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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

M-S-L, an adult,

Case No. 6:25-cv-01204-AA

Petitioner,

MOTION FOR TEMPORARY
RESTRAINING ORDER

v.

DREW BOSTICK, et al.,

**Oral Argument and Expedited
Consideration Requested**

Respondents.

Petitioner, M-S-L, through counsel, moves this Honorable Court for a temporary restraining order requiring the Respondents to release her from custody and barring future arrest or detention by the Respondents, absent leave of this Court. In support of this Motion, counsel states as follows:

I. Introduction

M-S-L's detention is illegal and unconstitutional. M-S-L was initially released from custody on an order of supervised release ("OSUP") nearly a year-and-a-half ago after expressing fear of return to Mexico and after Immigration and Customs Enforcement ("ICE") determined that she was not a flight risk and did not pose a risk to community safety. She was detained most recently while checking in with Respondents as they instructed. Respondents did not provide her with adequate notice of the reasons for her detention, an opportunity to be heard regarding those reasons, or an individualized determination that her release was no longer appropriate. Her re-detention without cause or lawful process violates: (1) the Administrative Procedure Act (APA) because the agency decision to detain her is arbitrary and capricious; and (2) her procedural due process rights because she was not given notice of alleged, individualized reasons justifying her detention or an opportunity to address the reasons that Respondents now allege justify her jailing.

As argued within M-S-L's Response to the Motion to Dismiss (ECF 17) and Motion to Grant the Writ (ECF 18), the Court may reach the merits of the First Amended Petition for Writ of Habeas Corpus and order her immediate release. 28 U.S.C. § 2243; ECF 16–18. If the Court does so, it need not adjudicate this Motion. However, in the event the Court finds that further proceedings or filings are necessary to adjudicate the merits of the habeas petition, the Court should find that M-S-L warrants interim relief and grant a temporary restraining order.

A. M-S-L has made the showing necessary to warrant her immediate release and further delay would prolong her unlawful detention which is not in the public interest.

The Court may provide interim legal relief when the movant establishes four factors:

“[1] that 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. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

The standard for granting a preliminary injunction and a temporary restraining order are “substantially identical.” *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). Here, each factor weighs in M-S-L’s favor and warrants issuance of a release order.

1. M-S-L is likely to succeed on the merits of her habeas petition because her detention violates her procedural due process rights and is the result of an arbitrary and capricious agency decision, or at a minimum she has raised serious questions going to the merits of these claims.

Of the factors necessary to win interim relief, “[l]ikelihood 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 and quotation omitted). For the reasons set forth in detail in M-S-L’s Response to the Motion to Dismiss, M-S-L is likely to succeed on the merits of her due process and APA claims. *See* ECF 17 at 5–13. Similar requests currently are being granted all over the country. *See e.g., Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17 (W.D.N.Y. May 2, 2025) (granting habeas relief when, like here, ICE violated 8 C.F.R. § 241.4(l) by not affording petitioner an informal interview or an opportunity to respond to the alleged reasons for revocation of petitioner’s OSUP).

What’s more, M-S-L’s circumstances recently have changed in several ways that support granting her habeas petition.

First, on July 29, 2025, Respondents determined that M-S-L has a “reasonable fear” of persecution or torture if returned to Mexico.¹ *See* Ex. C (Respondent’s Reasonable Fear Determination Checklist and Written Analysis). Upon making this finding, Respondent acknowledged that M-S-L’s testimony was credible and that it established “the presumption of a reasonable possibility of future persecution[.]” *Id.* Once a determination such as this has been made, the individual is then placed in withholding-only proceedings before an Immigration Judge. *See* 8 C.F.R. § 208.31(e). In withholding-only proceedings, M-S-L can apply for withholding of removal under INA § 241(b)(3) and protection under the Convention Against Torture (“CAT”). If in withholding-only proceedings M-S-L establishes that “it is more likely than not” that she will be persecuted if returned to Mexico, then withholding of removal will be granted and she will not be forced to return to Mexico. *See* 8 C.F.R. § 208.16(d). Because M-S-L established on July 29, 2025—to the agency’s satisfaction—that she has a reasonable fear of persecution, it is reasonably possible that withholding of removal will be granted. Therefore, M-S-L has negated Respondent’s post-hoc justification for her detention (i.e., that “there is a significant likelihood of [her] removal in the reasonably foreseeable future”). *See* ECF 14-4 at 1.

Second, Respondents filed a Reply in Support of Motion to Dismiss correcting another of their post-hoc rationalizations for revoking M-S-L’s release. ECF 21. Originally, Respondents alleged that M-S-L had violated the terms of her release by failing “on several occasions to report to ICE officials at the time and place specified, as required under the terms of the Order of Supervision.” ECF 14 at ¶ 9. Respondents now allege that M-S-L failed to report to ICE *one*

¹ Although this determination was made on July 29th, undersigned counsel was not made aware of the determination by Respondent until August 5th and did not receive the attached paperwork until August 6th, 2025.

single time (not “several”) in Stockton, California, on the very day, July 9, 2025,² that she physically reported to the ICE office in Eugene, Oregon, allegedly without prior approval from ICE officials in California to relocate to Oregon. ECF 21 at 2, 3. Not only does this error of falsely alleging “several” failed check-ins call into question the credibility and reliability of the information and allegations being offered by Respondents and the various government actors and databases upon which the government is relying, the amended information has been contradicted by evidence recently obtained by the Federal Public Defender’s Office (“FPD”).

Specifically, Investigator Javier Salazar with the Federal Public Defender’s Office contacted Teresa, the individual from Salem, Oregon who had assisted M-S-L in preparing her I-589 asylum application *and* had told M-S-L that she had registered a change of address with ICE on M-S-L’s behalf. *See* ECF 17-2 at ¶ 9; Ex. D (Salazar Decl.). During interactions with Teresa, it was confirmed that she, indeed, registered a change of address on M-S-L’s behalf, which potentially negates yet another of Respondents’ post-hoc justifications for M-S-L’s detention (i.e., that M-S-L “departed the state without permission or timely notifying ICE of Petitioner’s new address.”). ECF 14 at ¶ 9; *see also* Ex. D. Teresa confirmed to FPD Investigator Salazar that she may have retained a copy of that change of address form, probably on her computer, but she was currently outside of Oregon and could not timely access it. Ex. D.

Finally, in their Reply in Support of Motion to Dismiss, Respondents concede that the Notice of Revocation M-S-L received days after her detention cited the wrong statute and “did not fully explain the reasons for the revocation[.]” ECF 21 at 2–3. Now, one day before the

² M-S-L reported to the Eugene, Oregon ICE office on July 9, 2025, and was told to report back to that same office on July 10, 2025. She complied with that directive. Yet, ICE detained her and has held her in immigration detention ever since.

August 8, 2025, habeas evidentiary hearing, Respondents attempt to travel back in time to July 10, 2025, to insert a post-hoc reason for detaining M-S-L. ECF 22 (“Sica Declaration”). But Respondents cannot travel back in time to correct errors of the past through post-hoc justifications. Rather, Respondents should concede that their due process failures and the prejudice to M-S-L stem from their failure to contemporaneously afford M-S-L the rights and safeguards due at the time of the actual detention. The Sica declaration states that Respondents amended the Notice of Revocation of the Order of Supervision regarding the cited authority from 8 C.F.R. § 241.13 to 8 C.F.R. § 241.4(1), but the actual “reasons for revocation remained unchanged.” *Id.* at ¶ 4. The original notice of revocation stated the reason for revocation as M-S-L’s “significant likelihood of [] removal in the reasonably foreseeable future.” ECF 14-4. But the Sica Declaration discusses the reason for revocation as alleged events in the past (i.e., M-S-L’s change of address and move to Oregon), not reasons based on the reasonably foreseeable future. ECF 22 at 3–4. As discussed, *supra*, in the section about M-S-L’s positive reasonable fear interview results, the argument of the “significant likelihood” of removal is untenable.

Respondent’s *post-post-hoc* justifications and amendments, in addition to the reasons set forth in detail in M-S-L’s Response to the Motion to Dismiss (ECF 17), make it likely that M-S-L will succeed on the merits of her due process and APA claims given the arbitrary and capricious nature of her detention and her inability to challenge the accuracy of Respondents’ allegations through the due process she is entitled to. *See* ECF 17 at Part IV (discussing how M-S-L’s detention was arbitrary and an abuse of discretion); ECF 17 at Part V (discussing the statutory processes ICE must follow when revoking an OSUP); *see also* 8 C.F.R. § 241.4(l).

Alternatively, a temporary restraining order may issue on a showing that there are “serious questions going to the merits—a lesser showing than likelihood of success on the merits”

when the “balance of hardships tips sharply in the Plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (cleaned up). At a minimum, M-S-L’s Response to the Motion to Dismiss (ECF 17) and her Motion to Grant the Writ (ECF 18) demonstrate that there are serious questions going to the merits of her claim. And as demonstrated below, the balance of the hardship tips sharply in favor of M-S-L who has been unnecessarily detained for 27 days without a countervailing government interest in her detention.

2. Each day M-S-L spends in custody causes and exacerbates irreparable harm.

It is beyond dispute that “[d]eprivation of physical liberty by detention constitutes irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018) (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)); see also *Rodriguez v. Robbins*, 715 F.3d 1127, 1144–45 (9th Cir. 2013) (needless immigration detention constitutes irreparable harm). In *Hernandez*, the Ninth Circuit acknowledged “the irreparable harms imposed on anyone subject to immigration detention” in addition to the restriction on liberty, which include “subpar medical and psychiatric care in ICE detention facilities” and “the economic burdens imposed on detainees and their families as a result of detention.” 872 F.3d at 995. As the Ninth Circuit held, in the absence of interim relief, “harms such as these will continue to occur needlessly on a daily basis.” *Id.* M-S-L’s liberty has been unnecessarily restrained since July 10, 2025, and “[e]very day that a person is detained is a significant injury.” *Mahdawi v. Trump*, --- F.Supp.3d ---, 2025 WL 1243135, *39 (D. Vt. 2025); see also *Rosales-Mireles v. United States*, 585 U.S. 129, 139–40 (2018) (“‘Any amount of actual jail time’ is significant, and ‘has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration.’”) (cleaned up).

Furthermore, as M-S-L's detention is a deprivation of her due process rights, that too "unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The irreparable harm factor weighs heavily in M-S-L's favor.

3. The balance of equities tips in M-S-L's favor and the public has no interest in her unnecessary detention.

Because the Respondent is a government entity, "the third and fourth factors—the balance of equities and the public interest—‘merge.’" *Fellowship of Christian Athletes*, 82 F.4th 664, 695 (9th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002. "[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Hernandez*, 872 F.3d at 994; *see also* U.S. Immigration and Customs Enforcement, Directive No. 11002.1, § 6.2 (Jan. 4, 2010), https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf (ICE directive that when a noncitizen is found to have a credible fear of future persecution and is neither a flight risk nor danger to the community, the individual should be paroled into the community "on the basis that his or her continued detention *is not in the public interest*." (emphasis added)). The Respondents have not alleged that M-S-L is a danger to the community, nor is there any basis to do so. Moreover, by checking in with ICE officials each time she has been directed and earnestly pursuing asylum and withholding of removal in this country with the assistance of an attorney, M-S-L has demonstrated that she will appear at her court appearances, and she is motivated to do so.

Additionally, “[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering.” *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, *3 (N.D. Cal. June 14, 2025) (granting temporary restraining order enjoining respondents from detaining petitioner without notice and hearing) (quoting *Jorge M.F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, *3 (N.D. Cal. March 1, 2021)). The government has no legitimate countervailing interest in detaining people without due process. *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 U.S. Dist. LEXIS 132841, at *10 (S.D.N.Y. July 13, 2025) (“There is no dispute” that “ICE is required to adhere to the basic principles of due process” in exercising its “statutory, discretionary authority to detain noncitizens like Chipantiza-Sisalema under 8 U.S.C. § 1226(a)”). This is particularly true in M-S-L’s case, as she was checking in at the ICE office when she was arrested and detained for the last 27 days without procedural due process. *See* ECF 17 at Parts IV–V; *see also* 8 C.F.R. § 241.4(l).

4. The Court has jurisdiction to issue, and should issue, the temporary restraining order promptly.

Habeas corpus is a “speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.” *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–738 (9th Cir. 1954). “[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion) (citing U.S. Const., art. I, § 9, cl. 2). The writ is available to M-S-L as she is physically in the United States and challenging her unlawful detention. She does not seek review of any determination of her eligibility for withholding of removal or the merits of her asylum claim. Rather, she seeks only release from custody and contends that she was detained

without procedural due process and based on an arbitrary and capricious agency decision which violated the APA. *See* ECF 17 at Parts IV–V; *see also* 8 C.F.R. § 241.4(l).

Other courts across the country have quickly granted temporary restraining orders or preliminary injunctions for immigrant detainees who had been released or paroled and then re-arrested without process or cause. *See Clavijo v. Kaiser*, 2025 WL 2097467 (N.D. Cal. July 25, 2025) (granting temporary restraining order one day after arrest for immigrant who was released under § 1226 in 2023 and then detained without process on July 24, 2025, ordering petitioner’s immediate release from custody to return her to the status quo—namely, “the moment prior to the Petitioner’s likely illegal detention”); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493-LJV, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (granting preliminary injunction and ordering release after concluding that petitioner was likely to succeed on the merits of his claim that, after having been lawfully granted parole, his “about-face” detention violates his rights to procedural due process). Many more courts have considered habeas petitions on a highly expedited basis for similarly situated immigrant detainees. *See Benitez v. Francis, et al.*, 25-CV-5937 (DEH) (S.D.N.Y. July 28, 2025) (granting habeas petition ten days after petition was filed); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025) (granting petition two weeks after petition was filed); *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 U.S. Dist. LEXIS 132841 (S.D.N.Y. July 13, 2025) (granting the habeas petition ten days after petition was filed); *Valdez v. Joyce*, 25-cv-04627-GBD, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (granting habeas petition 16 days after petition was filed).

Relief Requested

Accordingly, the Court should (1) enter a temporary restraining order requiring Respondents to release M-S-L from custody; (2) order the Respondents not to return M-S-L to custody

during the pendency of this habeas matter absent leave of this Court; (3) order Respondents to only refer to Petitioner as “M-S-L” to never and anywhere disclose her name and personal identifying information in any court documents, press releases, or any statements or documents during and after this habeas action, without leave of court because public disclosure of M-S-L’s real name could expose M-S-L to harm upon M-S-L’s removal to Mexico as Respondents seek;³ and (4) order that M-S-L need post a \$1.00 security related to the temporary restraining order.⁴ If such relief is granted, M-S-L will reside with her U.S. citizen aunt in Salem, Oregon. *See* Ex. E (Letter in Support of Release from Detention).

Dated: August 7, 2025.

s/ Robert Easton

Robert Easton, OR SBN 203697

s/ Kurt Hermansen

Kurt David Hermansen, CA SBN 166349

/s/ Kara A. Sagi

Kara A. Sagi, AZ SBN 032250

³ In *Doe v. Garland*, 22-1824, the Ninth Circuit Changed Appellant’s name to “Doe” even after its opinion was already released with his true name. http://www.metnews.com/articles/2024/johndoe_012924.htm (“According to Petitioner, public disclosure of his real name could expose him to harm upon his removal to Mexico. The panel amends the memorandum and its associated caption to remove all references to Petitioner’s real name.”)

⁴ “[Federal] Rule [of Civil Procedure] 65(c) invests the district court ‘with discretion as to the amount of security required, *if any*.’” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (emphasis added) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)); *Innovation Law Lab v. Nielsen*, 342 F. Supp. 3d 1067, 1082 (D. Or. 2018) (“The Court has considered the relative hardships and the likelihood of success on the merits and concludes that to require any security in this case would be unjust.”).