UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT, MICHIGAN

Yanier Hernandez Capote,
Dagoberto Matilla Gutierrez,
Alain Suarez-Arbona,
Amauri Orozco Blanco,
Ariana Fernandez-Velazquez,
Roylan Hodelin Fabars,
Eridanys Amaury Grinan-Venzant,

Petitioners,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KEVIN RAYCRAFT, Acting Field Office Director, Detroit Immigration and Customs Enforcement; JOSEPH B. EDLOW, Director, U.S. Citizenship and Immigration Services, MICHAEL KLINGER Field Office Director Detroit U.S. Citizenship and Immigration Services; PAM BONDI, U.S. Attorney General, U.S. Department of Justice, SIRCE E. OWEN, Acting Director of the Executive Office of Immigration Review, and ANNA C. LITTLE, Acting EOIR Chief Immigration Judge,

Respondents.
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Case No.: 25-cv-12782

Hon. Judge Shalina D.Kumar
Mag. Judge Anthony P. Patti

EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION

Petitioners, through counsel respectfully request that this Court issue an Emergency Preliminary Injunction enjoining the Respondents from redetaining the Petitioners and with respect to Petitioner Yanier Hernandez Capote (Yanier), that he be immediately released from custody to pursue his applications for relief. When this action was filed, Petitioners believed that they could be arrested if they attended an immigration interview or immigration court – neither of which were upcoming for months. Upon information and belief, after this action was filed, people similarly situated as the Petitioners have been detained at their homes by the Respondent DHS without prior warning. Despite requests, Respondent ICE – Det has been unable to assure that the Petitioners are not at risk of immediate detention with the exception of Alain Suarez-Arbona or Arianna Fernandez-Velazquez. When this action was filed, Petitioner Yanier was not facing the inability to pursue his applications for relief due to his detention at a facility that is 7 hours away round trip from Detroit.

Petitioners requested concurrence with this Emergency Motion for Preliminary Injunction (Emergency Motion) but was unable to obtain consent.

In support of this Emergency Motion, the Petitioners state:

I. INTRODUCTION

The Petitioners seek an order to enjoin Respondents from redetaining them and preventing them from pursuing their permanent residency applications to which they are entitled by statute.

The Respondents have redetained Petitioner Yanier without prior notice or cause as he was attending an interview with Respondent U.S. Citizenship and Immigration Services (USCIS). Despite repeated requests to Respondent Immigration and Customs Enforcement Detroit Field Office (ICE Det.), Petitioners' counsel was denied any information as to Yanier's. On August 28, 2025, Yanier, at his bond in immigration court was informed that he was being mandatorily detained pursuant to INA §235 and therefore not eligible for bond. The other Petitioners are in imminent danger of being redetained pursuant to INA §235 without prior notice as they are following proper procedures by attending their immigration court hearings and appearing for adjustment of status to permanent residency interviews. They too will be ineligible for bond.

II. RELEVANT FACTS

All of the Petitioners are Cuban nationals who came to the United States at the Southern U.S. border and presented themselves to the Immigration authorities

immediately after crossing in the U.S. All of the Petitioners were detained by the Respondents. Upon information and belief, the Petitioners were detained by the Defendants at the southern border as follows:

Yanier was detained for 2 days and released on January 18, 2022;

Dagoberto Matilla Gutierrez was detained for 3 days and released on July 19, 2021;

Alain Suarez Arbona was detained for 1 day and released on July 22, 2021;

Amauri Orozco Blanco was detained for 1 day and released on July 22, 2021;

Arianna Fernandez Velasquez was detained for one day at the border and released on March 8, 2022;

Roylan Hodelin Fabars was detained for 2 days and released on March 14, 2022;

Eridanys Amaury Grinan-Venzant was detained for 4 days and released on April 19, 2022.

The Respondents determined that the Petitioners were fleeing the communist dictatorship in Cuban – a country that routinely violates human rights. The Respondents also determined that the Petitioners were afraid of returning to Cuba and that they were not a threat to national security or to public safety. Therefore, they were all released to pursue asylum applications or adjustment of status at the appropriate time. (Ex. 1 – See I-213 for Petitioners Yanier, Roylan, Alain, and Arianna. No I-213 have been provided by the Respondents.) All of the Petitioners were placed in removal proceedings with the immigration court in Detroit,

Michigan and charged with removability pursuant to INA § 212(a)(6)(A)(i) alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. All of the Petitioners contested that charge stating that they are applicants for admission pursuant to INA §8 U.S.C. § 1225(a)(1); see also 8 C.F.R. § 235.1(f)(2) (discussing noncitizens present without admission or parole and those who enter without inspection).

All Petitioners have applied for adjustment of status to permanent residence pursuant to the Cuban Adjustment Act, PL 89-732, 80 Stat 1161 (1966), amended by PL 94-571, 90 Stat 2703; H.R. Rep. No. 89-1978, reprinted in 1996 U.S.C.C.A.N. 3792. (CAA) Some of the applicants have pending asylum applications with the immigration court in Detroit, Michigan. The Respondents have argued that since Petitioners were released pursuant to INA §236, they cannot adjust status to permanent residency pursuant to CAA. (Ex. 2 – Respondents briefs to the Immigration Court for two of the Petitioners) Respondents' new Interim guidance of July 8, 2025 issued by Respondent Department of Homeland Security (DHS) in conjunction with Respondent US Department of Justice (DOJ) states that persons who crossed the border are detained under Immigration and Nationality Act (INA) §235. (Ex. 3 – July 8, 2025 ICE Interim Guidance) Under this section of the INA, the government states that detention is mandatory and the Immigration Judge cannot determine bond.

The INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). See, *Jennings v. Rodgriguez*, 583 U.S. 281 (2018) All of the Petitioners are seeking admission, and all were detained upon arriving in the United States.

The Respondents may release those subject to mandatory detention under INA§235 (b)(2) "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). In this case, the Respondent DHS determined that release was warranted, and all Petitioners were released on parole by operation of law.

III. TEMPORARY RESTRAINING ORDER

A preliminary injunction requires the Petitioner to show that "he is likely to succeed on the merits; that he is likely to suffer irreparable harm in the absence of preliminary relief; that the balance of equities tips in his favor; and that an injunction is in the public interest." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

a. <u>The Petitioners are likely to succeed on the merits.</u>

Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be "deprived of life, liberty, or property, without due

process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). When analyzing whether there has been a due process injury of a protectable liberty interest, courts generally apply the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976): "the private interest that will be affected by the official action," "the risk of an erroneous deprivation . . . and probable value, if any, of additional or substitute procedural safeguards," and "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

Due process protects a noncitizen's liberty and property interest including freedom from detention and the ability to file applications for relief and benefits made available under the immigration laws.

Respondents' redetention of Yanier and the potential redetention of the other Petitioners violates their right to due process by depriving them of their liberty without any consideration of whether such a deprivation is warranted.

Prior to the July 8, 2025 ICE Interim Guidance, the government consistently argued that the Petitioners are not eligible for adjustment of status to permanent residence under the CAA because they were released pursuant to INA§236. Under INA § 236(a), ICE generally may arrest and detain an alien found in the

United States pending his removal proceedings. Detention under this statute is discretionary, and an alien may be released on bond or conditional parole pending the removal proceedings. In addition, if the alien remains detained, he may seek review of ICE's custody determination at a bond hearing before an immigration judge.

After the issuance of the July 8, 2025 ICE Interim Guidance at Ex. 1, ICE has done an about face and now claims that people like the Petitioners are subject to mandatory detention pursuant to INA §235. The Respondents claim that the Petitioners' detention and release upon first contact with immigration agents at the border was under INA §236 and therefore they were not paroled into the U.S. and could claim permanent residency under the CAA. Now, the Respondents state that when detained the Petitioners would be detained under INA §235 which provides for no bond. In fact, this is the statute under which ICE is now redetaining Yanier.

Yanier was free from restraint until he appeared at Respondent USCIS in Detroit with his US citizen wife for an interview on the petition and permanent residence applications that they had filed. Without warning, Yanier's liberty was taken away from him even though nothing has changed since he was released over 2 years ago. In fact, Yanier had steady employment, a family and a home. Yanier has no criminal record. Redetaining Yanier is a deprivation of his due process rights under the U.S. Constitution. ICE made the determination that Yanier was eligible to be released and because of that decision he has spent over three years

living in the United States with work authorization and without incident. He has made a good life for himself getting married and caring for his stepchildren. There is no evidence in the record of any change in circumstance that would lead ICE to reach a different determination if they re-assessed his eligibility for release today. No changed circumstances requiring redetention exists in this case.

The other Petitioners are at grave risk of being detained under INA §235 despite being released over 2 years ago and despite having acquired equities and no criminal record. The Petitioners' private interests in continued freedom from detention weigh in their favor.

All of the Petitioners are not a risk to national security or a danger to the public as was determined by the Respondents at the southern border over three years ago.

b. <u>The Petitioners will suffer irreparable hard in the absence of preliminary relief.</u>

All of the Petitioners will suffer irreparable harm if they are redetained. Yanier is also suffering irreparable harm. His sudden detention has caused him to lose his job at [redacted]. He is separated from his wife and stepchildren. He is not able to return home and live peacefully with his family enjoying the day-to-day activities. His wife is distraught at having lost her husband without warning. She

has not only lost her life partner, father to her children, loss of income to the family but also those parts of life that come from having a family – and all this without notice.

Civil immigration detention must be "nonpunitive in purpose" and bear a "reasonable relation" to the authorized statutory purposes of preventing flight and danger to the community. *Zadvydas*, 533 U.S. at 690. As such, ICE's original decision to release the Petitioners was required by regulation to be premised on the determination that they were "neither a security risk nor a risk of absconding." See 8 C.F.R. § 212.5(b) (humanitarian or public interest parole may not be granted if non-citizens present a security risk nor a risk of absconding)

Furthermore, in the past the Respondents have prevented the Petitioners from filing for permanent residency under the CAA. Now, the Respondents are preventing Yanier from filing an asylum application. At the most recent immigration court hearing, the immigration judge made it very clear that he was inclined not to accept Yanier's asylum application because it was "incomplete". The immigration judge said the updated application needs to be filed with the immigration court by September 26, 2025. Even though the application complied with the standards for such applications at the time it was filed, the Board of Immigration Appeals (BIA), which is part of Respondent EOIR, has issued a decision requiring that applications be filled out completely instead of attaching a statement detailing the claim as was previously done. This new requirement

applies retroactively. Under the BIA decision in *Matter of C-A-R-R,* 29 I&N Dec. 13 (BIA 2025) (Ex. 4 – BIA opinion) if an asylum application is not complete, the immigration judge can consider it waived or abandoned. Yanier's updated asylum application in compliance with *Matter of C-A-R-R* has been completed but requires Yanier's signature. Yanier is currently detained at North Lake Detention Center in Baldwin, Michigan which is 3.5 hours away from the metro Detroit area. For the last three days, counsel has been attempting to obtain Yanier's signature so the application can be timely filed. However, ICE -Det refuses to cooperate and has insisted that counsel (who is located in New York) or someone from her Troy, Michigan office drive 7 hours round trip to obtain a signature on a form. Though other detention centers allow for forms to be sent by email or overnight mail (i.e. FEDEX or UPS), ICE – Det does not allow that under the guise that ICE - Det does not have the "resources" to provide this "service". If ICE-Det did not have the facility ready, they should have never placed detainees in that facility. Yanier is already at risk of not having his asylum application accepted by the immigration court. Without a signature, his application will definitely not be accepted. Therefore the Respondents are interfering with Yanier's ability to file applications for relief by making it very difficult to comply with EOIR's requirements. This constitutes irreparable harm because without an asylum application, Yanier cannot even request protection from the oppressive Cuban government regime.

The Respondents continued actions deprive Yanier of his due process rights to be free from restraint and to file applications for relief.

All of the Petitioners are at risk of being deprived of their due process rights in the same way. ICE – Det has indicated that they have no current plans to detain Petitioners Alain Suarez-Arbona or Arianna Fernandez-Velazquez but have not stated whether or not they will detain the remaining Petitioners thereby demonstrating that the risk of deprivation of liberty and the violation of due process rights is very real for all Petitioners.

c. The balance of equities tip in the Petitioners' favor.

The balance of the equities and the public interest, which merge in light of the fact that the government is the opposing party, tips in the Petitioners' favor.

The potential harm to the Petitioners is significant, while the potential harm to the government is minimal. There is no realistic likelihood of harm to the government in this case, nor any costs suffered if this injunction is granted. Rather, the costs of detention to the American people are huge. An estimated $3 billion is spent each year on immigration detention.

https://immigrantjustice.org/research/policy-brief-snapshot-of-ice-detention-inhumane-conditions-and-alarming-expansion/ ;

https://www.marketplace.org/story/2025/07/25/what-is-the-daily-cost-of-detaining-someone-arrested-by-ice

d. An injunction is in the public interest.

This factor is merged with the balance of equities discussed above. Abiding by the U.S. Constitution is always in the public interest and enjoining the government from violating the law by abrogating the rights of individuals is of upmost importance to the public interest.

IV. CONCLUSION

a. Order the release of Yanier within 3 days because his continued detention violates the Due Process;

b. Enjoin the Respondents from re-detaining Petitioners while their Immigration matters are pending with either the Immigration court or with USCIS;

c. Use the Court's discretion to pursuant to Fed. Rules of Civ. Pro 65(c) to dispense with requiring the Petitioners to file a bond;

d. Any other relief the Court deems appropriate.

Respectfully submitted:

s/Caridad Pastor

Dated: September 10, 2025

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CERTIFICATE OF SERVICE

I certify that today I filed the Emergency Motion for Preliminary Injunction through the ECMF system which will automatically serve all the interested parties including counsel for the Respondents:

Jennifer Newby, Asst. U.S. Attorney
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Submitted by: Dated: September 10, 2025

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