

DETAINED

BENJAMIN WANG, OSB #983664
(Pro Hac Vice)
bwang@bwanglaw.com
BENJAMIN BEIJING WANG P.C.
750 Lawrence Street
Eugene, OR 97401
Office: (541) 484-1811

KELLY VOMACKA, WSBA #20090
(Local Counsel)
kelly.vomacka@ghp-law.net
GIBBS HOUSTON PAUW
1000 2nd Ave, Suite 1600
Seattle, WA 98104-1003
Office: (206) 682-1080

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIN ARIEL GARCIA GABRIEL,

Petitioner,

v.

LAURA HERMOSILLO, *et.al.*,

Respondents.

No. 2:25-cv-2594

**MOTION FOR AND MEMORANDUM
IN SUPPORT OF TEMPORARY
RESTRAINING ORDER**

Noted for 12/17/2025

MOTION AND MEMORANDUM OF LAW

Petitioner Marin Ariel Garcia Gabriel respectfully moves this Court for an emergency order preventing his detention, transfer, and deportation in violation of his rights.¹

¹ Petitioner's arrest by ICE agents on November 5, 2025 was captured on TV and reported by the local KEZI 9 TV news. As reported, the windows of the landscaping truck in which he was riding to work were broken, and broken glass was scattered on the street at the scene. A homeowner in the neighborhood who witnessed the arrest told the news reporter: "I don't think these guys were criminals,

I. INTRODUCTION

In May 2016, Petitioner Marin Ariel Garcia Gabriel arrived at San Luis, Arizona, fleeing from abuse, threats, and violence he had suffered in his home country of Guatemala and seeking humanitarian assistance, safety, and protection in the United States. *See* Petition ¶¶ 52-53; *see also* Ex A. At that time, he was 17 years old. As a result, he was designated as an unaccompanied alien child (“UAC”) by the Office of Refugee Resettlement, the United States Department of Health and Human Resources. *See* Ex. A. He was briefly detained at the Southwest Key Casa Phoenix care facility operated by the Office of Refugee Resettlement until July 2016. He was then released into custody and care of a family relative who lived in Springfield, Oregon. *See* Ex A.

In February 2017, with the assistance of Oregon Law Center, he filed an application for asylum, withholding of removal and protection under the Convention Against Torture with the United States Citizenship and Immigration Services (“USCIS”). *See* Petition ¶¶ 54. In May 2017, Respondent ICE issued him an Order of Release on Recognizance that allowed him to be free from ICE detention. *See* Petition ¶¶ 55. He has complied ever since with all orders, instructions, and rules required of him. *See* Petition ¶¶ 56.

Following the executive orders of President Donald Trump and their implementation by Respondents, Petitioner believes that Respondents have adopted a

I see them in the neighborhood for quite some time, so they are just working guys like everybody else.”
See full news report of the arrest at: https://youtu.be/PDGa5SoInWc?si=7v7Lekd7hZFd_AiC.

1 mass detention policy to arrest and detain noncitizens, such as himself, irrespective of
2 any individualized circumstances, such as existence of the Order of Release, his
3 pending asylum application, his valid employment authorization, his employment
4 status, his family and community ties, or his standing in the local community. *See*
5 Petition ¶¶ 47-51 & 54-59. Petitioner has been taken away from his partner and 3-year-
6 old daughter who rely on him for their financial support and has been detained in the
7 ICE detention center located in Tacoma, Washington, hundreds of miles away from his
8 family. *See* Ex B.

10 Petitioner seeks an emergency order from this Court to halt his detention,
11 transfer out of this district, and removal from the United States.

13 **II. FACTUAL BACKGROUND**

14 **A. Petitioner's background and case posture**

15 Petitioner is a citizen of Guatemala who has resided in the United States since
16 May 2016. *See* Petition ¶¶ 1. Petitioner lives in Eugene, Oregon with his partner and
17 their 3-year-old daughter. *See* Petition ¶¶ 59; *see also* Ex B. His partner and daughter
18 depend on his financial, emotional, and spiritual support. *Id.* His continued detention
19 has caused them serious financial and emotional hardships. *See* Ex B.

21 On February 13, 2017, with the assistance of Oregon Law Center, Petitioner
22 filed an application for asylum, withholding of removal, and protection under the
23 Torture Convention with the USCIS while he was still under 18 years old. *See* Petition
24 ¶¶ 54. His application is based on a history of abuse, threats, and violence he had
25 experienced while growing up in Guatemala, and his fear for suffering serious harm if
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1 he were sent back to Guatemala. *Id.* USCIS has not scheduled an interview to consider
2 his application. *Id.*

3 In May 2017, Respondent ICE issued an Order of Release on Recognizance,
4 under which he was released until his re-detention on November 5, 2025. *See* Petition
5 ¶¶ 55. He is legally authorized to work in the United States, and his employment
6 authorization granted by USCIS is valid until April 24, 2030. *See* Petition ¶¶ 58. He
7 works hard as a landscape worker to support himself, his partner, and their daughter.
8 *See* Petition ¶¶ 59; *see also* Ex B. Due to his hard work and dependability, he has won
9 strong support from members of the community who have depended on him to clean
10 their yards and provide care for their gardens. *See* Petition ¶¶ 58; *See also* Ex C.

13 Under the individualized facts in Petitioner's case, Respondents have released
14 him on his own recognizance. *See* Petition ¶¶ 55. Petitioner appeared in person at ICE
15 office for reporting until he was told that he was no longer required to do so and has
16 complied with other terms of the Order. *See* Petition ¶¶ 56. To Petitioner's knowledge,
17 the Order of Release has not been revoked and remains valid. *See* Petition ¶¶ 70.

19 **B. Executive Orders and Respondents' Blanket Policy**

20 On January 20, 2025, President Donald Trump issued several executive actions
21 relating to immigration, including "Protecting the American People Against Invasion,"
22 an executive order (EO) setting out a series of interior immigration enforcement
23 actions. The Trump administration, through this and other actions, has outlined
24 sweeping, executive branch-led changes to immigration enforcement policy,
25 establishing a formal framework for mass deportation. The "Protecting the American
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1 People Against Invasion” EO instructs the DHS Secretary “to take all appropriate
2 action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement
3 procedures including through the use of mass detention.

4 On November 5, 2025, Petitioner was stopped, arrested and detained on his way
5 to work on his clients’ landscape projects. *See* Petition ¶¶ 60. On information and
6 belief, Respondents applied their mass detention policy to him, disregarding his
7 pending application for asylum, withholding of removal and protection under the
8 Torture Convention, the Order of Release, his valid employment authorization, and his
9 ties to the local community, arrested him, took him into physical custody, removed him
10 from the district of his home, and transferred him to their detention center in Tacoma,
11 Washington to detain him. *See* Petition ¶¶ 61, 47-51.

14 III. LEGAL STANDARDS

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

1 As an alternative to this test, a preliminary injunction is appropriate if “serious
2 questions going to the merits were raised and the balance of the hardships tips sharply
3 in the plaintiff’s favor,” thereby allowing preservation of the status quo when complex
4 legal questions require further inspection or deliberation. *Alliance for the Wild Rockies*
5 *v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).
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7 **IV. ARGUMENT**

8 Petitioner’s Motion for a Temporary Restraining Order should be granted
9 because he is likely to suffer irreparable harm in the absence of preliminary relief, he is
10 likely to succeed on the merits, and the balance of the equities and public interest weigh
11 in favor of emergency relief.
12

13 **A. Petitioner will likely suffer irreparable harm if not granted preliminary** 14 **relief.**

15 If this Court does not grant a temporary restraining order, Petitioner will be
16 detained in Tacoma, Washington, hundreds of miles away from his partner, their young
17 daughter, and community members who care deeply for him. *See* Ex B & C. His
18 continued detention will separate him from his family and community, cause him to
19 suffer loss of employment income, and cause his partner and daughter to experience
20 emotional and financial hardships, thus constituting irreparable harm. *See* Ex B.
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22 Respondents’ actions will cause irreparable harm to Petitioner by separating him
23 from his family members and community in the United States, forcing his loss of
24 meaningful employment, and denying him the benefit under his pending application.
25 These impacts constitute irreparable harm. *See e.g., Leiva-Perez v. Holder*, 640 F.3d
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1 962, 969-70 (9th Cir. 2011) (describing “separation from family members” and the
2 mental damage concomitant with such separation as irreparable harm) (quotation marks
3 omitted); *see also Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013) (“The right
4 to live with and not be separated from one’s immediate family is ‘a right that ranks high
5 among the interests of the individual’ and that cannot be taken away without procedural
6 due process.”) (quoting *Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982)). Additionally,
7 transferring Petitioner out of the district where he and his family reside deprives him of
8 proximity to his loved ones and community support, distance him from access to his
9 primary counsel, and impede his ability to engage in these immediate judicial
10 proceedings. *See Arroyo v. United States Dep’t of Homeland Sec.*, 2019 WL 2912848,
11 at *17 (C.D. Cal. June 20, 2019) (observing that (“a significant burden on the attorney-
12 client relationship, without a showing of underlying prejudice to the removal
13 proceedings, may be sufficient to establish a legal injury sufficient to justify injunctive
14 relief”), citing *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir.),
15 *amended on other grounds*, 807 F.2d 769 (9th Cir. 1986); *see also Escobar-Grijalva v.*
16 *I.N.S.*, 206 F.3d 1331, 1335 (9th Cir.), *amended on other grounds*, 213 F.3d 1221 (9th
17 Cir. 2000) (“Deprivation of the statutory right to counsel deprives [a noncitizen]
18 asylum-seeker of the one hope she has to thread a labyrinth almost as impenetrable as
19 the Internal Revenue Code.”).

20 As alleged in Petitioner’s habeas petition, Respondents’ actions will also violate
21 his constitutional rights under the fourth and fifth amendments of the constitution. *See*
22 Petition ¶¶ 71-108. “It is well established that the deprivation of constitutional rights
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1 unquestionably constitutes irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976,
2 994 (9th Cir. 2017) (internal quotation omitted).

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

4 Petitioner requests habeas relief from this court on the grounds that
5 Respondents’ stop, arrest, transfer, and detention of him violate his rights under the
6 United States constitution, statutes and regulations.
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8 Petitioner is likely to succeed on the merits of his claim under the Administrative
9 Procedures Act. Under the APA, a court shall “hold unlawful and set aside agency
10 action” that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An action is arbitrary and
11 capricious if the agency “entirely failed to consider an important aspect of the problem,
12 offered an explanation for its decision that runs counter to the evidence before the
13 agency, or is so implausible that it could not be ascribed to a difference in view or the
14 product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551
15 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm*
16 *Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). To survive an APA challenge, the agency
17 must articulate “a satisfactory explanation” for its action, “including a rational
18 connection between the facts found and the choice made.” *Dep’t of Com. v. New York*,
19 139 S. Ct. 2551, 2569 (2019) (citation omitted).
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23 Here, ICE/ERO’s decision to arrest, transfer, and detain Petitioner despite his
24 pending application before USCIS for asylum, the prior termination of removal
25 proceedings in his favor, their prior determination to release him on recognizance, and
26 his compliance with the Order of Release violates the APA. *See* Petition ¶¶ 54-57.

1 Petitioner has been released since July 2017 under the Order of Release. *See* Petition ¶¶
2 55. He has reported to ICE Eugene office as required, and no “exceptional
3 circumstances” have arisen since the granting of that release that would make him an
4 enforcement priority. *See* Petition ¶¶ 56. Because Respondent has articulated no
5 “satisfactory explanation” for its decision to change course so dramatically and arrest
6 and detain him, Petitioner is likely to succeed in his APA claim. *See Dep’t of Com.*, 139
7 S. Ct. at 2569.

9 Petitioner is also likely to succeed on his due process claim. Due process
10 requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487
11 F.3d 752, 757 (9th Cir. 2007). As noted above, there are no “exceptional
12 circumstances” that justify Respondents’ departure from their decision to grant
13 Petitioner release from custody and designate him as a low priority for enforcement.
14 Absent a change in the facts particular to his case, it is arbitrary for Respondents to
15 decide to arrest, transfer and detain him now.

17 Moreover, before Petitioner was detained, Respondents did not provide him with
18 written notice and meaningful hearing to determine whether he was a flight risk or
19 danger to the community. *See* Petition ¶¶ 69-70. Lack of notice and meaningful hearing
20 before he was deprived of protected liberty interests constitute violation of his right to
21 due process. *See Kumar v. Wamsley*, 2025 WL 2677089, 2:25-cv-01772-JHC-BAT
22 (W.D. Wash. Sep 17, 2025). In *Kumar*, the court applied the three *Mathews* factors to
23 similar facts and held Kumar was “likely to succeed on the merits of his due process
24 claim.” *Id.* p. 9. In that case, Kumar was released under an order of release on
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1 recognizance and was re-arrested at the time of his ICE reporting even though he
2 complied with the terms of the order and had a pending asylum application. *Id.* p 8.
3 Before Kumar's arrest, the government did not provide him with written notice of the
4 basis of his re-detention and an opportunity to be heard before a neutral decisionmaker.
5 *Id.* p 7. Under these circumstances, the court concluded "the government's interest in
6 re-detaining [Kumar] is minimal: the government has not shown that [Kumar] is a flight
7 risk, poses a danger to the community, or otherwise needs to be detained pending the
8 resolution of this litigation." *Id.* Likewise, in the instant case, before Petitioner was
9 arrested and detained, ICE did not provide him with notice of the basis for his arrest and
10 detention and a meaningful opportunity to be heard before a neutral decisionmaker.
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13 Petitioner's due process right was violated.

14 Finally, Petitioner's due process right was also violated when he was arrested
15 without warrant and probable cause. Immigration agents may stop individuals in public
16 only after identifying "specific articulable facts, together with rational inferences from
17 those facts, that reasonably warrant suspicion" of a violation of immigration law.

18 *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975; *Benitez-Mendez v. I.N.S.*,
19 752 F.2d 1309, 1311 (9th Cir. 1983, *amended*, 760 F.2d 907 (9th Cir. 1983); *see also* 8
20 C.F.R. §287.8(b)(2) (allowing officer to "briefly detain" a noncitizen for questioning if
21 the officer "has a reasonable suspicion, based on specific articulable facts" that the
22 noncitizen is engaged in an offense or is unlawful in the United States). On November
23 5, 2025, Respondent ICE did not have any "specific articulable facts" to initiate the stop
24 and did not have a warrant to arrest Petitioner. *See* Petition ¶¶ 62. Even if their initial
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1 stop was justifiable, they were not authorized to arrest and detain him without an
2 individualized assessment that he was a flight risk or danger to the community,
3 especially when he was released under the Order of Release that was still valid, he had
4 a pending application for asylum, he was authorized to work in the United States, and
5 he has deep ties in the community. *See* Petition ¶¶ 54 & 58; *See also* Ex B & C.

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

9 Petitioner has established that “the balance of the equities tip in [his] favor and
10 that an injunction is in the public interest” because he is an applicant for asylum,
11 withholding of removal and protection under the Torture Convention, he is not a flight
12 risk, and he is not a danger to the community. *See Winter*, 555 U.S. at 20. When the
13 federal government is a party, the balance of the equities and public interest factors
14 merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir. 2014) (citing *Nken v.*
15 *Holder*, 556 U.S. 418, 435 (2009)).

17 The balance of hardships tips substantially in favor of Petitioner. “[I]n addition
18 to the potential hardships facing Plaintiffs in the absence of the injunction, the court
19 ‘may consider . . . the indirect hardship to their friends and family members.’”
20 *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017), *quoting Golden Gate Rest.*
21 *Ass’n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008). Petitioner’s
22 detention would harm not only him, but also his family members depending on him for
23 their care and support, and the community members who depend on him to clean their
24 yards and provide care for their gardens. *See* Ex B & C. Petitioner lives in Eugene,
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1 Oregon with his partner and their 3-year-old daughter, who depend on him for their
2 financial support. *See* Ex B. Breaking up the family and taking away his income would
3 cause serious financial and emotional hardship for the family. *Id.* Without intervention
4 from this Court, these family members are likely to suffer irreparable harm as they will
5 not be able to make ends meet without Petitioner's earnings. There is also a strong
6 public interest in maintaining Petitioner's presence in his local community, where he is
7 an active member of his church and is a compassionate and caring member of his
8 community. *See* Ex. C. Petitioner has been providing landscape services to his clients in
9 the past 9 years, and they have relied on him to maintain their yard and landscape. *Id.*
10 His continued detention in Tacoma, Washington will deprive them of his high-quality
11 landscape services. They need him to be back in the community to help them clean,
12 maintain and care for their yards.

15 The merits of the constitutional violations that Petitioner has raised in his habeas
16 petition further weight the public interest toward emergency relief. *See* Petition ¶¶ 71-
17 108. "Generally, public interest concerns are implicated when a constitutional right has
18 been violated, because all citizens have a stake in upholding the Constitution."
19 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see also Zepeda v. U.S.*
20 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that "the INS cannot reasonably
21 assert that it is harmed in any legally cognizable sense by being enjoined from
22 constitutional violations"). In addition, "the public interest also benefits from a
23 preliminary injunction that ensures that federal statutes are construed and implemented
24 in a manner that avoids serious constitutional questions." *Rodriguez v. Robbins*, 715

1 F.3d 1127, 1146 (9th Cir. 2013).

2 Even when considered from a fiscal perspective, the public interest in the
3 efficient allocation of the government's fiscal resources weighs in favor of emergency
4 relief here. As the Ninth Circuit has explained, "The costs to the public of immigration
5 detention are "staggering": \$158 each day per detainee, amounting to a total daily cost
6 of \$6.5 million. Supervised release programs cost much less by comparison: between
7 17 cents and 17 dollars each day per person." *Hernandez v. Sessions*, 872 F.3d 976, 996
8 (9th Cir. 2017). The interests of the general public will not be served by Petitioner's
9 detention where he has a pending application for asylum, withholding of removal and
10 protection under the Torture Convention, is already complying with the terms of his
11 release, is providing his community with superb landscape services, and is neither a
12 flight risk nor a danger to the community. *See* Petition ¶¶ 54 & 56; *see also* Ex B & C.

13 By contrast, any public interest favoring Petitioner's detention is weak. *See*
14 *Kumar v. Wamsley*, 2025 WL 2677089, 2:25-cv-01772-JHC-BAT (W.D. Wash. Sep 17,
15 2025) (holding "the government's interest in re-detaining Petitioner is minimal: the
16 government has not shown that Petitioner is a flight risk, poses a danger to the
17 community, or otherwise needs to be detained pending the resolution of this
18 litigation."). Respondents do not appear to have any reason to suspect that the public
19 safety or national security may somehow be at risk if the motion for a temporary order
20 is granted. Any interest in effectuating Petitioner's removal is more than outweighed by
21 Petitioner's pending asylum application which indicates an independent basis for him to
22 remain lawfully in the United States, his employment authorization which is valid until
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1 April 2030, and the fact that there is not even any final order of removal against him at
2 the present time. Moreover, the agencies controlled by Respondents have released
3 Petitioner from custody and terminated his removal proceedings by exercise of
4 discretion; they did not consider their prior actions to be prejudicial to the public
5 interest. *See* Petition ¶¶ 55 & 57. Releasing Petitioner from custody to allow him to
6 provide financial support to his partner and their young daughter does not adversely
7 affect the public interest. Public interest favors his release from custody. *See* Ex. B&C.

9 **V. CONCLUSION**

10 For the foregoing reasons, Petitioner respectfully requests that this Court grant
11 his motion for temporary restraining order to release him from detention, block his
12 transfer outside the Western District of Washington, and stay his removal from the
13 United States.
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16 Dated: December 17, 2025. /s/ Kelly Vomacka

17
18 KELLY VOMACKA, WSBA #20090
19 (Local Counsel)
20 Kelly.Vomacka@ghp-law.net
21 GIBBS HOUSTON PAUW
22 1000 2nd Ave, Suite 1600
23 Seattle, WA 98104-1003
24 Office: (206) 682-1080

25 /s/ Benjamin Wang

26 BENJAMIN WANG, OSB #983664
(Pro Hac Vice)
bwang@bwanglaw.com
BENJAMIN BEIJING WANG, P.C.

750 Lawrence St
Eugene, OR 97401
Office: (541) 484-1811

Attorneys for Petitioner

I certify this document contains 3754 words in compliance with the Local Civil Rules.