

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JUAN MARIA	:	No. 3:25-CV-1887
CHIMBORAZO CUNIN	:	
Petitioner	:	(Neary, J.)
	:	(Camoni, M.J.)
v.	:	
	:	
BRIAN MCSHANE, et al.,¹	:	
Respondents	:	Filed Electronically

**RESPONDENT’S OPPOSITION TO
PETITIONER’S MOTION FOR PRELIMINARY INJUNCTION**

Petitioner Juan Maria Chimborazo Cunin asks this Court to enjoin the Respondents from further detaining him under 8 U.S.C. §1225. (Doc. 14) Respondents oppose Cunin’s motion because it is moot as the Court has ordered a bond hearing under 8 U.S.C. § 1226. (Doc. 1) Alternatively, Cunin cannot meet his burden of establishing he is entitled to preliminary injunctive relief.

¹ Although Petitioner named several other government officials, the only proper respondent in this case is Angela Hoover, the Warden of Clinton County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (“In habeas challenges to present physical confinement – ‘core challenges’ – the default rule is that the proper respondent is the warden of the facility where the prisoner is being held.”). Petitioner requests release from confinement. *See* Doc. 1 at 31, ¶ 6.

I. Procedural History

Petitioner Juan Maria Chimborazo Cunin was detained by Enforcement and Removal Operations on October 2, 2025, at his place of business after it was determined through multiple records checks that Cunin was unlawfully present in the United States. He is currently detained at the Clinton County Correctional Facility in McElhattan, PA. (Exhibit 1, I-830)

On October 8, 2025, Cunin filed a Petition (Doc 1) for a writ of habeas corpus and Complaint for Declaratory and Injunctive Relief. A response was filed by the Government. (Doc 9)

On December 9, 2025, Cunin filed a motion for a temporary restraining order and preliminary injunction claiming Petitioner's detention was unlawful. (Doc 14) The motion requested from the Court an order "enjoining Respondents from further detaining him." *Id.*

On December 10, 2025, this Court issued an order granting the motion (Doc 16) to enjoin the Government from detaining him under 8 U.S.C. §1225. Further, the Court ordered the Government to provide Cunin with a bond hearing under 8 U.S.C. §1226 within seven days of this order. (Doc 16).

Subsequent to the order, the Department of Homeland Security through the Office of the Principal Legal Advisor, advised that a bond hearing under 8 U.S.C. § 1226 has been scheduled for December 17 at 10:30 am. (Exhibit 2, Bond Hearing Notice)

This brief is timely filed in opposition to Petitioner's motion for Preliminary Injunction.

II. Factual and Procedural Background

The facts are not in dispute in this case. Petitioner is a native and citizen of Ecuador who entered the United States without inspection on or about May 28, 2005 (Doc 1). On or about March 31, 2017, Petitioner filed an Application for Asylum and for Withholding of Removal, Form I-589. (Exhibit 3, Record of Deportable/Inadmissible Alien, at 3) On May 15, 2020, a Notice to Appear was filed with the Immigration Court. (Exhibit 4, NTA at 1). On or about November 18, 2022, Petitioner filed an Application to Register Permanent Residence of Adjust Status, Form, I-485. (Exhibit 3, I-213 at 3) On or about July 9, 2024, this application was closed due to a data audit. *Id.* Cunin was encountered by Enforcement and Removal Operations (ERO) on October 2, 2025, after receiving credible evidence of illegal aliens employed at a business

location of 9048 S. Route 44 in Williamsport, Pennsylvania. *Id.* at 2. Petitioner was found not to be in possession of documents to enter or remain in the United States and was unlawfully present. *Id.*

On or about October 2, 2025, Petitioner arrived at and has been housed at Clinton County Correctional Facility located at 58 Pine Mountain Rd, McElhattan, PA. (Doc 1 at 7)

III. Statement of Question Involved

Whether this Court deny Cunin's preliminary injunction motion as it is moot and alternatively, he cannot meet his burden of establishing he is entitled to preliminary injunctive relief.

IV. Argument

A Legal standard

A preliminary injunction is an extraordinary remedy that should be granted only if a plaintiff demonstrates: "(1) that they are reasonably likely to prevail eventually in the litigation and (2) that they are likely to suffer irreparable injury without relief." *Hope v. Warden York Cty. Prison*, 972 F.3d 310, 319–20 (3d Cir. 2020) (quoting *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 105 (3d Cir. 2013)). If these two threshold showings are made the court can then consider, to the extent relevant, "(3) whether an injunction would harm the [defendants] more

than denying relief would harm the plaintiffs and (4) whether granting relief would serve the public interest.” *Id.*

The burden is on the moving party to prove the existence of each of these necessary elements. *See Acierno v. New Castle Cnty.*, 40 F.3d 645, 653 (3d Cir. 1994). Failure to establish any of them renders a preliminary injunction inappropriate. *See Opticians Ass'n of Am. v. Independent Opticians of Am.*, 920 F.2d 187, 192 (3d Cir.1990). Moreover, “when the preliminary injunction is directed not merely at preserving the status quo but, as in this case, at providing mandatory relief, the burden on the moving party is particularly heavy.” *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980) (citation omitted).

B. Cunin’s motion is moot because the relief he seeks has already been provided.

In his motion, Cunin asks this Court to “grant a Temporary Restraining Order (“TRO”) and Preliminary Injunction enjoining the Government from detaining him. (Doc 14) Cunin argues that mandatory detention under 8 U.S.C. § 1225 (b)(2)(A) misapprehends federal law and violates his due process rights (Docs 1, 14). Cunin argues that 8 U.S.C. § 1226 should apply to him and would allow for a bond hearing. *Id.* The

court ordered the Government to provide Cunin with a bond hearing under 8 U.S.C. § 1226. (Doc 16)

Because the relief Cunin seeks was already provided, his motion should be dismissed as moot. *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698–99 (3d Cir. 1996) (“If developments occur during the course of adjudication that eliminate a plaintiff’s personal stake in the outcome of a suit . . . the case must be dismissed as moot.”)

C. Alternatively, Cunin cannot meet his legal burden for preliminary injunctive relief.

Alternatively, if this Court does not believe Cunin’s preliminary injunction motion is moot, which Respondent’s dispute, then denial is still appropriate here. Cunin cannot meet any of the factors to support issuing a preliminary injunction here.

Cunin cannot demonstrate the first prong of a preliminary injunction: that he will likely succeed on the merits of his lawsuit. To the extent this Court finds Petitioner will succeed on the merits, Respondents rely on the arguments in the previously filed Response to Petitioner’s Writ of Habeas Corpus and Complaint for Injunctive Relief (Doc 9).

Likewise, Cunin cannot demonstrate the second prong of a preliminary injunction: he is being irreparably harmed. In order to secure a preliminary injunction, Cunin must make a “clear showing of immediate . . . injury,” and not just allege a “risk” of harm. *ECRI v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987) (citation omitted). Moreover, the “requisite feared injury or harm must be irreparable—not merely serious or substantial,” and it “must be of a peculiar nature, so that compensation in money cannot atone for it.” *Id.* (citation omitted). If he cannot demonstrate this kind of “presently existing actual threat” then the “dramatic and drastic power of injunctive force may [not] be unleashed.” *Holiday Inns of Am., Inc. v. B & B Corp.*, 409 F.2d 614, 618 (3d Cir. 1969).

Because Cunin has been scheduled for a bond hearing under 8 U.S.C. § 1226, he cannot show any present harm. He has been granted the relief he has requested; therefore, he cannot show irreparable harm. (Doc 16) Since the court order addressed this concern and he will now receive a bond hearing under 8 U.S.C. § 1226, he has no further argument. Whether or not the upcoming bond hearing results in further detention is not at issue. Cunin’s request for injunctive relief was solely

based on detention under 8 U.S.C. § 1225. His relief has been granted, and he has been given a bond hearing under 8 U.S.C. § 1226. As such, he cannot meet the imminent injury factor.

Because Cunin cannot meet his burden of establishing factors one and two, this Court does not have to consider the remaining factors. The moving party is required to “first satisfy [his] burden with respect to factors one and two” before considering factors three and four. *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484 (3d Cir. 2000). Since Cunin failed to satisfy his burden, a preliminary injunction should not be issued here.

V. Conclusion

Cunin's request for a preliminary injunction is moot and should be denied.

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Date: December 15, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on December 15, 2025, she served a copy of the attached

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Via Electronic Case Filing (ECF) upon the following:

Addressee:

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Matthew J. Archambeault

s/ Maureen Yeager
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