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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

O-R-C-A

Case No. 6:25-cv-02055-MC

Petitioner,

v.

CAMMILLA WAMSLEY, et al.,

Respondents.

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND RE-
PLY TO RESPONDENTS' OPPO-
SITION TO THE PETITION**

**Oral Argument and Expedited
Consideration Requested**

Petitioner O-R-C-A, through counsel, moves this Honorable Court for a temporary restraining order granting the relief requested in Part IV *infra*.

I. Introduction

Petitioner's detention is illegal and unconstitutional. His detention was without lawful cause or process and thus violates the Administrative Procedure Act (APA) because the agency's detention decision was arbitrary and capricious.

An immigration attorney was outside the ICE office when he was detained, she was in contact with the ICE officers, *but she was denied access to O-R-C-A*.

In May, 2024, O-R-C-A had been released by immigration officials because they determined he was not a danger to the community and not a flight risk. O-R-C-A continues to not be a flight risk. Illustrating this, a substantial part of the declaration supporting the Respondents' Opposition to the Petition ("Return") tracks O-R-C-A's whereabouts. ICE knew where O-R-C-A was because he continued to tell them. Then when ICE scheduled an in-person check-in in Oregon, he attended it on time.

Therefore, revoking his release violates the fifth amendment's due process of law, and is arbitrary, capricious, and an abuse of discretion.

The plain language of 28 U.S.C. § 2243 allows the Court to grant the Writ of Habeas Corpus and order immediate release. If the Court does so, it need not adjudicate this TRO 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 Petitioner warrants interim relief and grant a temporary restraining order.

II. Factual Background

O-R-C-A is a 31-year-old Ecuadorian citizen. He fled his country fearing for his life. O-R-C-A's Declaration Ex. A at ¶ 2. A few years before then, O-R-C-A had been a Mormon missionary in 2013-2014 to serve others in Mexico. O-R-C-A's Decl. Ex. A at 21; David Wright's Decl. Ex. B at ¶ 5. He continued to serve others, when not working so hard to financially provide for his family, he taught a men's class at his church in the Medford, Oregon area. O-R-C-A's Decl. Ex. A at ¶ 23; David Wright's Decl. Ex. B at ¶¶ 2, 3.

O-R-C-A did not enter the United States surreptitiously, he entered at a door in the border wall. When U.S. immigration officials opened it, he presented himself to them and they took him for processing. O-R-C-A's Decl. Ex. A at ¶ 4. They released him on an Order of Release on Recognizance ("OREC"). A key term on that OREC stated "you must not change your place of residence without first securing written permission from the immigration officer listed above." OREC Ex. C.

Absent from the OREC conditions are any restrictions on temporarily leaving a specified geographic area (*i.e.* temporary or work travel). *Id.* O-R-C-A timely filed his asylum application in the immigration court. O-R-C-A's Decl. Ex. A at ¶ 7.

While living in Utah, a friend recommended a job in Oregon to O-R-C-A. It looked promising, so he started requesting permission to move to Oregon in January, 2025. Permission was granted in February. He started that job in May, 2025, with a contractor for Spectrum, installing communication cables at various locations around Oregon. O-R-C-A's Decl. Ex. A at ¶ 8.

Towards the end of the summer, projects in Oregon slowed down. O-R-C-A's boss told him about a project in North Carolina. It came up quickly, on a weekend, so O-R-C-A acted on the opportunity. O-R-C-A's Decl. Ex. A at ¶¶ 9, 11, 12. Within a few days, O-R-C-A communicated with ICE about this work trip. O-R-C-A's Decl. Ex. A at ¶¶ 12, 13; *see also* Piersoll Decl. ECF 7-1 at ¶ 17. Thinking that he would work in North Carolina for a while, O-R-C-A requested ICE tell him where an ICE office was in North Carolina was so he could check in there. The project in North Carolina did not materialize, though, so his boss sent him to Mississippi to work. O-R-C-A's Decl. Ex. A at ¶¶ 13, 14.

Because of this hectic work schedule, ICE asked O-R-C-A to check in more often than in the past. O-R-C-A sent daily pictures of himself that were coupled with his GPS location. When cell coverage allowed, he was in almost constant contact with ICE during this work trip, they knew where he was because he told them. O-R-C-A's Decl. Ex. A at ¶¶ 13-15.

O-R-C-A's boss told him about new projects in Chicago and Virginia, and around the same time, ICE scheduled an in-person check in in Oregon for November

4. O-R-C-A was dedicated to following the rules in his immigration matters, so he gave up those work opportunities and drove back to Oregon for that check in. O-R-C-A's Decl. Ex. A at ¶ 16; *See generally* Piersoll Decl. ECF 7-1 at ¶¶ 19-22.

At that check in, an ICE officer detained O-R-C-A. O-R-C-A told the officer that he was pursuing asylum in the immigration court. While being detained, the ICE officer told O-R-C-A that a woman Katrina was outside and wanted his immigration documents and his car keys. The officer did not tell O-R-C-A that Katrina was an immigration attorney. Had he, O-R-C-A would have welcomed her help to explain why he should not be detained. O-R-C-A's Decl. Ex. A at ¶¶ 17, 18, 25.

Katrina Kilgren, the immigration attorney, will testify at the hearing.

III. Law and Argument

A. ***Winter v. Natural Res. Def. Council (infra)* provides the Court factors to analyze requests for Temporary Restraining Orders. Petitioner can satisfy the *Winter* factors for immediate release from ICE custody as further delay would prolong his 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) (describing intermediate relief in the form of preliminary injunction). 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 Petitioner's favor and warrants ordering that Respondents release him from ICE custody, thereby returning him to the status quo that existed Tuesday morning, November 4, 2025, before his current detention.

1. Winters factor 1: Petitioner is likely to succeed on the merits.

- a. O-R-C-A is likely to succeed on the merits of his habeas petition because his detention violates his procedural due process rights and is the result of an arbitrary and capricious agency decision, or at a minimum he 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) (cleaned up).

- i. The opposite of the flight risk Respondents accuse him of being, O-R-C-A was in almost constant communication with ICE about his whereabouts and he delivered himself in person to a check-in when they scheduled it.**

The Respondents' Return stated that O-R-C-A was released on his own recognition in May, 2024. Return ECF 7 at 3. The regulation 28 C.F.R. § 236.1(c)(8) guides how Respondents release noncitizens into the United States, as they did O-R-C-A. See Return ECF 7 at 7. In relevant part, an immigration officer must be satisfied that the noncitizen "would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 28 C.F.R. § 236.1(c)(8). O-R-C-A was released, so the officer must have been satisfied.

The issue here is the revocation of O-R-C-A's release under 8 C.F.R.

§ 236.1(c)(9), which must not be arbitrary, capricious, or an abuse of discretion. *See* Return ECF 7 at 7.

Again, § 236.1(c)(8) allowed O-R-C-A's release because he was not dangerous and not a flight risk. Under § 236.1(c)(8)-(9), it would be arbitrary, capricious, and an abuse of discretion to revoke that release absent changed circumstances that establish dangerousness or flight risk. That is an individualized determination and it should be rationally related to the facts. *See* Return ECF 7 at 8-9 (citing *Dep't of Comm. v. New York*, 588 U.S. 752, 773 (2019) (cite omitted)).

Critical to O-R-C-A's case, the conditions of the OREC stated that O-R-C-A "must not change [his] place of residence without first securing written permission from the immigration officer listed above." OREC Ex. C. It is true that some OREC documents contain a condition that the individual not leave their state of residence for more than 48 hours without advance permission. The OREC here for O-R-C-A, however, does not contain that provision. *Id.* It does not contain anything about temporary or work travel. *Id.*

Consistent with the OREC, O-R-C-A checked in with ICE when he arrived in Utah. In July 2024, they enrolled him in an Alternative to Detention ("ATD") program that included a monitoring app on his phone, SmartLINK. Return ECF 7 at 3. A few months later, on September 13, 2024, O-R-C-A signed a contract with a company BI, Incorporated, that operates the SmartLINK app. *Id.* Among other things,

this agreement with BI Incorporated regarded updating his phone's operating system, installing updates, allowing push notifications, keeping his phone charged, and not driving motor vehicles while using the app. BI Incorporated Agreement ECF 7-2. Another of the BI, Incorporated agreement provisions was that O-R-C-A agreed to stay "within the area designated by ERO, and agree to seek permission to leave this area." ECF 7-2. The SmartLink Agreement anticipates missed check-ins due to problems with cell-coverage in item 2 d. ECF 7-2 at 1. At most, taking all of the provisions together, this BI Inc. agreement seems like an operation manual.

The Return confuses this BI Incorporated agreement with the OREC. *See* Return ECF 7 at 5 ("His release on recognizance was canceled for failing to comply with the conditions of the release program."). Officer Piersoll references a "Master Zone" (ECF 7-1 at 7) but nowhere is that language to be found in the OREC or BI Incorporated agreement. *See* OREC Ex. C. The document that creates the conditions of O-R-C-A's release is the OREC. As discussed above, the OREC required O-R-C-A to get permission to move residences, and was silent on temporary, out-of-state travel.

O-R-C-A did not violate the OREC. The only time he changed his place of residence was when he moved from Utah to Oregon. For that move, he requested to move over a month before he moved, consistent with the OREC's conditions. O-R-C-A's Decl. Ex. A at ¶ 8.

The gravamen of this habeas case is O-R-C-A's work trip to North Carolina and other states. Because it came up quickly on a weekend, O-R-C-A didn't contact ICE at the very beginning of the trip, but he did only four days into the trip. O-R-C-A's Decl. Ex. A at ¶ 12. For the remainder of the trip, O-R-C-A and ICE were in close contact. ICE knew where O-R-C-A was because he freely told them where he was (as cell coverage allowed). O-R-C-A's Decl. Ex. A at ¶¶ 13-15.

Respondents state that O-R-C-A is now a flight risk. They offered immigration Officer Piersoll's declaration, that reads like a travelogue of O-R-C-A's work trip, showing that ICE knew a lot about his location. But to be the flight risk Respondents accuse him of being, *the opposite would be true*: O-R-C-A would have gone silent and not stayed in touch with ICE and given them so much information about his whereabouts. Unlike an ankle monitor, an app can be uninstalled from a phone, or GPS can be turned off. O-R-C-A did not do these things, he continued to report his location. Piersoll's declaration proves the opposite of Respondents' position that O-R-C-A is a flight risk.

Then even more, O-R-C-A delivered himself in person to ICE on the day they told him to in Eugene, Oregon.

That is the opposite of flight risk. That is compliance.

- ii. **It is uncertain who made the detention determination, making it impossible to determine whether that decision maker was authorized to do so.**

In O-R-C-A's case, the record does not make certain that an authorized official under the regulations revoked his release. In fact, the record does not indicate who revoked his release, only where it was revoked (Eugene). See ECF 7-1 at 24. Officer Piersoll is assigned to the Northwest ICE Processing Center in Tacoma, WA, not Eugene. ECF 7-1 at 1.

Respondents' Return quotes the list of authorized officials: "the district director [and certain other federal officers]." ECF 7 at 7 (Respondents' Return) (quoting 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9)) (omission in original). Those omitted officers include the "acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9). Directors, *et. al.*, are high ranking officers. That makes sense, of course, because this is a decision that takes away a person's liberty.

Respondents' Return is supported by a declaration of *Deportation Officer* Madison Piersoll. "Deportation Officer" is not a position authorized by the regulation to revoke a noncitizen's release. *Id.*

b. There are serious questions going to the merits of this habeas case.

O-R-C-A will likely succeed on the merits of his due process and APA claims given the arbitrary and capricious nature of his detention.

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, this motion and Petitioner’s declaration demonstrate that there are serious questions going to the merits of Respondents’ claims. And as demonstrated below, the balance of the hardships tip sharply in favor of O-R-C-A who has been unnecessarily detained without a countervailing government interest in their detention.

2. *Winters* factor 2: Each day O-R-C-A 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.*

Petitioner's liberty has been unnecessarily restrained since November 4, 2025, and 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.'" *Cf. Rosales-Mireles v. United States*, 585 U.S. 129, 139–40 (2018) (cleaned up). His child is already suffering the financial consequences of O-R-C-A's detention, they can no longer attend speech therapy. O-R-C-A's Decl. Ex. A at ¶ 10.

Furthermore, as O-R-C-A's detention is a deprivation of his 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 Petitioner's favor.

3. *Winters* factors 3 &4: The balance of equities [factor 3] tips in Petitioner's favor and the public has no interest [factor 4] in his unnecessary detention.

Because Respondents are 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.

Respondents have not alleged that Petitioner is a danger to the community, nor is there any basis to do so. Moreover, by checking in with ICE officials almost constantly during his work trip, and then driving several days to attend his in-person check-in in Eugene, Petitioner has demonstrated that he will appear at his immigration appearances, and he is motivated to do so. O-R-C-A’s Decl. Ex. A at ¶¶ 12-17.

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)”).

B. 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, 737-38 (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 Petitioner as he is physically in the United States and challenging his unlawful detention. He seeks release from custody and contends that he was detained without procedural due process and based on an arbitrary and capricious agency decision which violated the APA.

IV. Relief Requested

Accordingly, O-R-C-A requests the Court:

- (1) enter a temporary restraining order requiring Respondents to release him from custody;
- (2) order Respondents to bring O-R-C-A in person to the evidentiary hearing, in compliance with 28 U.S.C. § 2243, and Respondents must provide appropriate food and water to O-R-C-A for the trip;
- (3) order Respondents not to return Petitioner to custody during the pendency of this habeas matter absent leave of this Court;
- (4) order Respondents to only refer to Petitioner as O-R-C-A, or “Petitioner”

and to never anywhere disclose their 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 Petitioner's real name could expose him to harm if Petitioner is removed from the U.S. as Respondents seek;¹ and

(4) order Respondents to allow Petitioners' immigration counsel to accompany him to any future immigration matters (including ICE check-ins).

If such relief is granted, Petitioner will peacefully reside in Oregon, just like he did until November 4, 2025, when ICE detained him without due process.

Dated: November 17, 2025.

s/ Robert Easton

Robert Easton, OSB # 203697

s/ Christine Zeller-Powell

Christine Zeller-Powell, OSB # 115905

¹ 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.")