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Attorney for Mazeliah  
VIKTOR MAZELIAH

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

|                                      |   |                                 |
|--------------------------------------|---|---------------------------------|
| VIKTOR MAZELIAH,                     | ) | Civil No. 1:26-CV-00063-JAO-WRP |
|                                      | ) |                                 |
| Petitioner,                          | ) |                                 |
| vs.                                  | ) | <b>MAZELIAH IS IN CUSTODY</b>   |
|                                      | ) | <b>AT THE HONOLULU FEDERAL</b>  |
|                                      | ) | <b>DETENTION CENTER</b>         |
| MICHAEL J.D. SMITH, Warden,          | ) |                                 |
| Federal Detention Center, Honolulu,  | ) | SUPPLEMENTAL MEMORANDUM:        |
| Hawai'i and his successor;           | ) | RE: EMERGENCY PETITION FOR      |
| POLLY KAISER, Acting Field           | ) | EX-PARTE TEMPORARY              |
| Office Director, San Francisco Field | ) | RESTRAINING ORDER TO            |
| Office, Immigration and Customs      | ) | STAY HIS REMOVAL PENDING        |
| Enforcement, and her successor;      | ) | HIS APPEAL AT THE BIA           |
| PAMELA BONDI,                        | ) |                                 |
| Attorney General of the United;      | ) |                                 |
| States and her successor;            | ) |                                 |
| KRISTI NOEEM, Secretary of the       | ) |                                 |
| Department of Homeland Security      | ) |                                 |
| and her successor; JAYCI RONEY,      | ) |                                 |
| USCIS Honolulu Field Officer         | ) |                                 |
| Director and her successor; All in   | ) |                                 |
| their official capacity.             | ) |                                 |
|                                      | ) |                                 |
| Respondents                          | ) |                                 |
| _____                                | ) |                                 |

Petitioner Viktor Mazeliah, by and through his undersigned counsel  
hereby submits his supplemental legal memorandum.

Dated: Honolulu, Hawaii, February 20, 2026.

Respectfully submitted by:  
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Attorney for Viktor Mazeliah

**The effect of the BIA notice of denial of a stay of removal  
on Mazeliah’s Emergency Motion for a Stay of Removal**

The BIA notice of denial of Mazeliah’s stay of removal also duly certifies that Mazeliah’s motion to reopen continues to be pending before the BIA.

STAY ORDER: The Respondent has filed a request for a stay of removal while an appeal of the Immigration Judge’s denial of the motion to reopen is pending with the Board of Immigration Appeals. After consideration of the information, the Board has concluded that a stay of removal is not warranted. Accordingly, the following order is entered. ORDER: The request for a stay of removal is denied. (“Exhibit A”).

Because Mazeliah’s motion to reopen is still pending with the BIA, this Court has jurisdiction over Mazeliah’s Emergency Motion for a Stay of Removal pursuant to *Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021).

In *Cui v. Garland*, the Ninth Circuit considered the question of finality when applied to removal orders issued in absentia. The Cui court first noted that, generally, removal orders become final “upon the earlier of (i) a determination by the [BIA] affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the [BIA].” *Id.* (quoting 8 U.S.C. § 1101(a)(47)(B)). The court then noted that removal orders issued in absentia, unlike removal orders generally, “may not be appealed to the BIA without first filing a motion to reopen the order before the IJ within 180 days of the order.” *Id.* (citing 8 U.S.C. § 1229a(b)(5)(C)(i)). Given the 180-day period, the Cui court concluded that removal orders issued in absentia become “final at the end of the

180-day period” if no motion to reopen is filed or after BIA review. In the instant case, there is no final order of removal because his motion is still pending with the BIA, as per the certification of the BIA in its notice. (“Exhibit A”).

**This Court has jurisdiction to grant Petitioner Mazeliah’s Emergency Motion for Stay of Removal pursuant to Bonilla Mejia v. Hermosillo, USDC, Western District of Washington at Seattle**

In his brief to the Seattle USDC, Bonilla Mejia (“Bonilla”) argued that the USDC has jurisdiction over his Writ of Habeas Corpus and his Petition for an Emergency TRO because Bonilla is not contesting the validity of his order of removal, but rather the agency’s intent to remove him before the removal order is final. *Citing, Singh v. Gonzales, 499 F.3d 969 (9th Cir. 2007)* (where agency action is not encompassed within a final order of removal<sup>1</sup>, the circuit court lacks jurisdiction and district court review under habeas or APA is the remedy); *Ali v. Gonzales, 421 F.3d 795, 797 n.1 (9th Cir. 2005)* (District Court has jurisdiction over case so long as the actual order of removal is not challenged, even if petitioner is challenging physical removal); see *Aden v. Nielsen, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019)* (“To resolve petitioner's arguments, the Court does not need to review the removal order.”). Federal courts may stay the status quo until the court has had adequate opportunity to assess circumstances at issue. See *United States v. United Mine Workers of Am., 330 U.S. 258, 290 (1947)*. These principles have been applied in the immigration context. See *Chhoeun v. Marin,*

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<sup>1</sup>This means that the BIA order has to be a final order of removal before Petitioner can file a Petition for Review (appeal) in the Ninth Circuit.

*306 F. Supp. 3d 1147, 1157 (C.D. Cal. 2018); Nken v. Holder, 556 U.S. 418, 434 (2009).*

The Bonilla case is strikingly similar to Mazeliah's case. The facts are essentially the same, to the extent that both cases involve an in absentia order of removal for failure to attend their individual hearing. Further, just like in Mazeliah, Bonilla filed an emergency motion for a TRO to stay removal before the USDC at Seattle, and both requested from their respective USDCs that they not be transferred to an out of state detention center. The USDC at Seattle in Bonilla also stayed the removal of the petitioner pending its decision. In Bonilla, like in the instant case, Respondents argued that the USDC lacked jurisdiction under the exclusionary language of 8 U.S.C. § 1252(g).

*The Order granting Bonilla's Emergency Motion for Temporary Restraining Order, 2023 WL 3237824; Case No. 2:25-cv-02196, signed November 19, 2025.* (attached hereto and marked as "Exhibit B ") addresses why 8 U.S.C. § 1252(g) does not strip the jurisdiction of the USDC when there is no final removal order when the appeal is still pending at the BIA level. The following are excerpts of the Order and legal analysis of Judge Tiffany M. Cartwright, USDC at Seattle.

Therefore, according to Respondents, "the appropriate forum for [Bonilla] to challenge his in absentia removal order is through the administrative process or the Ninth Circuit," not the district courts. at 3. In response, Bonilla argues that 8 U.S.C. §§ 1252(g), 1252(a)(5), and 1252(b)(9) "are inapplicable because [he] does not have a final order of removal nor is he seeking review of the IJ denial." **The Court agrees with Bonilla. Section 1252(g) does not bar this Court's review of Bonilla's claims because his order of removal is not final** (Emphasis added).

8 U.S.C. § 1252(g) states: Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), ... no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter. In *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018), the Ninth Circuit considered Section 1252(g) as it applied to a claim about the execution of a removal order pending a stay of removal. *Id.* at 799–800. The *Arce* court concluded that the removal order was not final, given the stay, and it “falls outside of the statute’s jurisdiction-stripping reach.” *Id.* at 800. “Where the Attorney General totally lacks the discretion to effectuate a removal order,” as she does when there is no final removal order, “§ 1252(g) is simply not implicated.” *Id.* at 801. Like *Arce*, there is no final removal order for Bonilla, and Section 1252(g) does not bar this Court’s review of his claims. Sections 1252(a)(5) and (b)(9) do not bar this Court’s review of Bonilla’s claims for the same reasons. (This excerpt is found on page 3 of the attached Westlaw printout starting midway on the first paragraph of “Exhibit B.”)

Under section 1252(a)(5), a petition for review<sup>2</sup> is “the sole and exclusive means for judicial review of an order of removal.” Section 1252(b)(9) is a “‘zipper clause’ that consolidates all ‘questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien’ into a petition for review.” *Ibarra-Perez v. United States*, 154 F.4th 989, 1000 (9th Cir. 2025). Together, they “channel claims into the petition-for-review process,” and give judicial review of a final removal order solely to the circuit courts. *Id.* at 999. However, sections 1252(a)(5) and (b)(9) do not apply because Bonilla is not seeking review of a final removal order with his habeas claims. Instead, Bonilla is seeking the vindication of his legal right to not be removed before a final removal order has been issued and to have an opportunity to be heard before removal and re-detention. *Ibarra-Perez*, 154 F.4th at 1000 (“Section 1252(a)(5) does not apply because *Ibarra-Perez* does not seek review of his removal order” and “§1252 (b)(9) . . . does not bar claims that are ‘independent of or collateral to the removal process’”) (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). The Court concludes that 8 U.S.C. §§ 1252(g), 1252(a)(5), and 1252(b)(9) do not affect the likelihood of success for Bonilla’s claims on their merits. (This excerpt is found on page 3 of “Exhibit B”, starting in the middle of paragraph 5(.

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The reference to a petition for review refers to a Petition for Review before the Ninth Circuit Court of Appeals. Counsel for Petitioner hereby certifies that he called the Ninth Circuit of Appeals, and was informed that the Ninth Circuit Court of Appeals does not have jurisdiction to review Mazeliah’s claims until such time that the BIA enters a final decision on the merits of a particular motion pending at the BIA.

The Fifth Amendment entitles noncitizens “to due process of law in the context of removal proceedings.” *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). (This quote is found on page 3 of the last paragraph of “Exhibit B”). Bonilla has shown that his removal before a final removal order would likely cause him irreparable harm. Irreparable harm can come from separation from his two children and wife. *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (“[S]eparated families...are substantial injuries and even irreparable harms.”). A violation of Bonilla's Fifth Amendment right to due process is also an irreparable harm. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This too leans in favor of granting a TRO. (This excerpt is found on page 4, third paragraph of “Exhibit B.”) The “balance of equities” and “public interest” tip in Bonilla's favor. The final two factors, which involve balancing the equities and considering the public interest, merge when the Government is a party to a case. *Padilla v. Immigr. & Customs Enf’t*, 953 F.3d 1134, 1141 (9th Cir. 2020) (citation omitted). Bonilla argues that he “faces a weighty hardship: loss of liberty, deprivation of the right to remain in the U[nited] S[tates] pending an asylum application, deprivation of the right to apply for asylum, and separation from his family,”<sup>3</sup> but Respondents face no hardship as all they must do is allow him to continue pursuing his asylum application pending a decision by the BIA. Additionally, his claims involve his Constitutional rights and a government policy “inconsistent with federal law,” which “strongly tips the balance of equities and public interest factors in favor” of granting a TRO. Respondents argue that the balance of equities and public interest weigh “decisively” against Bonilla's request for a TRO because he “asks this Court to enjoin the enforcement of a final removal order” and it “is well settled that the public interest in enforcement of United States' immigration laws is significant.” ....Again, according to *Cui*, since Bonilla's order of removal is not final he is not asking the Court to “enjoin the enforcement of a final removal order.” at 4. In the balance of equities, it costs the Respondents very little to allow Bonilla to see his appeal through. If his removal order becomes final, then Respondents may carry out Bonilla's removal. Additionally, “there is a public interest in preventing [noncitizens] from being wrongfully removed.” *Nken v. Holder*, 556 U.S. 418, 436 (2009). It is “always in the public interest to prevent the violation of a party's constitutional rights.” *Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022) (Excerpt found on page 4, paragraphs 4-7, “Exhibit B.”)

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In the instant case, Counsel for Mazeliah submits that Mazeliah’s irreparable harm and hardships if he is removed involve not only separation from his family but also the catastrophic collapse of his businesses since he is responsible for the day to day operation and administration of his businesses. See attached Declaration of Iris Freitas, Mazeliah’s USC wife, “Exhibit C”.

Judge Cartwright ordered that 1. The motion for temporary restraining order is GRANTED. 2. Respondents, including their officers, agents, servants, employees, attorneys, or others acting on their behalf, are ENJOINED from removing Petitioner from the United States or from the Western District of Washington pending further Order of this Court...

3. This temporary Order expires December 19, 2025 unless extended by this Court. See *Abuzeide for Est. of Dane v. Openroad Auto Grp, Inc.*, 2017 WL 8727861, at (W.D. Wash. Apr. 27, 2017) (14-day limit for TROs does not apply when they are issued with notice and full opportunity to be heard). The Court anticipates that it can rule on the underlying habeas petition within that time. Should an extension be necessary, the Court will allow the parties to be heard on whether to convert the TRO into a preliminary injunction.

4. Respondents have not requested a bond and the Court waives the bond requirement under Federal Rule of Civil Procedure 65(c).("Exhibit B").

*Rauda v Jennings*, 55 F.4th 773,778 (9<sup>th</sup> Cir. 2022) does not apply to Mazeliah's case because in *Rauda* there was a final order of removal from the BIA. In the instant case, there is no final order of removal from the BIA.

Rauda had entered the US illegally and had been involved in violent gang activity. *Rauda*, 55 F.4th at 775-76, and ICE detained him and sought to remove him. Rauda then sought relief in front of the IJ and subsequently appealed to the BIA. Rauda was denied relief by both the IJ and the BIA. Rauda then filed a motion to reopen the BIA's denial of relief on the merits. Rauda then filed a writ of habeas corpus with the USDC seeking to enjoin the government from removing him until the BIA had ruled on his post judgement motion to reopen. The USDC denied his writ and then Rauda filed a petition for review at the Ninth Circuit Court of Appeals. The Ninth Circuit concluded that 1252(g) barred review because Rauda was challenging the execution of his removal order. *Rauda* does not apply to Mazeliah's case because there is no final order of removal inasmuch as his appeal *de novo* of the IJ's denial of

the motion to reopen is still pending at the BIA. The Supreme Court has instructed that § 1252(g) should be read narrowly. See *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 487, (1999); *DHS v. Regents of UC.*, 591 U.S. 1, (2020). In *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998)—one of the first cases to interpret § 1252(g)—the 9<sup>th</sup> Circuit specifically held § 1252(g) did not bar due process claims. *Id.* at 1052–53. In the instant case, Mazeliah has the right to due process to have his claims before the BIA decided before ICE can remove him to Israel. Even if the BIA were to enter a final order of removal, Mazeliah would still be entitled to file a petition for review at the Ninth Circuit. At the end of the day, this Court is the only forum at this time which can stay his removal pending his appeals to the BIA. Respondents would not be harmed by any TRO. The only persons who will be irreparably harmed will be Mazeliah, his wife and stepdaughter, and the residents of Hawaii who depend on the services for affordable housing and low cost building materials which his businesses provide in partnership with the State of Hawaii and the C & C of Honolulu, and the catastrophic collapse of these businesses due to any removal at this time. Given these extraordinary consequences, Justice will be served if this Court grants Mazeliah’s Emergency TRO. A lot is at stake for Mazeliah. He has no criminal history, entered the U.S. lawfully and prays that this Court will be merciful.

Dated: Honolulu, Hawaii, February 20, 2026.

Respectfully Submitted by:  
s/Fernando L. Cosio  
Fernando L. Cosio  
Attorney for Petitioner  
Viktor Mazeliah

**NOT FOR PUBLICATION**

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

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MATTER OF:

Viktor MAZELIAH, A 

Respondent

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**FILED**

Feb 17, 2026

ON BEHALF OF RESPONDENT: Fernando L Cosio, Esquire

IN REMOVAL PROCEEDINGS  
On Motion for Stay of Removal before the Board of Immigration Appeals

Before: Gemoets, Appellate Immigration Judge

GEMOETS, Appellate Immigration Judge

STAY ORDER

The respondent has filed a request for a stay of removal while an appeal of the Immigration Judge's denial of the motion to reopen is pending with the Board of Immigration Appeals. After consideration of the information, the Board has concluded that a stay of removal is not warranted.

Accordingly, the following order shall be entered.

ORDER: The request for stay of removal is denied.

**"EXHIBIT A"**

**Bonilla v. Hermosillo, Slip Copy (2025)**

2025 WL 3237854

Only the Westlaw citation is currently available.  
United States District Court, W.D. Washington,  
at Tacoma.

Moises David BONILLA Mejia, Petitioner,  
v.  
Laura HERMOSILLO, et al., Respondents.

Case No. 2:25-cv-02196

1

Signed November 19, 2025

**Attorneys and Law Firms**

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Seattle, WA, for Petitioner.

Michelle R. Lambert, DOJ-United States Attorney's Office,  
Tacoma, WA, U.S. Attorney Habeas, for Respondents  
Cammilla Wamsley, Kristi Noem, Pamela Bondi, United  
States Department of Homeland Security.

U.S. Attorney Habeas, for Respondent Bruce Scott.

**ORDER GRANTING PETITIONER'S MOTION FOR AN  
EMERGENCY TEMPORARY RESTRAINING ORDER**

Tiffany M. Cartwright, United States District Judge

**I. INTRODUCTION**

\*1 Before the Court is petitioner Moises David Bonilla Mejia's ("Bonilla") motion for an emergency temporary restraining order ("TRO"). Dkt. 2. Bonilla seeks to restrain Respondents<sup>1</sup> from removing or transferring him from the Western District of Washington before a final removal order and a full and fair hearing of his claims. *Id.* For the following reasons, Bonilla's motion is GRANTED.

**II. BACKGROUND**

Bonilla, his wife, and their two children entered the United States on March 29, 2024. Dkt. 9 at 2; *see* Dkt. 2-1 at 47-50. They were arrested by United States Border Patrol agents on that same day and released several days later. *Id.*

Respondents initiated removal proceedings against Bonilla and his family, charging them with removability under Immigration and Nationality Act ("INA") sections 212(a)(7)(a)(i)(I) and 212(a)(6)(A)(i). Dkt. 10-1 at 2; Dkt. 9 at 2. Bonilla's wife applied for asylum on behalf of the entire family, and they appeared for all their preliminary hearings before the immigration courts. *See* Dkt. 2-1 at 1-2, 47-50, 87-95; Dkt. 9 at 3.

A final merits hearing on their asylum application was scheduled for 8:30 AM on June 16, 2025. Dkt. 9 at 3. However, because of the illness of one of their children the night before, unexpected lack of childcare, heavy traffic due to the influx of tourists for the FIFA Club World Cup, the presence of community protesters outside the Seattle Immigration Court, and delays in passing through security, Bonilla and his family arrived at their courtroom late with the courtroom's door closed and locked.<sup>2</sup> Dkt. 2-1 at 23-25, 33-39. While waiting for Bonilla and his family to appear, the immigration judge ("IJ") issued a removal order *in absentia*, ordering Bonilla and his family's removal to Honduras. Dkt. 2-1 at 1-2.

On July 18, 2025, Bonilla and his family moved to rescind the removal order issued *in absentia* and reopen their removal proceedings under INA § 240(b)(5). Dkt. 2-1 at 9-18. On July 29, 2025, the IJ denied the motion, finding that they "failed to demonstrate that any exceptional circumstances outside of their control justify their failure to appear." *Id.* at 71. On August 19, 2025, Bonilla and his family filed a notice of appeal of the IJ's denial of their motion. *Id.* at 77-86. That appeal is pending before the BIA.

Bonilla was arrested after visiting the Tukwila office for ICE's Intensive Supervision Appearance Program on November 3, 2025. Dkt. 2 at 3. Unable to locate Bonilla after his arrest, his counsel reached out to Respondents and learned that he was being detained at NWIPC. Dkt. 2-1 at 100. His counsel asked whether he would be "scheduled for removal in the next 48 hours," and was informed that "NWIPC has three flights that leave regularly" and if they wanted to take any legal action, it "would need to be done as soon as possible." *Id.* at 99.

\*2 Bonilla filed a habeas petition and the instant motion for a TRO on November 4, 2025. Dkts. 1-2. The TRO was provisionally granted pending full briefing. Dkt. 3. Based

**Bonilla v. Hermosillo, Slip Copy (2025)**

on the parties' agreed schedule, Dkt. 6, a response to the motion was filed by Respondents on November 7, 2025. Dkt. 8. Bonilla's reply was filed on November 13, 2025. Dkt. 11.

**III. LEGAL STANDARD**

A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (the standard for a TRO is "substantially identical" to the standard for a preliminary injunction). A plaintiff seeking a TRO must show: (1) they are likely to succeed on the merits, (2) the potential for irreparable harm absent preliminary relief, (3) the balance of equities favors injunction, and (4) the relief sought is in the public interest. *Winter*, 555 U.S. at 20 (the "Winter factors"); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). "Likelihood of success on the merits is a threshold inquiry and is the most important factor." *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (citation omitted).

**IV. DISCUSSION**

With his motion for a TRO, Bonilla seeks to restrain Respondents from removing him or transferring him from the Western District of Washington during the pendency of his habeas proceedings. Dkt. 2 at 1; *see* Dkt. 2-2. The Court will consider each of the *Winter* factors in turn.

**A. Bonilla's claims are likely to succeed on the merits.**

Bonilla's habeas petition contains two claims, one under the Immigration and Nationality Act (INA) and one under the Fifth Amendment's Due Process Clause. Dkt. 1 at 13-15. He argues that he is likely to succeed on those claims because Respondents are seeking to remove him from the United States without a final removal order, in violation of the INA and his right to Due Process. Dkt. 2 at 4-6. In response, Respondents argue that Bonilla's habeas claims are unlikely to succeed because the Court lacks subject matter jurisdiction over Bonilla's petition. Dkt. 8 at 4-9. For reasons that will become readily apparent, the Court must first consider whether Bonilla's removal order *in absentia* is final.

*1. Bonilla's removal order is not final.*

In *Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021), the Ninth Circuit considered the question of finality when applied to removal orders issued *in absentia*. The *Cui* court first noted that, generally, removal orders become final "upon the earlier of (i) a determination by the [BIA] affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the [BIA]." *Id.* (quoting 8 U.S.C. § 1101(a)(47)(B)). The court then noted that removal orders issued *in absentia*, unlike removal orders generally, "may not be appealed to the BIA without first filing a motion to reopen the order before the IJ within 180 days of the order." *Id.* (citing 8 U.S.C. § 1229a(b)(5)(C)(i)). Given the 180-day period, the *Cui* court concluded that removal orders issued *in absentia* become "final at the end of the 180-day period" if no motion to reopen is filed or after BIA review. *Id.*

Respondents' jurisdictional arguments depend, in large part, on this Court disregarding *Cui's* holding, which they ask the Court to do. Dkt. 8 at 9-10. Respondents argue that Bonilla should not be able to rely on *Cui* because the decision was "contrary to law." *Id.* at 9. But while Respondents are free to preserve an argument for appeal that *Cui* was wrongly decided, neither they nor this Court are free to disregard it. "This Court is bound to follow Supreme Court and Ninth Circuit precedent under the principle of stare decisis." *Johnson v. City of Seattle*, 385 F. Supp. 2d 1091, 1098 n.5 (W.D. Wash. 2005) (citing *Hart v. Massanari*, 266 F.3d 1155, 1168, 1175 (9th Cir. 2001)). The idea that Respondents could remove Bonilla from the United States by simply ignoring *Cui* because they disagree with it would be antithetical to the rule of law. In their return to Bonilla's habeas petition, the Court expects Respondents to clarify the nature of their argument regarding *Cui* consistent with their obligations under Federal Rule of Civil Procedure 11(b)(2).

\*3 Bonilla's removal order was issued *in absentia* on June 16, 2025. Dkt. 2-1 at 1. On July 18, 2025, Bonilla and his family moved to reopen. *Id.* at 9-18. On July 29, 2025, the IJ denied the motion. *Id.* at 71. On August 19, 2025, Bonilla and his family filed a timely notice of appeal of the IJ's denial of their motion. *Id.* at 77-86. That appeal is pending before the BIA. Accordingly, Bonilla's removal order issued *in absentia* is not final. The Court will now consider whether the jurisdictional issues presented by Respondents will affect whether Bonilla's claims are likely to succeed on the merits.

**Bonilla v. Hermosillo, Slip Copy (2025)**

2. *The Court has jurisdiction over Bonilla's habeas claims.* Bonilla is seeking habeas relief pursuant to 28 U.S.C. § 2241. Respondents argue Bonilla's claims are unlikely to succeed on the merits because the Court lacks subject matter jurisdiction to consider Bonilla's claims under 8 U.S.C. §§ 1252(g), 1252(a)(5), and 1252(b)(9). Dkt. 8 at 4–9. Therefore, according to Respondents, “the appropriate forum for [Bonilla] to challenge his *in absentia* removal order is through the administrative process or the Ninth Circuit,” not the district courts. *Id.* at 7. In response, Bonilla argues that 8 U.S.C. §§ 1252(g), 1252(a)(5), and 1252(b)(9) “are inapplicable because [he] does not have a *final* order of removal nor is he seeking review of the IJ denial.” Dkt. 11 at 6 (emphasis added). The Court agrees with Bonilla.

Section 1252(g) does not bar this Court's review of Bonilla's claims because his order of removal is not final. 8 U.S.C. § 1252(g) states:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory),...no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

In *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018), the Ninth Circuit considered Section 1252(g) as it applied to a claim about the execution of a removal order pending a stay of removal. *Id.* at 799–800. The *Arce* court concluded that the removal order was not final, given the stay, and it “falls outside of the statute's jurisdiction-stripping reach.” *Id.* at 800. “Where the Attorney General totally lacks the discretion to effectuate a removal order,” as she does when there is no final removal order, “§ 1252(g) is simply not implicated.” *Id.* at 801. Like *Arce*, there is no final removal order for Bonilla, and Section 1252(g) does not bar this Court's review of his claims.

Sections 1252(a)(5) and (b)(9) do not bar this Court's review of Bonilla's claims for the same reasons. Under section 1252(a)(5), a petition for review is “the sole and exclusive means for judicial review of an order of removal.” Section 1252(b)(9) is a “ ‘zipper clause’ that consolidates all ‘questions of law and fact...arising from any action taken or proceeding brought to remove an alien’ into a petition for review.” *Ibarra-Perez v. United States*, 154 F.4th 989,

1000 (9th Cir. 2025). Together, they “channel claims into the petition-for-review process,” and give judicial review of a final removal order solely to the circuit courts. *Id.* at 999. However, sections 1252(a)(5) and (b)(9) do not apply because Bonilla is not seeking review of a final removal order with his habeas claims. Instead, Bonilla is seeking the vindication of his legal right to not be removed before a final removal order has been issued and to have an opportunity to be heard before removal and re-detention. Dkt. 1 at 16; *Ibarra-Perez*, 154 F.4th at 1000 (“Section 1252(a)(5) does not apply because Ibarra-Perez does not seek review of his removal order” and “§ 1252(b)(9)...does not bar claims that are ‘independent of or collateral to the removal process’ ”) (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)).

\*4 The Court concludes that 8 U.S.C. §§ 1252(g), 1252(a)(5), and 1252(b)(9) do not affect the likelihood of success for Bonilla's claims on their merits. The Court will now consider the substance of Bonilla's claims and whether they are likely to succeed on the merits.

3. *Bonilla's INA and Due Process arguments are likely to succeed on their merits.*

Bonilla's habeas petition contains two counts. Dkt. 1 at 13–15. Count one alleges that Respondents' attempt to remove him from the United States before obtaining a final removal order violates the INA. *Id.* at 13. Given his pending appeal before the BIA of an *in absentia* removal order, Bonilla has a strong claim that his immediate removal would violate the INA, specifically 8 U.S.C. § 1231(a)(1)(B) as interpreted by the Ninth Circuit under *Cui*.

Count two alleges that Respondents' attempt to remove him from the United States before obtaining a final removal order violates his Fifth Amendment right to due process. *Id.* at 14–15. The Fifth Amendment entitles noncitizens “to due process of law in the context of removal proceedings.” *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (quoting *Trump v. J.G.G.*, 604 U.S. —, 145 S. Ct. 1003, 1006 (2025) (per curiam)). Given the practical impossibility of pursuing an asylum claim and presenting evidence in supporting that claim from outside the United States, see 8 U.S.C. §§ 1101(a)(42), 1158(a)(1), Bonilla also has a strong claim that his immediate removal would strip him of his ability to pursue his asylum claim and thus violate his constitutional right to due process.

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Bonilla has shown that he is likely to succeed on the merits of his habeas petition. This weighs in favor of granting a TRO.

**B. Bonilla is likely to suffer irreparable harm in the absence of a TRO.**

The irreparable harm standard “requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction.” *Winter*, 555 U.S. at 22. It must be more than a mere “possibility of irreparable harm.” *Id.*

Bonilla contends that if he is removed before his appeal has concluded, he would likely be denied an opportunity to return to pursue his asylum claims and separated from his family members. Dkt. 11 at 10. Respondents argue that Bonilla has not shown that he will likely suffer irreparable injury without the TRO and that he makes only a showing of a “possibility.” Dkt. 8 at 10. Respondents contend this is because Bonilla has not shown that he will succeed on his appeal of the IJ’s denial of his motion to reopen or that his removal “categorically irreparable.” *Id.*

Bonilla has shown that his removal before a final removal order would likely cause him irreparable harm. Irreparable harm can come from separation from his two children and wife. *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (“[S]eparated families...are substantial injuries and even irreparable harms.”). A violation of Bonilla’s Fifth Amendment right to due process is also an irreparable harm. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This too leans in favor of granting a TRO.

**C. The “balance of equities” and “public interest” tip in Bonilla’s favor.**

\*5 The final two factors, which involve balancing the equities and considering the public interest, merge when the Government is a party to a case. *Padilla v. Immigr. & Customs Enft.*, 953 F.3d 1134, 1141 (9th Cir. 2020) (citation omitted). Bonilla argues that he “faces a weighty hardship: loss of liberty, deprivation of the right to remain in the U[nited] S[tates] pending an asylum application, deprivation of the right to apply for asylum, and separation from his family,”

but Respondents face no hardship as all they must do is allow him to continue pursuing his asylum application pending a decision by the BIA. Dkt. 11 at 10. Additionally, his claims involve his Constitutional rights and a government policy “inconsistent with federal law,” which “strongly tips the balance of equities and public interest factors in favor” of granting a TRO. Dkt. 11 at 11.

Respondents argue that the balance of equities and public interest weigh “decisively” against Bonilla’s request for a TRO because he “asks this Court to enjoin the enforcement of a final removal order” and it “is well settled that the public interest in enforcement of United States’ immigration laws is significant.” Dkt. 8 at 11–12 (citing *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981)).

The final two factors lean in favor of Bonilla. Again, according to *Cui*, since Bonilla’s order of removal is not final, he is not asking the Court to “enjoin the enforcement of a final removal order.” *See supra*. In the balance of equities, it costs the Respondents very little to allow Bonilla to see his appeal through. If his removal order becomes final, then Respondents may carry out Bonilla’s removal. Additionally, “there is a public interest in preventing [noncitizens] from being wrongfully removed.” *Nken v. Holder*, 556 U.S. 418, 436 (2009). It is “always in the public interest to prevent the violation of a party’s constitutional rights.” *Riley’s Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022).

**V. CONCLUSION**

All four factors lean in favor of granting Bonilla’s request for a TRO. Accordingly, the Court ORDERS as follows:

1. The motion for temporary restraining order (Dkt. 2) is GRANTED.
2. Respondents, including their officers, agents, servants, employees, attorneys, or others acting on their behalf, are ENJOINED from removing Petitioner from the United States or from the Western District of Washington pending further Order of this Court.
3. This temporary Order expires December 19, 2025 unless extended by this Court. *See Abuzeide for Est. of Dane v. Openroad Auto Grp, Inc.*, 2017 WL 8727861, at \*1 (W.D. Wash. Apr. 27, 2017) (14-day limit for TROs does not apply when they are issued with notice and full opportunity

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to be heard). The Court anticipates that it can rule on the underlying habeas petition within that time. Should an extension be necessary, the Court will allow the parties to be heard on whether to convert the TRO into a preliminary injunction.

4. Respondents have not requested a bond and the Court waives the bond requirement under Federal Rule of Civil Procedure 65(c).

**All Citations**

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**Footnotes**

- 1 Respondents include Laura Hermosillo, ICE ERO Seattle acting Field Office Director; Bruce Scott, Warden, Northwest ICE Processing Center; Kristi Noem, Secretary, United States Department of Homeland Security; Pamela Bondi, United States Attorney General; and United States Department of Homeland Security (collectively "Respondents").
- 2 The parties disagree as to the length of Bonilla and his family's lateness, 12 minutes according to Bonilla, or 16–20 minutes according to Respondents and the IJ's order denying the motion to reopen. Dkt. 2-1 at 23–25, 70; Dkt. 8 at 3. This distinction is not relevant to the outcome of the motion.

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## DECLARATION OF IRIS FREITAS

### IN SUPPORT OF EMERGENCY STAY OF REMOVAL

I, **Iris Freitas**, hereby declare as follows:

1. I am a United States citizen and the **lawful spouse of Viktor Mazeliah**, to whom I have been **legally married since 2021**. I make this declaration in support of an emergency stay of removal and based on my personal knowledge.

2. I am a business owner. Individually, I own and operate a digital marketing agency based entirely in the United States. Together with my husband, we own and manage multiple businesses, including a local construction company in Hawai'i. Through these businesses, we employ many families in Hawai'i and in other parts of the United States. These are active, growing businesses that require our physical presence, leadership, and daily involvement.

3. We are currently in the process of opening a new warehouse and showroom scheduled for next month, focused on kitchen cabinetry and stone materials. Our businesses are deeply rooted in the United States, and there is no realistic way for me to relocate or continue these operations from another country.

4. Relocating to Israel would cause extreme hardship to me and my family. I do not speak Hebrew, and my daughter does not speak Hebrew. I have no professional network, employment opportunities, or support system in Israel. My entire professional career—including years of work with national brands as a model and content creator—has been built in the United States. I do not consider Israel my home. My home, my country, and my life are in the United States.

5. I make this declaration not only as a wife, but as a mother whose deepest wish is for her daughter's life to continue as it is now—stable, secure, and full of opportunity.

6. My daughter has lived in Hawai'i since early childhood. She is deeply connected to her community, school, friends, and environment. She is currently enrolled at [REDACTED] and is an exceptional student, consistently earning honor roll recognition and ranking at the top of her class. We have already begun the process of registering her for [REDACTED] with plans in place for ninth grade and high school.

**"EXHIBIT C"**

7. In addition to her academic success, my daughter's life is structured around stability and personal development, including piano, guitar, drums, and Olympic gymnastics. Removing her from this environment would fundamentally disrupt the trajectory of her life.

8. My daughter's biological father abandoned her when she was three years old. Since that time, my husband, Viktor Mazeliah, has been her father in every meaningful sense. He has raised her, supported her, and provided the emotional stability and guidance that every child deserves. He is the only consistent father figure she has known.


9. My husband and I are currently undergoing fertility treatment at a clinic in Honolulu, a process we have been committed to for nearly six months. We have also recently purchased our family home, achieving a long-standing goal through years of dedication and hard work. We had hoped to enjoy the stability we have built together while continuing to grow our family and businesses.

10. Our commitment to our community extends beyond our household. Through our businesses, we contribute to the local economy, provide employment, sponsor local youth sports, support community initiatives, and participate in government-related projects such as affordable housing. Our presence in Hawai'i is active, tangible, and meaningful.

11. The immediate removal of my husband would cause devastating financial instability, severe emotional harm, and an irreparable rupture to our family life. These consequences would deeply affect not only us, but also our employees, our community, and especially my daughter, whose well-being depends on the family structure we have built together.

12. For these reasons, I respectfully request that the Court grant an emergency stay of removal and allow our family to remain intact while this matter is properly reviewed.

I declare **under penalty of perjury** that the foregoing is true and correct.

Executed on this 07 day of February, 2026,  
at 

Iris Freitas  
U.S. Citizen



Certificate of Service

THE UNDERSIGNED certifies that a copy of the attached pleading and exhibits will be served upon the Respondents herein, including the below party, counsel for Respondents, through the electronic filing system of this Court via the ECF platform, and that all registered parties will receive notice of the instant filing and will be able to download said legal supplemental memorandum.

Edric Ching, Esq.  
Assistant U.S. Attorney General  
Prince Kuhio Federal Building  
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Honolulu, HI 96850

Dated: Honolulu, Hawaii, February 20, 2026.

Respectfully submitted by:  
s/Fernando L. Cosio  
Fernando L. Cosio  
Attorney for Petitioner  
Viktor Mazeliah