

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

EDGUAR ADRIAN LOPEZ DE LEON,

Petitioner,

Case No. 5:25-cv-00165

v.

Dist. Judge Marina Garcia Marmolejo

Mag. Judge: Brian C. Bajew

Immigration and Customs Enforcement
Harlingen Field Office Immigration and
Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT
OF HOMELAND SECURITY; Pamela BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW;
GEO Corporation, Administrator of
RIO GRANDE PROCESSING CENTER,

Respondents.

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**EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER TO PREVENT TRANSFER
OF PETITIONER**

INTRODUCTION

The Petitioner, Edguar Adrian Lopez de Leon, pursuant to Federal Rule of Civil Procedure 65, respectfully submits this Motion for a temporary restraining order to prevent the Respondents from transferring him outside of the jurisdiction of this Court. The Respondents are able to transfer the Petitioner at any time without limitations to remote locations. A transfer could cause a loss of jurisdiction and would require that a new Petition for Habeas be filed and/or new counsel retained. The Petitioner's detention would thereby be extended.

Without a temporary restraining order, the Petitioner will suffer immediate and irreparable harm as described above. Petitioner's detention will be unnecessarily lengthened. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)

FACTS

Petitioner Edguar Adrian Lopez de Leon is in the physical custody of Respondents at the Rio Grande Processing Center in Laredo, Texas where he is being detained by the Respondents.

Petitioner is charged with, *inter alia*, having entered the United States on or around September 2007 and at or near Texas without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i). He has been in the U.S. for over 18 years.

The Respondents allege he is detained under INA §235 which requires mandatory detention without any access to bond. Not even an Immigration Judge can issue bonds if someone is detained pursuant to INA §235.

However, the Petitioner was detained under INA §236 which allows for an immigration judge to consider bond. The Respondents issued an arrest warrant that specifically shows the Petitioner was arrested pursuant to INA §236.

LEGAL STANDARD

To obtain a temporary restraining order, a plaintiff “must establish 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. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Texas Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200, 206 (5th Cir. 2010)

PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

The Petitioner is likely to succeed on the merits since the Respondents did not follow the relevant statute in detaining him and deprived him of the bond hearing to which he is entitled. The Executive Office of Immigration Review (EOIR) erroneously concluded that the Petitioner is subject to mandatory detention

based on the representations of the attorneys for Immigration and Customs Enforcement. The Immigration Judge in Laredo, Texas, found Petitioner ineligible for bond pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as an alien who is present in the United States without admission. Petitioner's detention violates the plain language of the Immigration and Nationality Act of 1952 (INA). INA § 235 does not apply to individuals like Petitioner who previously entered and are now residing in the United States for the last 17 years. Instead, such individuals are subject to a different statute, INA §236, that allows for review by an immigration judge who can decide whether to release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection. The Respondents arrested the Petitioner under a Warrant subjecting him to detention under INA § 236. (Ex. 1 - Warrant for Arrest of Alien).

Numerous courts have found that persons like the Petitioner who have resided in the U.S. for years are subject to INA §236 and are being erroneously detained under INA §235. See, *Lopez-Arrevalo v. Ripa*, 2025 WL 2691828 (W.D. Texas September 22, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La September 11, 2025) *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*

Figueroa, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma*

Perez v. Berg, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

PETITIONER WILL SUFFER IRREPARABLE HARM WITHOUT THE TRO

Without the TRO, Petitioner will suffer irreparable harm. He will be unlawfully detained longer as he finds new counsel and a new Petition for Habeas Corpus is filed in the new jurisdiction. He will have to serve a new U.S. Attorney’s office who will need to begin working on the case when the U.S. Attorney in this district has already received a copy of the case. Time in unlawful detention cannot be remedied without a TRO. Liberty is one of the most precious things a human being can have in life. The Petitioner’s continued detention constitutes a loss of liberty which is irreparable.

THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST WEIGHS IN THE PETITIONER’S FAVOR

The final two factors for a preliminary injunction which is akin to a TRO —

the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009) The Petitioner faces weighty hardships: loss of liberty and significant stress and anxiety. The government, by contrast, faces no hardship, as all it must do is refrain from transferring a person who is being unlawfully detained while this habeas is pending. Avoiding such preventable human suffering strongly tips the balance in favor of the Petitioner. The public interest weighs in favor of adhering to the rule of law. The Respondents will not suffer any damages by not being able to transfer the Petitioner to another facility. He is currently in one of the Respondents' facilities. A transfer to another facility serves no purpose.

CERTIFICATION OF SERVICE

Though this is an ex parte motion and no government attorney has been assigned to this case, counsel did email AUSA Daniel Hu, Chief of the Civil Unit in the Houston office of the U.S. Attorney for the Southern District of Texas.

CONCLUSION

To prevent ouster of this Court's habeas jurisdiction, Petitioner respectfully asks this Court pursuant to 28 U.S.C. §§ 1651(a) (All Writs Act), 2241, to issue a limited order prohibiting Respondents from transferring Petitioner outside the

Court's District or otherwise changing his immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. See *Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

Respectfully submitted:

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