UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Moises David BONILLA MEJIA,

Petitioner,

v.

Cammilla WAMSLEY, Seattle Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); Bruce SCOTT, Warden, Northwest ICE Processing Center; Kristi NOEM, Secretary, United States Department of Homeland Security; Pamela BONDI, U.S. Attorney General; UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No. _____

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Note on Motion Calendar:
November 4, 2025

INTRODUCTION

Petitioner Moises David Bonilla Mejia seeks an emergency temporary restraining order (TRO) enjoining Respondents from removing him, or transferring him from this district, when he does not have a final removal order and before a full and fair hearing on his application for asylum, withholding, and relief under the Convention Against Torture. Respondents have

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informed Mr. Bonilla's immigration counsel that his removal is imminent, even though he was taken into custody only yesterday.[1]

STATEMENT OF FACTS

Petitioner Moises David Bonilla Mejia entered the United States with his wife and minor children on or about March 29, 2024, and they were apprehended by U.S. Customs and Border Patrol (CBP). The family was released from ICE custody with a Notice to Appear in the Seattle Immigration Court on June 11, 2024.

Mr. Bonilla and his family were enrolled in the Intensive Supervision Appearance Program (ISAP). To their knowledge, they have complied with all ISAP appointments, both by telephone and in person.

Mr. Bonilla and his family submitted I-589 applications for asylum and related relief on October 3, 2024. Mr. Bonilla appeared for all required initial hearings before the Immigration Judge.

On June 16, 2025, Mr. Bonilla and his family were scheduled for their individual, merits hearing on their applications for asylum, withholding of removal, and relief under the Convention Against Torture, at the Seattle Immigration Court. However, due to a number of exceptional circumstances, including the illness of one of their children the night before, unexpected lack of childcare, heavy traffic due to the influx of tourists for the FIFA Club World Cup held that week in Seattle, and the presence of community protesters outside the Seattle Immigration Court, the family arrived late to their scheduled hearing. The family asserts that they arrived 12 minutes late to the courtroom – after delays in passing through security – to find the door to the Court closed. When they sought out and talked to the Clerk of the Court, they were told they were "too late" and were instructed to file a motion to reopen. The Immigration

[1] Counsel certifies that they are providing notice of the habeas petition and this motion to the U.S. Attorney's Office for the Western District of Washington via email concurrently with this filing.

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Judge asserts that he started the *in absentia* hearing 16 minutes after the scheduled time and ordered the family removed.

On July 18, 2025, Mr. Bonilla and his family timely filed a motion to rescind and reopen, citing the exceptional circumstances that caused their tardiness and arguing that their brief tardiness should not be considered a failure to appear.

On July 29, 2025, the IJ denied the motion to reopen. Mr. Bonilla and his family filed a timely appeal, received by the Board of Immigration Appeals on August 20, 2025, which remains pending as of the date of this petition.

On November 3, 2025, Mr. Bonilla presented himself at the ISAP office at 14220 Interurban Ave S, Tukwila, WA 98168 and was taken into ICE custody. Mr. Bonilla's two minor children, ages 5 and 6, were with him at the time of his arrest.

After being taken into custody, Mr. Bonilla and his family filed a motion to stay removal that was received at the BIA on November 3, 2025. No decision has yet been made by the BIA, though counsel has informed the Board of the imminent risk of removal.

On November 4, 2025, Mr. Bonilla's immigration counsel learned from ICE that Mr. Bonilla was detained at the NWIPC. In response to counsel's inquiry about whether Mr. Bonilla's removal was imminent, a deportation officer responded that there are three flights that leave regularly every week from the NWIPC, and that any legal work needed to be done as soon as possible.

As of the filing of the instant motion, to undersigned counsel's knowledge and belief, Mr. Bonilla remains detained at the NWIPC in Tacoma, Washington.

ARGUMENT

On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are

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"substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the "serious question" test, Petitioners must also show that they are likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

The Federal District Court has jurisdiction over these claims because Mr. Bonilla is not contesting the validity of his order of removal, but rather the agency's intent to remove him before the removal order is final. *See Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007) (where agency action is not encompassed within a final order of removal, the circuit court lacks jurisdiction and district court review under habeas or APA is the remedy); *Ali v. Gonzales*, 421 F.3d 795, 797 n.1 (9th Cir. 2005) (District Court has jurisdiction over case so long as the actual order of removal is not challenged, even if petitioner is challenging physical removal); *see Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) ("To resolve petitioner's arguments, the Court does not need to review the removal order."). Federal courts may stay the status quo until the court has had adequate opportunity to assess circumstances at issue. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 290 (1947). These principles have been applied in the immigration context. *See Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1157 (C.D. Cal. 2018); *Nken v. Holder*, 556 U.S. 418, 434 (2009).

I. Petitioners are likely to succeed on the merits of their petition.

Respondents' intent to remove Petitioner before he has a final order of removal violates the INA. It is axiomatic that a person may not be removed while a stay is in place and until his or her removal order is administratively final. 8 U.S.C. § 1231(a)(1)(B) ("The removal period begins on the latest of the following: … (i) The date the order of removal becomes administratively final."); *see also* 8 C.F.R. § 208.5 (no removal pending asylum adjudication). While the agency has long treated an *in absentia* order as a final order of removal when issued by the IJ, with an administrative stay only available when a motion to rescind is pending before an IJ, the Ninth Circuit in 2021 rejected the agency's finality reasoning in a precedent decision,

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Cui v. Garland, 13 F.4th 991, 996 (9th Cir. 2021). *Cui* held that an *in absentia* removal order does not become final until the 180 day period to file a motion to reopen runs or until the *Board* issues a final order.

The Ninth Circuit's finality analysis in *Cui* is based on the plain language of the statute defining final orders, 8 U.S.C. § 1101(a)(47)(B). Under the statute, a removal order does not become final until either a determination by the BIA, or when the time to appeal to the BIA has run. *Id.* Because the Board has previously held that the only avenue to challenge an *in absentia* removal order, and to receive BIA review, is first on a motion to reopen and rescind to the IJ, the Ninth Circuit concluded that an *in absentia* order is not final until the 180 days to file such a motion has run, or until the Board makes a decision on a denied motion to reopen. *See Cui*, 13 F.4th at 996. Because Petitioner's motion to rescind and reopen is still pending before the BIA, his removal order is not final.

The Ninth Circuit's interpretation of the unambiguous statutory language controls over the prior competing agency regulatory interpretation at 8 C.F.R. § 1241.1(e) (in absentia order final on issuance by IJ). *See Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 849 n.9 (1984); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). *Cui* did not discuss or defer to this regulation because it found the statutory language was clear and gave effect to the plain language. Thus, under *Cui*, because an *in absentia* removal order is not final until the time to reopen and appeal to the Board has run, or until the Board has decided the motion to reopen, the execution of the removal order is stayed until the BIA decides or the time to appeal has passed. *See* 8 U.S.C. § 1231(a)(1); 8 C.F.R. § 1003.6(a).

Respondents' intent to remove Petitioner also violates the Due Process Clause. To determine whether a due process violation occurs in removal proceedings, a court must ask whether "(1) the proceeding was so fundamentally unfair that the [noncitizen] was prevented from reasonably presenting his case," and whether "(2) the [noncitizen] [has] demonstrate[d] prejudice, which means that the outcome of the proceeding may have been affected by the

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alleged violation." *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620-21 (9th Cir. 2006) (internal quotation marks omitted). Petitioner satisfies both inquiries.

Respondents' actions bar Petitioner from presenting his case. Because he cannot be granted asylum while outside the U.S. and while in hiding in his home country, absent this TRO he would be absolutely deprived of a full and fair hearing on his asylum claim. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (an individual "who faces deportation is entitled to a full and fair hearing of his claims and a reasonable opportunity to present evidence on his behalf."). Petitioner is ineligible for asylum if he is not physically present in the U.S. 8 U.S.C. §§ 1101(a)(42), 1158(a)(1). Even if he were eligible to pursue asylum while in Honduras, his removal before a hearing on his claim would render his right to present testimony and evidence meaningless. *See Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (IJ must provide a reasonable opportunity to present evidence). Absent an order requiring Defendants to facilitate their return, Plaintiff is denied due process.

As this Court recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), is the controlling framework for determining what process Petitioner is due. *E.A. T.-B.*, 2025 WL 2402130, at *3. *Mathews* requires the Court to evaluate (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; *see also Ramirez Tesara*, 2025 WL 2637663, at *2–4 (applying *Mathews* factors to assess right to pre-deprivation hearing); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee's liberty interests and the state's interests to determine what process is due a parolee). Here, those factors strongly favor Petitioner.

A. Petitioner has a Weighty Private Interest.

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Petitioner has an exceptionally strong interest in remaining in the U.S. with his wife and minor children. He also has a strong interest in his right to remain in the U.S. pending adjudication of his asylum claim, and in his right to reside here until he has a final order of removal. He also has a liberty interest in the full and fair consideration of his claim for asylum.

B. The Risk of Erroneous Deprivation Is High.

The risk of an erroneous deprivation of his interests is high. If denied a TRO, he will be removed to the very country from which he sought asylum, in this case without *any* hearing on the danger he faces in that country. He will be separated from his wife and children, and he will be denied an opportunity to have his asylum claim adjudicated. For these reasons, the risk of an erroneous deprivation is high.

C. The Government's Interest Is Minimal.

Finally, the government's interest in removing Mr. Bonilla prior to a final order is minimal. First, the government has no legitimate interest in violating the statute by removal individual before their removal is final. Second, the government's interest in the potential timing of removal is minimal. Should Mr. Bonilla ultimately be denied asylum or have his motion to rescind denied, the government may lawfully remove him at that point.

In sum, Petitioner is able to demonstrate that he has a protected interest in remaining in the U.S. to pursue his asylum case, and that statute and due process requires that he not be removed when he does not have a final removal order and has not been granted an opportunity for a full and fair hearing on his asylum claim.

II. Petitioner will suffer irreparable harm absent an injunction.

Petitioner must also show 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).

Here, Petitioner's unlawful removal is an irreparable injury. If removed, he would be effectively denied the opportunity to apply for asylum – having been removed to the very

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country from which he sought protection. His detention and removal also inflicts substantial harm on Mr. Bonilla by separating him from his wife and children. Absent a TRO, Mr. Bonilla has no hope of being reunited with his wife and children. Such separation from family members is an important irreparable harm factor. *See Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding "separated families" to be a "substantial injur[y] and even irreparable harm[]").

In sum, the unlawful deprivation of liberty to which Petitioner is subject causes him direct and immediate irreparable harm that warrant a TRO.

III. The balance of hardships and public interest weigh heavily in Petitioner's favor.

The final two factors for a TRO—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioners face weighty hardships: loss of liberty, deprivation of the right to remain in the U.S. pending an asylum application, deprivation of the right to apply for asylum, and separation from his family. The government, by contrast, faces no hardship as to Petitioner, as all it must do is permit Mr. Bonilla to continue to pursue his asylum application pending a decision by the BIA. 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." *Id.* 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.

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents refrain from removing Mr. Bonilla from the U.S., or transfer him outside of this jurisdiction.

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CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Court grant their motion for a temporary restraining order.

Respectfully submitted this 4th day of November, 2025.

s/ Christopher Strawn
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WSBA No. 32243

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Counsel for Petitioners

WORD COUNT CERTIFICATION

I certify that this memorandum contains 2,760 words, in compliance with the Local Civil Rules.

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