

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ANTONIO AGUIRRE VILLA)

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Petitioner,)

vs.)

TONY NORMAND, *in his official capacity as*)
Warden of Folkston Detention center, and)
TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and Customs Enforcement, and)
GEORGE STERLING, *Field Office Director ICE Atlanta*)
Field Office)
KRISTI NOEM, *Secretary of Homeland Security, and*)
PAMELA BONDI, *Attorney General*)

Respondents.)

CASE NO.:
5:25-cv-89-LGW-BWC

**PETITIONER'S RESPONSE TO ECF NO. 10 AND ECF NO. 11 ORDERS AND
REPORT AND RECOMMENDATION**

COMES NOW Petitioner, Antonio Aguirre Villa, and respectfully submits this response to the Court's September 19, 2025, Order and Report and Recommendation, ECF No. 10 and ECF No. 11. Petitioner requests: (1) confirmation that all named government Respondents/Defendants remain because their participation is necessary to effectuate any release or bond order and (2) modification of the briefing and hearing schedule to comply with the habeas statutes' expedition requirements in light of the emergent record and pending TRO.

I. Preliminary Statement and Posture

1. The Court has granted the Motion for Order to Show Cause in part, ordered service on federal officials, required an Answer within 14 days, as well as a response to the TRO within 7 days thereafter, and denied the request to take custody of Petitioner or “produce the body.”
2. Petitioner remains detained despite an Immigration Judge’s bond order finding no danger or flight risk, causing ongoing irreparable harms described in ECF 7 and 7-1, suffering ongoing loss of liberty, separation from his United States citizen (USC) children and partner, and impaired ability to prepare his removal defense.
3. Petitioner previously invoked 28 U.S.C. §§ 2243 and 1657(a) to seek a three-day return, production of the immigration and bond record, and an expedited hearing on the TRO and/or preliminary injunction. *See* ECF 5, 7, 7-1.
4. Regarding service, proper service was already effectuated as to Respondent Normand on September 2, 2025, nearly one month ago. *See* ECF 8. Likewise, Respondent Bondi was served on September 8, 2025. *See* ECF 9.
5. Just yesterday, attorney Otto Woelke Leithart entered an appearance on behalf of Respondents, indicating they were in fact served and are prepared to move forward. *See* ECF 12.

II. All Government Respondents/Defendants Should Remain Because They Are Required to Implement the Court's Orders and to Afford Complete Relief

The Court is correct that habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement based on *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). The Court emphasized the importance of identifying the proper respondent in a habeas petition, which should be the person who has custody over the petitioner, as per 28 U.S.C. § 2242 and § 2243. Petitioner acknowledges the Court's concern and confirms that Respondent Normand is indeed the immediate custodian, and thus, the proper respondent for the habeas claim. However, it is crucial to maintain additional federal officials—as respondents for the non-habeas claims that seek prospective declaratory and injunctive relief, given Petitioner's continued unlawful detention and the possibility of re-detention without bond.

In the immigration detention context, the jail warden or facility operator cannot release an ICE detainee absent direction from the U.S. Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE). The DHS Secretary, ICE, and the ICE Field Office Director are the officials with legal authority to execute release, implement an Immigration Judge bond order, and issue supervision conditions under 8 C.F.R. § 236.1. Keeping those officials in the case, ensures the Court's orders can be implemented without delay or dispute. The relief sought includes immediate release or, alternatively, implementation of the Immigration Judge's bond decision. That affirmative relief runs to DHS/ICE—not merely the jailer—and requires action by federal officials. They are, at minimum, necessary parties under principles analogous to Fed. R. Civ. P. 19, as complete relief cannot be accorded in their absence.

In addition to the habeas claims, Petitioner asserts non-habeas claims seeking prospective declaratory and injunctive relief against federal officials in their official capacities. These claims

are essential to ensure comprehensive relief beyond the immediate release from custody. The non-habeas claims address systemic issues, such as the enforcement of 8 C.F.R. § 1003.19(i)(2) and compliance with DHS/the Executive Office for Immigration Review (EOIR) custody regulations.

By maintaining these claims, Petitioner seeks to prevent future unlawful detention, re-detention, and ensure adherence to constitutional and statutory mandates. This distinction is crucial for the Court to understand the broader context of the relief sought and the necessity of involving federal officials who have the authority to implement systemic changes to facilitate comprehensive relief, implement policy changes, and ensure compliance with Court orders. Each respondent named in this action plays a critical role in effectuating the Court's orders and providing complete relief. DHS/ICE officials are responsible for executing bond orders and setting supervision conditions, while EOIR officials oversee the regulatory framework affecting Petitioner's detention. Their inclusion is vital to address the systemic issues raised in the non-habeas claims and to ensure that any relief granted by the Court is effectively implemented at the agency level. Therefore, maintaining these government defendants in this habeas petition is paramount and necessary and proper.

Injunctive orders bind parties, their officers, agents, servants, employees, and those in active concert. See Fed. R. Civ. P. 65(d)(2). Maintaining the federal Respondents eliminates any ambiguity about who is bound and responsible for execution, especially given that detention is occurring under federal immigration authority.

Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C.

§ 1651—necessary to enjoin enforcement of 8 C.F.R. § 1003.19(i)(2) as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer/removal, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. *See, e.g., Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963). Petitioner acknowledges that under *Rumsfeld v. Padilla*, the proper respondent to the habeas claim is the immediate custodian (Respondent Normand), and he does not rely on the named Respondent officials from DHS, ICE, and the U.S. Department of Justice (DOJ) (such as Lyons, Noem, Bondi) as “habeas respondents.” 542 U.S. 426 (2004). To the extent the Court deems them improper Respondents on the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as Respondents-Defendants on the non-core claims, so that effective, agency-directed relief can issue to the officials with authority to implement it.

Federal immigration custody and release authority:

Although the physical custodian is a necessary respondent in a present-confinement habeas, only DHS/ICE has authority to effectuate an Immigration Judge’s bond order, release Petitioner, and set supervision conditions under 8 C.F.R. § 236.1. The jail warden cannot lawfully release an ICE detainee without DHS/ICE action. DHS/ICE controls the actions of Respondent Normand who is the immediate custodian, but Respondent Normand is acting based on orders from DHS/ICE.

Necessity to accord complete relief:

The government Respondents named in the Complaint (ECF. No. 1) are necessary to accord complete relief. The requested relief—immediate release or implementation of an IJ bond order—requires directives to DHS/ICE. Those federal officials are necessary parties to afford

complete relief and to ensure prompt compliance with any injunction or writ. *See* principles analogous to Fed. R. Civ. P. 19 and the binding scope of Rule 65(d)(2).

Record production and compliance:

The Court has ordered production of the immigration and bond record with the Respondent's Answer. Petitioner reiterates the request for the expedited production of these records, emphasizing their critical importance for a fair and timely resolution of the case. These records and materials are under the control of DHS/ICE and EOIR, and retaining federal respondents ensures compliance with this directive. Prompt production is necessary to address the ongoing harm faced by the petitioner. Retaining the federal Respondents ensures timely production and compliance. Respondent Normand cannot comply with this request and does not have any knowledge about the specific immigration history of Petitioner.

Requested relief on parties:

Petitioner respectfully asks the Court to confirm that all named government Respondents/Defendants remain in this action until the Court's orders are executed and effective relief is ensured, without prejudice to later refinement if appropriate.

In addition, given the possibility of transfer in immigration detention, retaining national and regional officials prevents jurisdictional disputes or mooted of effective relief

Service of Process:

The Court ordered service on federal officials and required confirmation of proper service. Petitioner confirms that service has been properly effectuated on all relevant parties, including Respondent Normand and Respondent Bondi, as evidenced by ECF 8 and ECF 9, via Certified Mail Return Receipt Requested. Additionally, attorney Otto Woelke Leithart has entered an appearance on behalf of the respondents, indicating their readiness to proceed with the case.

III. The Court should expedite under 28 U.S.C. §§ 2243 and 1657(a) and set an immediate hearing on the TRO

The Court set a timeline for the Respondents' answer and response to the TRO, but Petitioner seeks a more expedited schedule. Petitioner respectfully argues for a modification of the briefing and hearing schedule based on the statutory expedition requirements under 28 U.S.C. §§ 2243 and 1657(a). The ongoing irreparable harm faced by the petitioner and the lack of good cause for delay by the respondents warrant an expedited hearing on the TRO to prevent further harm and ensure compliance with legal standards.

Statutory expedition governs Petitioner's Complaint for Writ of Habeas Corpus. 28 U.S.C. §1657(a) mandates that habeas matters receive priority and be expedited. 28 U.S.C. § 2243 provides for a return "**within three days unless for good cause additional time, not exceeding twenty days, is allowed,**" and directs the Court to "summarily hear and determine" the matter. These statutory commands warrant modification of the current schedule since the current action was filed on August 29, 2025—over one month ago.

While the Court referenced the Rules Governing § 2254 Petitions, those rules are applied by analogy in § 2241 cases and should yield to § 2243's specific timing where, as here, Petitioner is in ongoing custody and has demonstrated emergency circumstances and grave harm and risk to his life due to attempted suicide and mental incapacity that are directly caused by his incarceration.

The Court has recognized the emergent nature of the case. The government controls the necessary records and can produce them promptly. The core materials—IJ bond order, immigration docket, and audio/recordings—are in Respondents' exclusive control and can be produced quickly. They are all electronic records and therefore should be easily produced within

one day. The IJ has already found Petitioner not to be a danger or flight risk. Continued detention imposes severe and irreparable harms—including loss of liberty, family separation, and impairment of Petitioner’s ability to prepare his removal defense. *See* ECF 7 at 3–6; 7-1 at 1–2, 20–21. Respondents lack any good cause for these extended delays, and no good cause supports a 14+ day delay on this record. The government will suffer no cognizable prejudice from an accelerated schedule: these are their records, and the Immigration Judge has already adjudicated dangerousness/flight risk in Petitioner’s favor.

TRO factors favor an expedited hearing in this case:

- (1) **Likelihood of success on the merits:** Petitioner has demonstrated a substantial likelihood of success on the merits of his claims. The continued detention is based on an ultra vires regulation that contravenes established legal standards and violates Petitioner’s Due Process rights under the U.S. Constitution. An Immigration Judge has already determined that Petitioner is neither a danger to the community nor a flight risk, yet ICE persists in detaining him unlawfully. This contravention of a lawful judicial determination further strengthens Petitioner’s case. The legal framework and factual record strongly support Petitioner’s position that his detention is not only unlawful, but also unconstitutional. Petitioner challenges detention inconsistent with an Immigration Judge bond order and alleges constitutional and statutory violations. The record supports a strong showing on the merits.
- (2) **Irreparable harm:** Petitioner faces ongoing and severe irreparable harm due to his continued detention. The deprivation of liberty itself constitutes irreparable harm, as recognized by the courts, because it cannot be remedied by monetary damages or any other form of relief after the fact. Each day of unlawful detention exacerbates this harm, particularly given Petitioner's precarious mental health condition. The detention has

already resulted in significant mental distress, including attempted suicide, which underscores the urgent need for immediate relief. Furthermore, the separation from his USC children and long-time partner inflicts additional emotional and psychological harm, disrupting family unity and support systems that are vital for his well-being.

- (3) **Balance of equities/public interest:** The balance of equities tips decidedly in Petitioner's favor. The harm to Petitioner from continued detention far outweighs any administrative inconvenience to Respondents. Moreover, the public interest is served by ensuring that government agencies comply with the law and respect constitutional rights. Prompt compliance with immigration law, regulations, Immigration Judge determinations, and constitutional requirements serves the public interest. Granting the requested relief aligns with these principles and upholds the integrity of the judicial process. Any administrative burden on Respondents is minimal relative to Petitioner's harms. *See* authorities cited in ECF 7-1.

IV. Custody and Transfer Concerns

The Court denied the request to take custody of the Petitioner or "produce the body." Petitioner respectfully acknowledges the Court's decision but requests a limited order under 28 U.S.C. §§ 1651(a),m 2241 to prevent the transfer of the petitioner outside the Court's district without prior leave. This measure is necessary to maintain the Court's jurisdiction and ensure effective review, as supported by precedents like *Rumsfeld v. Padilla* and *Ex parte Endo*. However, Petitioner will comply with whatever the Court orders and is able to place a bond or any reasonable assurances he will appear for future hearings.

To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C.

§§ 1651(a) (All Writs Act), 2241, issue a limited order prohibiting Respondents from transferring Petitioner outside the Court's District or otherwise changing his immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

V. Additional Cases in Support

Since filing of the motion for the TRO, undersigned counsel has become aware of additional court cases from various courts around the country that find the automatic stay provision unlawful, including an Order granting habeas relief for one of her other clients in Indiana, which is attached hereto as an exhibit: *See Campos-Leon v. Forestal*, Case 1:25-cv-01774-SEB-MJD (S.D. In., Sept 22, 2025).

Other courts considering the same automatic stay provision have found this unconstitutional as well. *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlton v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*,

No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025).

VI. Requested Schedule and Relief

Petitioner respectfully requests that ECF No. 10 and No. 11 be modified to:

- (1) Require Respondents to file their Return/Answer and produce the complete immigration and bond record within 3 days of the modified order, or, alternatively, within 7 days upon a specific good-cause finding under § 2243.
- (2) Permit Petitioner to file a traverse within an equal period after the return (3 days, or 7 days if the Court allows that alternative).
- (3) Set an expedited hearing on the TRO/preliminary injunction within 7 days, with Petitioner and counsel made available telephonically or by video if necessary.
- (4) Alternatively, grant interim relief maintaining the status quo by directing immediate implementation of the Immigration Judge bond order or release under supervision pending final disposition, to preserve the Court's ability to render a meaningful decision on the merits, consistent with the authorities cited at ECF 7-1 (*U.S. v. State of Ala.*, 791 F.2d 1450, 1459 (11th Cir. 1986); *Corrigan Dispatch Co. v. Casa*

Guzman, S.A., 569 F.2d 300, 302 (5th Cir. 1978); *Granny Goose Foods Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

VII. Conclusion

In conclusion, the urgency and necessity of the requested relief cannot be overstated. Petitioner faces ongoing irreparable harm due to unlawful detention, which not only violates his constitutional rights but also inflicts severe emotional and psychological distress. The likelihood of success on the merits is substantial, given the clear legal and factual support for Petitioner's claims. The balance of equities and public interest strongly favor granting the requested relief, as it aligns with the principles of justice and the rule of law. Petitioner respectfully requests that the Court expedite the proceedings, retain all necessary respondents, and grant the relief sought to prevent further harm and ensure compliance with legal standards.

Petitioner requests that the Court: (1) retain all government Respondents/Defendants as necessary to afford complete and prompt relief and (2) modify the briefing and hearing schedule to comply with §§ 2243 and 1657(a): order prompt record production; and set an expedited TRO hearing or grant interim relief to prevent irreparable harm; and preserve the Court's ability to provide effective habeas relief.

Respectfully submitted this 1st day of October, 2025.

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CERTIFICATE OF SERVICE

I certify that on 1st day of October, 2025, I electronically filed the foregoing **PETITIONER'S RESPONSE TO NO. 10 AND ECF NO. 11, ORDERS AND REPORT AND RECOMMENDATION** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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