

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

ERIC VINICIUS SILVA OLIVEIRA,)

) NUMBER: 6:25-cv-01463

Petitioner,)

) JUDGE: Hon.David C. Joseph

- Versus -)

) MAG. JUDGE: David J. Ayo

BRYAN PATTERSON, Warden, Pine Prairie ICE)
Processing Center;)

BRIAN ACUNA, Acting ICE New Orleans Field)
Office Director;)

TODD M. LYONS, Acting Director, U.S.)
Immigration and Customs Enforcement;)

SIRCE OWEN, Acting Director, Executive Office)
For Immigration Review;)

KRISTI NOEM, Secretary of the U.S.)
Department of Homeland Security; and)

PAMELA BONDI, Attorney General of the)
United States in their official capacities,)

Respondents.)

**MOTION FOR TEMPORARY RESTRAINING
ORDER/PRELIMINARY INJUNCTION**

Petitioner, hereby moves under Federal Rule of Civil Procedure 65 and for reasons set forth, for a temporary restraining order and preliminary injunction for

the immediate release of the Petitioner from ICE custody, pending further proceedings consistent with the Petition for a writ of habeas corpus; to hold an immediate bond hearing for the Petitioner; and barring the Respondents, their agents, employees and any of their agents from removing, transferring, relocating the Petitioner from this jurisdiction in violation of the Petitioner's United States Constitution's Fifth Amendment Due Process Clause rights. In support of the motion Petitioner states that:

1. To obtain injunctive relief the Petitioner must establish: (1) a substantial likelihood of success on the merits of the Petitioner's claim (2) a substantial threat of irreparable injury if the injunction is not granted (3) the threatened injury outweighs the threatened harm the injunction may do to the opposing party and (4) granting the injunction will not disserve the public interest. *See Misquitta v. Warden Pine Prairie ICE Processing Center*, 353 F.Supp. 3d 518, 521(W.D.La. Nov. 16, 2018) (citing *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981).

2. This relief is warranted. Petitioner is likely to succeed on the merits of his claims. Pursuant to 8 U.S.C. § 1226(a) the Respondents are currently unlawfully detaining the Petitioner at the Pine Prairie ICE Processing Center in Pine Prairie, LA 70576, and Petitioner has been in ICE custody since August 15, 2025, after being apprehended by ICE officers looking for another individual during a

traffic stop, in Hartford, CT in violation of the Petitioner's Due Process rights for a bond hearing 8 U.S.C. § 1226(a).

3. Petitioner has been unlawfully and unconstitutionally deemed ineligible for a bond based on an erroneous finding that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See* Order of Immigration Judge dated September 8, 2025 denying Petitioner custody redetermination pursuant to 8 C.F.R. § 1236 based on: "Respondent is statutorily ineligible for IJ custody redetermination. *See Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019; *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)."

4. The Petitioner's continued detention is unlawful under 8 U.S.C. § 1226(a) because the expedited removal charge is improper since he has resided in the United States since 2016 – a period of nine years – (and four years since the Immigration Judge dismissed removal proceedings) and that deprivation of liberty, as in the Petitioner's case, is unwarranted and injunctive relief should be granted under Rule 65. *See Kostak v. Trump*, 2025 WL 2472136 (W.D.La. Aug. 27, 2025)(No. 3:25-cv-01093) and *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D.La. Sept. 11, 2025)(3:25-cv-01193).

5. The Supreme Court recently analyzed the interplay between 8 U.S.C. § 1225 and 8 U.S.C. § 1226 in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). The Court distinguished between the detention of arriving aliens who are seeking entry

into the United States under 8 U.S.C. § 1225 and the detention of those who are already present in the United States under 8 U.S.C. § 1226.

6. The Court found that for those already present in the United States 8 U.S.C. § 1226 already provides for bond hearings at the discretion of the Attorney General.

7. Because the Petitioner in the instant case has already been present in the United States for nine years, the Petitioner should be entitled to a bond hearing under 8 U.S.C. § 1226.

8. ICE misclassified and mischaracterized the Petitioner as “seeking admission” under 8 U.S.C. § 1225, erroneously placing the Petitioner in expedited removal proceedings.

9. Absent relief, the Petitioner will be irreparably harmed due to potential immediate and irreparable removal from the United States and risk of harm without an adjudication of rights, deprivation of liberty, lack of a meaningful review, family hardship, and access to counsel.

10. Subsequent to a status conference held on October 6, 2025, pertaining to the pending Petition for Habeas Corpus, AUSA Shannon T. Smitherman, Chief, AUSA advised Lisa LaCombe, Courtroom Deputy, that “Petitioner was issued an expedited removal order on August 15, 2025, and was scheduled for removal on October 1, 2025.”

11. Given that the Petitioner has already been “scheduled for removal on October 1, 2025 - a date that has already passed – there is evidence of the irreparable injury and utmost urgency if the Respondents are not enjoined.

12. Petitioner is a native and citizen of Brazil who last entered the U.S. when he was 16-years-old, on August 26, 2016 without inspection at Nogales, AZ.

13. The Petitioner was issued an NTA (Notice to Appear) and was granted humanitarian parole on August 27, 2016.

14. Petitioner’s removal case (A ) was dismissed on July 8, 2021 by Immigration Judge Michael W. Straus, in Hartford, CT pursuant to 8 C.F.R. § 1239.2(c), 8 C.F.R § 1239.2(a)(7).

15. On August 15, 2025, after his arrest during a random traffic encounter the Petitioner was wrongly placed in expedited removal proceedings pursuant to INA § 235(b)(1), 8 U.S.C. § 1225(b)(1) and found inadmissible pursuant to INA § 212(a)(7)(A)(i)(1).

16. On August 8, 2025, Petitioner was denied custody redetermination by the Immigration Judge, who found statutory ineligibility, citing, *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)

17. Petitioner has not been charged with a crime, and does not possess a

criminal history. Petitioner has never been arrested, nor does he have any pending criminal matters.

18. Unless this Court issues a temporary restraining order and subsequent preliminary injunction staying the removal or transfer of the Petitioner, without a bond hearing, in violation of the Petitioner's Due Process rights, the Petitioner will continue to suffer irreparable harm: the serious abridgment of the Petitioner's fundamental right to liberty, lack of meaningful review, potential removal from the United States without a full adjudication of his rights, family hardship and lack of access to counsel, should he be removed.

17. "Violation of constitutional rights constitute irreparable injury as a matter of law." *Springtree Apartments, ALPIC v. Livingston Parish Council*, 207 F. Supp. 2d 507, 515 (M.D. La, 2001); 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d Ed. 1995) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). This reasoning essentially collapses the "likelihood of success on the merits" and "irreparable harm" prongs of the injustice inquiry where constitutional rights are at stake. *Forum for Academic & Inst. Rights v. Rumsfeld*, 390 F.3d 219, 246 (3d. Cir. 2004).

18. The potential harm to Petitioner far outweighs any burden that Respondents will face if the Court enjoins an unconstitutional deprivation of Petitioner's fundamental rights to Due Process and liberty.

19. The harm to Petitioner who has extended residency, strong family ties and as a minor who has matured in the United States, poses serious due process concerns, as does lack of an individualized assessment for danger or flight risk coupled with indefinite detention.

20. A temporary restraining order and eventual preliminary injunction will not disserve the public interest, but would affirmatively promote it.

21. The public interest is ensured when individuals are not arbitrarily deprived of liberty after decades-long policy of bond availability promotes the public interest.

22. Because the Petitioner faces an imminent risk of harm if Respondents are not enjoined, this Court should:

- a. Grant injunctive relief staying Respondent's removal or transfer of Petitioner.

Date: 10/08/2025
New York, New York

Respectfully submitted,

s/Steven Lyons

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Department of Homeland Security; and)
PAMELA BONDI, Attorney General of the))
United States in their official capacities,)
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Respondents.)
)

**MEMORANDUM OF LAW FOR RESTRAINING
ORDER/PRELIMINARY INJUNCTION**

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. Petitioner, Eric V. Silva Oliveira is a 25-year-old native and citizen of Brazil who entered the United States in 2016, without inspection when he was 16-years-old at the U.S.-Mexico border near, Nogales, AZ.

2. The Petitioner was issued an NTA (Notice to Appear) and placed in removal proceedings pursuant to INA § 212(a)(7)(A)(i)(I) and was granted humanitarian parole. At a hearing on July 8, 2021, an Immigration Judge dismissed the Petitioner's removal proceedings.

3. On August 16, 2025, the Petitioner was detained and arrested after being apprehended by ICE officers looking for another individual during a traffic stop, in Hartford, CT.

4. The Petitioner was placed in expedited removal proceedings and denied a bond hearing by an Immigration Judge dated September 8, 2025, based on lack of jurisdiction citing, *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

5. The Petitioner has now been detained for nearly two months without a bond hearing and according to an e-mail of Shannon T. Smitherman, Chief, AUSA dated October 6, 2025, advised Lisa LaCombe, Courtroom Deputy, that "Petitioner

was issued an expedited removal order on August 15, 2025, and was scheduled for removal on October 1, 2025.”

6. The Petitioner is faced with the real possibility of imminent removal from the U.S. if the Petitioner is not granted a restraining order and preliminary injunctive relief based on statutory, regulatory and violation of the U.S. Constitution Fifth Amendment Due Process Clause.

7. Petitioner requests that to vindicate his rights, a restraining order and preliminary injunction should issue enjoining Respondents from removing the Petitioner and granting Petitioner injunctive relief.

II. JURISDICTION

8. This Court has jurisdiction pursuant to 8 U.S.C. § 1252(g). The United States Supreme Court held that §1252(g) relates to “three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm*, 525 U.S. 471, 482 (1999) (emphasis in original). “By its explicit terms § 1252(g) strips courts of subject-matter jurisdiction to review claims ‘arising from’ a decision or action to execute a removal order against an alien.” *Westley v. Harper*, No. 25-cv-229, 2025 WL 592788, at *4 (E.D. La. 2025).

9. The Petitioner does not contest the initiation or adjudication of his case.

Petitioner requests that a restraining order and injunctive relief be provided staying and enjoining Respondents from removing the Petitioner. *See Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000)(1252(g) “does not bar courts from reviewing an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to execute removal orders.”

10. The Petitioner is requesting the enforcement of his constitutional rights to due process not the legitimacy or adjudication of removal proceedings or orders. Consequently, this Court has jurisdiction and authority to hear this case. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018) analyzed habeas jurisdiction to challenge detention without an individualized bond hearing.

III. INTERPLAY BETWEEN 8 U.S.C. § 1225 AND 8 U.S.C. § 1226

11. 8 U.S.C. § 1225 provides that “an alien who arrived in the United States or is present in this country but has not been admitted, is treated as an applicant for admission.” *See Jennings v. Rodriguez*, 583 U.S. at 287 (2018) in analyzing habeas jurisdiction to challenge detention without an individualized bond hearing the Court noted that 8 U.S.C. § 1225(b) “applies primarily to aliens seeking entry into the United States.” *Id.* at 297; and 8 U.S.C. §1226 “applies to aliens already present in the United States.” *Id.* at 303.

12. Petitioner asserts that he is detained pursuant to 8 U.S.C. § 1226

allowing for a bond hearing and not 8 U.S.C. § 1225 requiring mandatory detention as the Respondents assert.

13. Thus, applying the reasoning in *Jennings* to the facts in the instant case, the Petitioner entered the United States in 2016 – nine years ago - without inspection and was served with an NTA, placed in removal proceedings and granted humanitarian parole. His removal proceedings were subsequently dismissed.

14. Nine years later, in 2025, the Petitioner was already present in the United States when he was arrested and detained and served with another NTA placing him in expedited removal proceedings under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1) subject to mandatory detention. *See* Order of the Immigration Judge dated September 8, 2025 denying the Petitioner a bond hearing due to lack of jurisdiction based on *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

15. Because the Petitioner was already present in the United States for nine years, under 8 U.S.C. § 1226 and not seeking admission under 8 U.S.C. § 1225, the Petitioner should not be subject to mandatory detention. *See Jennings*.

IV. CONCLUSION

16. Based on the foregoing, it is respectfully asserted that the Petitioner is

subject to 8 U.S.C. §1226(a) and Respondents should be enjoined and stayed from removing or transferring the Petitioner on the basis that he is detained under 8 U.S.C. § 1225(b)(2).

Dated: 10/08/2025
New York, NY

s/Steven Lyons
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