

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

Rigoberto HERNANDEZ HERNANDEZ,

Petitioner,

v.

U.S. BORDER PATROL, et al.,

Respondents.

Case No.

Agency No. XXXX-XXX-475

**PETITIONER’S MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

MOTION AND MEMORANDUM OF LAW

Petitioner Rigoberto Hernandez Hernandez (“Mr. Hernandez”) is a wildland firefighter who was actively deployed on a federal contract to fight the Bear Gulch fire that continues to burn largely uncontained in Olympic National Park. On August 27, 2025, in the middle of the wilderness, inside the fire closure area, just outside the perimeter of the fire, Mr. Hernandez and his entire crew of first responders were seized by a roving band of armed Border Patrol who demanded to see their papers for a random pop-up immigration inspection *during* the wildland fire.

For hours, this roving band of armed Border Patrol agents detained two entire first responder crews in a quota-inspired hunt for immigration arrests. Under no legal obligation to do

1 so, Mr. Hernandez presented his firefighter identity card to an agent when demanded, and then,
2 when interrogated further about his *immigration status*, asserted his Fifth Amendment right to
3 remain silent. In response to the invocation of his Constitutional rights, one Border Patrol agent
4 openly mocked him and laughed; another agent told him that would not turn out well for him. The
5 Border Patrol agents proceeded to extend the detention even longer before finally handcuffing Mr.
6 Hernandez, packing him into an unmarked white van, and hiding him from the world.

7 For the next 24 hours, Mr. Hernandez was held incommunicado by Border Patrol agents
8 who denied him access to his counsel, refused to allow him to communicate to anyone, and then
9 obfuscated his location when his counsel finally identified his possible detention site. Only then
10 did the Border Patrol transfer Mr. Hernandez to the Northwest ICE Processing Center (NWIPC)
11 in Tacoma, Washington, where he remains detained.

12 Mr. Hernandez's detention is unlawful for multiple reasons, including because
13 Respondents denied him a meaningful pre-detention opportunity to be heard in violation of his
14 constitutional right to due process and Respondents' own regulations, because Respondents
15 conducted a warrantless arrest despite no probable cause of an immigration violation or any flight
16 risk, and because Respondents erroneously purport to subject him to mandatory detention under a
17 statutory provision that does not apply. To be sure, the Respondents—a collection of different
18 immigration enforcement agencies—have broken many laws in their quest to detain Mr.
19 Hernandez for their quotas. *See* Petition for Habeas Corpus at ¶¶ 159-253 (raising 13 counts of
20 illegal behavior by Respondents). But for purposes of this motion for a temporary restraining order,
21 Mr. Hernandez seeks to restore the *status quo ante litem* with his release because he is likely to
22 succeed on the merits of his due process, warrantless arrest claims, and INA claims (Counts 4, 5,
23 6, 10, 11, and 12); he is suffering irreparable harm from his continued detention; and the balance

1 of equities and public interest tip sharply in his favor.

2 Consistent with numerous courts across the country, this Court held in four separate cases
 3 over the past month that government agents may *not* sweep up any person they wish and hold that
 4 person without consideration of dangerousness or flight risk. *See E.A. T.-B. v. Wamsley*, No. 25-
 5 cv-1192-KKE, --- F. Supp. 3d --- 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering
 6 immediate release because “a post-deprivation hearing cannot serve as an adequate procedural
 7 safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty”);
 8 *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569, at *5 (W.D. Wash. Sept. 5,
 9 2025) (ordering immediate release to secure status quo of liberty prior to alleged unlawful re-
 10 detention); Order Granting Mot. for Temp. Restr. Order, *Ramirez Tesara v. Wamsley*, 2:25-cv-
 11 01723-MJP-TLF (W.D. Wash. Sept. 11, 2025), Dkt. 19 (hereinafter *Ramirez Tesara*, Dkt. 19)
 12 (ordering immediate release to restore Petitioner to the status quo prior to his unlawful arrest
 13 without a hearing); *Kumar v. Wamsley*, No. 2:25-cv-01772-JHC-BAT, Dkt. 11 (W.D. Wa. Sept.
 14 17, 2025) (same).

15 Accordingly, Mr. Hernandez respectfully seeks immediate relief from this Court to restore
 16 the status quo of his liberty pending the Court’s adjudication of his *habeas* petition.¹

17 I. FACTUAL BACKGROUND

18 On January 20, 2025, President Donald Trump issued several executive actions relating to
 19 immigration, including “Protecting the American People Against Invasion,” an executive order
 20 (EO) setting out a series of interior immigration enforcement actions. The Trump administration,
 21 through this and other actions, has outlined sweeping, executive branch-led changes to
 22

23 ¹ Together with the filing of the habeas petition and motion, counsel certifies that they are
 providing concurrent notice regarding this filing to the U.S. Attorney’s Office for the Western
 District of Washington via e-mail.

immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures, including through mass detention. At the same time, President Trump has indicated that noncitizens like Mr. Hernandez are not entitled to due process, the Fifth Amendment notwithstanding.²

In late May, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.³

On May 28, Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”⁴

Following the directive from Noem and Miller, ICE agents were instructed in an e-mail to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by

² See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514>, <https://perma.cc/9HHY-35JC> (last visited Sept. 18, 2025) (in response to a question about whether noncitizens deserve due process under the Fifth Amendment, President Trump replied “I don’t know. It seems—it might say that, but if you’re talking about that, then we’d have to have a million or 2 million or 3 million trials.”).

³ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), <https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877>; Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump’s focus on immigration is reshaping federal law enforcement*, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494>; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

⁴ Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, FOX NEWS (May 28, 2025), available at <https://www.foxnews.com/video/6373591405112> (last visited Sept. 18, 2025).

pursuing “collaterals”—individuals for whom the agency by definition would not have arrest warrants.⁵ As another e-mail put it: “If it involves handcuffs on wrists, it’s probably worth pursuing.”⁶

The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of detainees’ individual circumstances and the law.

Petitioner’s Background

Petitioner Rigoberto Hernandez Hernandez is of indigenous Mixtec ancestry and grew up in a household where English, Spanish, and Mixtec were spoken. Petitioner’s Declaration ISO Motion for a TRO (“Petitioner’s Decl.”) ¶ 3. His father and mother are migrant farmworkers. *Id.* While Mr. Hernandez was growing up, the family spent time in different years and different agricultural seasons across California, Oregon, and Washington. *Id.* Mr. Hernandez attended schools across these states and ultimately graduated from Salinas High School, in California. *Id.*

Mr. Hernandez is a wildland firefighter employed by ASI Arden Solutions Inc., a federal contractor. *Id.* ¶ 5. He is a Type 2IA certified firefighter and a qualified sawyer, which means he is physically fit, highly and extensively trained, and capable of leading a squad for initial attacks against wildland fires. *Id.* ¶, Declaration of Riva Duncan ISO Petitioner’s Motion for a TRO (“Duncan Decl.”) ¶¶ 4, 15. His responsibilities during wildland fires may include creating lines to stop the fire from burning into untouched green areas, cutting down trees, and clearing vegetation to manage spread. Petitioner’s Decl. ¶ 5. Prior to his arrest, he was in training to

⁵ José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>, <https://perma.cc/54HH-SNSN> (last visited Sept. 18, 2025).

⁶ *Id.*

1 become an Incident Commander Type 5, which requires understanding how to read the weather,
2 work a radio, run a saw, and operate a small squad in a way that is safe and responsible. *Id.*

3 Mr. Hernandez's work requires a combination of specialized knowledge, physical strength,
4 and strong mental focus, which is critical in controlling fires and ensuring the safety of
5 firefighting crews on the fireline. *See* Duncan Decl. ¶¶ 4-6. During fire season, Mr. Hernandez
6 can be called up to fight fires anywhere in the United States. Petitioner's Decl. ¶ 6. He has been
7 deployed to fight wildland fires more than 20 times over the past few years, including in
8 Colorado, Idaho, North Carolina, Oregon, Tennessee, Washington, and California, and even
9 supported staging for the devastating Los Angeles wildfires earlier this year. *Id.*

10 Wildland firefighters are often required to work long hours in challenging and changing
11 conditions, including high temperatures and steep terrain. Wildfires are unpredictable and
12 devastating natural events that can cause destruction and loss. Wildfires are known for their rapid
13 spread, intense heat, and unpredictable behavior. The speed at which a wildfire spreads can be
14 astonishing. Wildland firefighting is generally a federal initiative and has an interagency,
15 hierarchical structure. Duncan Decl. ¶¶ 4-6. There are agency firefighters and private contract
16 firefighters, like Mr. Hernandez, who collectively battle wildland fires around the nation. *Id.*

17 The interagency response is generally comprised of the U.S. Forest Service, the National
18 Park Service, and Bureau of Land Management, and other state and local entities. Duncan Decl.
19 ¶ 8. Prior to the incident at issue in the petition, the U.S. Border Patrol has never been part of the
20 interagency fire response. *Id.* ¶ 9 ("The U.S. Border Patrol is not considered to be part of an
21 interagency wildland fire, generally and in my long experience has never been involved as an
22 agency in a wildland fire management response.").

Bear Gulch Fire

The Bear Gulch Fire is a wildfire that began on July 6, 2025, on the north side of Lake Cushman in the Olympic National Forest. It is the Olympic Peninsula's largest fire since 1951.⁷

As of September 17, 2025, the fire had burned 15,739 acres and remains only nine percent contained.⁸ Most of the fire's growth happened over just seven hot and dry days since it sparked on July 6, from a human cause that is still under investigation. At one point it sent a column of smoke nearly 30,000 feet into the air, visible from as far as Seattle and Aberdeen.⁹

According to the West Mason fire Chief Matt Weland, because of the "steepness of the terrain, how far it was off the road initially, and then, not just all of that, but everything that was on fire was logs that could roll down the hill, rocks that could get kicked loose, lot of dead snags, things that would be dangerous for (any) firefighters," it was clear to him that "[f]rom the very beginning, this was a fire that needed specialized people, specialized equipment, specialized teams."¹⁰ The Petitioner and his brothers were some of those specialized people and members of the specialized teams who arrived to fight the fire.¹¹ Petitioner's Decl. ¶¶ 5-7; Decl. of Ricardo Hernandez Hernandez ("Hernandez Decl.") ¶¶ 6-7.

Under an interagency response managed by the U.S. Forest Service, the National Park Service, the Washington Department of Natural Resources, the California Interagency Incident

⁷ Isabella Breda, *Inside the fight to slow down WA's roller coaster Bear Gulch fire*, The Seattle Times, Aug. 24, 2025, <https://www.seattletimes.com/seattle-news/climate-lab/inside-the-fight-to-slow-down-was-roller-coaster-bear-gulch-fire/>, <https://perma.cc/56S5-PXDZ> (last visited Sept. 9, 2025).

⁸ KOMO News Staff, *Bear Gulch fire intensifies after day of high temps, smoke blankets Olympic Peninsula*, Sept. 17, 2025, <https://komonews.com/news/local/bear-gulch-fire-intensifies-after-day-of-high-temps-smoke-blankets-olympic-peninsula-lake-cushman-wildfire-season-high-heat-flames>, <https://perma.cc/7V7B-VZAQ> (last visited Sept. 19, 2025).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Image from *id.*

Management Team, and Hoodspout Fire & EMS, the Bear Gulch Fire was “being managed with a full suppression strategy,” with orders that all the firefighters “assigned to the incident shall work together to provide a high level of service, safety, and protection” and that all personnel “at every level shall ensure transparent, timely and accurate communications while strengthening relationships with each other[.]” *See* Incident Action Plan, Bear Gulch Fire (published 8/16/2025).¹²

Mr. Hernandez arrived on site as a Type 2 Initial Attack firefighter with a private contractor, called Arden, for whom he had worked since 2023. Petitioner’s Decl. ¶¶ 5-7; Hernandez Decl. ¶ 5. There are very few Type 2 Initial Attack crews in the country and their skilled firefighters are in high demand.¹³

For the most of his time fighting the Bear Gulch fire, until his arrest by Border Patrol, Mr. Hernandez was assigned to fight the fire by staging, patrolling, and combatting new or reignited fires by getting rid of hotspots and residual flames that could reignite days or weeks later without treatment, often called “mop-up” operations. Petitioner’s Decl. ¶ 7; Hernandez Decl. ¶ 7.

During mop-up, firefighters use hand tools to turn over soil and smother embers with dirt and apply water when available to cool hot spots and prevent reignition. Duncan Decl. ¶ 17.

¹² An Incident Action Plan is a daily set of actions that the firefighting teams undertake. *See* Duncan Decl. ¶ 12 (describing Incident Action Plan). The Incident Action Plans for the Bear Gulch fire are posted publicly at:

https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/2025_Bear_Gulch_WAOLF000178/IAP/ (last visited Sept. 12, 2025). URLs and permalinks are provided for the IAPs cited in this petition. The August 16, 2025 IAP is published at: https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/2025_Bear_Gulch_WAOLF000178/IAP/Archive/IAP_Corrected_20250816_000178.pdf, <https://perma.cc/95K5-FPS6> (last visited Sept. 12, 2025)

¹³ *See, e.g.*, Gabrielle Canon, *US faces alarming firefighter shortage during peak wildfire season, data reveals*, The Guardian, July 22, 2025, <https://www.theguardian.com/world/2025/jul/22/us-firefighter-shortage-wildfires>, <https://perma.cc/PDF4-XP9> (last visited Sept. 18, 2025).

1 Crews will keep monitoring for hours or even days to make sure nothing flares up again.
 2 Mopping up is one of the most critical steps in controlling a wildfire.¹⁴ *Id.*

3 Petitioner was detained by CBP Officers on August 27, 2025, despite there being no
 4 reasonable suspicion that he had committed an immigration violation. Petitioner's Decl. ¶¶ 11-
 5 22; Hernandez Decl. ¶ 15-23. On that date, numerous uniformed, armed officials seized 40
 6 people at once, held them under armed guard, and did not release them until they had produced
 7 identification and told officers where they were born. Hernandez Decl. ¶¶ 15-23. Mr. Hernandez
 8 was never released. *Id.*

9 The morning of August 27, Mr. Hernandez' crew was split into two squads to be deployed
 10 to two different locations. Petitioner's Decl. ¶ 9. This was unusual, as the squad usually all
 11 worked together. *Id.* Mr. Hernandez and his squad of about 40 people were driven to a remote
 12 drop point – DP 22 – where Mr. Hernandez had never been before. Petitioner's Decl. ¶ 9.¹⁵

13 Still within the fire closure zone (but not in the active fire), the drop point was deep into
 14 the forest where there was no or limited cell phone service. Petitioner's Decl. ¶ 10; Hernandez
 15 Decl. ¶ 11. The site was a large circular clearing surrounded by tall trees and thick forest. *Id.*
 16 Enormous, felled logs flanked the site, which contained a single entrance opening to the road.
 17 Petitioner's Decl. ¶ 10; Hernandez Decl. ¶ 9.

21 ¹⁴ See IAP Map, August 27, 2025,
 22 [https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/](https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/2025_Bear_Gulch_WAOLF000178/GISS/Products/20250827/iap_85x11_land_20250827_212_9_Bear%20Gulch_WAOLF000178_0828_day.pdf)
 23 [2025_Bear_Gulch_WAOLF000178/GISS/Products/20250827/iap_85x11_land_20250827_212_9_Bear%20Gulch_WAOLF000178_0828_day.pdf](https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/2025_Bear_Gulch_WAOLF000178/GISS/Products/20250827/iap_85x11_land_20250827_212_9_Bear%20Gulch_WAOLF000178_0828_day.pdf), <https://perma.cc/DV78-ZUFZ> (last visited 9/12/2025). The blue dots with numbers are “drop points” or “DP” in the IAP vernacular. They are marked areas within the closed fire zone. Duncan Decl. ¶ 13.

¹⁵ See *supra* n. 11 (identifying drop point).

1 Around 9:00 am, Mr. Hernandez was standing in the drop point with his squad when four
2 vehicles pulled up—two trucks and two SUVs. Hernandez Decl. ¶ 9. They parked to block the
3 single entrance to the drop site such that no one could come or go. *Id.*

4 Armed agents wearing vests that said “Border Patrol” surrounded Mr. Hernandez and the
5 other firefighters. Hernandez Decl. ¶¶ 9-10. They directed everyone to get in a line, and as the
6 firefighters complied, more agents, also armed, got out of their vehicles. Petitioner’s Decl. ¶¶
7 11-12.

8 As the agents surrounded Mr. Hernandez and the other firefighters, Mr. Hernandez could
9 see that all or most of them had guns and magazines on their waists. *Id.* Most of them had two
10 magazines on their waist and one of them had four magazines. *Id.* One of the agents was walking
11 around constantly clutching his holster. *Id.*

12 When agents surrounded Mr. Hernandez told him to line up, Mr. Hernandez was not doing
13 anything unlawful. *Id.* He was on active fire duty, directed by his crew leaders and divisional
14 leaders to Drop Point 22 to cut firewood for the community. *Id.* Even so, Mr. Hernandez felt that
15 he had no choice but to line up and do what the officers said because there were many officers
16 all around him, they all had guns, and they were telling everyone what to do. *Id.* ¶ 12. He had no
17 transport away from the drop point because the vehicles and armed agents had blocked that
18 egress and, moreover, he was on orders to be at the drop point and had been transported there by
19 his official crew. *Id.* ¶¶ 10-13; Hernandez Decl. ¶ 11.

20 The Border Patrol agents went from firefighter to firefighter taking their identification
21 documents to find out where they were born. *Id.* ¶¶ 13-15.

22 Agents asked Mr. Hernandez for his identification and country of birth. Mr. Hernandez
23 provided his firefighter’s ID, which reflects his name, photo and other identifying information.

Petitioner's Decl. ¶ 14. The agent then asked him where he was born. *Id.* ¶ 15. Mr. Hernandez stated that he was pleading the Fifth Amendment. *Id.* He did not carry any documents or identification that reflected his place of birth or nationality. *Id.*

Instead of "clearing" Mr. Hernandez, officers told him to stand apart from the other firefighters. Petitioner's Decl. ¶ 18. Mr. Hernandez complied with these instructions.

A bald male Border Patrol agent approached Mr. Hernandez and asked, "Why aren't you providing the information we're asking?" Mr. Hernandez asserted that he was exercising his right to remain silent and would not answer questions. *Id.* ¶¶ 15-17; Hernandez Decl. ¶¶ 15-16.

The interrogation was as follows:

Q. This is an immigration inspection. Since you didn't have any identification except your - what was the card?

A. It was the Fire Card.

Q. The Fire Card, okay. What country were you born in?

A. I plead the Fifth.

Id. ¶¶ 15-16. When another agent approached, the bald agent said, "This guy is exercising his rights and not answering the questions." The other agent replied, "that's not gonna be good for him." Petitioner's Decl. ¶ 16.

For more nearly three hours, Mr. Hernandez was held by armed Border Patrol agents. The bald agent instructed Mr. Hernandez to put his hands behind his back. He handcuffed him and told him that he was under arrest but did not tell him why; when asked, he replied "because you're here illegally." *Id.* ¶ 20.

At no point did any agent produce a warrant, explain why he had been stopped initially, or provide any documents of any kind during the hours long stop. *Id.* At no point did any agent provide their name or badge number to Mr. Hernandez during the hours long stop. *Id.* At no point did any agent advise Mr. Hernandez that they were immigration officials authorized to

1 make immigration arrests during the hours long stop. *Id.* At no point did any agent asked Mr.
2 Hernandez any questions about his family or community ties during the hours long stop. *Id.*

3 For the next hour, Mr. Hernandez sat on the ground while handcuffed. They were
4 surrounded by roughly 8 to 12 armed agents. *Id.* ¶ 21. While Mr. Hernandez was sitting on the
5 ground handcuffed, he heard officers talking about him and guessing where he was from based
6 on the way he looked. *Id.* ¶ 22. They named a few different foreign countries. One of the officers
7 suggested that he could be Oaxacan, but another officer said, “No, he’s too big, too tall to be
8 Oaxacan.” *Id.*

9 After waiting approximately three hours during the Border Patrol’s questioning and an
10 additional hour handcuffed on the ground, agents transported Mr. Hernandez to a Customs and
11 Border Protection station in Ferndale, Washington, some 200 miles away from the arrest site. *Id.*
12 ¶ 26. At the station he told officers that he wanted to speak with his attorney. He also asked
13 repeatedly for a phone call; each request was denied. *Id.* ¶ 28. Although Mr. Hernandez’ counsel
14 was attempting to contact him, at no point did officers at the CBP station tell Mr. Hernandez that
15 anyone was trying to reach him. *Id.*

16 Officers asked Mr. Hernandez to sign a document. *Id.* ¶ 29. The CBP officers did not
17 explain the document. *Id.* Mr. Hernandez refused. *Id.* At one point, officers woke him up in the
18 middle of the night and brought him to an interrogation room. Again, Mr. Hernandez invoked
19 his Fifth Amendment right to remain silent. *Id.* ¶ 30.

20 After roughly 24 hours detained at the CBP station, Mr. Hernandez was transferred to the
21 NWIPC in Tacoma, Washington, where he has been detained ever since. *Id.* ¶ 31.

At no point during any of the days since he was handcuffed has any officer asked Mr. Hernandez about his family, employment, or community ties, nor has any officer undertaken any other evaluation of whether he posed a risk of flight or dangerousness. *Id.* ¶ 20.

II. 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 temporary restraining order or 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).

III. ARGUMENT

Petitioner’s Motion for a Temporary Restraining Order should be granted because he is likely to succeed on the merits of his claims; he is suffering irreparable harm in the absence of preliminary relief; and the balance of the equities and public interest weigh strongly in favor of

Petitioner's release pending the Court's adjudication of his habeas petition. Mr. Hernandez also satisfies the alternative test for a temporary restraining order.

A. Petitioner is likely to succeed on the merits of his core habeas claims challenging his ongoing custody and his warrantless arrest.

1. Petitioner is likely to succeed on Count Six.

Mr. Hernandez was entitled to a meaningful opportunity to be heard prior to his detention by statute and regulation. Following a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires that the individual arrested "shall be taken without unnecessary delay" for further consideration of "their right to enter or remain in the United States." Under 8 U.S.C. § 1226(a), immigration officers may choose to either extend detention or to release an individual from custody; this decision is based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

Unless there is an emergency—here, there is none—the regulations require an individualized opportunity to be heard on whether detention is warranted. The regulation at 8 C.F.R. § 287.3(d) requires that, within 48 hours of a warrantless immigration arrest, an immigration officer make an individualized custody determination as to whether the noncitizen should remain in custody or be released. Likewise, the regulation at 8 C.F.R. § 236.1(c)(8) requires an opportunity for the noncitizen to be heard on flight risk and dangerousness.

The Respondents denied Mr. Hernandez a meaningful opportunity to be heard in violation of the statute and regulations. Under the APA, a court shall "hold unlawful and set aside agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D). Because Respondents have denied him an opportunity to be heard in order to make an individualized determination as to whether Petitioner's custody should be

continued, their continued detention of Mr. Hernandez is in violation of the statute, regulations, and the APA.

2. Petitioner is likely to succeed on Count Ten.

Mr. Hernandez was entitled to a meaningful opportunity to be heard prior to his detention under the Due Process Clause of the U.S. Constitution. No later than August 29, 2025, the Due Process Clause required Respondents to provide a meaningful opportunity for Mr. Hernandez to be heard on his detention prior to making any individualized custody determination. Their failure to do so violates his constitutional Due Process rights.

The Due Process Clause provides that “No person shall be . . . deprived of life, liberty, or property without due process of law.” U.S. Const. amend V. The Due Process Clause applies to “all ‘persons’ within the United States,” irrespective of their immigration status. *Trump v. J.G.G.*, 604 U.S. 670, 673 (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas*, 533 U.S. at 693. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process requires notice and “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Where the government seeks to deprive an individual of a protected interest, the Supreme Court has directed that courts balance three factors to determine what process is due:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. As this Court recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews* is the controlling framework for determining what process Mr. Hernandez

1 is due. *E.A. T.-B.*, 2025 WL 2402130, at *3; *see also Ramirez Tesara*, Dkt. 19 at 5–9 (applying
2 *Mathews* factors to assess right to pre-deprivation hearing). Here, all three factors strongly favor
3 Mr. Hernandez.

4 First, Mr. Hernandez has an exceptionally strong interest in freedom from physical
5 confinement and in an opportunity to be heard prior to any restraint of his liberty. Indeed, his
6 “interest in not being detained is ‘the most elemental of liberty interests[.]’” *E.A. T.-B.*, 2025 WL
7 2402130, at *3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see*
8 *also Ramirez Tesara*, Dkt. 19 at 5 (stating that the petitioner “has an exceptionally strong interest
9 in freedom from physical confinement”). “Freedom from imprisonment . . . lies at the heart of the
10 liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Thus, “[d]etention,
11 including that of a non-citizen, violates due process if there are not ‘adequate procedural
12 protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally protected
13 interest in avoiding physical restraint.’” *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal.
14 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth
15 Circuit has held that “[i]n the context of immigration detention, it is well-settled that ‘due process
16 requires adequate procedural protections to ensure that the government’s asserted justification for
17 physical confinement outweighs the individual’s constitutionally protected interest in avoiding
18 physical restraint.’” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v.*
19 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point.
20 *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that commitment for any
21 purpose constitutes a significant deprivation of liberty that requires due process protection.”
22 (citation omitted)). Mr. Hernandez’s liberty interest is particularly weighty give the civil context
23 of immigration detention. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)

1 (explaining that “[g]iven the civil context, [a noncitizen’s] liberty interest is arguably greater” that
2 the interest of parolees in the criminal context).

3 Second, Mr. Hernandez has a strong interest in his liberty. He grew up and attended schools
4 in California, Oregon, and Washington; he now lives in Oregon with his brothers Hector and
5 Ricardo, who are also wildland firefighters. Petitioner’s Decl. ¶ 3; Hernandez Decl. ¶ 4. For the
6 past few years, he has worked as a wildland firefighter, excelling despite dangerous and demanding
7 conditions in over twenty fire deployments across California, Colorado, Idaho, North Carolina,
8 Oregon, Tennessee, and Washington. Petitioner’s Decl. ¶ 6. He finds purpose in his career, through
9 which he is motivated “to protect the land, the wildlife, and the people of this country.” *Id.* ¶ 34.

10 Third, “the risk of erroneous deprivation of [Mr. Hernandez’s] liberty interest in the
11 absence of a pre-detention hearing is high.” *E.A. T.-B.*, 2025 WL 2402130, at *4. “That the
12 Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation
13 to effectuate the detention in a manner that comports with due process.” *Id.* The only justification
14 that Mr. Hernandez has received for his custody is the arresting officer’s statement, based solely
15 on his appearance, name, and assertion of his right to silence, that he was in the country “illegally.”
16 Petitioner’s Decl. ¶ 20. But that is no justification at all and is entirely arbitrary because it bears
17 no rational basis with either of the factors. The arbitrary and unlawful nature of Mr. Hernandez’s
18 detention is underscored by comments he overheard from one of the immigration officers, who
19 likened the immigration arrest to animal control. *Id.* ¶ 23 (recalling agent saying “imagine a stray
20 cat showed up to your door. You take it in. But if a bunch of cats show up, what do you do? You
21 call animal control!”).

22 Finally, any government interest in detaining Mr. Hernandez without notice and an
23 opportunity to be heard is weak, as the procedural safeguard that Petitioner seeks is merely what

Respondents are already legally required to do: provide him an opportunity to be heard so that they can conduct an individualized assessment to determine whether his individual facts and circumstances make him a flight risk or a danger to the community. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. at 38. Had Respondents conducted such an assessment, they would have been compelled to conclude that Mr. Hernandez’s facts and circumstances did not support detention. Indeed, it is not clear that Respondents have *any* interest in detaining Petitioner. *See Addington v. Texas*, 441 U.S. 418, 426 (1979). (“The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger.”).

Mr. Hernandez is likely to succeed on the merits of Counts Six and Ten; the court can grant the TRO and release Mr. Hernandez to restore the status quo on this basis alone. Respondents’ decision to detain Mr. Hernandez without any rational and individualized determination of whether he is a safety or flight risk and the failure to identify any government interest to detain him violates his constitutional right to due process.

3. Petitioner is likely to succeed on Counts Four and Five.

Petitioner is likely to succeed on the merits or, at a minimum, has raised serious questions going to the merits of his warrantless arrest claims because Respondents conducted a warrantless arrest of Mr. Hernandez despite *no* evidence that he was unlawfully in the United States.

Mr. Hernandez has a statutory and regulatory right to be free from warrantless immigration arrests. Under the INA, an immigration officer may conduct a warrantless arrest only if that officer has “reason to believe” that an individual is in the United States in violation of the immigration laws and is “likely to escape before a warrant can be obtained for [their] arrest.” 8 U.S.C. § 1357(a)(2). A “reason to believe” is equivalent to “the constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). Accordingly, an immigration

1 arrest also “must be based on consent or probable cause” that the person is in fact a noncitizen.
 2 *United States v. Brignoni-Ponce*, 422 U.S. 873, 881–82 (1975); *id.* at 884 (explaining that the
 3 “broad congressional power over immigration ... cannot diminish the Fourth Amendment rights of
 4 citizens who may be mistaken for [noncitizens]”).

5 Respondents conducted a warrantless arrest of Mr. Hernandez despite *no* evidence – let
 6 alone probable cause – that he was unlawfully in the United States. 8 C.F.R. § 287.8(c)(2)(i)
 7 specifies that before making a warrantless arrest, an immigration officer must have probable cause
 8 “to believe that the person to be arrested has committed an offense against the United States or is
 9 [a noncitizen] illegally in the United States.” Respondents seized Petitioner as part of a roving
 10 immigration inspection in the middle of the Olympic National Forest while he was working as a
 11 first responder fighting a wildland fire. Petitioner provided his firefighter identification, which
 12 included his full name and photo, and then invoked his Fifth Amendment right to silence.
 13 Petitioner’s Decl. ¶¶ 14-16; Hernandez Decl. ¶¶ 15-16. Respondents arrested Mr. Hernandez based
 14 on his race following his silence, making an unsubstantiated claim that he was “here illegally”
 15 before proceeding to guess a number of foreign nationalities based solely on Mr. Hernandez’s
 16 apparent race and physical appearance. *See* Petitioner’s Decl. ¶¶ 20-22 (describing officers
 17 guessing about different foreign countries, including remarking “he’s too big, too tall be Oaxacan”).
 18 But an immigration officer may not establish probable cause on the basis of a noncitizen’s silence
 19 pursuant to his Fifth Amendment rights. *See Hurd v. Terhune*, 619 F.3d 1080, 1088 (9th Cir. 2010)
 20 (affirming “the fundamental principle that a suspect’s silence in the face of questioning cannot be
 21 used as evidence against him”).

22 The warrantless arrest was illegal because Mr. Hernandez was not a flight risk and
 23 Respondents obviously knew that. The regulation at 8 C.F.R. § 287.8(c)(2)(ii) requires that

before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is “likely to escape before a warrant can be obtained.” *See also Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (requiring officers to have “grounds for a reasonable belief that they were particularly likely to escape”). Respondents arrested Petitioner while he was actively working as a federal contractor to combat a major, largely uncontained wildfire in the Olympic National Forest. Petitioner’s Decl. ¶¶ 6-7; Hernandez Decl. ¶¶ 6-9; Duncan Decl. ¶ 7. During his assignment to the Bear Gulch fire, Petitioner both worked and resided in remote, demarcated areas of the Olympic National Forest as instructed by his team leadership. *See* Duncan Decl. ¶ 12 n.1, 14, 20; Hernandez Decl. ¶ 6 (noting transport to Bear Gulch fire deployment in company vehicles); Petitioner’s Decl. ¶¶ 7-10 (describing transport and assignments as directed by supervisors).

Mr. Hernandez is likely to succeed on Counts Four and Five because Respondents’ warrantless arrest pursuant to 8 U.S.C. 1357(a)(2) was unlawful.

4. Petitioner is likely to succeed on Counts Eleven and Twelve.

Petitioner is likely to succeed on Counts Eleven and Twelve because Respondents’ new detention policies are contrary to the plain language of the statute and decades of agency practice. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” The language explicitly applies to people charged as being inadmissible, including those who are alleged to have entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). And “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the

statute generally applies.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

In contrast, § 1225(b) expressly applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). As the Supreme Court has explained, this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1226’s detention authority therefore undoubtedly applies to people who face charges of being inadmissible to the United States, including individuals who are alleged to be present without admission or parole. Dozens of federal courts have agreed. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,

2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same). Thus, Petitioner is likely to prevail on Counts Eleven and Twelve.

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

Mr. Hernandez must show that he is “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Mr. Hernandez has suffered and will likely continue to suffer irreparable harm. Here, Mr. Hernandez’s unlawful detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where “preliminary injunction is necessary to ensure that individuals . . . are not needlessly

1 detained” because they are neither a danger nor a flight risk). The irreparable harm from unlawful
2 detention is particularly acute for Mr. Hernandez, as his detention also violates the Constitution.
3 *See supra* at § IV.A.2. “It is well established that the deprivation of constitutional rights
4 unquestionably constitutes irreparable injury.” *Hernandez*, 872 F.3d at 994 (internal quotation
5 omitted); *see also Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases
6 involving a constitutional claim, a likelihood of success on the merits usually establishes
7 irreparable harm”).

8 Without intervention from this Court, it is also very possible that Respondents will transfer
9 Petitioner to another immigration detention facility far away from his lawyers, his family, and his
10 support system – as they have done in many other cases. Respondents have recently implemented
11 a detention and transfer policy to detain and rapidly remove noncitizens outside of the United
12 States, to sites including El Salvador, Cuba, and South Sudan. Respondents’ transfer of Petitioner
13 out of this district could irreparably jeopardize his life.

14 Respondents’ transfer would also cause irreparable harm to Petitioner by depriving him of
15 proximity to his counsel and impeding his ability to engage in these immediate judicial
16 proceedings. *See Arroyo v. United States Dep’t of Homeland Sec.*, 2019 WL 2912848, at *17 (C.D.
17 Cal. June 20, 2019) (observing that “a significant burden on the attorney-client relationship,
18 without a showing of underlying prejudice to the removal proceedings, may be sufficient to
19 establish a legal injury sufficient to justify injunctive relief”), citing *Comm. of Cent. Am. Refugees*
20 *v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 769 (9th Cir.
21 1986).

22 The unlawful deprivation of liberty causes Mr. Hernandez direct and immediate irreparable
23 harms that warrant a TRO.

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

A TRO should be granted because the balance of equities tips sharply in favor of Mr. Hernandez. Petitioner has established that “the balance of the equities tip in [his] favor and that an injunction is in the public interest.” *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)).

Here, Mr. Hernandez faces weighty hardships: loss of liberty and deprivation of the right to earn a living. The government, by contrast, faces no hardship as Mr. Hernandez is neither a flight risk nor a danger to the community. Avoiding such “preventable human suffering” strongly tips the balance in favor of Mr. Hernandez. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

While Respondents do not appear to have any reason to suspect that the public safety or national security may somehow be at risk if the motion for a temporary order is granted, Mr. Hernandez’s continued detention actually reduces public safety by removing him from the wildland firefighter unit that has been actively fighting the Bear Gulch fire. As of this week, the Bear Gulch fire is classified as a “large fire” and is only 9% contained; it has already burned over 10,000 acres and is projected to not be fully contained until at least October 1. Duncan Decl. ¶ 7. Mr. Hernandez’s work fighting this fire was focused on protecting structures and hiking areas, addressing dangerous situations along hiking trails, and putting out smoldering fires to prevent reignition. Petitioner Decl. ¶ 7. Mr. Hernandez’s detention prevents him from serving as a wildland firefighter – a role he has been deployed in over 20 times in the past few years, fighting fires in states spanning from North Carolina to California. Petitioner’s Decl. ¶ 6. Mr. Hernandez’s continued detention during fire season further harms the public interest.

1 What is more, “the public interest benefits from an injunction that ensures that individuals
2 are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal]
3 process.” *Hernandez*, 872 F.3d at 996. Indeed, “in cases involving a constitutional claim, a
4 likelihood of success on the merits . . . strongly tips the balance of equities and public interest in
5 favor of granting a preliminary injunction.” *Baird*, 81 F.4th at 1048. The merits of the due process
6 violations that Petitioner has raised in his habeas petition further weight the public interest toward
7 emergency relief. “Generally, public interest concerns are implicated when a constitutional right
8 has been violated, because all citizens have a stake in upholding the Constitution.” *Preminger v.*
9 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see also Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th
10 Cir. 1983) (concluding that “the INS cannot reasonably assert that it is harmed in any legally
11 cognizable sense by being enjoined from constitutional violations”). In addition, “the public
12 interest also benefits from a preliminary injunction that ensures that federal statutes are construed
13 and implemented in a manner that avoids serious constitutional questions.” *Rodriguez*, 715 F.3d
14 at 1146.

15 Even when considered from a fiscal perspective, the public interest in the efficient
16 allocation of the government’s financial resources weighs in favor of emergency relief here. As
17 the Ninth Circuit has explained, “[t]he costs to the public of immigration detention are
18 “staggering”: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.”
19 *Hernandez*, 872 F.3d at 996. The interests of the general public will not be served by Petitioner’s
20 detention where he is neither a flight risk nor a danger to the community.

21 Accordingly, the balance of hardships and the public interest tip sharply in favor of a
22 temporary restraining order to return Mr. Hernandez to the status quo, releasing him from detention
23 while the Court adjudicates his habeas petition.

D. Immediate release is warranted to restore the *status quo ante litem*.

As in *Ramirez Tesara*, *Phetsadakone*, *E.A. T.-B.*, and *Kumar*, this Court should order Mr. Hernandez’s immediate release. “[A] post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.” *E.A. T.-B.*, 2025 WL 2402130, at *6. In other words, Mr. Hernandez’s unlawful detention without a pre-deprivation opportunity to be heard is *already* occurring, and only immediate release can restore the status quo.

As this Court explained in *Ramirez Tesara*, Mr. Hernandez’s “immediate release is necessary to restore the status quo ante litem. This ‘refers not simply to any situation before the filing of a lawsuit, but instead to the last uncontested status which preceded the pending controversy.’” *Ramirez Teresa*, Dkt. 19 at 10 (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Phetsadakone*, 2025 WL 2579569, at *5 (concluding that restoring petitioner to his prior liberty “maintains the status quo ante litem and prevents irreparable harm while allowing full adjudication of his claims for injunctive relief and on the merits”). As in these cases, here the pending controversy stems from Petitioner’s unlawful arrest, which led to his current unlawful custody.

Moreover, the principles that govern this case are now well-established. In the past month, this Court has repeatedly affirmed that it is unlawful for Respondents to detain persons like Mr. Hernandez without first providing a hearing where the detained person can demonstrate that they present a flight risk or a danger to the community if not taken into custody. These decisions are consistent with other district courts’ conclusions across the country.

Accordingly, Petitioner respectfully requests that the Court grant a TRO ordering his immediate release from custody. Immediate release is the only relief that will fully restore the

status quo ante litem. In the alternative, however, the Court may order that a § 1226(a) bond hearing be held within seven days of the Court's order, at which Petitioner would have the chance to demonstrate that he is neither a flight risk nor a danger to the community. The Court should then direct Respondents to respond to an order to show cause with any arguments or additional information they believe is necessary so that this Court can issue the writ of habeas securing Mr. Hernandez's continued right to liberty.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his motion for a temporary restraining order, restoring the status quo by granting Mr. Hernandez release from custody while the Court adjudicates his pending habeas petition. Petitioner respectfully requests that the Court order Respondents to respond to this Motion by noon on Tuesday, September 23, 2025; allow Petitioner to file a reply by noon on Wednesday, September 24, 2025; and issue a decision by September 25, 2025. If the Court finds a hearing to be necessary, Petitioner respectfully requests that the hearing take place on September 24, 2025, subject to the Court's availability.

Dated: September 19, 2025.

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**Motion for Pro Hac Vice Forthcoming*

LCR 7(e) WORD COUNT CERTIFICATION

I certify that this motion and memorandum contains 8,323 words, in compliance with the
Local Civil Rules.

s/ Matt Adams

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

Rigoberto HERNANDEZ HERNANDEZ,

Petitioner,

v.

U.S. BORDER PATROL, et al.,

Respondents.

Case No.

**[PROPOSED] ORDER GRANTING
PETITIONER'S MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

Having considered the parties' briefing concerning Petitioner's Motion for a Temporary Restraining Order, the Court finds that Rigoberto Hernandez Hernandez has satisfied the requirements to issue a temporary restraining order. Therefore, his motion is **GRANTED** and the Court **ORDERS** Petitioner's immediate release pending further proceedings in this case.

Specifically, the Court hereby **FINDS** that:

- 1) Mr. Hernandez is likely to succeed on the merits of his claims that his detention violates the Immigration and Nationality Act, federal regulations, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.

- 1 2) Mr. Hernandez is likely to succeed on the merits of his claims that Respondents
- 2 unlawfully arrested him without probable cause of any immigration violation or probable
- 3 cause of flight risk.
- 4 3) Mr. Hernandez is likely to succeed on the merits of his claims that Respondents have no
- 5 custody authority to detain him under 8 U.S.C. § 1225(b).
- 6 4) Mr. Hernandez faces immediate and irreparable injury because he is unlawfully detained.
- 7 The harms Petitioner faces include the loss of physical liberty and inability to support his
- 8 family.
- 9 5) The balance of equities tips in favor of Mr. Hernandez.
- 10 6) An injunction is in the public interest.

11 Accordingly, the Court hereby **ENJOINS** Respondents from re-arresting or re-detaining
12 Mr. Hernandez absent compliance with constitutional protections, which include at a minimum,
13 pre-deprivation notice—describing the change of circumstances necessitating his arrest and
14 detention—and a bond hearing before a neutral decisionmaker to determine whether Petitioner
15 should be detained while removal proceedings are ongoing. At any such hearing, the
16 Government shall bear the burden of establishing by clear and convincing evidence that Mr.
17 Hernandez poses a danger to the community or a risk of flight. Mr. Hernandez shall be allowed
18 to have counsel present.

19 [ALTERNATIVE ORDER]

20 Therefore, his motion is **GRANTED** and the Court **ORDERS** Respondents to present
21 Petitioner to the immigration court for a bond hearing no later than seven days after the entry of
22 this order where the Respondents shall have the burden to demonstrate that Petitioner's
23

1 continued detention is warranted because there is no reasonable bond to assure future
 2 appearances.]

3 Further, Respondents, are hereby issued an **ORDER TO SHOW CAUSE** (OSC) within
 4 three days as to why the petition should not be granted. *See* 28 U.S.C. § 2243. The Temporary
 5 Restraining Order shall remain in effect for fourteen days unless extended by this Court for good
 6 cause to address any response to the OSC.

7 It is so **ORDERED**.

8 DATED this _____ day of _____, 2025.

10 _____
 11 [Name]

UNITED STATES DISTRICT JUDGE

12 s/ Matt Adams

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s/ Stephen W Manning

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21 **Motion for Pro Hac Vice Forthcoming*