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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A-, an adult,
Petitioner,

v.

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

Case No. 6:25-cv-02011-MTK

Agency No. XXX-XXX-902

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

ORAL ARGUMENT REQUESTED

Expedited Hearing:
November 4, 2025 at 8:00 AM

MOTION FOR A TEMPORARY RESTRAINING ORDER AND MEMORANDUM OF LAW IN SUPPORT

Petitioner M-J-M-A- was simply heading into work on the morning of October 30, 2025, when she was swept up in Respondents' dragnet of immigration enforcement in Woodburn—one of Oregon's most heavily Latino cities.[1] This dragnet was meant to achieve a quota of immigrant arrests, regardless of what the law requires U.S. Immigrations and Customs Enforcement ("ICE") to do when taking away someone's liberty. ICE had neither a warrant to arrest M-J-M-A- nor probable cause to detain her. To compound this illegality, when M-J-M-A- was working with a pro bono lawyer discussing the illegality of her arrest and detention, and her options for obtaining liberty and fighting her immigration case, ICE terminated the conversation and whisked her away; now, by operation of the transfer, blocking her access to her lawyer for over 48 hours.

M-J-M-A-'s detention is unlawful for multiple reasons: she was unlawfully stopped, without reasonable suspicion, after the stop of the vehicle in which she was a passenger; she was unlawfully arrested without a warrant and without probable cause or reason to believe she had committed an immigration violation and would flee before a warrant could be obtained; and Respondents denied her a meaningful pre-detention opportunity to be heard in violation of her constitutional right to due process and Respondents' own regulations, including egregiously interfering with her right to counsel.

But "freedom from government custody is fundamental." *Jimenez v. Bostock*, 2025 WL 2430381 *7 (D. Or. 2025). Therefore, Petitioner seeks to restore the *status quo ante litem* by an order requiring her immediate release from executive detention and her return to Oregon while this Court adjudicates the merits of her petition. While she is likely to succeed on the merits of all of her claims, she seeks emergency interim relief only on Counts 1, 3, 4, 5, and 6.

[1] FOX 12 Oregon, *More than 30 immigrants were detained by ICE in Woodburn, an immigrant justice group claims* (Oct. 31, 2025), available at https://www.kptv.com/2025/10/31/30-arrested-by-ice-woodburn-local-organizers-say/ (last visited Nov. 1, 2025).

I. FACTUAL BACKGROUND

On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to 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, U.S. Customs and Border Protection ("CBP"), and U.S. Citizenship and Immigration Services ("USCIS") to prioritize civil immigration enforcement procedures, including through mass detention. At the same time, President Trump has indicated that noncitizens like M-J-M-A- 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]

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[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.

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 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.

DHS Dragnet of Woodburn, Oregon

Early in the morning of October 30, 2025 starting about 5 a.m., DHS launched an immigration dragnet of Woodburn, Oregon and its environs. *See* Sami Edge, *ICE detains 35 people in Woodburn, immigrant rights coalition says*, Oregonlive (Oct. 30, 2025), https://www.oregonlive.com/crime/2025/10/ice-detains-29-people-in-woodburn-immigrant-rights-coalition-says.html, https://perma.cc/43EQ-TE64 (last visited Nov. 1, 2025). Individuals with information about the arrests and tactics described it as "the largest raid or action like this we've seen so far in this administration". *Id.* DHS's actions caused school officials to alert staff and individuals who responded in the community described the scene as "traumatic." *Id.* Individuals with information explained that the dragnet took place predominantly around

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[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).

[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*.

apartment complexes during the morning hours of 5:00 AM to 7:30 AM, when many Woodburn farmworkers were heading to work. *See* Sophia Cossette, *Arresting 'Oregon's economic engine': Woodburn-area leaders speak out against arrest of 31 immigrants, farmworkers in Thursday ICE raids*, The Newberg Graphic (Oct. 31, 2025), available at https://newberggraphic.com/2025/10/31/arresting-oregons-economic-engine-woodburn-area-leaders-speak-out-against-arrest-of-31-immigrants-farmworkers-in-thursday-ice-raids/, https://perma.cc/89YJ-SW2U (last visited Nov. 1, 2025).

Petitioner's Unlawful Detention

Petitioner M-J-M-A- is an Oregon farmworker. Declaration of Natalie Lerner (hereinafter, "Lerner Decl.") ¶ 4. On the morning of October 30, 2025, ICE agents stopped a car in which M-J-M-A- was a passenger; she was on her way to work. *Id.* ICE agents detained everyone in the car. *Id.* ICE agents did not identify M-J-M-A- by name before detaining and arresting her; nor did they identify themselves to her as ICE officers during the apprehension. *Id.* ICE agents did not provide M-J-M-A- with a warrant or other paperwork upon her arrest. *Id.* M-J-M-A- did not attempt to flee after ICE stopped the car. *Id.*

On the same morning of M-J-M-A-'s detention, *pro bono* attorneys from Innovation Law Lab and the CLEAR Clinic attempted to provide legal services and legal advice to M-J-M-A- and the other approximately thirty or more people who had been detained that same morning. Declaration of Kelsey Provo (hereinafter, "Provo Decl.") ¶¶ 2-4. ICE officers did not allow the *pro bono* attorneys from Innovation Law Lab into the building to begin meeting with detainees until approximately one hour after they arrived; ICE denied CLEAR Clinic attorneys access to prospective clients in the facility until 3:00 PM. *Id.* ¶¶ 14, 21.

ICE limited *pro bono* attorneys Kelsey Provo and Natalie Lerner to meet with M-J-M-A- for only about ten minutes. *Id.* ¶ 15.[7] A few minutes into their meeting, an ICE officer interrupted

[7] Ms. Provo, Ms. Lerner, and the CLEAR Clinic attorneys are affiliated with Equity Corps of Oregon, Oregon's universal representation program. Equity Corps of Oregon is a recognized pro bono provider under the Immigration and Nationality Act. *See* 8 C.F.R. § 1003.61(2) (defining

to tell them that the meeting would be cut short because they were going to transfer Petitioner out of the facility. *Id.* Ms. Provo requested an additional ten minutes to meet with M-J-M-A- so she could complete an abbreviated legal screening about the arrest and the circumstances and legality of the immediate detention; the ICE officer denied that request, granted an additional sixty seconds, and then terminated the attorney-client conversation. *Id.*[8]

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).

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pro bono legal services); List of Pro Bono Legal Service Providers, EOIR, at 110 (October 2025), https://www.justice.gov/eoir/file/probonofulllist/dl (listing Equity Corps of Oregon).

[8] Since the Respondents abruptly terminated the attorney-client meeting in order the transport the Petitioner out of the district, the earliest the Respondents will allow Petitioner to meet with her lawyers is Sunday, November 2, 2025—more than 48 hours after her unlawful detention. The emergency order entered by this Court requiring the Respondents to locate the Petitioner and update their systems to reflect her site of detention is the *only reason* Petitioner's lawyers know where she is and the *only reason* they were able to schedule a contact for the first available date. Their system that purports to identify sites of detention simply is unworkable. *See* Lerner Decl. ¶ 10.

III. ARGUMENT

Petitioner's Motion for a Temporary Restraining Order should be granted because she is likely to succeed on the merits of her claims relating to the unlawful nature of her warrantless arrest as well as her claim regarding violation of her Fifth Amendment right to counsel;[9] she 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. M-J-M-A- also satisfies the alternative test for a temporary restraining order.

A. Petitioner is likely to succeed on the merits of her claims.

1. Petitioner is likely to succeed on her claims that her warrantless arrest on October 30, 2025, was unlawful.

Petitioner is likely to succeed on the merits or, at a minimum, has raised serious questions going to the merits, of her warrantless arrest claims because Respondents conducted a warrantless arrest of M-J-M-A- despite *no* evidence that she was unlawfully in the United States.

a. Petitioner is likely to succeed on Counts 1, 3, 4, and 5 because she was arrested without probable cause.

Petitioner has a statutory and regulatory right to be free from warrantless immigration arrest without probable cause. 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).

Petitioner is likely to succeed on Count One. Respondents conducted a warrantless arrest of Petitioner despite having *no* reasonable suspicion – let alone probable cause – that she was

[9] Per the status conference with the Court on October 31, 2025, this TRO seeks Petitioner's immediate release based on the egregious violation of her Fifth Amendment rights including violations of her rights to counsel and all the reasons set forth above. The TRO does not seek her release based on Count 2 because Respondents have not yet filed their return. Petitioner reserves the right to seek release on this Count and to pursue additional arguments in favor of the remaining counts after the Respondents have filed their return.

unlawfully in the United States. A warrantless immigration arrest "must be based on consent or probable cause" that the person is in fact a noncitizen. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881–82 (1975); *id.* at 884 (explaining that the "broad congressional power over immigration ... cannot diminish the Fourth Amendment rights of citizens who may be mistaken for [noncitizens]"). Respondents seized Petitioner in a vehicle stop without showing her any documents or asking her a single question. Lerner Decl. ¶ 4. Based on the facts in the record at this time, Petitioner is likely to succeed on her claim that her warrantless arrest, which was part of widespread sweeps of arrests of farmworkers on their way to work in Marion County, was unlawfully based solely on her apparent race and ethnicity. But an immigration officer may not establish probable cause on the basis of race alone. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). Because Respondents arrested Petitioner without probable cause to believe that she was a noncitizen unlawfully in the United States, her warrantless arrest was in violation of the Fourth Amendment.

Petitioner is likely to succeed on Count Three for these same reasons. The regulation at 8 C.F.R. § 287.8(c)(2)(i) specifies that before making a warrantless arrest, an immigration officer must have probable cause "to believe that the person to be arrested has committed an offense against the United States or is [a noncitizen] illegally in the United States." Respondents' warrantless arrest of Petitioner without probable cause of an immigration violation is in violation of their statutory and regulatory authority.

Petitioner is likely to succeed on Count Four. Petitoner's warrantless arrest was independently illegal because Respondents had no probable cause that she was a flight risk, such that Respondents had no time to reasonably obtain a warrant. 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 she was on her way to work in a van with other

people; she did not flee the scene when they stopped the vehicle, and she complied with every request. Lerner Decl. ¶ 4. Because Respondents had no evidence *at all* to support a probable cause finding that Petitioner was a flight risk, their warrantless arrest of Petitioner was in violation of her statutory and regulatory rights.

Petitioner is likely to succeed on Count Five. In making probable cause determinations for a warrantless arrest, Respondent ICE must comply with the settlement agreement in *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.) (hereafter, "*Nava* Broadcast Policy"). Pursuant to the October 7, 2025, order in that case, Respondent ICE reissued the *Nava* Broadcast Policy to all ICE officers nationwide on October 22, 2025, with the instruction that the *Nava* Broadcast Policy shall remain in effect through February 2, 2026. *See Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.) at Dkt. 224, 224-1 at ¶ 5. Under this policy, Respondent ICE is required to consider a delineated set of factors before effectuating a warrantless arrest. In particular, before concluding whether or not the person is at risk of fleeing before a warrant is obtained, ICE must consider "the totality of circumstances," including "the ICE Officer's ability to determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond." *See* Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), *available at* https://perma.cc/54EX-YGM7 (last visited Nov. 1, 2025).[10] In conducting Petitioner's arrest, Respondents' agents either had no evidence of these circumstances or, where they did, the circumstances heavily weighed against a risk of flight. Petitioner was on her way to work and did

[10] Notably, the remedy for those arrested in violation of this agreement within the jurisdiction of the Chicago Field Office is prompt release from custody. *Castañon Nava v. Dep't of Homeland Sec.*, 2025 WL 2842146, at *5 ("Class members who are arrested contrary to the terms of the Agreement and are in ICE custody shall be released from custody on their own recognizance without posting bond as soon as practicable" unless subject to mandatory detention under the INA).

not attempt to flee when stopped by immigration agents. Lerner Decl. ¶ 4. Petitioner's warrantless arrest without consideration of the factors required by the *Nava* Broadcast Policy is a violation of the *Accardi* doctrine, which requires the agency to follow its own policies, and the APA. *See Accardi v. Shaughnessy*, 347 U.S. 260, 266-268 (1954); 5 U.S.C. § 706(2)(A).

b. Petitioner is likely to succeed on Count 6 because her warrantless arrest without probable cause violates her Due Process rights.

Petitioner is likely to succeed on the merits of Count Six. "No person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend V. It is well-established that the Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to "all 'persons' within the United States," irrespective of their immigration status. *J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). 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 also 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)); *Jimenez*, 2025 WL 2430381*6 (applying *Mathews)*.

Petitioner was entitled to a meaningful opportunity to be heard prior to her detention under the Due Process Clause of the U.S. Constitution. Instead, M-J-M-A- was subjected to warrantless in an arbitrary manner, without any notice of the basis for her arrest and in the absence of requisite probable cause. She was not arrested based on any rational and individualized determination of whether she should be detained based on the individual facts and circumstances pertaining to whether Petitioner was a flight risk or unlawfully present in the United States, including the factors explicitly required by the *Nava* Broadcast Policy. *See supra* at § III.A.2.a.

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. In applying this balancing test, it is clear that Respondents provided inadequate process when they arrested Petitioner without a warrant and without any requisite probable cause. The private interest at stake here is grave: Petitioner has a strong private interest in her liberty. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment," including immigration detention, "lies at the heart of the liberty [the Due Process] Clause protects."); *Jimenez*, 2025 WL 243038 *6-7. By contrast, Respondents' interest is weak if not negligible, as they were already required by the Due Process Clause to at minimum comply with the requirements for a lawful warrantless arrest – namely, to effectuate an arrest only with probable cause. And the additional procedural requirement that Petitioner requests is only those procedures already required by law – the individualized determination of probable cause required by the Constitution, statute and regulation, and the binding terms of the *Nava* Broadcast Policy. Respondents' warrantless arrest of Petitioner without an individualized determination of probable cause also violates her Fifth Amendment right to due process.

c. Petitioner is likely to succeed on Count 6 because Respondents intentionally denied her access to counsel before a continuing custody determination was made.

Petitioner is additionally likely to succeed on Count Six because Respondents deprived her of access to counsel in advance of making any individualized custody determination, as they are required to do promptly after a warrantless arrest.

To summarize: Following her unlawful warrantless arrest, Petitioner was meeting with statutorily-recognized *pro bono* counsel about the facts and circumstances of her unlawful detention when ICE abruptly terminated the conversation. Provo Decl. ¶ 15. Within minutes of terminating the attorney conversation, ICE transported Petitioner out of the district with no obvious plan regarding her constitutional rights for counsel or due process. Indeed, as of this filing, Petitioner's counsel has not been able to communicate with M-J-M-A- and, but for the order of

this court requiring ICE to update its systems, Petitioner's counsel would have been unable to actually locate her. Lerner Decl. ¶¶ 8-10.

Respondents have continued to detain Petitioner without giving her a meaningful opportunity to be heard before making an individualized custody determination. After 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*, 533 U.S. at 690; *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 Fifth Amendment demands that the government may not obstruct Petitioner's access to her counsel in advance of making this critical custody determination. Individuals detained in immigration operations have a right to counsel that is rooted in the Due Process Clause of the Fifth Amendment. *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1162 (D.Or. 2018); *Usubakunov v. Garland*, 16 F.4th 1299, 1303 (9th Cir. 2021) ("As we have stressed, the importance of the right to counsel … cannot be overstated." (cleaned up)); *Arrey v. Barr*, 916 F.3d 1149, 1157 (9th Cir. 2019) ("Both Congress and [the Ninth Circuit] have recognized the right to retained counsel as being among the rights that due process guarantees to petitioners in immigration proceedings."); *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) (The right to counsel in immigration proceedings is rooted in the [Fifth Amendment] Due Process Clause[.]"); *see also* 5 U.S.C. § 555(b) ("A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding."). The right to counsel for individuals detained

in civil immigration enforcement actions "begins before any court proceeding, with notices from the agency to the immigrant and with the detention itself." *Torres*, 411 F. Supp. 3d at 1061–62; *see* 8 C.F.R. § 287.3(c) (providing that an immigrant arrested without a warrant must be notified of her "right to be represented at no expense to the Government").

Instead of taking heed of the "warning" to "not treat [the right to counsel] casually," ICE did exactly that. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990). Petitioner was exercising her right to access her counsel at the Portland ICE Field Office when Respondents terminated the conversation and extinguished her exercise of that right even though it was *at that moment* that Respondents were making important decisions about her case, including her ongoing custody determination, to transfer her hundreds of miles away from her counsel, family, community, and nearly this Court's jurisdiction. *See* Provo Decl. ¶ 15; *Vasquez Perdomo v. Noem*, 790 F.Supp.3d. 850, 876-77 (C.D. Cal. July 11, 2025) (granting injunctive relief where individuals had "reasonable fear of imminent detention without access to counsel" at temporary holding facilities), *stay of injunctive relief granted by Noem v. Vasquez Perdomo*, 2025 WL 2585637 (S. Ct. Sept. 8, 2025). The government may not impose restrictions that undermine a detained person's opportunity to obtain or communicate with counsel. *See Orantes-Hernandez*, 919 F.2d 549 at 565. Impediments to communication, including through detention in a difficult-to-access facility, can constitute a "constitutional deprivation" where they obstruct an "established on-going attorney-client relationship." *Comm. of Cent. Am. Refugees*, 795 F.2d at 1439.

Because Respondents intentionally and egregiously interfered with Petitioner's ability to meaningfully communicate with counsel before her transfer out of the district, they deprived her of the opportunity to be heard on any individualized determination of her continuing custody. *Jimenez*, 2025 WL 2430381, at *7 (D. Or. Aug. 22, 2025) (granting writ of habeas corpus where government had revoked an individual's prior release with procedural due process). Applying the *Mathews v. Eldridge* balancing test, the additional procedural protection Petitioner requested was miniscule: her counsel, with whom she was actively meeting, asked for ten more minutes. *See* Provo Decl. ¶ 15. The Constitution requires more, but even this small amount of additional time

was refused for no obvious reason other than to intentionally prevent her from discussing with a lawyer the facts of her case and the illegality of the arrest. As a factual matter, Respondents made at least two more transfers of individuals from Portland to Tacoma later in the day; either transfer would have allowed Petitioner to finish her consultation for counsel and could have afforded her the opportunity to be heard before Respondents made a custody and transfer determination. *See M-L-G-G- et al v. Wamsley*, No. 6:25-cv-02012-AA (D.Or. Oct. 30, 2025), Dkt. 4 (asserting that petitioners in a separate habeas case were transferred out of Oregon to the Tacoma detention center at approximately 3:04 PM); *A-B-D- et al v. Wamsley*, No. 6:25-cv-02014-AA (D.Or. Oct. 30, 2025), Dkt. 3 (asserting that petitioners in a separate habeas case were transferred out of Oregon to the Tacoma detention center at approximately 4:39 PM). The deprivation of counsel here is particularly egregious because counsel has continued to be unable to speak with Petitioner since her transfer, despite diligent efforts. *See* Lerner Decl. ¶¶ 8-10. And the risk of harm to Petitioner from the continued denial of her access to counsel is particularly high given ICE's recent practice of pressuring detainees to renounce their legal rights and agree to removal. *See id.* ¶ 12; Kate Morrissey, *ICE Is Pressuring People in Custody to Self-Deport. Many Are Giving Up.*, Capital & Main (Aug. 6, 2025), available at https://capitalandmain.com/ice-is-pressuring-people-in-custody-to-self-deport-many-are-giving-up; Ximena Bustillo, *Trump offers $1,000 incentive to migrants who leave the country voluntarily*, NPR (May 6, 2025), available at https://www.npr.org/2025/05/06/g-s1-64513/trump-self-deportation-monetary.

B. Petitioner will likely suffer irreparable harm if not granted preliminary relief from her current custody and separation from counsel.

Petitioner must show that she 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).

Petitioner has suffered and will likely continue to suffer irreparable harm. Here, Petitioner'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 detained" because they are neither a danger nor a flight risk). The irreparable harm from unlawful detention is particularly acute for M-J-M-A-, as her detention also violates the Constitution. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal quotation omitted); *see also Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").

Respondents' actions will cause further irreparable harm to Petitioner by depriving her of access and proximity to her local counsel and impeding her ability to engage in these instant judicial proceedings. *See Arroyo v. United States Dep't of Homeland Sec.*, 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019) (observing that "a significant burden on the attorney-client relationship, without a showing of underlying prejudice to the removal proceedings, may be sufficient to establish a legal injury sufficient to justify injunctive relief"), citing *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir. 1986), *amended on other grounds,* 807 F.2d 769 (9th Cir. 1986); *see also Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir.), *amended on other grounds*, 213 F.3d 1221 (9th Cir. 2000) ("Deprivation of the statutory right to counsel deprives [a noncitizen] asylum-seeker of the one hope she has to thread a labyrinth almost as impenetrable as the Internal Revenue Code."). These harms are not speculative. Already, as explained above on the day the immediate petition was filed, Respondents obstructed Petitioner's access to counsel from the moment she was arrested. Had Respondents allowed M-J-M-A- more time to meet with her counsel at the Macadam facility in Portland, Oregon, she might have been meaningfully heard on her case and been released.

Petitioner's current detention has also continued to impede her access to counsel, extending this irreparable harm. Following her transfer out of the District, Petitioner's counsel has been

unable to obtain a confidential legal visit with M-J-M-A- , despite diligent attempts. Lerner Decl. ¶¶ 8-10. Her immigration counsel has significant concerns M-J-M-A-'s detention will continue to impede their communication, given routine two- to five-hour waits for in-person meetings due to overcrowding at the NWIPC facility, in addition to the distance of the detention center from her counsel and from Oregon. *Id.* ¶ 11. M-J-M-A- has not even been able to speak with her immigration counsel by phone, since the first available confidential video call is not until Sunday, November 2, 2025—three days after her arrest. *Id.* Her deprivation of counsel has also already caused irreparable harm to Petitioner by depriving her of the ability to timely learn of her rights and to share more facts pertaining to her arrest that could inform these proceedings before the Court.

Petitioner's unlawful deprivation of liberty and continued impediments to accessing counsel are direct and immediate irreparable harms that warrant a TRO.

C. The balance of the equities and public interest factors tip sharply in favor of Petitioner's temporary release while this Court adjudicates her claims.

A TRO should be granted because the balance of equities tips sharply in favor of M-J-M-A-. 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)). When the alleged action by the government violates federal law, the public interest factor generally weighs in favor of the plaintiffs. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). As the Ninth Circuit has observed, "[a] plaintiff's likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors decisively in his favor." *Baird v. Bonta*, 81 F.4th 1036, 1036 (9th Cir. 2023).

Petitioner has established that "the balance of the equities tip in [her] favor and that an injunction is in the public interest." *See Winter*, 555 U.S. at 20. Here, Petitioner faces weighty hardships: loss of liberty, removal from her home in Oregon, and deprivation of her ability to earn a living. The government, by contrast, faces no hardship as Petitioner is neither a flight risk nor a danger to the community. Avoiding such "preventable human suffering" strongly tips the balance

in favor of Petitioner. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

What is more, "the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process." *Hernandez*, 872 F.3d at 996. Indeed, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048. The merits of the constitutional violations that Petitioner has raised in her habeas petition further weight the public interest toward emergency relief. "Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi,* 422 F.3d 815, 826 (9th Cir. 2005); *see also Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that "the INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations"). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights," *Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019) (quoting *Melendres*, 695 F.3d at 1002); *see also Baird v. Bonta*, 81 F.4th at 1036, and the government suffers no harm from a court order that simply ensures that constitutional standards are upheld, *see Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Zepeda v. United States Immigration & Naturalization Service*, 753 F.2d 719, 727 (9th Cir. 1983). In addition, "the public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions." *Rodriguez*, 715 F.3d at 1146.

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

Accordingly, the balance of hardships and the public interest tip sharply in favor of a temporary restraining order to return M-J-M-A- to the status quo, releasing her from detention and enabling her return to the District while the Court adjudicates her habeas petition.

IV. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court grant her motion for a temporary restraining order to restore the *status quo* by granting M-J-M-A- release from custody and return to Oregon while the Court adjudicates her pending habeas petition.

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Respectfully submitted,

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