

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 25-CV-24078-MOORE/Elfenbein

JOSE SERRANO,  
Petitioner,

v.

JUAN LOPEZ-VEGA, In his official capacity as  
Acting Director, Miami Field Office, Enforcement  
and Removal Operations, U.S. Immigration and  
Customs Enforcement, et al;  
Respondents.

**PETITION FOR A WRIT OF  
HABEAS CORPUS PURSUANT  
TO 28 U.S.C. § 2241**

**PETITIONER'S EMERGENCY MOTION FOR A TEMPORARY  
RESTRAINING ORDER**

1. Petitioner, Jose Serrano, respectfully moves this Court for an Emergency Temporary Restraining Order (TRO), ordering his immediate transfer from criminal detention to non-criminal asylee detention, or in the alternative release from detention. Although this court issued an Order to Show Cause regarding his Habeas Corpus Petition on Sept. 9, 2025, **the conditions of his detention place Petitioner in grave danger and require immediate attention.**
2. Petitioner is a former President of the Congress of Ecuador as well as a former Minister of Justice, Interior, Finance and Labor under three Presidents. He is one of the best known and popular politicians in his country and **is well known as a fierce critic of the current Ecuadorean President, who he has frequently and publicly accused of involvement in drug trafficking.** He has a million followers on Twitter.
3. Petitioner has been detained by Respondents since August 7, 2025, which is six days after Homeland Security Secretary Kristi Noem signed a Memorandum of Understanding with the current Ecuadorean government in Quito, permitting the US



to send non-Ecuadorean immigrants to Ecuador and allowing an Ecuadorian National Police liaison to embed with CBP's National Targeting Center.

4. Petitioner's detention and deportation to Ecuador is an important goal of the current Ecuadorean government, in order to silence their most important and credible critic.
5. As Justice and Interior Minister of his country Petitioner was very tough on drug dealers and money launderers, arresting and convicting hundreds of gang members and drug dealers and eliminating criminal gangs. **In 2016 he was given an award by the US Drug Enforcement Agency for his cooperation in Washington.** During his time in office the murder rate in Ecuador dropped from 25 per 100,000 to 5 per 100,000 (it has since risen to 45 per 100,000 with an accompanying increase in drug dealing and money laundering). He is widely seen in his country as credible and strongly anti-corruption.
6. Petitioner is being held by Respondents as a criminal with criminals instead of as an asylum seeker in direct violation of US and international law. **For example, he is forced to sleep three beds from Rolando Miraba, an Ecuadorean gang member and drug dealer who spent nine years in US prison for trafficking 800 kilos (nearly a ton) of cocaine into the US.** This would be like a former US attorney general being held with US drug dealers in a foreign country.
7. His detention as a criminal with criminals appears to be a deliberate strategy by Respondents to encourage Petitioner to stop pursuing his asylum case and agree to voluntary deportation to Ecuador.
8. Mr. Serrano entered the US on May 19, 2021, after inspection, and affirmatively requested asylum on October 29, 2021, while in legal status. He was granted a work permit and worked and paid US taxes during the pendency of his asylum process. He has no criminal record in the US or anywhere in the world.
9. It is virtually unique that an affirmative asylum seeker who entered the US legally, has never broken immigration laws, and has no criminal record is arrested at his home and detained before his asylum case is heard.
10. Petitioner has had two bond hearings with an immigration judge since his August 7 arrest, however no decision was made regarding his detention. His most recent hearing was postponed until Sept. 16 by the immigration judge, who only asked the parties one question: whether any charges had yet been placed against Petitioner in Ecuador, which has not happened to this date.
- 11. Petitioner is in immediate danger for his life due to his confinement by Respondents with Ecuadorean drug dealers and gang members.**

#### **LEGAL STANDARD**

12. A court may issue a preliminary injunction or TRO where the moving party demonstrates: (1) a substantial likelihood of success on the merits; (2) that he will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to



him outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest. *See Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). Mr. Serrano clearly meets all four requirements.

**13. I. Mr. Serrano Has a Substantial Likelihood of Success on the Merits.** Mr.

Serrano's request to be held as a non-criminal asylum seeker is substantially likely to succeed, because his detention in extremely dangerous conditions without a bond is a clear violation of US and international law and US obligations relating to the detention of non-criminal asylum seekers. The Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). As the Supreme Court noted in *Demore v. Hyung Joon Kim*, 538 U.S. 510, there is an "uncontroversial requirement that detention serve a compelling governmental interest." *Id.* at 566 n. 22 (citing *Zadvydas v. Davis*, 533 U.S. 678, 721 (2001)).

14. As a non-criminal asylum seeker with a pending application, Petitioner's detention in dangerous conditions serves no legitimate purpose; it is unconstitutionally punitive. The Due Process Clause applies to all "persons" within the United States, *Plyler v. Doe*, 457 U.S. 202, 210, 102 S.Ct. 2382 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883 (1976); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596-598. The Fifth, Sixth, and Fourteenth Amendments apply to all persons within the United States, including excludable aliens; *Korematsu v. U.S.*, 323 U.S. 214, 216 (1944).

**15. II. Mr. Serrano Is Suffering And Could Suffer Irreparable Injury.**

Should Petitioner be murdered by those he prosecuted in Ecuador while in Respondent's custody he would suffer irreparable injury. Being held in conditions where one fears death is clearly irreparable injury. The State "owes a duty of protection when its agents create or increase the danger to an individual." *Id.*; *see also Paine v. Cason*, 678 F.3d 500, 510 (7th Cir 2012); *Wang v. Reno*, 81 F.3d 808, 817 (9th Cir. 1996) (noncitizen could not be removed to China after the U.S. government convinced him to testify about a topic that would lead the Chinese government to torture and possibly execute him). Due process is implicated when the state actor's conduct in such a case is "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Butera*, 235 F.3d at 651 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).

16. In addition to the danger due to his status as a former Justice and Interior Minister of Ecuador, the ongoing deprivation of a person's fundamental right to liberty constitutes irreparable injury. *See Am. Civil Liberties Union of Fla., Inc. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). The same is true for the fundamental right to be free from unconstitutional



confinement. Each day Mr. Serrano remains unlawfully detained is a harm that cannot be remedied by a later judgment. This detention also impedes his ability to prepare his asylum case, and causes severe emotional distress.

**17. III. The Balance of Harms Weighs Decisively in Mr. Serrano's Favor.**

Should Mr. Serrano be murdered while detained by Respondents, the harm to him, his followers and his family would be immense. The harm to Mr. Serrano from being held in fear of imminent death is great. The loss of his physical liberty is also great harm. ("[I]t is well to remember the magnitude of the injury that pretrial detention inflicts and the departure that it marks from ordinary forms of constitutional governance"); *Grodzki v. Reno*, 950 F. Supp. 339, 342 (N.D. Ga. 1996)

18. In contrast, the harm to the government from his detention with non-criminal asylum seekers or his release is negligible. The government has no legitimate interest in detaining an individual who is neither a flight risk nor a danger to the community in extremely dangerous conditions. Should Mr. Serrano be released his complete lack of a criminal record and his past cooperation with the DEA demonstrate he poses no threat. His extensive family and community ties ensure he will attend all future proceedings. Therefore, the severe injury to Mr. Serrano far outweighs any minimal interest the government may claim.

**19. IV. An Injunction Serves the Public Interest.**

The public interest in the US being seen as a country where asylum law and US law is respected and followed is immense. **It would be historically catastrophic to US public image around the world should harm occur to such an obvious and important asylum seeker by his persecutors while in Respondent's custody.**

Enjoining an unconstitutional detention reinforces the principles of due process and liberty upon which the nation was founded, as well as respect for international law of *non-refoulement*. It is also not in the public's interest to expend finite resources detaining a non-dangerous asylum seeker who has actively assisted U.S. law enforcement.

## **CONCLUSION**

For the foregoing reasons, Petitioner Jose Serrano respectfully requests that the Court grant this motion and issue an immediate Temporary Restraining Order or Preliminary Injunction ordering Respondents to detain him as an asylum seeker held with non-criminal asylum seekers, not as a criminal held with criminals. He asks this court to clarify that Respondents should not place him in solo confinement or transfer him out of its jurisdiction. In the alternative, Petitioner respectfully asks this court to order his release from DHS custody to await his asylum interview.

Dated: September 13, 2025



Respectfully submitted,

/s/ Robert Sheldon

**Robert Sheldon, Esq.**

Law Offices of Robert Sheldon

3134 Coral Way

Miami, FL 33145

(786) 436-1714

rsheldon1@hotmail.com

FL Bar #83409

*Counsel for Petitioner*

**[PROPOSED] ORDER GRANTING TEMPORARY RESTRAINING ORDER**

Upon consideration of Petitioner's Emergency Motion for a Temporary Restraining Order, it is hereby **ORDERED** this \_\_\_\_ day of September, 2025, that the motion is **GRANTED**.

Respondents, their officers, agents, and employees are **ORDERED** to immediately refrain from detaining Petitioner Jose Serrano (A# XXXXXXXXXX) as a criminal held with criminal detainees and instead hold him as an asylum seeker with non-criminal asylum seekers. Petitioner should not be held in solo confinement or transferred out of the jurisdiction of this Court.

{In the alternative} Petitioner should be immediately released from Respondent's custody.

This order shall remain in effect pending a hearing on Petitioner's request for a preliminary injunction.

---

IT IS SO ORDERED:

//

DATED: \_\_\_\_\_,

Hon.

United States District Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Petitioner's Motion for a Temporary Restraining Order and Proposed Order was served via electronic mail on this 13 day of September, 2025 to the Assistant United States Attorney for the Southern District of Florida, 99 N.E. 4<sup>th</sup> Street, Miami, Florida 33132.

/S/ Robert Sheldon  
Robert Sheldon, Esq.

*Counsel for Petitioner*