

United States District Court  
Western District of Texas  
San Antonio Division

Jose Guadalupe Hernandez Ramiro,  
Petitioner,

v.

Kristi Noem, Secretary of United States  
Department of Homeland Security et. al.,  
Respondents.

No. 5:25-CV-01207-XR

**Response in Opposition to Petitioner's Motion for  
Temporary Restraining Order and/or Preliminary Injunction**

Petitioner, through counsel, filed a habeas petition with this Court on or about September 25, 2025. ECF No. 1,4. The Court ordered service on Respondents and a response within 3 days of that service. ECF No. 2.

Petitioner filed an Ex-Parte Motion for Temporary Restraining Order ("TRO Motion"), requests, *inter alia*, that the Court order his immediate release from custody, enjoin his re-arrest until a bond hearing is held by an immigration judge, enjoin Respondents from refusing a bond payment, and seeking an automatic stay or discretionary stay. ECF No. 3 at 5. Petitioner also requests the court order Respondents from transferring Petitioner from the Western District of Texas, and a full copy of his administrative file. *Id.* Petitioner challenges the lawfulness of his pre-removal-order detention but concedes that he (1) entered the United States without being admitted or paroled; (2) is currently without lawful status and in removal proceedings; and (3) has been detained in pre-removal-order ICE custody since September 16, 2025. Petitioners TRO Exhibit 3 at 44.

While the parties disagree on the governing detention statute in this case, which is a mixed question of law and fact that should be decided only by the circuit court of appeals upon review of a final order of removal, this Court need not resolve that issue to dispose of this TRO motion or

the underlying habeas petition. *See* 8 U.S.C. §§ 1252(b)(9); 1225(b). Regardless of which statute controls here, Petitioner is not entitled to release. *See id.* Petitioner's detention is not in violation of the Constitution as applied to him, because the statute under which ICE is detaining him does not even provide him with a bond hearing. Nonetheless, he was given ample procedural due process protections through a bond hearing and a bond appeal. The statute does entitle him to full removal proceedings, where he is already represented by counsel and will be afforded access to judicial review through the BIA and the circuit court of any adverse decision. *See* 8 U.S.C. § 1225(b)(2). His detention is also not in violation of substantive due process, because he makes no showing that he has any lawful status entitling him to release, nor has he shown his pre-removal-order detention is unreasonably prolonged or indefinite. As such, Petitioner is not likely to succeed on the merits of these claims, and this TRO should be denied.

Specifically, Petitioner is not likely to succeed for several reasons: (1) his pre-removal detention is authorized by statute, whether mandatory under § 1225(b) or in the exercise of ICE's discretion under § 1226(a); (2) while this Court may review an as-applied constitutional challenge in certain circumstances, Petitioner cannot show that his continued detention violates procedural due process where the statute does not even provide for a bond hearing in his circumstances; even still, Petitioner was given a bond hearing followed by a full administrative review; (3) Petitioner is currently pursuing relief from removal in "full" removal proceedings, including the right to counsel and the right to judicial review; (4) his detention is not unconstitutionally prolonged (or indefinite) in violation of his substantive due process rights, because he has been detained less than 90 days in pre-removal-order detention, and those proceedings will eventually conclude. This TRO

should be denied, and habeas petition should be denied in its entirety.<sup>1</sup>

## **I. Relevant Background**

Petitioner is a native and citizen of Mexico. ECF No. 1 at ¶ 14. He is currently detained in ICE custody pending his removal proceedings. *Id.* ¶ 21. Petitioner concedes that he was placed into removal proceedings after being released to ICE after a traffic stop in Austin, Texas. *Id.* ¶ 21. Petitioner filed a motion for a bond hearing before an immigration judge and at said hearing the immigration judge denied bond. ECF No. 3 at 6 ¶ 3. Petitioner is currently scheduled for his master calendar hearing on October 24, 2025.<sup>2</sup> At said hearing, Petitioner will be able to apply for any relief from removal that he believes he is eligible for, and the immigration court can work on calendaring the case for future hearings.

## **II. Legal Standards**

A preliminary injunction is an “extraordinary and drastic remedy.” *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is “not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion.” *Black Fire Fighters Ass’n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). “The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Canal Auth.*, 489 F.2d at 572. A

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<sup>1</sup> While this Court could *sua sponte* deny this habeas petition with further input from the government, Federal Respondents do intend to respond to the habeas petition in full within 30 days of service, as contemplated by the text Court’s Order.

<sup>2</sup> See Automated Case Information (last accessed Oct. 8, 2025).

preliminary injunction should be granted only if the movant has “clearly” carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

### **III. Argument**

#### **A. Plaintiff Is Unlikely to Succeed on the Merits.**

Petitioner is unlikely to succeed on the merits of his as-applied constitutional claims. To establish a due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit finds no due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Petitioner is receiving due process protections, both substantively and procedurally, and his detention is both statutorily permissible and constitutional as applied to him.

While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated here that Petitioner’s detention without bond is unconstitutional. *See, e.g., Jennings v Rodriguez*, 583 U.S. 281, 312 (2018). This Court’s review is limited to whether ICE is providing due process of law to Petitioner within the scope of § 1225(b). *Id.*; *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Indeed, Petitioner has been placed “full” removal proceedings, which entitles him to robust due process protections, including representation by counsel of his choice at no expense to the government and appellate review of any adverse decision. Petitioner is not entitled to anything beyond what § 1225(b) provides him. *See Jennings*, 583 U.S. at 312; *see also Thuraissigiam*, 591 U.S. at 140.

Moreover, Petitioner’s pre-removal custody is neither prolonged, nor indefinite. Petitioner has been detained for just under a month while pending removal proceedings. Pre-removal-order

detention “has a definite termination point: *the conclusion of removal proceedings*.” *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024) (emphasis in original) (paraphrasing *Jennings*, 583 U.S. at 304). Petitioner is scheduled for a master calendar hearing with the immigration judge in his removal proceedings on October 14, 2025.<sup>3</sup> Petitioner’s detention is not delayed beyond anything other than ordinary litigation processes. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *See Jennings*, 583 U.S. at 297–303; *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that “the Due Process Clause provides nothing more”). An “expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause.” *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983).

Petitioner is not entitled to a bond, even under the statute he claims applies to his detention. *See* 8 U.S.C. § 1226(a). He is not likely to succeed on his claim that he is entitled to release from custody as a matter of due process, because he has been detained in pre-removal-order custody just under a month, was provided a bond hearing and given an opportunity to appeal, has been represented by counsel during his pending removal proceedings, and has yet to applications for relief from removal. When he does, he will have an opportunity to present to an Immigration Judge. That he must pursue this robust process from detention is not the fault of the government; his detention is a direct result of his unlawful status as an alien who was found to be present within

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<sup>3</sup> *See* Automated Case Information (last accessed Oct. 8, 2025).

the United States without ever having been admitted or paroled. 8 U.S.C. § 1225(b)(2).

**B. Remaining Factors Do Not Favor Relief.**

With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is in removal proceedings, which entitles the government to detain him in the exercise of discretion; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws.

Moreover, Petitioner has provided no basis for this Court to determine that his continued detention pending removal proceedings will cause him irreparable harm. Indeed, Petitioner is represented by counsel in this habeas and in removal proceedings before the immigration judge. Petitioner's TRO Exhibit 3. Additionally, Petitioner has stated that he intends to seek relief from removal in the form of cancellation of removal. Remaining in detention benefits the Petitioner. Should he be granted the relief he seeks, and he not be detained, he would be subject to any visa caps associated with the type of relief he seeks. Adjudication of this relief while in immigration detention would remove the visa cap hurdle from the defendant, allowing him quickly pursue adjudication of his relief more rapidly. The built-in procedural safeguards in the regulations further weaken his claim that he is likely to suffer irreparable harm without this Court's intervention. Petitioner can apply for relief from removal while in custody and is currently set for a hearing before an immigration judge so that he may file said relief. Respondents also note that Petitioner had the last 14 years to apply for this relief and yet failed to do so. Those 14 years, not in custody, could have been used to prepare and file for relief. If he receives an adverse decision on his relief application, he can seek judicial review through the BIA and the circuit court. The Court should therefore deny the TRO and dismiss this case in its entirety.

### C. Case Citations

During the hearing on October 6, 2025, the Court requested that Respondents provide a list of any known cases that agree with the Respondent's interpretation. The following courts have held in favor of the Respondent's. *See Acxel S.Q.D.C. v Bondi*, No. 25-CV-3348-PAM-DLM, 2025 WL 2617973 (D. Minn. September 9, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 8:25-cv-00526-BCB-RCC, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

### IV. Conclusion

This motion should be denied, and the Court should deny the Petition.

Respectfully submitted,

Justin R. Simmons  
United States Attorney

By: /s/ Fidel Esparza, III

Fidel Esparza, III  
Assistant United States Attorney  
Texas Bar No. 24073776  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
(210) 384-7026 (phone)  
(210) 384-7358 (fax)  
Fidel.Esparza@usdoj.gov

Attorneys for Federal Respondents