

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Leovigildo Hernandez-Lopez,


Petitioner,

v.

Sam Olson, IMMIGRATION CUSTOMS
ENFORCEMENT AND REMOVAL
OPERATIONS CHICAGO FIELD OFFICE
DIRECTOR, *et. al.*

Respondents.

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) No. 21-CV-10145
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) Agency No. A 
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) Judge Alonso
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**PETITIONER'S MEMORANDUM IN RESPONSE TO THE RESPONDENTS'
OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER**

This habeas action arises from the Respondents' decision to arrest and detain a derivative U-visa applicant at his U.S. Citizenship and Immigration Services ("USCIS") biometrics appointment while his Form I-918A Petition for U Nonimmigrant Status remains pending without a Bona Fide Determination or waiting list decision, and without his counsel being able to appropriately assess whether his decade-old removal order is administratively final and without defect.

Petitioner, Leovigildo Hernandez Lopez, is a native and citizen of Mexico, subject to a 2015 order of removal. *See* Respondents' Exhibit 1, Dkt. 9. On September 24, 2024, Mr. Hernandez Lopez filed a Petition for U-2 nonimmigrant status. *See* Petitioner's Exhibit 1. On August 25, 2025, Mr. Hernandez Lopez appeared for his scheduled 8:00 AM biometrics appointment at the Application Support Center in Waukegan, Illinois. Immigration and Customs

Enforcement (“ICE”) officers seized him at the door, even though USCIS has not yet completed the interim adjudications that, by agency policy and longstanding practice, ordinarily confer deferred action and work authorization for four years upon both principals and derivatives whose petitions are bona fide or waitlisted. In response, Petitioner promptly sought a writ of habeas corpus and a narrowly tailored temporary restraining order to prevent his transfer or removal long enough, so that he could maintain access to counsel, identify the reason he was detained by ICE, assess his due process rights as a petitioner for derivative U Nonimmigrant Status, and preserve meaningful judicial review.

Respondents’ assert that this court has no jurisdiction over Petitioner’s habeas claim pursuant to 28 U.S.C. 1252(g), citing *E.F.L. v. Prim*, 986 F.3d 959 (7th Cir. 2021). However, Petitioner’s case is distinguishable from *E.F.L.* in two distinct ways. First, Ms. E.F.L. did not object to or challenge the finality of her removal order, while in the instant case, Mr. Hernandez Lopez, has not had a meaningful opportunity to confer with his counsel since he was detained to assess whether there are procedural or legal defects in his final order of removal. Mr. Hernandez Lopez is currently scheduled to speak with his counsel on August 29, 2025 at 1:30 PM. *See* Petitioner’s Exhibit 2. Second, Ms. E.F.L. did not have a pending benefits request with USCIS, which the court found rendered her claim moot. *See E.F.L.* at 962-963. Here, Mr. Hernandez Lopez *does* have a pending benefits request with USCIS. *See* Petitioner’s Exhibit 1. Further, the Suspension Clause provides that the “Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. Art 1, Sec. 9, Cl 2. This core right outlined in the Constitution cannot be altered by Congress without providing “a collateral remedy which is neither inadequate nor ineffective to test the legality of a person’s detention. *See Swain v. Pressley*, 430 U.S. 372, 381 (1977).

For the above reasons, the Petitioner's temporary restraining order should remain in effect.

Respectfully submitted,

s/ Bethany T. Hoffmann
Hoffmann Immigration Law LLC
401 E State St, Fl 2
Rockford, IL 61104
Tel. 815-394-1359
Fax. 815-394-1280
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned attorney, Bethany T. Hoffmann, certify that I electronically filed this document with the Clerk of Court using the CM/ECF system on August 28, 2025. Pursuant to FED R. CIV. P. 5(b)(3) AND THE Northern District of Illinois LR 5.9. I have thereby electronically served all electronic filing users with a copy.

By: S/ Bethany T Hoffmann

Bethany T. Hoffmann
Hoffmann Immigration Law LLC
401 E State St, Fl 2
Rockford, IL 61104
(815) 394-1359
bethany@hil-llc.com

