

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Luis Antonio Guaman Guaman,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:25-cv-188-JL-TSM
	)	
Patricia Hyde, Boston Field Office Director,	)	
U.S. Immigration and Customs Enforcement;	)	
Michael Krol, HSI New England	)	
Special Agent In Charge,	)	
U.S. Immigration and Customs Enforcement;	)	
Todd Lyons, Acting Director,	)	
U.S. Immigration and Customs Enforcement;	)	
Kristi Noem, Secretary,	)	
U.S. Secretary of Homeland Security,	)	
	)	
Respondents.	)	
	)	

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RESPONDENTS' RESPONSE TO PETITIONER'S  
MOTION FOR A TEMPORARY RESTRAINING ORDER

**INTRODUCTION**

Enforcing the immigration laws of the United States is the sovereign prerogative of the Executive Branch. That is what the Respondents did in this case. Petitioner Luis Antonio Guaman Guaman ("Petitioner") was lawfully detained and is going through immigration proceedings, which have already included his bond hearing at which an Immigration Judge granted a bond in the amount of \$4500.00. Petitioner can post bond at any time to be released from detention. To date, he has chosen not to do so.

Petitioner's Emergency Petition for Habeas Corpus alleges that ICE's detention of Petitioner violated his due process rights, seeking as relief both his immediate release and an injunction against his transfer out of this judicial district, ensuring that the Court would retain jurisdiction of the case and thus the authority to grant his release. He now asks the Court to

impose a temporary restraining order (“TRO”) on Respondents to “cease their detention” of him and “immediately return” him to New Hampshire. ECF No. 7.

However, Petitioner cannot satisfy any of the requirements necessary for the extraordinary remedy of a TRO. His emphasis on Respondents’ accidental transfer of Petitioner out of New Hampshire misses the point. Petitioner has identified no authority to support his original claim that arrest and detention by ICE violated his due process rights in the first instance. Once detained, he was provided the due process owed to him when a bond hearing was held and he was ordered released on bond. It is his continued choice to remain in detention so that he may rely on Respondent transferring him back to New Hampshire, rather than to post his bond and be released in Texas. He therefore cannot demonstrate likely success on the merits.

Likewise, he cannot demonstrate irreparable harm from a delay in his transfer where he could have been released in Texas immediately after the bond hearing but is choosing to wait for Respondents to provide his return to New Hampshire, over which he necessarily cedes some control.

Finally, the balance of equities swing in Respondents’ favor, given that they are already in the process of facilitating Respondent’s transfer back to New Hampshire and he has the option of being released immediately in Texas as soon as he posts his bond.. In contrast, the significant public interest of the enforcement of the immigration laws, which includes its scheduling of its transfer of immigration detainees, weighs in favor of Respondents

#### **FACTS AND PROCEDURAL HISTORY**

Petitioner is an Ecuadorian citizen and national. ECF No. 1, ¶1. On May 16, 2025, he was lawfully detained by ICE. *See* Affidavit of Keith Chan (attached as Ex. A). Petitioner filed his Emergency Petition for Habeas Corpus on May 19, 2025. ECF No 1. A bond hearing was

scheduled for May 29, 2025, and on May 20, 2025, the Court issued an Order requiring that Respondents provide 72 hours' notice before transferring Petitioner out of this District. Endorsed Order, May 20, 2025.

On May 27, 2025, Counsel for Petitioner notified undersigned counsel for Respondents that Petitioner was being transferred out of this District, despite the Court's Order that ICE provide 72 hours' notice before any transfer take place. ECF No. 4. Undersigned counsel immediately reached out to ICE counsel, who after checking on Petitioner's status, confirmed that ICE accidentally transferred Petitioner out of New Hampshire on May 27, 2025. *Id.*; Ex. A, ¶¶ 6-8. This inadvertent error occurred when Petitioner was transferred with numerous other individuals for bedspace decompression. *Id.* ¶ 7. Once the transfer was discovered, ICE immediately began efforts to transfer the Petitioner back to New Hampshire and booked an itinerary intended to have the Petitioner back in New Hampshire on or about May 31, 2025. *Id.* ¶¶ 8-9. At this time, ERO Boston is trying to determine why Petitioner was not transferred back as expected. *See id.* ¶ 12. There is nothing preventing Petitioner from posting his bond and being released from custody. *Id.*

Additionally, Respondent facilitated the occurrence of the bond hearing, which in fact occurred, and the Immigration Judge granted Respondent's request of bond. Ex. A, ¶ 11.

#### STANDARD OF REVIEW

"Injunctive relief is an extraordinary and drastic remedy that is never awarded as of right." *Monga v. Nat'l Endowment for the Arts*, 323 F. Supp. 3d 75, 82 (D. Me. 2018) (quoting [\*8] *Peoples Fed. Sav. Bank v. People's United Bank*, 672 F.3d 1, 8-9 (1st Cir. 2012)). Courts considering whether to impose a TRO following the familiar four-factor analysis that governs a motion for preliminary injunction: "(1) [W]hether the plaintiff is likely to succeed

on the merits, (2) whether he is likely to suffer irreparable harm in the absence of immediate relief, (3) the balance of equities, and (4) whether granting the injunction is in the public interest.” *McBreairty v. Miller*, Docket No. 1:23-cv-00143-NT, 2023 WL 3096787 (D.M.E. April 26, 2023); see also *Together Emps. v. Mass Gen. Brigham Inc.*, 32 F.4th 82, 85 (1st Cir. 2022) (quoting *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008)).

## ARGUMENT

### I. Petitioner is Not Likely to Succeed on the Merits

Petitioner’s habeas corpus action alleges that his due process rights were violated by his detention and seeks as remedy his instant release and an injunction preventing his transfer from this district to allow this Court to retain the jurisdiction to order his release. ECF No. 1. His likelihood of success on the merits of this issue is independent from whether Respondents have inadvertently failed to comply with the Court’s order regarding notice, especially given that Respondents are working diligently to return to him to this District and have not contested the Court’s continued jurisdiction over the case. On the merits, he has offered no authority supporting his contention that his original detention by ICE was illegal and instant release was merited.

Further, Petitioner had a bond hearing and his bond request was granted. Ex. A, ¶ 11. He is choosing to stay in detention so that ICE will give him a ride back to New Hampshire, but he could post the bond and be immediately released. Where his continued detention is voluntary, he is not likely to succeed on the merits of a petition seeking his release from detention.

**II. Injunctive Relief is Not Available to Petitioner Because He Has Not Shown Immediate, Irreparable Harm.**

Irreparable harm must be likely absent injunctive relief, not merely possible. *Winter*, 555 U.S. at 22. And as the First Circuit has held, “irreparable harm is a necessary threshold showing for awarding preliminary injunctive relief,” *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1<sup>st</sup> Cir. 2004). Here, Petitioner has failed to establish any irreparable harm. His continued detention is voluntary, and he fails to offer anything more than speculation as to the harm of being released in Texas. In any event, if he chooses to stay in detention, Respondent will transfer him back to New Hampshire at the earliest possible opportunity.

**III. The Balance of Equities and Public Interest Favor the Government.**

The balance of equities and public interest factors “merge when the Government is the opposing party.” *See Nken v. Holder*, 556 U.S. 418, 435 (2009). A court ““should pay particular regard for the public consequences”” of injunctive relief. *Winter*, 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). Here, this factor weighs heavily in the Government’s favor. “Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). And the public interest in enforcement of United States immigration laws is significant, especially where, as here, a petitioner has failed to identify any illegality in the government’s original action. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981).

Given that Petitioner could post bond and leave detention immediately, and that Respondent is in the process of nevertheless transferring him back, the public interest would not be served by the Court commandeering the authority of the agency and dictating exactly when ICE transfers Petitioner back.

**CONCLUSION**

For these reasons, the Court should deny Petitioner's request for a temporary restraining order in its entirety.

Respectfully submitted,

JOHN J. MCCORMACK  
Acting United States Attorney

Dated: June 2, 2025

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