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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Antonio Alejandro Garcia Morao,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

MICHAEL V. BERNACKE, in his official
capacity as ICE Field Officer Director,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: 2:25-cv-838

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

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

2
3 Petitioner, by and through undersigned counsel, respectfully moves this Court for a Temporary
4 Restraining Order (TRO) pursuant to Federal Rule of Civil Procedure 65(b), to enjoin Respondents
5 from removing Petitioner from the State of Utah while his habeas petition is pending and to
6 immediately release him from custody.

7
8 **I. INTRODUCTION**

9 Antonio Alejandro Garcia Morao (Petitioner), by and through his undersigned counsel, hereby
10 files this petition for a writ of habeas corpus. Petitioner entered the United States on May 23, 2023 after
11 having been admitted under the Venezuelan Humanitarian Parole Program. Ex. 1.

12
13 Petitioner is married to a United States' Citizen and, upon information and belief, has a pending
14 application for adjustment of status through that marriage. Upon information and belief, Petitioner filed
15 his application for adjustment of status prior to the expiration of his parole.

16
17 On September 18, 2025, a domestic disagreement resulted in the police being called and
18 Petitioner being arrested. Petitioner was charged with 76-5-102(2) + (3A), Assault – Class B
19 Misdemeanor; 76-6-106(2B) + (3DIV), Criminal Mischief – Loss < \$500 – Class B Misdemeanor; 76-
20 9-110, Public Intoxication – Class C Misdemeanor; and 76-5-114(2D), Domestic Violence in the
21 Presence of Child – Class B Misdemeanor. Ex. 2. Petitioner's spouse informed the police that she did
22 not intend to seek charges against Petitioner. To date, Petitioner has no criminal convictions.

23
24 Petitioner was released from the county's custody presumably on Monday, September 22, at
25 5pm, and was transferred to ICE custody on September 23, 2025. Petitioner remains in ICE custody in
26 Salt Lake City, Utah. Based on information given by ICE, Petitioner is detained under charges under
27 INA §212(a)(6)(A)(i) and §212(a)(7). The first charge is for an alien present without having been
28 admitted or paroled, and the second is for an alien who was not in possession of a valid entry permit or

1 visa when applying for admission. As Petitioner was granted parole and had a valid entry permit when
2 he presented himself at the border, neither charge would apply to him.
3

4 It is current policy of the Department of Homeland Security and the Department of Justice to
5 not allow individuals to seek bond if they were not admitted into the United States.¹ As Petitioner was
6 paroled and not admitted into the United States, he would be subject to this policy change, rendering
7 him detained indefinitely until his removability can be proven.
8

9 Pursuant to 8 U.S.C. 1226(b), the Attorney General shall take into custody any alien who is
10 inadmissible for having committed any offense found under 8 U.S.C. 1182(a)(2), or any alien who is
11 deportable for having committed any offense found under 8 U.S.C. 1227(a)(2)(A)(iii), (A)(iii), (B),
12 (C), or (D). Petitioner's criminal charges do not constitute an offense listed under any of these sections.
13 Petitioner's charges are not crimes involving moral turpitude under 8 U.S.C. 1182(a)(2), and, his
14 charges cannot qualify under 8 U.S.C. 1227(a)(2)(A)(iii), (A)(iii), (B), (C), or (D) because petitioner
15 has not been convicted of any crime.
16
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18 Under 8 U.S.C. 1226(a) an alien may be arrested on a warrant issued by the Attorney General
19 pending a decision on whether the alien can be removed. To date, the Attorney General has not issued
20 an arrest warrant against the Petitioner. Therefore, Petitioner's detention violates the Immigration and
21 Nationality Act.
22

23 **II. LEGAL STANDARD**

24 A Temporary Restraining Order (TRO) is an extraordinary remedy, but it is warranted when
25 the movant satisfies the four-part standard set forth by the Supreme Court. To obtain a TRO, the
26 Petitioner must show:
27
28

¹ See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025), <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> [<https://perma.cc/5GKM-JYGX>].

- 1 1. A likelihood of success on the merits,
- 2 2. Irreparable harm in the absence of relief,
- 3 3. The balance of equities favors the movant, and
- 4 4. The injunction is in the public interest.

5
6 *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139,
7 156 (2010).

8
9 Likelihood of success on the merits requires that the Petitioner demonstrate that it is “more
10 likely than not” that the legal claim will prevail. Courts recognize that noncitizens with pending asylum
11 applications have a statutory and regulatory right to have those claims adjudicated before removal.

12
13 Irreparable harm exists when the injury cannot be adequately remedied by money damages or
14 other legal relief. *Winter*, 555 U.S. at 20.

15
16 Balance of equities requires weighing the harm to the Petitioner against any potential harm to
17 the Respondents from issuance of a TRO. *Winter*, 555 U.S. at 24.

18
19 Public interest favors compliance with statutory and regulatory requirements, and the United
20 States’ obligations under international law to protect individuals from persecution and torture.

21 **III. ARGUMENT**

22
23 Petitioner is entitled to a Temporary Restraining Order because all four factors for injunctive
24 relief are met: (1) likelihood of success on the merits, (2) irreparable harm, (3) balance of equities, and
25 (4) public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Monsanto Co. v. Geertson Seed Farms*,
26 561 U.S. 139, 156 (2010).

27 **A. Petitioner Is Likely to Succeed on the Merits**

- 28 i. Respondents Are Unlawfully Detaining the Plaintiff

1 The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal
2 government from depriving any person of “life, liberty, or property, without due process of law.” U.S.
3 Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-
4 citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533
5 U.S. at 693.57.
6

7
8 The Department of Homeland Security’s and Department of Justice’s interim policy directing
9 the detention of individuals who are applying for admission, regardless of individualized
10 circumstances, violates these fundamental due process protections. See DHS, *Interim Guidance*
11 *Regarding Civil Immigration Detention and Parole for Applicants for Admission* (Nov. 2021). By
12 treating all parole applicants as categorically subject to detention without the constitutionally required
13 individualized assessment of risk or necessity, the policy impermissibly presumes detention rather than
14 liberty. This blanket presumption of detention disregards the Supreme Court’s repeated instruction that
15 “[f]reedom from imprisonment ... lies at the heart of the liberty that Clause protects,” *Zadvydas v.*
16 *Davis*, 533 U.S. 678, 690 (2001), and therefore contravenes the Fifth Amendment’s guarantee of due
17 process for all persons in the United States.
18
19

20 Under the Immigration and Nationality Act (INA), Congress has defined specific circumstances
21 in which the Department of Homeland Security (DHS) may detain noncitizens. Mandatory detention
22 applies only to aliens who are inadmissible under certain criminal grounds, 8 U.S.C. § 1182(a)(2), or
23 deportable under specified criminal grounds, 8 U.S.C. § 1227(a)(2)(A)(iii), (B), (C), or (D). 8 U.S.C.
24 § 1226(b). Deportable offenses require convictions trigger mandatory detention. 8 U.S.C.
25 1227(a)(2)(A)(iii), (A)(iii), (B), (C), or (D).
26
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1 For all other noncitizens, detention is discretionary under 8 U.S.C. § 1226(a). DHS may arrest
2 and detain an alien only *pursuant to a warrant issued by the Attorney General* pending a decision on
3 removability. Here, no such warrant has been issued.
4

5 DHS's detention authority is therefore limited and contingent on compliance with statutory
6 prerequisites. Detention outside these boundaries constitutes an arbitrary deprivation of liberty in
7 violation of the Fifth Amendment.
8

9 Respondents have not issued an arrest warrant for the Petitioner, and Petitioner is not subject to
10 mandatory detention, he is not an arriving alien and he has not been convicted of any crime, nor has he
11 admitted to the essential elements of any crime that would subject him to mandatory detention. Further,
12 Plaintiff is not subject to any other grounds of removability that would give cause to an arrest warrant.
13 Therefore, DHS is detaining the Petitioner unlawfully.
14

15 **B. Petitioner Will Suffer Irreparable Harm**

16 Petitioner is currently being deprived of his liberty and property while being detained. He is
17 unable to work and unable to provide for his family. Further, if Petitioner is moved out of state, he will
18 be deprived access to counsel, and will be unable to defend himself in his criminal proceedings. This
19 will deprive him of his due process rights in criminal court and result in potentially further deprivation
20 of his liberty without his ability to defend. Therefore, he would suffer irreparable harm if he is not
21 released and/or moved out of the state as he will not be able to defend himself in criminal court.
22
23

24 **C. The Balance of Equities Favors Petitioner**

25 Respondents suffer minimal burden by released Petitioner and allowing him to defend his
26 criminal case in the state of Utah.
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28 In contrast, Petitioner faces permanent harm to his liberty and safety. One's right to a speedy
and fair trial in criminal proceedings is paramount in the United States.

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DATED: September 23, 2025

Respectfully submitted,

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