

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Alain Marrero Castano,

Petitioner,

V.

Janice Killian, Warden at South Texas Detention Center; **Sylvester M. Ortega**, Acting Field Office Director of San Antonio, Texas U.S. Immigrations and Customs Enforcement; **Todd M. Lyons**, Acting Director, Immigration and Customs Enforcement; **Kristi Noem**, Secretary of U.S. Department of Homeland Security; and **Pam Bondi**, Attorney General of the United State, in their official capacities,

Respondents.

5:25-CV-00904-FB-RBF

**EMERGENCY MOTION
FOR A TEMPORARY
RESTRAINING ORDER**

Judge Fred Biery

Mag. Judge Richard B. Farrer

**PETITIONER'S EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Petitioner, Mr. Alain Marrero Castano, through his undersigned Counsel, moves under the Federal Rules of Civil Procedure 65 for the following temporary restraining order and preliminary injunction against all Defendants:

1. Grant his Motion for Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction.
2. Enter an Order continuing to enjoining Defendants and their agents from removing him from the United States until further order of the Court; and
3. Grant him such other, further and additional relief as the Court deems just and appropriate.

In support of his Motion, Petitioner relies on the accompanying Brief in Support, including any attached exhibits, and his Petition for Habeas Corpus relief. (ECF # 1)

As Petitioner shows in his brief, he is entitled to immediate and preliminary injunctive relief because he shows that there is (1) the imminent threat of irreparable harm; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.” The issuance of a temporary restraining order is meant to preserve the status quo.

Petitioner also requests an opportunity to be heard on this Motion as soon as the Court’s schedule allows. If a hearing is to be set on this motion, since Petitioner’s attorney is out-of-state, undersigned counsel for Petitioner respectfully moves this Court to allow for his (attorney Brian Green’s) remote participation.

INTRODUCTION

After successfully serving more than twenty-five years, Mr. Marrero-Castano was finally released from imprisonment to reunite with his family and re-join society to be a productive member who was remorseful and learned from his mistakes. However, this sigh of relief was cut short when he immediately placed into the custody of Immigration Customs and Enforcement (hereinafter “ICE”) and for immigration removal proceedings.

Due to the nature of his criminal conviction, Mr. Marrero was held mandatorily during the pendency of his immigration proceedings, and he expressed his fear of returning to his native country of Cuba. However, the Immigration Judge ordered him removed. At the time, and still today, Cuba and the U.S. government do not have a repatriation agreement, and the Cuban government has outright refused receive any of its deported citizens. As a result, ICE released Mr. Marrero on an Order of Supervision (“OSUP”), in which he complied to the conditions of his

release and regularly attended his check-in appointments. Mr. Marrero began and held steady employment, reunited with his family and started his own family with my fiancée, Ms. Janisca Perales, an U.S. citizen.

On January 26, 2025, on his way to work, without advance notice or cause, nor the opportunity for a due process hearing, ICE arrested Mr. Marrero from his home and placed him into its custody. ICE did not provide an explanation as to his re-arrest nor was there evidence of any other significant changes relevant to his detention status, removability, or criminal record. Since his detainment, ICE officials informed Mr. Marrero their intention to remove him to a third country. First, they informed Mr. Marrero that he would be deported to Libya, but he expressed a reasonable fear of torture. He has yet to receive any reasonable fear interview.

Just recently, in the last twelve (12) hours, ICE officials informed, in writing, Mr. Marrero of his imminent removal to Rwanda, to which he has no connection and where he also fears torture. (Exhibit A). Mr. Marrero verbally expressed his fear of being removed to Rwanda and it was expressed by his immigration counsel, Ms. Afshan J. Khan. (Exhibit B). This is all happening even though Mr. Marrero is statutorily required to have a reasonable fear interview and if found credible, a full and fair hearing on his claims to withholding of removal and protection under the Convention Against Torture. The Defendants seek to remove Mr. Marrero despite the fact that he has never been provided with a constitutionally sound interview nor proceeding on his claim for withholding and protection under the Convention Against Torture from Rwanda.

Petitioner Marrero faces immediate, irreparable harm as a direct result of the Defendants' actions. He seeks this court's emergency intervention to further prevent the harm he has incurred and continue to experience because of Defendants. Defendants' effort to deport him while he awaits a constitutionally sufficient hearing is directly responsible for the immediate harms

Petitioner has and continues to sustain. It is for this reason that he is seeking a temporary restraining order and preliminary injunction in this matter.

LEGAL STANDARD

The Fifth Circuit considers motions for preliminary injunctions and temporary restraining orders based on the following factors: (1) the threat of irreparable harm to the petitioner, (2) the likelihood that the petitioner will succeed on the merits, (3) the state of balance between the harms of the parties; and (4) the public interest. *Rest. L. Ctr. V. U.S. Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023). The “first two factors of the traditional standard are the most critical.” *Nken v. Holder*, 556 U.S. 418, 434 (2009).

ARGUMENT

I. Petitioner will suffer irreparable harm in the absence of an immediate injunction

To satisfy the first element of the injunction analysis, Petitioner must demonstrate that, if the Court denies the grant of a injunction, irreparable harm will result. Irreparable harm exists where “there is no adequate remedy at law.” *Louisiana v. Biden*, 55 F.4th 1017, 1033–34 (5th Cir. 2022).

“The [Supreme] Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies.” *Weinberger v. Romero-Barceló*, 456 U.S. 305, 312, 102 S. Ct. 179 (1982) “[T]he concept of irreparable harm does not readily lend itself to definition.” *Judicial Watch, Inc. v. Dep't of Homeland Sec.*, 514 F. Supp. 2d 7, 10 (D.D.C. 2007).

Deporting Mr. Marrero without providing him with the opportunity to have a constitutionally sound hearing on his claims to withholding of removal and protection under the Convention Against Torture would cause Mr. Marrero an irreparable injury. Mr. Marrero has

expressed a fear that he will face torture should he be forced to go to Rwanda. He has yet to be scheduled for a reasonable fear interview, which is required. Deporting Mr. Marrero before he could have a constitutionally sound interview, let alone hearing, on his fear of persecution could subject Mr. Marrero to serious physical harm or death if he is removed to Rwanda.

The importance of not sending someone to a country where they would be the subject to persecution on account of a protected ground is a fundamental feature of immigration law. 8 USC §1231(b)(3). It is so fundamental to our immigration law that even individuals who do not qualify for the more generous asylum under 8 U.S.C. §1158 can still claim protection. This includes people who have been convicted of serious crimes. The law provides a mechanism for people like Mr. Marrero to assert that he would be harmed if he were removed to a third country. 8 C.F.R. §208.2. The Immigration & Nationality Act has set up a substantial edifice to ensure that all those who assert a fear of harm get a constitutionally adequate process because the risk of irreparable harm is so high. *Id.* The risk of irreparable harm in this case is put very simply, that Mr. Marrero will be killed or tortured if he is sent to Rwanda.

It is also worth noting that Petitioner's family will also suffer irreparable harm if Mr. Marrero is deported. Mr. Marrero's fiancé is Janisca Perales, an U.S. citizen, and she is currently pregnant with twins. In her prior statement, Mr. Perales explained her reliance on her fiancé and the serious negative impact it would on her and her unborn children. Mr. Marrero's removal will have irreparable harm to Ms. Perales, (Exhibit C).

II. Petitioner is Likely to Prevail on his Claim

The next critical element in the injunction analysis is whether the Petitioner have "shown a substantial likelihood of ultimately succeeding on the merits, potential procedural hurdles notwithstanding." *Janvey v. Alguire*, 647 F.3d 585, 599 (5th Cir. 2011) (citation omitted).

“Substantial” likelihood of success on the merits does not mean “certain.” *Byrne v. Roemer*, 847 F.2d 1130, 1133 (5th Cir. 1988) (explaining that “the movant need not always show a probability of success on the merits”) (quoting *Celestine v. Butler*, 823 F.2d 74, 77 (5th Cir. 1987); see also *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov’t*, 849 F.3d 615, 626 (5th Cir. 2017) (“Though there is no particular degree of likelihood of success that is required in every case, the party seeking a preliminary injunction must establish at least some likelihood of success on the merits before the court may proceed to assess the remaining requirements.”). Some likelihood of success can be sufficient to support the issuance of a preliminary injunction. See *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980) (“Where the other factors are strong, a showing of some likelihood of success on the merits will justify temporary injunctive relief.”).

The facts here could not be clearer. A procedure exists for the adjudication of claims for protection for people with reinstated orders of removal, such as Mr. Marrero. That procedure calls for referral to the asylum officer for a reasonable fear interview. 8 C.F.R. § 241.8(e). If the individual meets the standard of proof, the individuals are placed into withholding only proceedings before the immigration judge to have their fear of persecution and/or torture considered. 8 C.F.R. §208.31(e). That hearing is conducted under the procedures established in 8 C.F.R. §208.16

Proceedings under the Immigration & Nationality Act must comply with due process under the 5th Amendment. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993). The Fifth Circuit has required an applicant claiming ineffective assistance of counsel to “show both (1) that his counsel was constitutionally deficient; and (2) that he is prejudiced thereby, i.e. that there was a reasonable possibility that, but for counsel’s unprofessional errors, the result

of the proceeding would have been different.” *Diaz v. Sessions*, 894 F3d 222, 228 (5th Cir. 2018) quoting *Strickland v. Washington*, 466 U.S. 668, 691 (1984).

Mr. Marrero’s habeas petition asks for nothing more than the constitutionally-sound hearing required by the 5th Amendment, and it is Petitioner is likely to succeed on the merits of his claim.

III. That Greater Injury Will Result From Denying The Temporary Restraining Order Than From Its Being Granted and The Balance of Hardships Favor Plaintiffs, and The Injunctive Relief Will Not Harm the Public Interest

The next requirements for issuance of a preliminary injunction—the balance of harms and whether the requested injunction will serve the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 1762, 173 L. Ed. 2d 550 (2009). In this assessment, the Court must weigh “the competing claims of injury and...consider the effect on each party of the granting or withholding of the requested relief,” while also considering the public consequences of granting injunctive relief. *Winter*, 555 U.S. at 24, 129 S. Ct. at 376.

In the instant matter, the balance of equities tips in the Petitioner’s favor because while there is a public interest in the prompt execution of orders of removal, there is a greater public interest in ensuring that individuals are not wrongly removed. *See Nken*, 556 U.S. at 436. In the current matter, since Petitioner can show that there is a substantial question as to whether his removal would be wrongful, that balance of hardship and the public interest tips sharply in favor of an injunction preventing his removal.

The government should not be allowed to come into this court and argue that prompt execution of removal orders is a significant interest. The government has allowed Mr. Marrero to live in the United States since 2023, despite the final order of removal, and cannot point to any

negative consequences of their decision to allow him to remain on an order of supervision for two years. The government cannot point to any change in circumstances that could justify such an abrupt departure.

CONCLUSION

Balancing the four factors, the equities weigh in favor of granting an injunction to preserve the status quo. Petitioner has shown a likelihood of success on the merits, that he is and will suffer irreparable harm, there will be no harm to others, and the public interest will not be negatively impacted. Petitioner Marrero respectfully requests this Court to enter a temporary restraining order granting his request for immediate injunctive relief.

August 14, 2025

Respectfully Submitted,

/s/ Brian Scott Green

Brian Scott Green

Colorado Bar ID # 56087

Law Office of Brian Green

9609 S University Boulevard, #630084

Highlands Ranch, CO 80130

Phone (443) 799-4225

BrianGreen@greenUSimmigration.com

CERTIFICATE OF SERVICE

I certify that on August 14, 2025, I electronically filed the foregoing PETITIONER'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION with the Clerk of court using the CM/ECF system which will automatically send e-mail notification of such filing to the Defendants' attorneys of record.

I also emailed this Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction to:

Lacy L. McAndrew
DOJ-USAO
U.S. Attorney's Office
601 NW Loop 410
Suite 600
San Antonio, TX 78216
Lacy.mcandrew@usdoj.gov

Mary F. Kruger
Chief, Civil Division
U.S. Attorney's Office
601 NW Loop 410
Suite 600
San Antonio, TX 78216
mary.kruger@usdoj.gov

/s/ Brian Scott Green
Brian Scott Green
Colorado Bar ID # 56087
Law Office of Brian Green
9609 S University Boulevard, #630084
Highlands Ranch, CO 80130
Phone (443) 799-4225
BrianGreen@greenUSimmigration.com