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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**

10 **Martha Lidia Cotoc Yac de Yac,**

11 Petitioner,

12 v.

13 **LAURA HERMOSILLO, et al.,**

14 Respondents.
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Case No.
2:25-CV-02593

Agency No. A 

**PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDE**

ORAL ARGUMENT REQUESTED

Noted for consideration:
December 17, 2025

20 **I. INTRODUCTION**

21 Petitioner, an asylum and U Nonimmigrant status applicant with no criminal history, who
22 was initially detained and released on her own recognizance in 2021 was unlawfully re-detained
23 by Respondents on December 12, 2025, in Portland, Oregon. In re detaining Petitioner,
24 Respondents violated Petitioner's right to Due Process by failing to conduct a pre-deprivation
25 hearing to determine if there are changed circumstances since Petitioner's initial release on

1 recognizance that would support an individualized determination that Petitioner is a flight risk or
2 danger to the community.

3 Petitioner is not a flight risk or danger to the community. Petitioner is an asylum and U
4 nonimmigration status applicant from Guatemala, with no criminal record, who is awaiting her
5 asylum interview with U.S. Citizenship and Immigration Services and the adjudication of her
6 Petition for U Nonimmigrant Status. An asylum interview has not yet been scheduled.

7 Because Petitioner is likely to succeed on the merits of the petition, is suffering
8 irreparable harm, and the balance of equities and public interest tip strongly in her favor, the
9 Court should order Respondents to immediately release Petitioner, return her immigration case
10 to the Portland, Oregon immigration court, and restore the status quo ante. *See E.A. T.-B. v.*
11 *Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *2 (W.D. Wash. Aug. 19, 2025), *Rosado*
12 *v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report &
13 Recommendation at 33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803
14 (S.D.N.Y. Aug. 8, 2025) (Dkt.#14, Opinion and Order at 29-31).

16 II. FACTS

17 On August 20, 2021, Petitioner was detained by Customs and Border Patrol officers near
18 Hidalgo, Texas. The same day, Petitioner was served a notice to appear placing her in removal
19 proceedings under 8 U.S.C. § 1229a, and she was released on her own recognizance pursuant to
20 8 U.S.C. § 1226(a) and 8 CFR § 1236.1(c)(8). Immigration and Customs Enforcement (ICE)
21 (through a contractor) required the Petitioner report her location every week for about a year.
22 Petitioner diligently reported as instructed until she was told that she was no longer subject to
23 reporting requirements.
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1 On January 19, 2022, Petitioner filed an I-589 application for asylum with the Portland,
2 Oregon immigration court. On November 27, 2023, Petitioner attended a biometrics appointment
3 at the USCIS office in Portland, Oregon. Petitioner has no criminal record.

4 The Petitioner's removal proceedings in the immigration court were dismissed on March
5 16, 2023. The court dismissed the proceedings without prejudice based on a motion filed jointly
6 by the ICE Office of Chief Counsel and Petitioner. The Petitioner filed an affirmative asylum
7 application with U.S. Citizenship and Immigration Services (USCIS) on November 8, 2023. The
8 Petitioner was also a victim of crime and filed a Petition for U Nonimmigrant Status with USCIS
9 on May 14, 2025.

10 On December 12, 2025, Petitioner was detained by ICE or CBP officers in Vancouver,
11 Washington, transported and held by ICE officers in Portland, Oregon and then transferred to the
12 Northwest ICE Processing Center in Tacoma, Washington.

13 III. LEGAL STANDARD

14 The standard for issuing a temporary restraining order (TRO) is the same as the standard
15 for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434
16 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only be awarded upon
17 a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*,
18 555 U.S. 7, 24 (2008). "The proper legal standard for preliminary injunctive relief requires a
19 party to demonstrate: (1) 'that he is likely to succeed on the merits, (2) that he is likely to suffer
20 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his
21 favor, and (4) that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d
22 1109, 1127 (9th Cir. 2009) (*citing Winter*, 555 U.S. at 20).

23 Alternatively, a preliminary injunction is appropriate if "serious questions going to the
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1 merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," thereby
2 allowing preservation of the status quo when complex legal questions require further inspection
3 or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.
4 2011).

5 **IV. ARGUMENT**

6 **A. Petitioner is likely to succeed on the merits of her habeas petition.**

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8 "No person shall be ... deprived of life, liberty, or property, without due process of law."
9 U.S. Const. amend. V. The right to due process of law applies to all persons in the United States
10 regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

11 To be lawful, civil immigration detention requires a valid purpose. In general, courts have
12 recognized two valid purposes for immigration detention – 1) flight risk and 2) danger to the
13 community. *See Zadvydas*, 533 U.S. at 690-691. Immigration detention may not be used as
14 punishment. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). Fulfilling a daily arrest
15 quota is not a valid purpose for detaining a noncitizen. Respondents are violating Petitioner's
16 due process rights by detaining her without a valid purpose and without a pre-detention
17 procedure to determine flight risk or danger to the community.

18
19 Procedurally, to determine what procedures are constitutionally necessary to protect a
20 liberty interest, courts generally apply the three-part test set forth in *Mathews v. Eldridge*, 424
21 U.S. 319 (1976). *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *3 n.1
22 (W.D. Wash. Aug. 19, 2025) (collecting cases). The *Mathews test* requires balancing the private
23 interest affected by government action, the risk of an erroneous deprivation through the
24 procedures used and the probable value of additional safeguards, and finally the government
25 interest, including the function and the burden of additional measures. *Mathews*, 424 U.S. at 335.

1 “[D]ue process requires the government to identify some interest beyond its own administrative
2 practices to justify depriving an individual of her liberty without any pre-deprivation protections.
3 Detention for its own sake, to meet an administrative quota, or because the government has not
4 yet established constitutionally required pre-detention procedures is not a legitimate government
5 interest. *Pinchi v. Noem*, 5:25-cv-05632-PCP *10 (N.D. Cal. Jul 24, 2025).

6 Once a noncitizen has satisfied a DHS officer that she is not a flight risk or danger to the
7 community and she is released from immigration custody, she may not be re-detained absent an
8 individualized determination that circumstances have changed to such an extent that the
9 noncitizen may now constitute a flight risk or danger to the community. *See Saravia v. Sessions*,
10 280 F.Supp.3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
11 F.3d 1137 (9th Cir. 2018); *Ortiz Calderon v. Kaiser*, 25-cv-06695-AMO (N.D. Cal. Aug 22,
12 2025), [https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695/USCOURTS-](https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695/USCOURTS-cand-3_25-cv-06695-1)
13 [cand-3_25-cv-06695-1](https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695/USCOURTS-cand-3_25-cv-06695-1); *Panosyan v. Mayorkas*, 854 F. App’s 787, 788 (9th Cir. 2021) (“Thus,
14 absent changed circumstances ... ICE cannot redetain Panosyan.”).

16 Here, Respondents first determined that Petitioner was not a flight risk or a danger to the
17 community and released her on her own recognizance in 2021. *See* 8 CFR §1236.1(c)(8). At that
18 point, Petitioner had a protected liberty interest in being free from detention. *See Ortega v.*
19 *Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019).

21 In re-detaining Petitioner on December 12, 2025, Respondents did not make a
22 predeprivation individualized determination that circumstances have changed such that Petitioner
23 is either a flight risk or a danger to the community. Respondents violated Petitioner’s
24 constitutionally protected liberty interest by unlawfully detaining her on December 12, 2025. *See*
25 *Ramirez Terra v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-cv-01723-MJP-TLF, 2025 WL 2637663,

at *3–4 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, --- F. Supp. 3d ---, No. C25-1192-KKE, 2025 WL 2402130, at *2–6 (W.D. Wash. Aug. 19, 2025) *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report & Recommendation at 33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt. #14, Opinion and Order at 29-31).

Petitioner is not a flight risk or danger to the community. While not a true remedy for a constitutional violation, ordinarily an individual detained under 8 U.S.C. § 1226(a) is able to request a custody redetermination (bond) hearing before an immigration judge. 8 C.F.R. § 1236.1(d)(1). However, on September 5, 2025, the BIA, in a precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), concluded that individuals like Petitioner, who have not previously been inspected and admitted or paroled, are subject to mandatory detention under 8 U.S.C. § 1225(b), regardless of how long the person has been in the United States. *Id.* at 227-228. In so holding, the BIA misconstrued the Supreme Court’s analysis in *Jennings v. Rodriguez*, 583 U.S. 281, 287-288 (2018), and failed to address the temporal component of the statutory term “seeking admission.” *See* 8 U.S.C. § 1225(b)(2)(A); *Lopez-Campos v. Rayfield, et al.*, Case No. 2:25-cv-12486, Opinion and Order Granting Writ of Habeas Corpus, 2025 WL 2496379 *15-18 (E.D. Mich. Aug.29, 2025). The BIA’s decision in *Yajure Hurtado* forecloses any possibility that Petitioner would be granted bond by the immigration court. *Yajure Hurtado*, 29 I&N Dec. at 216 (“Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission”). As a result, prudential exhaustion should not be required. *See Hernandez v. Sessions*, 872 F.3d 976, 988-989 (9th Cir. 2017) (waiving prudential exhaustion requirement for BIA appeal of bond decision).

Petitioner's attorney, believing Petitioner to still be located in Oregon, filed a Habeas petition on December 12, 2025. Counsel also filed a motion for temporary restraining order and supporting memorandum the same day. Case 3:25-cv-02320-SI, Document 6. District Court Believing the case to be within his jurisdiction, Judge Michael H. Simon granted the motion for temporary restraining order ordering Respondents not to remove Petitioner out of the State. *Id.* Notably, Judge Simon found that no security was required for Petitioner's release because he found that "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Quoting Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). Judge Simon concluded that "the [government] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." (*Quoting Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).

In short, Petitioner is unlawfully detained and there is no legal justification for her continued detention. Petitioner is likely to prevail on the merits of the petition.

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

"Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause [Due Process] protects." *Zadvydas*, 533 U.S. at 590. Petitioner is unlawfully detained, and her constitutional rights are being violated each day she is held in immigration detention. This constitutes irreparable harm. *See Hernandez v. Sessions*, 872 F.3d at 994 ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *quoting Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Petitioner is also separated from her two children, currently three and eight years-old. "[E]ven brief family separations can cause significant and often irreparable harm to children, resulting in lifelong setbacks in learning, behavior, and health." *News Release*,

1 American Psychiatric Associatio and the American Academy of Child and Adolescent
 2 Psychiatry, October 22, 2020 ([https://www.psychiatry.org/news-room/news-releases/apa-and-](https://www.psychiatry.org/news-room/news-releases/apa-and-aacap-deeply-concerned-over-reports-that-p)
 3 [aacap-deeply-concerned-over-reports-that-p](https://www.psychiatry.org/news-room/news-releases/apa-and-aacap-deeply-concerned-over-reports-that-p), last accessed 12/16/2025). Petitioner has been an
 4 active member of her Christian church since 2021. She teaches Sunday school, which her
 5 children also attend. Her absence during the Christian holiday season constitutes irreparable
 6 harm to her and to her children.

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

9
 10 Petitioner has established that “the balance of the equities tip in h[er] favor and that an
 11 injunction is in the public interest” because she is a bona fide asylum seeker, she was eligible for
 12 and applied for U Nonimmigrant Status, she is not a flight risk, and she is not a danger to the
 13 community. *See Winter*, 555 U.S. at 20. When the federal government is a party, the balance of
 14 the equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073
 15 (9th Cir. 2014) (*citing Nken v. Holder*, 556 U.S. 418, 435 (2009)). Not only was Petitioner
 16 released by CBP at the border, ICE Office of Chief Counsel moved the immigration court to
 17 dismiss her case in an exercise of its discretion. *See Doyle Memorandum*, U.S. Immigration and
 18 Customs Enforcement, April 3, 2022 ([https://www.ice.gov/doclib/about/offices/opla/OPLA-](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf)
 19 [immigration-enforcement_guidanceApr2022.pdf](https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf), last accessed December 16, 2025). The Doyle
 20 Memorandum directed the ICE Office of Chief Counsel to consider whether a Respondent was
 21 an enforcement priority and empowered it to exercise its discretion to move to dismiss cases. By
 22 moving to dismiss immigration proceedings against the Petitioner, the ICE Office of Chief
 23 Counsel determined that the Petitioner was not an enforcement priority, that is: Not a threat to
 24 national security; not a Threat to public safety; and Not a threat to border security. *Id.* Nothing
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1 about the Petitioner's situation has changed since her case in the immigraton court was dismissed
2 in 2023.

3 The merits of the due process violations that Petitioner has raised in his habeas petition
4 further tip the public interest toward emergency relief. "Generally, public interest concerns are
5 implicated when a constitutional right has been violated, because all citizens have a stake in
6 upholding the Constitution." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see also*
7 *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that "the INS cannot
8 reasonably assert that it is harmed in any legally cognizable sense by being enjoined from
9 constitutional violations"). In addition, "the public interest also benefits from a preliminary
10 injunction that ensures that federal statutes are construed and implemented in a manner that
11 avoids serious constitutional questions." *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir.
12 2013); *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 838 (9th Cir.
13 2020) ("It is always in the public interest to prevent the violation of a party's constitutional
14 rights.").

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V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant her motion for temporary restraining order, and order her immediate release from immigration detention, thereby maintaining the status quo ante pending resolution of these proceedings.

I certify this motion contains 2748 words in compliance with Local Civil Rules.

Respectfully submitted this 17th day of November, 2025

s/ Shara Svendsen

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

3 Martha Cotoc Yac de Yac,)

Case No. 2:25-CV-02593

4)
5 Petitioner,)

[PROPOSED]

6 v.)

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

7)
8 Laura Hermosillo, et al.,)

9)
10 Respondents.)

11 Upon consideration of Petitioner's motion for temporary restraining order, any
12 opposition, the record before the court, the issues of fact and law presented for consideration, and
13 after being fully advised, the Court finds Petitioner has demonstrated:

- 14 1. A likelihood of success on the merits;
15 2. A likelihood of irreparable harm in the absence of preliminary relief;
16 3. That the balance of equities tips in Plaintiff's favor; and
17 4. That the requested relief is in the public interest.
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19 *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Petitioner's Motion for Temporary Restraining Order is GRANTED;
22 2. Respondents shall immediately release Petitioner from detention, and shall
23 not re-detain Petitioner absent advance notice to and leave of this Court;
24 3. If Petitioner is placed in removal proceedings, Respondents shall return Petitioner's
25 removal proceedings to the jurisdiction of the Portland, Oregon immigration court;

4. Petitioner shall not post security, as required by Fed. R. Civ. P. 65(c); and

5. The Court retains jurisdiction to enforce and modify this Order as justice requires.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

Dated this _____ day of _____, 202__

Presented by:

s/ Shara Svendsen

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