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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

B.R.F.,

Petitioner,

v.

LAURA HERMOSILLO, Seattle Field Office Director,
Immigration and Customs Enforcement and
Removal Operations ("ICE/ERO"); TODD LYONS,
Acting Director of Immigration Customs
Enforcement ("ICE"); U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; KRISTI NOEM,
Secretary of the Department of Homeland
Security ("DHS"); U.S. DEPARTMENT OF
HOMELAND SECURITY; AND PAMELA BONDI,
U.S. Attorney General;

Respondents.

Case No.: 3:25-cv-02154-AN

Agency Case No.: 

**PETITIONER'S MOTION FOR AND
MEMORANDUM IN SUPPORT OF
TEMPORARY RESTRAINING
ORDER**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested.

MOTION AND MEMORANDUM OF LAW

Petitioner B.R.F. respectfully moves this Court for an emergency order preventing his detention and transfer in violation of his Constitutional right to Due Process.

I. INTRODUCTION

Petitioner, B.R.F., is a beneficiary of an approved I-130 petition, an approved I-601A Provisional Waiver Application, and is scheduled for his immigrant visa interview at the U.S. Embassy in Guatemala City, Guatemala on January 14, 2026, where if approved will grant him permanent resident status. On November 20, 2025, without warning or advance notice, Petitioner was detained by Immigration and Customs Enforcement officers (ICE) and is presently in ICE custody. Petitioner was given no notice in advance of his detention, and ICE did not undertake any individualized determination of whether Petitioner is a flight risk or danger to the community.

Petitioner seeks an emergency order from this Court to halt his unlawful detention and transfer out of this district, or an order to return him to Oregon if he is in fact no longer in this district.

II. FACTUAL BACKGROUND

Petitioner, B.R.F., is a citizen of Guatemala who was detained by ICE officers on November 20, 2025. Petitioner is the beneficiary of an I-130 petition that was filed on June 12, 2020. The I-130 petition was approved on October 8, 2020. Petitioner, B.R.F. then applied for a Provisional Unlawful Presence Waiver which was approved on April 15, 2025. He has since submitted his immigrant visa application to the U.S. Department of State and his Immigrant Visa interview is scheduled at the U.S. Embassy in Guatemala City, Guatemala, on January 14, 2026,

at 7:00 AM. Petitioner, B.R.F. is registered for the interview and making travel plans to Guatemala City to attend his interview.

On November 20, 2025, Petitioner was detained by ICE officers. Petitioner was detained with no explanation. Petitioner's attorney was contacted by Petitioner's wife who informed Petitioner's attorney that she received a voicemail from an unknown number stating she needed to put money in a Telmate account in order to speak with an inmate at the detention center. Petitioner's wife was extremely worried her husband was detained. Petitioner's attorney was contacted again by Petitioner's wife stating she received a phone call directly from Petitioner confirming he was detained at the Portland ICE office.

III. LEGAL STANDARDS

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). 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, 24 (2008). "The proper legal standard for preliminary injunctive relief requires a party to demonstrate (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.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20).

As an alternative to this test, a preliminary injunction is appropriate if "serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," thereby allowing preservation of the status quo when complex legal questions require

further inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

IV. ARGUMENT

Petitioner's Motion for a Temporary Restraining Order should be granted because he will suffer irreparable harm in the absence of preliminary relief, he is likely to succeed on the merits, and the balance of the equities and public interest weigh in favor of emergency relief.

A. Petitioner will likely suffer irreparable harm if not granted preliminary relief

If this Court does not grant a temporary restraining order, Petitioner will be imminently transferred out of the state of Oregon, and if Petitioner has already been transferred, he is subject to being disappeared within the sprawling ICE detention system without the ability to communicate with his attorney.

Respondents' actions to detain petitioner and remove him from Oregon will cause irreparable harm to Petitioner by separating him from his attorney. *See Arroyo v. United States Dep't of Homeland Sec.*, 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019) (observing that ("a significant burden on the attorney-client relationship, without a showing of underlying prejudice to the removal proceedings, may be sufficient to establish a legal injury sufficient to justify injunctive relief"), citing *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir.), amended on other grounds, 807 F.2d 769 (9th Cir. 1986); *see also Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir.), amended on other grounds, 213 F.3d 1221 (9th Cir. 2000) ("Deprivation of the statutory right to counsel deprives [a noncitizen] asylum-seeker of the one hope she has to thread a labyrinth almost as impenetrable as the Internal Revenue Code.")).

Respondents' actions will violate Petitioner's constitutional right to due process. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable

injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal quotation omitted). Respondents’ arrest and detention of Petitioner, absent a finding that Petitioner is either a flight risk or a danger to the community serves no valid or legal purpose. Respondents’ actions purporting to subject Petitioner to mandatory detention under 8 U.S.C. § 1225(b), violate the statute established by Congress, the Administrative Procedures Act, and Due Process Clause of the Fifth Amendment to the U.S. Constitution.

B. Petitioner is likely to succeed on the merits of his habeas petition

Petitioner requests habeas relief from this Court on the grounds that Respondents’ decision to detain him without notice and without an individualized determination of flight risk or danger to the community is (1) arbitrary and capricious and in violation of Respondents’ own policies and (2) a violation of his procedural due process rights.

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado*, in which it reasoned that all individuals who entered the United States without inspection or admission (EWI), regardless of how long the person has been in the United States, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that immigration judges do not have jurisdiction to conduct bond proceedings or grant bond to a person who is present without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 216 (BIA 2025). The BIA’s precedent decisions are binding on immigration judges. This drastic new interpretation of the immigration statute would render superfluous multiple statutory provisions enacted by Congress including 8 U.S.C. § 1226(c) (mandatory detention for aggravated felony convictions) and portions of the recently passed Laken Riley Act. *Laken Riley Act (“LRA”)*, Pub. L. No. 119-1, 139 Stat 3 (2025), codified at 8 U.S.C. § 1226 (c)(1)I(i) and (ii). The BIA’s flawed analysis has been squarely rejected by district courts throughout the country. *See, e.g., Salcedo Aceros v.*

Kaiser, No. 25-cv-06924-EMC, 2025 WL 2637503, at *1 (N.D. Cal. Sept. 12, 2025); *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Aguilar Merino v. Ripa*, 25-23845-CIV (S.D. Fla. Oct. 15, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025).

Petitioner is likely to succeed on the merits of his claim under the Administrative Procedures Act. Under the APA, a court shall “hold unlawful and set aside agency action” that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An action is arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

Here, Petitioner is preparing for his immigrant visa interview in Guatemala which if approved will grant him permanent resident status. He is not a flight risk or danger to the community and Respondents have given no explanation for his detention.

C. The balance of the equities and public interest tip sharply in favor of preliminary relief

Petitioner has established that “the balance of the equities tip in his favor and that an injunction is in the public interest” because he is a bona fide asylum seeker, he is not a flight risk,

and he is not a danger to the community. *See Winter*, 555 U.S. at 20. When the federal government is a party, the balance of the equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

The merits of the due process violations that Petitioner has raised in his habeas petition further weigh the public interest towards emergency relief. “Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see also Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that “the INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations”). In addition, “the public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant his motion for temporary restraining order to release him from detention, block his transfer outside the district of Oregon, and maintain the status quo pending resolution of these proceedings.

Respectfully submitted this 20th day of November 2025.

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