UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EMMANUEL STEPHANE RUKIRANDE MUKIZA Petitioner. v. **THOMAS BERGAMI**, WARDEN, Prairieland Detention Center, et al. Respondents.	)	Case No. 3:25-cv-02081-E-BT **ORAL ARGUMENT REQUESTED**

BRIEF IN SUPPORT OF EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER AND MANDATORY INJUNCTION

Petitioner Emmanuel Stephane Rukirande Mukiza asks this Court to issue a temporary restraining order and mandatory injunction that compels Defendants to keep Petitioner within the geographical confines of the jurisdiction of this court, where his petition for a writ of habeas corpus is pending. Absent the requested relief, Petitioner will be seriously and irreparably harmed by his transfer outside of the jurisdiction this court. Because of the serious and irreparable nature of this harm and because Petitioner is entitled to mandatory injunctive relief under FRCP 65(b), this Court can and should grant Petitioner' motion and issue the requested mandatory temporary restraining order.

I. STATEMENT OF FACTS

Petitioner is a 37-year-old native of Gabon, and a citizen of the Democratic Republic of the Congo who entered the United States on December 22, 2008, as a nonimmigrant F-1 student He fell out of student status in 2010, and his F-1 status was formally terminated on May 7, 2011. On October 5, 2011, Petitioner pled guilty in Texas of Aggravated Assault with a Deadly Weapon. He received a deferred adjudication sentence of 5 years' probation, which he successfully

completed. He has no other criminal history.

On March 26, 2012, the Department of Homeland Security ("DHS" or "the Department" or "the Government") initiated removal proceedings against Petitioner. On May 3, 2012, an Immigration Judge ordered Petitioner removed to Gabon, and that order became final after Petitioner withdrew his appeal.

Approximately ninety (90) days after the removal order in 2012 Petitioner was released from DHS detention on an order of supervision after post-order custody review as required under *Zadvydas v. Davis*, 533 U.S. 678 (2001). He reported as required every year with DHS. He was not arrested for any other crimes. In the years since that removal order, Petitioner has rehabilitated himself and built strong family ties in the United States. On February 19, 2016, he married Tabitha Ann Rukirande, a U.S. citizen. On March 3, 2017, Ms. Rukirande filed Form I-130, Petition for Alien Relative, on his behalf, and on April 7, 2020, USCIS approved that I-130. As a result, Petitioner is now an "immediate relative" of a U.S. citizen with an immediately available immigrant visa number. See INA § 201(b).

On July 3, 2025 Petitioner reported to his annual check-in with DHS and was detained without any notice of cancellation of his Order of Supervision, or any opportunity to respond to any kind of cancellation or rescission. He subsequently filed a Motion to Re-open his removal proceedings Sua Sponte with the Dallas Immigration Court. This Motion was denied on July 25, 2025. He filed an appeal of the denial with the Board of Immigration Appeals and that appeal is still pending. Exhibit B. On August 8, 2025, Petitioner filed for a writ of habeas corpus. The Court issued an Order to Show Cause requiring Respondents to answer within 60 days, or by October 7, 2025.

On August 25, 2025, Respondent's immigration counsel Robert Urenda was informed by

the ICE officer assigned to Petitioner's case that he was not scheduled for removal at that time. Exhibit C.

On September 12, 2025, counsel Urenda again emailed the ICE officer requesting an update on Petitioner's removal, but received an automated email response that the ICE officer was out of the office until September 25, 2025. Exhibits C and D

On September 12, 2025, at approximately 10:15 PM in the evening, Petitioner called his wife to inform her he was being moved from Prairieland Detention Center but was unable to tell her anything else. Exhibit A. His current location is unknown. *Id.* Neither counsel for Petitioner nor his family have been advised where he was transferred. *Id.*

II. THE COURT SHOULD ISSUE A MANDATORY TEMPORARY RESTRAINING ORDER THAT REQUIRES DEFENDANTS TO KEEP PETITIONER WITHIN THE JURISDICTION OF THE COURT

FRCP 65 governs the issue of temporary restraining orders ("TROs") and preliminary injunctions. When ruling on a motion for a temporary restraining order or preliminary injunction, a Court must balance four factors: (1) whether the movant has a strong or substantial likelihood of success on the merits, (2) whether the movant will suffer irreparable harm without the relief requested, (3) whether granting the relief requested will cause substantial harm to others, and (4) whether the public interest will be served by granting the relief requested. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 460 (6th Cir. 1999).

This Court should grant a temporary restraining order if "it clearly appears from specific facts shown by affidavit…that immediate and irreparable injury, loss, or damage will result" to the applicant. Fed. R. Civ. P. 65(b). The Sixth Circuit has held that "[i]n general, the likelihood of success that need be shown… will vary inversely with the degree of injury the plaintiff will suffer absent an injunction." *Friendship Materials, Inc. v. Michigan Brick, Inc.*, 679 F.2d 100, 105 (6th

Cir. 1982) (internal quotation and citation omitted).

All four factors weigh strongly in favor of granting the temporary restraining order in this case.

A. Petitioner Has Strong Likelihood of Success on the Merits of his petition for writ of habeas corpus

Respondent filed a petition for writ a habeas corpus challenging his re-detention without proper notice of the revocation of his Order of Supervision, or any change in circumstances. He had complied with all requirements under his Order of Supervision. He had not been arrested again by police. To date Respondents have not produced any evidence that Petitioner was given notice of the revocation of his Order of Supervision as required under 8 C.F.R. § 241.4(l), or that he was given an opportunity to respond to any notice.

Additionally, Petitioner had already completed his 90 day post order custody review under *Zadvydas* previously in 2012. There were no changes circumstances such as a new arrest. Respondent ICE has not provided any proof that they have been successful in acquiring a travel document for Petitioner. Petitioner has already been re-detained for approximately 72 days and has not been informed by ICE of any travel documents. ICE has not produced any evidence that removal is reasonably foreseeable. Exhibits C and D.

Zadvyas in fact held that even where "removal is reasonable foreseeable," detention is permitted only if there is a sufficient "risk of the [noncitizen]'s committing further crimes." 533 U.S. at 700. Respondents are unable to show any evidence that Petitioner is at risk of committing further crimes when he has only been arrested 1 time, completed his required probation, and has not re-offended in more than 13 years.

Due to these factors Petitioner has a high likelihood of success on the merits of his habeas petition.

B. Petitioner Will Suffer Immediate Irreparable Harm Without the Relief Requested.

Petitioner has suffered and will continue to suffer irreparable harm if the Court does not issue the requested relief and order Defendants to keep him here within the jurisdiction of this Court. This court retains jurisdiction over the habeas petitioner because the petition was filed when the Petitioner was detained at location within this jurisdiction. Petitioner should not be transferred to another jurisdiction while his current petition for habeas is pending. If Petitioner is not allowed the opportunity to petition for a writ of habeas corpus it would be a grave violation of his constitutional right to due process. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—*even if that freedom is lawfully revocable*—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). The violation to his constitutional right to due process is irreparable harm.

Detention outside the jurisdiction of the Northern District of Texas will also cause further emotional and mental harm to Petitioner because his family lives within driving distance of the Prairieland Detention Center but would not able to travel to see him if he is detained elsewhere. See Exhibit A. The prolonged needless re-detention has already cause Petitioner physical and mental harm for which there is no compensation.

For these reasons, the second factor weighs strongly in favor of granting the requested mandatory TRO.

C. Granting The Relief Requested Will Not Substantially Harm Others.

A mandatory TRO that compels Respondents to keep Petitioner within the jurisdiction of this court will not harm anyone, much less cause substantial harm. Petitioner has not been re-arrested for any crime, and in fact has shown rehabilitation by holding steady and gainful

employment for more than 10 years as well as establishing strong family ties by marrying a U.S citizen. The Respondents will not be harmed by his continued physical presence within this jurisdiction. This third factor also weighs strongly in favor of granting the requested mandatory temporary restraining order.

D. The Public Interest Will Be Served By Granting The Requested Relief.

The public interest will be well-served by granting the requested relief. It is always in the public's interest to ensure that the federal government complies with the law. Accordingly, this fourth factor also weighs strongly in favor of granting the requested mandatory TRO.

E. Petitioner was unable to Notify Counsel of this Motion.

Petitioner's counsel was not able notify Respondent's counsel of this motion as no counsel has appeared for the government as well as due to the emergency nature of this motion on a Saturday when government offices were closed. Petitioner was taken from the Prairieland Detention Center at approximately 10:30 PM on Friday, September 12, 2025 and counsel for Respondent filed the motion shortly after. Petitioner respectfully requests that the court hold that notice is not necessary.

III. CONCLUSION

For the reasons stated, Petitioner request that the Court grant this motion and issue an order prohibiting Petitioner's transfer outside of this jurisdiction.

Respectfully submitted,

/s/Amy M. Hsu, Esquire
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Attorney for Petitioner

CERTIFICATE OF CONFERENCE UNDER FRCP 65(b) AND LOCAL RULE 7.1

I certify that I was unable to confer with counsel for Respondents before filing due to the emergency nature of this motion on a Saturday when government offices were closed. Petitioner was taken from the Prairieland Detention Center at approximately 10:30 PM on Friday, September 12, 2025 and counsel filed the Motion as possible after getting notice from Petitioner's wife. No counsel has appeared on behalf of Respondents in the habeas. For these reasons Petitioner respectfully requests that the court hold that notice is not necessary.

Date: September 13, 2025

/s/ Amy Hsu
AMY HSU

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing Motion for Temporary Restraining Order and Mandatory Injunction to be served on all counsel of record via ECF on September 13, 2025.

/s/ Amy Hsu
AMY HSU