UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

JESUS ARIZMENDI MORA, A# [redacted] Petitioner, vs. JASON STREEVAL, *in his official capacity as Warden of Stewart Detention center*; and GEORGE STERLING, *Field Office Director of ICE Atlanta Field Office*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*; and PAMELA BONDI, *U.S. Attorney General*. Respondents.	CASE NO.: 4:25-cv-00342-CDL-AGH

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF AND REQUEST FOR AN IMMEDIATE HEARING

COMES NOW Petitioner, Jesus ARIZMENDI MORA (Petitioner), A# [redacted], and pursuant to Federal Rule of Civil Procedure 65 and Local Rule 65.1, hereby files his Motion for Temporary Restraining Order and Preliminary Injunctive Relief against Respondents, and states as follows in support thereof:

Petitioner hereby incorporates all contents of his Complaint, ECF 1, into this motion for Temporary Restraining Order and/or Preliminary Injunction.

Upon information and belief, Petitioner entered the United States without inspection through the southern border more than 20 years ago. Since then, He has established strong family, community, and economic ties having lived in the country for so long. He has been married to a

naturalized U.S. citizen. ECF 1. The only reason that he is currently detained and ineligible for a bond before ICE or the Immigration Judge, is the current position being held by both ICE/DHS and EOIR that since Petitioner entered the U.S. without inspection, he is an "arriving alien" or "seeking admission" and therefore his detention is governed by 8 U.S.C. § 1225. *See* generally Complaint, ECF 1, ICE memo, ECF 1-6 and EOIR decision *Matter of Yajure Hurtado*.

Although Petitioner was apprehended within the interior of the United States, many years after his initial entry, immigration authorities have classified him as ineligible for release on bond as an "arriving alien" or "applicant for admission" solely because of his alleged entry without inspection more than three decades ago. This classification is inconsistent with the plain language of the Immigration and Nationality Act (INA). It also contradicts the Supreme Court interpretation in *Jennings v. Rodriguez,* 583 U.S. 281 (2018), is contrary to due process principles and established agency policy. Petitioner's long-term residence, family ties, and lack of significant criminal history demonstrate that he poses neither a flight risk nor a danger to the community. These actions to detain Petitioner or continue his detention constitute a violation of agency regulations and constitutional due process, rendering his detention unlawful.

Specifically, on October 1, 2025, Petitioner was detained by ICE while traveling to work with his brother, José Arizmendi, and another male coworker. At this time, ICE stopped their vehicle during a traffic operation, and all three men were taken into custody. Petitioner was then transported to Stewart Detention Center in Lumpkin, Georgia, where he has been detained ever since. His continued custody lacks a lawful basis, exceeds the scope of ICE's statutory authority, and undermines fundamental protections guaranteed by the Fifth Amendment to the United States Constitution.

Under these circumstances, Petitioner filed a habeas corpus petition in this Court on October 23, 2025, which is currently pending. As explained in detail in the attached Brief in Support, Petitioner is, by this motion, seeking a temporary restraining order and preliminary injunction to prevent ICE and its contracted officials to remove him to a geographic location outside this Court's jurisdiction, to release him from custody unless the government can prove, by clear and convincing evidence, that he is a flight risk or danger to the community, and to enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1225, until his habeas corpus petition is fully resolved.

This Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction is necessary, just, and of an imminent nature because DHS through ICE is detaining Petitioner contrary to law and the U.S. Constitution, causing him significant hardship. Petitioner's continued unlawful detention is justifying the need for Court intervention to prevent irreparable harm. In addition, there is no remedy at law that can adequately compensate Petitioner for the consequences of his continued unlawful detention and if continued could lead to irreversible health impacts.

Petitioner, Jesus Arizmendi Mora, is a 40-year-old citizen of Mexico who has resided in the United States since approximately March 2004, having entered through the southern border without inspection more than twenty-one (21) years ago. He has been married to a U.S. citizen, Yovana Y. Arizmendi, since May 9, 2020, and they have been together since 2014. Petitioner currently has a pending Form I-130, Petition for Alien Relative, filed by his U.S.-citizen spouse on June 27, 2023, and upgraded to immediate-relative status in June 2025, which remains under review by USCIS.

On October 1, 2025, Petitioner was arrested by Immigration and Customs Enforcement ("ICE") officers in Cook County, Georgia, while traveling to work with his brother, José Arizmendi, and another male coworker. According to Petitioner's wife, ICE stopped their vehicle during a

traffic operation, and all three men were taken into custody. Following his apprehension, Petitioner was transferred to immigration custody and remains detained at the Stewart Detention Center in Lumpkin, Georgia, under the custody of DHS.

Petitioner filed this underlying Writ of Habeas action on October 23, 2025. *See* ECF 1. The sole reason that Petitioner is currently detained and ineligible for a bond before ICE or the Immigration Judge is ICE/DHS's and the Executive Office for Immigration Review's (EOIR) position that because Petitioner entered the United States without inspection, he is an "arriving alien" or "seeking admission" and therefore his detention is governed by 8 U.S.C. § 1225. *See* generally Complaint, ECF 1; ICE memo, ECF 1-6 and EOIR decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Although Petitioner was apprehended within the interior of the United States, many years (21) after his initial entry, immigration authorities have classified him as ineligible for release on bond solely because of his alleged entry without inspection more than three decades ago. This classification is inconsistent with due process principles and established agency policy, as Petitioner's long-term residence, family ties, and lack of criminal convictions demonstrate that he poses neither a flight risk nor a danger to the community.

As a result, Petitioner remains unjustly confined at the Stewart Detention Center within the Middle District of Georgia, under conditions amounting to unlawful civil detention, alongside criminals. His continued custody lacks a lawful basis; exceeds the scope of ICE's statutory authority; and undermines fundamental protections guaranteed by the Fifth Amendment to the United States Constitution. Because no administrative remedy exists to ensure ICE/DHS releases Petitioner, judicial intervention is necessary at this time to prevent irreparable harm. The function of preliminary injunctive relief is to **prevent irreparable harm and preserve the status quo ante pending final adjudication**. Courts have repeatedly emphasized that, where the status quo itself

is causing irreparable injury, it may be necessary to alter the situation to prevent further harm, even if this requires affirmative action.[1]

Futility of Bond Request

As set forth in the Complaint, exhaustion of administrative remedies is neither necessary nor required before initiating a writ of habeas corpus to challenge an unlawful arrest. Should Respondents contend that Petitioner was obligated to seek a bond hearing before the immigration judge, such a step is both unnecessary and would be futile under the circumstances. The futility of pursuing a bond request, as well as the legal authorities confirming that exhaustion is not required, are demonstrated in ECF 1-9 and 1-10.

This Court Has Jurisdiction to Grant Relief

This Court has jurisdiction to enjoin Petitioner's removal from the United States unless and until the Immigration Judge orders removal, because 8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful** discretion to **commence** removal proceedings, **adjudicate** those cases, and **execute** orders of removal." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025). As the Fourth Circuit has explained, "§ 1252(g) does not apply to agency interpretations of statutes as these decisions do not fall into any of the three categories enumerated in § 1252(g)."

[1] In *Austin v. Univ. of Fla. Bd. of Trs.*, 580 F. Supp. 3d 1137 (N.D. Fla. 2000), the court granted a preliminary injunction to restore the status quo ante, reasoning that the focus must be on the prevention of injury, not merely the preservation of the status quo. The case involved constitutional rights, including the right to associate and freedom of speech. The court explicitly stated that if the currently existing status quo is causing irreparable injury (policy preventing first amendment rights), it is necessary to alter the situation so as to prevent the injury, and restoration to the last uncontested status between the parties is appropriate. This principle applies regardless of whether the operative complaint has changed, so long as the underlying harm and the need for urgent relief persist.

Section 1252(g)'s bar on jurisdiction is narrow and only includes those three actions (commence removal proceedings, adjudicate cases, execute orders of removal). It does not preclude jurisdiction over the challenges to legality or constitutionality of a noncitizen's detention, that is specifically permitted in the habeas statute. Detention of a noncitizen is a separate issue than removal proceedings. The Supreme Court has read the language "any cause of action or claim by or on behalf of any alien ***arising from*** the decision or action by the Attorney General to **commence proceedings, adjudicate cases, or execute removal orders** against any alien under this chapter" to only refer to those three actions themselves. *Jennings*, 583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-483 (1999)) ("We did not interpret this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General"). In *Reno v. Am.-Arab Anti- Discrimination Comm.*, the Supreme Court clarified that § 1252(g) is not a "'zipper' clause" that prevents judicial review of all actions related to deportation proceedings. 525 U.S. 471, 482 (1999). Instead, "[t]he provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.' There are of course many other decisions or actions that may be part of the deportation process . . . ." Id. at 482 (quoting 8 U.S.C. § 1252(g)). The Court observed that Congress enacted § 1252(g) to protect the executive's discretionary actions. Id. at 483–85.

Finally, section 1252 only limits the Court's authority to issue injunctive relief on (1) "the operation of the provisions of part IV of this subchapter . . . ***other than with respect to the application of such provisions to an individual alien against whom proceedings under such have been initiated***" and (2) "the removal of any alien ***pursuant to a final order*** . . . [without] clear and

convincing evidence that the entry of execution of such order is prohibited as a matter of law." 8 U.S.C. § 1252(f)(1)-(2).

Other than certain criminal aliens subject to detention based on 8 U.S.C. § 1226(c) and noncitizens with final removal orders (neither situation is the case with Petitioner), detention is separate and distinct from removal proceedings. Because immigration detention is **civil** in nature (and not criminal), it cannot be punitive and **can only serve two legitimate purposes: to prevent flight prior to removal and to prevent danger to the community**. Petitioner's detention is unsupported by either purpose. Petitioner is not disputing the government's ability to initiate removal proceedings against him, adjudicate his removal case or execute an order of removal (to which he is not yet subject). However, Petitioner is disputing the government's ability to **detain** him throughout the entire process without bond, pursuant to the ICE July 2025 memo and the Board of Immigration Appeals' *Matter of Yajure Hurtado*, which are unlawful and unconstitutional and unsupported by the plain language of the Immigration and Nationality Act. What petitioner is seeking, review of the federal statute governing his detention and dispute over his unlawful detention is specifically permitted in the Habeas statute (§2241) to challenge the lawfulness of his detention.

Government Shutdown Does Not Affect Habeas Cases

Petitioner respectfully requests an immediate hearing on his application for a temporary restraining order (TRO), notwithstanding the ongoing government shutdown. While undersigned counsel acknowledges and is sympathetic to the furloughs affecting government attorneys in the civil division, this matter warrants expedited consideration and the stay should be lifted. Habeas

proceedings are routinely prioritized over other civil actions against the United States due to the irreparable harm and deprivation of liberty suffered by petitioners in custody.

The habeas statute at 8 U.S.C. § 2243 outlines the procedure for handling petitions for writs of habeas corpus. It mandates that the court must either grant the petition or issue an order to show cause "forthwith," unless the Petitioner is not entitled to relief. If an order to show cause is issued, the **Respondents are required to file a return within three days**. However, the court may allow additional time for good cause, but this extension cannot exceed twenty days.

Importantly, ICE continues to detain individuals unlawfully during the shutdown, and habeas cases are proceeding as normal in all federal courts known to undersigned counsel, including NDGA, SDGA, SDIN, NDIL, WDLA, District for Colorado, and other districts where undersigned counsel regularly appears in habeas matters. See also Exhibit 1, which includes a comparable order from the District of Colorado in a similar habeas case.

Conclusion and Prayer for Relief

Immediate injunctive relief is essential because Plaintiff has a substantial likelihood of success on the merits of the complaint; Plaintiff will suffer irreparable harm in the absence of injunctive relief; there is no adequate remedy available at law; the balance of hardships favor Plaintiff, and the requested injunctive relief will not harm the public interest. The facts and legal arguments supporting this motion are set forth in detail Petitioner's Memorandum of Authorities in Support of Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction filed contemporaneously herewith.

Should Respondents' unlawful detention continue, Petitioner will remain confined indefinitely. These harms include the loss of liberty itself, which gives rise to a Due Process claim,

and injury to his fundamental interest in family unity. This loss will cause tremendous hardship to Petitioner and his family and frustrates the statutory scheme that entrusts custody determinations to neutral adjudicators. The basis for this Motion is set forth in the attached Memorandum of Authorities.

WHEREFORE, Petitioner respectfully requests that the Court enter a temporary restraining order, and requests leave to present oral argument in support of the entry of preliminary injunctive relief following notice thereof to all parties as follows:

(1) Schedule a hearing on this TRO or PI for as soon as possible;

(2) Order Respondents to return Show Cause within 3 days;

(3) Restrain Respondents from moving Petitioner from outside this Court's jurisdiction in order to prevent ouster of this Court's review of the pending Writ of Habeas Petition;

(4) Order Petitioner's immediate release from custody and enjoining Respondents from re-detaining him under 8 U.S.C. § 1225 during the pendency of these proceedings;

(5) Alternatively, conduct a bond hearing in this Court within 2 days where the government bears the burden to prove the Petitioner is a flight risk or a danger to the community;

(6) Enjoin Respondents, absent change of circumstances, from re-detaining Petitioner or modifying Petitioner's terms of release on recognizance without prior notice and Court's permission;

(7) Order that prior to any re-detention of Petitioner, Respondents must prove, by clear and convincing evidence, that he is a flight risk or danger to the community;

(8) Compelling Respondents and those acting under them to perform their duty owed to Petitioner, namely, to rule upon and adjudicate Petitioner's I-130 Petition immediately;

(9) Award Petitioner attorney's fees and costs; and

(10) Grant Petitioner any additional relief proper and just under the circumstances.

Undersigned counsel requests that if any hearing is scheduled, she be permitted to appear telephonically or through video conferencing as she has a heavy workload in many courts around the country and travel is very difficult on short notice with so many court appearances, TRO's and other hearings scheduled in the immediate future. She does not object to video or telephonic appearance by government counsel. A supplemental memorandum of authorities is being filed herewith.

Respectfully submitted this 23rd Day of October, 2025

Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on October 23, 2025, I electronically filed the foregoing PETITIONER'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

Karen Weinstock

/s/ Karen Weinstock

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