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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GREGORIO NICOLAS VASQUEZ,

Petitioner,

v.

**J.L JAMISON,
et al**

Respondents.

Case No. 2:26-cv-1704

MOTION FOR TEMPORARY RESTRAINING ORDER

PLEASE TAKE NOTICE that as soon as counsel may be heard, the undersigned will move the Court, seeking a Temporary Restraining Order (“TRO”) in the form attached hereto and asking that this matter be set down for a hearing to convert those temporary restraints into a Preliminary Injunction pursuant to Fed. R. Civ. P. 65. In support of this motion, Petitioner submits the accompanying Memorandum of Law in Support of a Temporary Restraining Order and the concurrently filed petition.

WHEREFORE, Petitioner respectfully requests that this Court grant this Motion for a Temporary Restraining Order and issue an order enjoining Respondents from moving Petitioner the United States during the pendency of the habeas process and ensuring that he receives an procedural due process by ordering Petitioner’s immediate release from Respondents’ custody.

Respectfully Submitted,

Date: March 19, 2026

s/Kimberly Tomczak
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CERTIFICATE OF SERVICE

I, Kimberly Tomczak, Attorney for the Petitioner, certify that I served the forgoing MOTION FOR TEMPORARY RESTRAINING ORDER electronically via ECF, where it is available for viewing and downloading for the respondent parties:

Dated: March 19, 2026

s/Kimberly Tomczak
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**MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

INTRODUCTION

Petitioner filed this petition when he was detained at the Federal Detention Center in Philadelphia. Thereafter, Petitioner was moved to Moshannon Valley Correctional Facility in Philipsburg, PA. Despite the habeas petition pending before this Court, counsel received a call from Petitioner's friends that he was told he would be moved again in the middle of the night last night. Though he appears in the ICE detainee locator as still being at Moshannon, Respondents have informed him of their clear intention to move him again.

Respondents have deprived Petitioner of his liberty interest protected by the Fifth Amendment by detaining him since March 13, 2026, without any interview to determine whether his ongoing detention is justified. Petitioner has filed the associated habeas petition to ensure he gets an interview regarding his revocation of Order of Supervision per the regulations. This court should enforce the associated temporary restraining order, forbidding DHS from removing from Petitioner from the United States, until he has had an adequate opportunity to challenge his detention.

ARGUMENT

I. PETITIONER'S DETENTION VIOLATES DUE PROCESS

The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. The Due Process Clause extends to all “persons” regardless of status, including non-citizens, whether here lawfully, unlawfully, temporarily, or permanently *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). To determine whether detention violates procedural due process, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335. Further, government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances “where a

special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.” *Zadvydas* at 690.

a. Petitioner’s Private Interest

First, Petitioner’s “private interest ... affected by the official action is the most elemental of liberty interests—the interest in being free from physical detention.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, (2004). “It is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection.” *Jones v. United States*, 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (emphasis added; internal quotation marks omitted). At this stage in the *Mathews* calculus, the Court must consider the interest of the *erroneously* detained individual. *Carey v. Piphus*, 435 U.S. 247, 259 (1978) (“Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.” *Hamdi* at 2646–47).

b. The Risk of an Erroneous Deprivation

As to the second prong of the *Mathews v. Eldridge* balancing test, the Court should find that the risk of erroneous deprivation is particularly high here. The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Petitioner has raised significant and supported legal arguments against Respondents’ detention of Petitioner. Petitioner was detained without following the proper regulations for revocation of an Order of Supervision.

c. The Government’s Interest

The final *Mathews* factor concerns the United States’ interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. *Mathews*, 424

U.S. at 335. Petitioner recognizes that the United States has an interest in meaningful immigration laws that advance its stated policies. However, the United States has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied under the proper means.

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491. Respondents will be unable to provide any evidence or argument that Petitioner is either a flight risk or a danger. The record would indicate that he is neither:

Nor is Petitioner a danger to the community. He has no criminal record nor any accusations of being a danger to national security. Respondents cannot show that their interest in detaining Petitioner without an individualized interview and determination outweighs Petitioner's liberty interests; nor can they show that the effort and cost of providing Petitioner with procedural safeguards is burdensome.

Accordingly, all three *Mathews* factors weigh heavily in support of Petitioner.

II. THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER

The Court should grant a temporary restraining order or preliminary injunction enjoining Respondents from detaining Petitioner without bond and ordering that petitioner not be moved during the pendency of these proceedings, as he has already been moved from the jurisdiction of this Court to Moshannon. Counsel also believes he may have been moved from Moshannon, though she is unable to confirm at this time.

"A Petitioner seeking a preliminary injunction must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest."

Winter v. National Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The Third Circuit has described the first two requirements as “gateway factors.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). If the gateway factors are met, then a court should consider the remaining factors. *Id.*; see also *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350 (Fed. Cir. 2001) (“[A] movant cannot be granted a preliminary injunction unless it establishes *both* of the first two factors, *i.e.*, likelihood of success on the merits and irreparable harm”).

a. Likelihood of Success on the Merits

There is no question that Petitioner is likely to succeed on the merits of his claim. ICE did not follow the proper regulations to revoke his Order of Supervision.

b. Irreparable Harm if TRO is not Issued

Petitioners seeking a preliminary injunction or temporary restraining order must make a clear showing “that irreparable injury is likely in the absence of an injunction.” *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Given Petitioner’s high likelihood of success on the merits, his burden of showing irreparable harm is lessened, though still required. The Third Circuit has endorsed a “flexible” approach to the first two *Winters* factors. *Reilly v. City of Harrisburg*, 858 F.3d 173 (3d Cir. 2017), *as amended* (June 26, 2017). This approach requires courts to consider the factors “taken together,” such that a petitioner who shows great harm has leeway to show less success on the merits, or a plaintiff who shows less harm must show a high likelihood of success on the merits to warrant a preliminary injunction. *Reilly*, 858 F.3d 173; *Word Seed Church v. Vill. of Hazel Crest*, 533 F. Supp. 3d 637, 647 (N.D. Ill. 2021) (“the [c]ourt applies a ‘sliding scale’ approach under which ‘the more likely the plaintiff will succeed on the merits, the less the balance of irreparable harms need favor plaintiff’s position’”) (quoting *Turnell v. CentiMark Corp.*, 796 F.3d 656, 662 (7th Cir.

2015)). Generally, irreparable harm must be harm that cannot be remedied by a legal or equitable remedy following trial, and must be actual and imminent, and not speculative or remote. See *Angstadt ex rel. Angstadt v. Midd-West Sch.*, 182 F. Supp. 2d 435, 437 (M.D. Pa. 2002); *see also Dice v. Clinicorp, Inc.*, 887 F. Supp. 803, 809 (W.D. Pa. 1995).

Petitioner is suffering irreparable injury due to his unlawful and unconstitutional detention and Respondents must be enjoined from holding him.

In the immigration context, unlawful detention is a sufficient irreparable injury. *See Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 46–47 (M.D. Pa. 2025); *see also Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (finding that immigration detention can constitute irreparable harm “by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time” and emphasizing harm related to economic burdens due to missed work and the harm that results when children cannot see their detained parents). Further, separation from family members while being wrongly detained constitutes irreparable injury. *E.O.H.C. v. Barr*, 434 F. Supp. 3d 321, 340 (E.D. Pa. 2020), order vacated, appeal dismissed sub nom. *E.O.H.C. v. Att’y Gen. United States*, No. 20-1163, 2020 WL 2111302 (3d Cir. Apr. 20, 2020)¹ (“Courts have recognized that separation from family members constitutes an irreparable injury.”); *see also Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (holding that loss of liberty due to detention is “perhaps the best example of irreparable harm”); *Carmona v. Bondi*, No. CV-25-00110-TUC-JGZ, 2025 WL 786514, at *3 (D. Ariz. Mar. 12, 2025) (holding that a detainee who is facing potential removal has shown irreparable injury). (citing *Ragbir v. U.S.*, No. 17-cv-

¹ The Court of Appeals decision was based upon petitioners’ release from detention rendering the matter moot, not based upon error of law. *E.O.H.C.*, 2020 WL 2111302.

1256, 2018 WL 1446407, at *18 (D.N.J. March 23, 2018)) (*citing U.S. v. Diana*, Crim No. 83-cv-301, 1988 WL 17011, at *2 (E.D. Pa. Feb. 25, 1988)).

Petitioner demonstrates the risk of irreparable harm, as he has experienced and will continue to experience harm in his ability to support himself financially, should this Court not order his release. There is only one remedy to Petitioner’s ongoing harm – this Court must order Petitioner’s immediate release.

c. Public Interest & Balance of Harms

“[I]f a [petitioner] demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the [petitioner].” *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). There is a public interest in ensuring that the government respect the fundamental due process principle that no one should be subject to unlawful detention. Absent legitimate, countervailing concerns, public interest favors the protection of constitutional rights, and any comparison of harm to the Government turns mostly on matters of public interest, as those considerations merge when the Government is an opposing party. *Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 47 (M.D. Pa. 2025), citing *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 332 (3d Cir. 2020).

The public interest factor to weigh in favor of issuing a preliminary injunction ordering the release of a noncitizen, despite potential concerns with border security or public safety because the public interest is served by assuring government institutions follow the law. *Arias Gudino* at 47–48, citing *Abrego Garcia v. Noem*, 777 F. Supp. 3d 519 (D. Md. 2025) (“Equally important, the public remains acutely interested in ‘seeing its governmental institutions follow the law’”)

(quoting *Nken*, 556 U.S. at 436, 129 S.Ct. 1749) (quoting *Roe v. Dep't of Def.*, 947 F.3d at 230–31 (4th Cir. 2020) (internal quotation marks and citation omitted)).

Put plainly, Respondents have no legitimate interest in enforcing this unconstitutional and unlawful policy of arresting as many non-citizens as possible detaining them without the possibility of release.² The State “has no interest in enforcing an unconstitutional law, [and] the public interest is harmed by the enforcement of laws repugnant to the United States Constitution.” *Siembra Finca Carmen, LLC v. Sec'y of Dep't of Agric. of P.R.*, 437 F. Supp. 3d 119, 137 (D.P.R. 2020).

CONCLUSION

For the foregoing reasons, the motion for a temporary restraining order should be granted.

Respectfully Submitted,

Date: March 19, 2026

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² ICE, Enforcement and Removal Operations (ERO) “field offices **no longer have the option to discretionarily release aliens, nor decline to take aliens into custody...**” U.S. Immigration & Customs Enf’t, National Hold Room Waiver, at 2 (June 17, 2021), available at <https://immpolicytracking.org/policies/ice-waives-the-12-hour-holding-cell-limit-allowing-detainees-to-be-held-for-72-hours/#/tab-policy-documents> (emphasis added) .

CERTIFICATE OF SERVICE

I, Kimberly Tomczak Attorney for the Petitioner, certify that I served the forgoing MEMORANDUM OF LAW IN SUPPORT TEMPORARY RESTRAINING ORDER, electronically via ECF, where it is available for viewing and downloading for the respondent parties.:

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