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10  
11 UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF IDAHO  
13

14 **SERVANDO TORRES HERNANDEZ,**

15 Petitioner,

16 v.

17 **PAMELA BONDI**, Attorney General;  
18 **KRISTI NOEM**, Secretary of Homeland  
19 Security; **TODD LYONS**, Acting Director,  
20 U.S. Immigration and Customs Enforcement  
21 (ICE); **JASON KNIGHT**, Field Officer  
22 Director, ICE Salt Lake Field Office;  
23 **KENNETH PORTER**, Field Officer Director,  
24 ICE Boise Field Sub-Office; **STEVE**  
25 **ANDERSON**, Sheriff, Jefferson County,  
26 Idaho,

27 Respondents.  
28

Case No. 1:25-CV-00615-BLW

**REPLY IN SUPPORT OF MOTION  
FOR TEMPORARY RESTRAINING  
ORDER**

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1 **I. LEGAL ARGUMENT**

2 **A. This Court has jurisdiction over habeas petitions pursuant to 28 U.S.C. § 2241.**

3 As described in detail in his Petition and Reply in Support, this Court maintains jurisdiction  
4 over habeas corpus proceedings pursuant to section 2241 of Title 28 of the United States Code.  
5 Because Petitioner is not asking for review of any decision arising out of removal proceedings,  
6 there is no question of this Court’s jurisdiction over this matter.

7 **B. The relief sought by Petitioner is well within this Court’s purview to grant.**

8 Respondents again take quotes out of context to support their position that the Secretary of  
9 Homeland Security maintains exclusive jurisdiction and discretion over the location of detained  
10 noncitizens (and, by extension, the Secretary’s decision of where to detain Petitioner). Response,  
11 Dkt. 6, p. 5 (citing *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022)). However, *Geo*  
12 *Group* involved a state’s capacity to interfere with the detention of noncitizens *during removal*  
13 *proceedings*. 50 F.4th at 750. Congress has not granted discretion to the Secretary of Homeland  
14 Security to suspend this Court’s jurisdiction over habeas proceedings and related relief. Despite  
15 Respondents repeated arguments to the contrary, the matter before this Court is wholly separate  
16 from any removal proceeding, the existence of which for Petitioner remains unconfirmed by the  
17 record.

18 Respondents’ arguments regarding this Court’s authority to grant relief suffer from the same  
19 flaw. First, section 1231 of Title 8 of the United States Code is entitled “Detention and Removal of  
20 [Noncitizens] *Ordered Removed*[.]” 8 U.S.C. § 1231 (emphasis added). Then, section 1231(g)(1)  
21 states that it is up to the Attorney General to “arrange for appropriate places of detention for  
22 [noncitizens] detained pending removal or a decision on removal.” 8 U.S.C. § 1231(g)(1). While it  
23 is correct that the Attorney General or her designee may detain these individuals, the noncitizens  
24 described in this section are those that have been ordered removed by an immigration judge in  
25 removal proceedings. As belabored throughout these filings, it is not clear from the record whether  
26 Petitioner is even in removal proceedings at all, and Respondents concede that no removal order  
27 has been issued. Response, Dkt. 6, p. 6. Therefore, because this matter does not relate to judicial  
28 review of an aspect of removal proceedings, this Court has jurisdiction to adjudicate this case.

1 Second, section 1252 is entitled “Judicial Review of Orders of Removal[.]” 8 U.S.C. § 1252.  
2 Petitioner has not been ordered removed, and, therefore, this provision does not apply to him.  
3 Reviewing the specific subsection referenced by Respondents compels the same result. Section  
4 1252(a)(2)(B)(ii) discusses “[d]enials of discretionary relief[.]” which do not apply in this case.  
5 Petitioner is not asking for review of a denial made by the Attorney General, with the authority  
6 vested to her by the Immigration and Nationality Act. If he was, then perhaps section  
7 1252(a)(2)(B)(ii) may be relevant, but that is not the case here. Instead, this Court’s “[p]ower to  
8 grant writ” is not housed within the Immigration and Nationality Act at all. 28 U.S.C. § 2241; *see*  
9 *also* U.S. CONST. art. I, § 9, cl. 2. For these reasons, Respondents’ jurisdiction-stripping arguments  
10 are, again, unavailing, and this Court may grant the requested relief.

11 C. **Petitioner is likely to succeed on the merits because the plain language of the**  
12 **relevant statutes demonstrate that he is detained pursuant to section 1226.**

13 Petitioner rebuts each of Respondents’ points discussing success on the merits in his Reply  
14 in Support of Petition for Habeas Corpus. First, Respondents have alleged no injury from the  
15 service error. Their response to the petition and motion was filed before the service error was  
16 corrected, and, therefore, they have waived any argument regarding ineffective service of process.  
17 Second, as described in both the preceding section and in the Reply, this Court maintains  
18 jurisdiction over habeas proceedings pursuant to section 2241 of Title 28 of the United States Code.  
19 Third, as a long-time resident of the United States, apprehended away from the border and any  
20 ports of entry, Respondents detained Petitioner pursuant to section 1226 of Title 8 of the United  
21 States Code. Fourth, the administrative guidance that binds immigration judges throughout the  
22 country effectively nullifies any opportunity for illegal entrants to seek release. Immigration judges  
23 have been divested of jurisdiction over bond requests, meaning not that cases will be denied on the  
24 merits but that they will not be entertained at all. Therefore, administrative exhaustion in this matter  
25 is futile. Because Petitioner is likely to succeed on the merits of his claim, his motion for a  
26 temporary restraining order should be granted.

1           **D. Petitioner has already and continues to suffer irreparable harm each day that**  
2           **he remains unlawfully detained.**

3           “[T]he measure of irreparable harm is not a rigid one; it has been referred to as a sliding  
4 scale, working in conjunction with a moving party’s likelihood of success on the merits.” *Vaqueria*  
5 *Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 485 (1st Cir. 2009). Here, the harm is clear:  
6 Unconstitutional deprivation of liberty without the protection of due process. “[T]he interest in  
7 being free from physical detention by [the] government” is “the most elemental of liberty interests.”  
8 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Indeed, “[i]t would be perverse to find that loss of  
9 liberty somehow suddenly stops being irreparable harm just because it is being considered in the  
10 immigration context.” *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at \*8 (D. Mass. Aug.  
11 19, 2025). It is the very essence of this liberty interest that has compelled courts across the country  
12 to hold that immigration detention without the ability to be released on bond to constitute  
13 irreparable harm. *See, e.g.*, Petition for Writ, Dkt. 1, ¶ 44. Every day that Petitioner remains  
14 detained, he is unable to be with his wife, children, and other family members and cannot work to  
15 support his family.

16           Besides this fundamental interest in physical liberty, Petitioner suffers continued injury  
17 from Respondents’ violation of the statutory rights afforded to him under section 1226. For the  
18 reasons described in the Petition and Reply in Support, Respondents detained Petitioner pursuant  
19 to section 1226. Therefore, he should be afforded the full privileges of custody determinations made  
20 under that provision.

21           Finally, as explained in his original filing, Petitioner is eligible for a form of immigration  
22 relief that is only available for similarly situated individuals who have lived in the United States  
23 for at least ten years. 8 U.S.C. § 1229b(b). The threat of unlawful removal of Petitioner without  
24 first granting him an opportunity to have his case heard by an immigration judge is injury in and of  
25 itself. In the spirit of keeping families together, the Immigration and Nationality Act affords  
26 noncitizens who have made a life in the United States an opportunity to seek an immigrant visa.  
27 Petitioner is exactly of the class Congress intended to grant this special privilege, and his unlawful  
28 removal would eliminate his opportunity to pursue such relief.

1 Petitioner’s physical detention is a sufficient demonstration of irreparable harm on its own.  
2 However, the significant deprivation of liberty along with the ongoing statutory violation and  
3 inability to be with his family, work, and pursue his case in immigration court demonstrate  
4 irreparable harm.

5 **E. Petitioner’s interest in physical freedom far outweighs the government’s**  
6 **purported interests in his detention.**

7 Respondents appear to imply that it believes Petitioner to somehow be a threat to the  
8 country’s security. Response to TRO, Dkt. 6, p. 3. However, Respondents have produced no  
9 evidence to suggest that Petitioner is somehow dangerous or a threat to public safety. The only  
10 “negative” factor that Respondents offer is that he was apprehended during a multi-agency raid “at  
11 an illegal horse racing and gambling event[.]” Response to TRO, Dkt. 6, p. 4. Petitioner has not  
12 been charged with any illegal activity apart from the alleged grounds of inadmissibility in a Notice  
13 to Appear that Respondents have not been able to produce. There is simply no evidence that  
14 Petitioner was engaging in any illegal activity. From the information contained in the record, he  
15 could very well be an innocent bystander; there is not enough information before this Court to  
16 conclude that he is a threat to national security or public safety.

17 Additionally, Petitioner’s release does not prevent Respondents from carrying out the  
18 immigration laws of the United States, as they have been tasked to do. *See* Response, Dkt. 6, pp.  
19 7–8. Nothing in the record supports the conclusion that Petitioner is somehow trying to abscond  
20 immigration authorities or avoid potential removal proceedings. Indeed, the majority of noncitizens  
21 in removal proceedings are not detained, yet Respondents are still able to carry out the immigration  
22 laws in the way that they have been tasked. *See, e.g., ICE Arrests and Deportations from the U.S.*  
23 *Interior, MIGRATION POL’Y INST.* (Feb. 2025),  
24 [https://www.migrationpolicy.org/sites/default/files/publications/mpi-interior-enforcement-](https://www.migrationpolicy.org/sites/default/files/publications/mpi-interior-enforcement-explainer-feb2025_final.pdf)  
25 [explainer-feb2025\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi-interior-enforcement-explainer-feb2025_final.pdf) (explaining that as of the time of publication, there were about 3.6  
26 million cases pending in immigration court, yet ICE had funding for only 41,500 detention beds).  
27 Respondents have not proffered any evidence to suggest that Petitioner’s continued detention is  
28 necessary to carry out the immigration laws, and, therefore, his release should be imminent.

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**II. CONCLUSION**

For the foregoing reasons and those set forth in Petitioner’s Reply in Support of the Petition for Habeas Corpus, he respectfully requests this Court grant his Motion for a Temporary Restraining Order, convert it to a Motion for a Preliminary Injunction, and order his release.

Dated: November 6th, 2025

FENNEMORE CRAIG, P.C.

By: /s/ Alycia T. Moss

Alycia T. Moss

Attorney for Petitioner  
SERVANDO TORRES HERNANDEZ