

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

ANDRES ALONSO  
CERVANTES-MARTINEZ,  
A [REDACTED]  
*Petitioner,*

Case No. 1:25-cv-236

v.

WARDEN FOR THE PORT ISABEL  
DETENTION CENTER; TODD M.  
LYONS, Acting Director, U.S.  
Immigration and Customs Enforcement;  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT; PAMELA JO BONDI,  
U.S. Attorney General,  
*Respondents.*

PETITIONER'S MEMORANDUM OF  
LAW IN SUPPORT OF THE MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION

On October 19, 2025, Petitioner Andres Alonso Cervantes-Martinez filed a writ of habeas corpus due to his unlawful detention. He now seeks a temporary restraining order and preliminary injunction, precluding Respondents from further detaining him and removing him from the United States because there is not a lawful removal order. Critically, neither Mr. Cervantes-Martinez's detention nor Respondents' current attempts to quickly remove him without completing the requisite credible fear review process and despite an unsigned removal order comply with the Immigration and Nationality Act (INA), federal regulations, or due process. Injunctive relief is warranted to maintain the status quo pending full consideration of Mr. Cervantes-Martinez's petition.

Mr. Cervantes-Martinez is a native and citizen of Peru who entered the United States in 2022. At that time, he was apprehended by immigration officials and placed in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). However, those proceedings have been riddled with error and the resulting expedited removal order is unenforceable.

On August 18, 2025, Immigration and Customs Enforcement (ICE) detained Mr. Cervantes-Martinez when he arrived at the United States Citizenship and Immigration Service (USCIS) Field Office to attend his adjustment of status interview. ICE recently transferred him to the Port Isabel Service Processing Center, a staging facility for his removal to Peru.

On October 19, 2025, Mr. Cervantes-Martinez filed a petition for a writ of habeas corpus on the basis that he has a fear of returning to Peru and had not been provided the requisite fear screening prior to his removal. *See* ECF No. 1. On further investigation, Mr. Cervantes-Martinez learned that an immigration judge had recently issued a new order affirming a three-year-old fear screening, without serving Mr. Cervantes-Martinez. This action violated the applicable regulations relating to credible fear proceedings and thus violates his due process rights. Additionally, this case presents one of the limited circumstances in which a noncitizen can challenge an expedited removal order in a petition for a writ of habeas corpus.

Because Mr. Cervantes-Martinez's removal is imminent—despite the unlawful nature of the order seeking to be enforced—he requests a temporary restraining order to allow this Court jurisdiction and time to consider the issue. He also requests an order releasing him from custody, as his continued detention is unlawful because there is no executable removal order.

**RELEVANT FACTUAL BACKGROUND**

Mr. Cervantes-Martinez entered the United States on May 2, 2022, without inspection. *See* Ex. A at 12.<sup>1</sup> He was encountered shortly thereafter by United States Border Patrol, and he expressed a fear of returning Peru. *Id.* On May 4, 2022, Border Patrol Agent found him inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I) [INA § 212(a)(7)(A)(i)(I)], as an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the INA. *Id.* at 9. No officer ever signed the order of removal that accompanied the charge of inadmissibility. *Id.*

On May 31, 2022, an asylum officer conducted a credible fear interview. *Id.* at 14-31. The asylum officer found Mr. Cervantes-Martinez credible, but concluded that he did not establish a credible fear of persecution or torture should be returned to Peru. *Id.* at 17-18. That decision was approved by a Supervisory Asylum Officer on June 1, 2022. *Id.* at 18. Mr. Cervantes-Martinez requested an immigration judge's review of the asylum officer's determination. While that review was pending, ICE paroled Mr. Cervantes-Martinez from custody pursuant to 8 U.S.C. § 1182(d)(5)(A), and he traveled to live with his uncle in Chicago, who was his sponsor. *See id.* at 28 (stating that his sponsor purchased him a plane ticket and he was supposed to be released the following day). The immigration court in Chicago, Illinois scheduled the review proceeding for June 13, 2022. Ex. B at 1. For unknown reasons, the hearing was subsequently rescheduled for July 28, 2022. Ex. C at 1; *see* Ex. D. While the immigration court sent a notice of the scheduling change, that notice was returned to the court as undeliverable. Ex. C. The address on the envelope is illegible and it is unknown what address the court used. *Id.*

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<sup>1</sup> The page numbers refer to the Adobe Acrobat pagination, which should correspond to the pagination of the ECF filing system.

Mr. Cervantes-Martinez contracted COVID-19 at the time of the July 2022 hearing. *See* Ex. E. Mr. Cervantes-Martinez did not appear at the immigration court for the review proceedings and the immigration judge returned the case to DHS without conducting a review. In August 2022, Mr. Cervantes-Martinez reached out to Immigration and Customs Enforcement (ICE) officers to see the status of his case. Ex. F. Upon information and belief, ICE did not respond to the email, or provide Mr. Cervantes-Martinez any additional process or information.

Mr. Cervantes-Martinez subsequently married a United States citizen, who has filed a visa petition on his behalf. The petition remains pending. *See* Ex. G (printout from egov.uscis.gov for receipt number IOE0930834782). In August 2025, the ICE filed a motion with the immigration court for an order on the credible fear review. Ex. D. On October 2, 2025, an immigration judge issued an order in the case. Ex. H. The order referenced a nonexistent June 13, 2022 DHS negative credible fear determination and provided no factual findings, only a conclusion and signature. *Id.* The order also failed to indicate whether or how it was served on Mr. Cervantes-Martinez. *Id.*

Over three years later, ICE apprehended Mr. Cervantes-Martinez at his interview for adjustment of status and placed him in ICE custody. He has since been transferred to Port Isabel Service Processing Center. *See* Ex. I. To date, he has not received a copy of a complete, enforceable removal order (expedited or otherwise), and has not received an immigration judge review of his June 2, 2022 credible fear determination.

### **ARGUMENT**

“To obtain a preliminary injunction, the applicant must show (1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) that his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) that granting the preliminary injunction will not disserve the

public interest.” *Planned Parenthood of Houston & Southeast Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005). “The function of a preliminary injunction is merely to preserve the status quo until the merits of a case can be adjudicated.” *Morgan v. Fletcher*, 518 F.2d 236, 239 (5th Cir. 1975); *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty*, 415 U.S. 423, 439 (1974). The standard for a temporary restraining order is the same as for a preliminary injunction. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987); *Texas v. United States*, 524 F. Supp. 3d 598, 651 (S.D. Tex. 2021).

**A. Mr. Cervantes-Martinez is likely to succeed on the merits.**

Mr. Cervantes-Martinez is likely to succeed on the merits of his request for a writ of habeas corpus because ICE is illegally detaining and seeking to remove him due to an invalid expedited removal order. The Department of Homeland Security (DHS) has the statutory authority to issue an expedited removal order without further hearing before an immigration judge if, upon inspection of a noncitizen attempting to enter the United States, DHS determines that the noncitizen either seeks to procure admission to the United States by fraud or willful misrepresentation or does not have a valid visa or entry documents. 8 U.S.C. § 1125(b)(1)(A)(i). However, if the noncitizen indicates a fear of persecution or intent to apply for asylum, DHS is required to conduct a credible fear interview by an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii). If the asylum officer finds that the noncitizen has a credible fear of persecution, the noncitizen is referred for removal proceedings before an immigration judge. 8 U.S.C. §§ 1225(b)(1)(B)(ii). If the asylum officer finds no credible fear, noncitizen is entitled to a “prompt review by an immigration judge” of the negative credible fear determination. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). “Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection.” *Id.* Critical to this case,

“[r]eview shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after” the asylum officer’s credible fear determination. *Id.*

There is very limited judicial review available of expedited removal orders. Specifically, a noncitizen may only seek review, in a habeas corpus proceeding, of three determinations:

- (A) Whether the petitioner is an alien,
- (B) Whether the petitioner was ordered removed under such section, and
- (C) Whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee . . . or has been granted asylum. . . .

8 U.S.C. § 1252(e)(2). This claim raises a challenge to the second category: whether Mr. Cervantes-Marinez was ordered removed under 8 U.S.C. § 1225(b)(1). The Court’s review is “limited to whether [the expedited removal] order in fact was issued and whether it relates to the petitioner.” 8 U.S.C. § 1252(e)(5). The order, here, found at Ex. A p. 9-10, relates to Mr. Cervantes-Martinez: it contains his full name and his A-number. But this Court must conclude that the order was not, in fact, issued. *Dugdale v. U.S. Customs and Border Protection*, 88 F. Supp. 3d 1, 6 (D.D.C. 2015). As the District Court for the District of Columbia recognized, “[c]ase law on this question is scarce.” *Id.* But such a claim must include whether the order “was not lawfully issued due to some procedural defect.” *Id.*; see also *Agarwal v. Lynch*, 610 F. Supp. 3d 990, 999 (E.D. Mich. 2022) (finding jurisdiction to review a claim of whether the purported expedited removal order was properly issued by the required official).

The order in this case not only is missing the supervisor’s approval that the court found problematic in *Dugdale*, but it is also missing the name and title of a line immigration officer. Ex.

A at 9; *see Dugdale*, 88 F. Supp. 3d at 6 (considering an expedited removal order that neither contained a supervisor's signature nor a checked box indicating remote approval). It is also missing the certificate of service. Ex. A at 9. In fact, the document titled Notice and Order of Expedited Removal is only filled out as to the Notice; not the Removal Order portion of the document. *Id.* Each piece of the missing information is critical and required by regulation.<sup>2</sup> 8 C.F.R. §§ 235.3(b)(2)(i), (7). And without a completed removal order portion of the document, the removal order itself was not final. *See Agarwal*, 610 F. Supp. 3d at 999, 1001; *Dugdale*, 88 F. Supp. 3d at 7-8 (recognizing that "given how few means aliens have to challenge expedited removal orders, the Court believes it is important that [Customs and Border Protection] follow the letter of the law in issuing them, even in cases where the grounds for removal appear clear."). Accordingly, there is no executable order. For this reason alone, the Court should grant an injunction precluding Respondents from removing Mr. Cervantes-Martinez from the United States.

It should also order Mr. Cervantes-Martinez's release because he is not currently subject to an expedited removal order. Thus, his continued detention violates his due process rights. To be sure, *Department of Homeland Security v. Thuraissigiam*, provided for mandatory detention for those placed in expedited removal and detained pending resolution of that process. 591 U.S. 103 (2020). But DHS released Mr. Cervantes-Martinez from custody in 2022, and he has since established connections in the United States. *Id.* at 107. And he is not subject to an expedited removal order that would otherwise subject him to mandatory detention at this time.

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<sup>2</sup> While Mr. Cervantes-Martinez signed the document acknowledging receipt, because only the Notice section was completed, he could only have acknowledged that Notice, and not any determinations that DHS may have intended to make. *See* Ex. A at 10.

Even if there was a removal order, DHS released him from custody in 2022 and has not demonstrated that any circumstances have changed such that he should be re-detained at this time. While DHS has authority to revoke a noncitizen's bond or parole "at any time," there must nevertheless be a change of circumstances to warrant re-detention. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019); *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). Mr. Cervantes-Martinez has not committed a crime and is not a flight risk. Simply put, there was no reason for ICE to re-detain him in August 2025. And there is no basis for continued, mandatory detention under 8 U.S.C. § 1225(b)(2)(A). See *Buenrostro-Menez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025).

Finally, Mr. Cervantes-Martinez is likely to succeed on his claim because he has not received proper review of his credible fear claim. See Petition. The statute requires that an immigration judge review the asylum officer's credible fear determination within no more than 7 days. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). The October order is incomplete; it contains no factual findings, refers to the wrong date of the asylum officer's evaluation, and the certificate of service does not indicate that it was served on Mr. Cervantes-Martinez. See Ex. H. While Mr. Cervantes-Martinez admittedly cannot challenge the credible fear determination itself, the agency has not complied with the statute and regulations in the credible fear process, and thus his removal pending proper completion of that process is unlawful. For these reasons, Petitioner has established a likelihood of success on the merits of his habeas petition and the Court should grant a temporary restraining order, precluding Respondents from removing Mr. Cervantes-Martinez and ordering his release.

**B. Mr. Cervantes-Martinez will suffer irreparable injury absent an injunction.**

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”); *see Maniar v. Warden Pine Prairie Corr. Ctr.*, No. 6:18-CV-00544, 2018 WL 11544220, at \*4 (W.D. La. July 11, 2018) (recognizing that civil detention that is punitive violates due process) (citing *United States v. Hare*, 873 F.2d 796, 800 (5th Cir. 1989)). While Mr. Cervantes-Martinez was processed for expedited removal and thus any due process rights in those proceedings are limited, this case raises one of the limited grounds for challenging an expedited removal order. 8 U.S.C. § 1252(e)(2)(B). Because there is no valid removal order, Respondents continue to violate Mr. Cervantes-Martinez’s rights every day he remains detained. *See, e.g. Beyhaqi v. Noem*, No. 4:25-CV-1788 (S.D. Tex. Apr. 22, 2025) (DHS termination of a student visa created irreparable harm in the form of economic and educational hardships with the mere risk of detention and deportation).

**C. Mr. Cervantes-Martinez’s interest in his liberty and continuing his application for adjustment of status outweighs Respondents’ desire to keep him detained in light of the lack of an enforceable removal order.**

Third, the harm to Mr. Cervantes-Martinez outweighs any harm the injunction would do to Respondents. “There is generally no public interest in the perpetuation of unlawful agency action,” *Louisiana v. Eiden*, 55 F.4th 1017, 1035 (5th Cir. 2022), and this case involves significant and ongoing unlawful action by Respondents. Neither Mr. Cervantes-Martinez’s detention nor Respondents’ current attempts to quickly remove him without completing the credible fear review process and despite an unsigned removal order comply with the INA, federal regulation, or due process. Therefore, the balance of equities in the third factor favors Mr. Cervantes-Martinez.

**D. An injunction will not disserve the public interest.**

Fourth, a limited injunction protecting Mr. Cervantes-Martinez will not disserve the public interest. Freedom from unlawful custody is the heart of due process protections and necessarily is in the public interest. *Zadvydas*, 533 U.S. at 690. Moreover, the public has a strong interest in immigration officers following federal laws and regulations in carrying out their duties. Indeed, “government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise discretionary decisions.” *Wilkinson v. Legal Servs. Corp.*, 27 F. Supp. 2d 32, 34 n.3 (D.D.C. 1998) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–69 (1954)).

Without an enforceable order and without having complied with the regulations for credible fear interviews, the public interest far outweighs DHS’s desire to quickly remove or keep Mr. Cervantes-Martinez detained. There are ample regulations and processes in place to ensure Mr. Cervantes-Martinez cooperation and compliance with any directives regarding his removal proceedings. *See e.g.*, 8 C.F.R. §§ 212.5(b), 235.3. Indeed, social norms in this country demand that “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The public interest does not and cannot favor the unlawful detention of Mr. Cervantes-Martinez in an attempt to skirt its legal obligations or due process.

**NO BOND IS WARRANTED UNDER RULE 65(c)**

Finally, the Court should not require Mr. Cervantes-Martinez to provide security prior to issuing an injunction. Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” A court can waive the bond requirement should

the plaintiff establish they are very likely to succeed on the merits. *See Continuum Co., Inc. v. Incepts, Inc.*, 873 F.2d 801, 803 (5th Cir. 1989); *J.A.V. v. Trump*, 2025 WL 1257558, \*2 (S.D. Tex. Apr. 11, 2025); *Doe v. Noem*, 778 F. Supp. 3d 1151, 1167 (W.D. Wash. 2025); *Pablo Sequen v. Kaiser*, -- F. Supp. 3d --, 2025 WL 2203419, \*4 (N.D. Cal. Aug. 1, 2025). Here, there is no reasonable likelihood of harm to Respondents in enjoining Mr. Cervantes-Martinez's removal prior to them providing him with the process to which he is entitled. *Pablo Doe*, 778 F. Supp. 3d at 1167; *Sequen*, 2025 WL 2203419 at \*4.

### **RELIEF**

Having met his burden to establish each element for a preliminary injunction, the Court must craft the injunction to appropriately maintain the status quo until the merits of Mr. Cervantes-Martinez's petition may be finally adjudicated. For this reason, Mr. Cervantes-Martinez requests the Court enjoin Respondents from removing Mr. Cervantes-Martinez from the United States until this petition is resolved so as to preserve the Court's jurisdiction and order his release where he is not subject to valid expedited removal order.

**CONCLUSION**

Based on the foregoing reasons, Petitioner requests the Court grant the motion and issue a temporary restraining order precluding Respondents from removing Mr. Cervantes-Martinez from the United States without honoring the necessary process.

October 21, 2025

Respectfully submitted,

/s/ Jessica A. Dawgert

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**CERTIFICATE OF SERVICE**

On October 21, 2025, undersigned counsel caused a true and correct copy of the foregoing Petitioner's Motion for Preliminary Injunction and Temporary Restraining Order to be filed with the Clerk of the Court for the U.S. District Court for the Southern District of Texas via the Court's CM/ECF. A courtesy copy will be electronically mailed to the Civil Chief for the United States Attorney's Office for the Southern District of Texas.

Date: October 21, 2025

Respectfully Submitted,

/s/ Jessica Dawgert  
JESSICA DAWGERT

**CERTIFICATE OF CONFERENCE**

Counsel for Respondents have not yet entered an appearance in this case so undersigned counsel did not confer with counsel prior to filing of this motion as required by L.R 7.1(D)(1).

Date: October 21, 2025

Respectfully Submitted,

/s/ Jessica Dawgert  
JESSICA DAWGERT