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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Joao Alexandre Dos Reis Franco,

Petitioner,

VS.

CRAIG MEYER, ET AL

Respondents

CASE #: 3:25-CV-09480-EKL
PETITIONER'S CERTIFICATION OF
ATTEMPT TO PROVIDE NOTICE
PER FED. R. CIV. P. 65 (A) AND (B)

Petitioner filed this action on November 03, 2025, seeking a Petition for Writ of Habeas

Corpus. The undersigned counsel for Petitioner certifies that he has given notice of this motion for a TRO to Respondents.

Pursuant to Federal Rules of Civil Procedure 65(a)-(b), Petitioner, by counsel, hereby certifies the following attempts made to give notice to the adverse parties regarding the Petitioner's Motion for a Temporary Restraining Order:

1 **1. Initial Communication:**

2 • **Date:** November 10, 2025.

3 • **Method:** Mail.

4 • **Details:** Petitioner's counsel properly notified Respondents' counsel of intent to file a
5 Motion for Temporary Restraining Order and Preliminary Injunction enjoying Respondents from
6 taking any adverse action on Petitioner's pending I-485 Application to Adjust Status until the
7 Court issues a final judgment on the merits and from transferring Petitioner from his current
8 location of detention.

9 **Reasons for Not Requiring Notice:**

10 Petitioner certifies that he has made all reasonable efforts to provide notice to the
11 Respondents as required by Rule 65(a) and (b). Immediate and irreparable injury, loss, or
12 damage will occur before the adverse party can be heard in opposition. The specific facts
13 supporting this claim are detailed in the accompanying affidavit.

14 Therefore, Petitioner's counsel respectfully requests that the Court issue the Temporary
15 Restraining Order without further notice to Petitioner.

16 Wherefore, Petitioner respectfully requests that this Court issues a Temporary
17 Restraining Order and/or Preliminary Injunction to enjoin Respondents from taking any adverse
18 action on Petitioner's pending I-485 Application to Adjust Status until the Court issues a final
19 judgment on the merits and enjoying Respondents from transferring Petitioner from his current
20 location of detention or removing him from the United States pending further order of this Court.

1 I declare under penalty of perjury that the foregoing is true and correct.
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4 Date: November 11, 2025
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7 Respectfully submitted,
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 Joao Alexandre Dos Reis Franco,
13 Petitioner,

14 vs.

15 CRAIG MEYER , ET AL
16 Respondents.

17 Case No.: 3:25-cv-09480-EKL

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19
20 **EMERGENCY MOTION FOR
21 TEMPORARY RESTRAINING ORDER
22 AND IMMEDIATE RELEASE**

23 Fed. R. Civ. P. 65(a) and 65(b)

24 Location: Northern District of California
25 Judge: Hon. Eumi K. Lee
Date Action Filed: 11/03/2025

Trial Date: Not Yet Set

26 Pursuant to Federal Rules of Civil Procedure 65(a)-(b), Petitioner, by counsel, hereby
27 moves this Court for a temporary restraining order and/or preliminary injunction that prevents
28 Respondents from transferring and removing Petitioner and from denying his I-485 application
until this Court has an opportunity to issue a final judgment on the merits. In support of this
motion, Petitioner states as follows:

- 1 1. Petitioner entered the United States in January 2020 on a B-2 visitor visa. He later
2 obtained an extension of his visitor status and remained in the U.S. lawfully until he
3 overstayed his visa in early 2021.
- 4 2. On March 18, 2025, Petitioner's U.S. citizen spouse filed a Form I-130 Petition for
5 Alien Relative, and Petitioner concurrently filed a Form I-485 Application to Adjust
6 Status, which remains pending.
- 7 3. On November 3, 2025, Petitioner appeared for a USCIS adjustment interview in San
8 Francisco, California. At the conclusion of the interview, ICE agents arrested Petitioner
9 without providing any notice of charges, Notice to Appear, or opportunity to consult
10 with counsel.
- 11 4. Petitioner has strong family and community ties in the United States and presents no
12 flight risk or danger to the public. He is at risk of being transferred to a distant facility,
13 which would significantly impede counsel access and cause irreparable harm.
- 14 5. Therefore, Petitioner is being detained for deportation while an I-485 application is
15 pending on her behalf, and she is at risk of being transferred to a location far from his
16 family and attorney.
- 17 6. A temporary restraining order is appropriate in that:
 - 18 a. Petitioner is likely to succeed on the merits of his claim, as detention violates
19 federal law, regulations, and constitutional protections.
 - 20 b. Unless Respondents are enjoined from detaining or transferring Petitioner, he
21 will be denied meaningful access to counsel and his family, and risk irreparable
22 harm including deportation without an opportunity to contest removal
23 proceedings.

- 1 c. Unless Respondents are enjoined from interfering with Petitioner's I-485
- 2 application, he will be irreparably harmed, losing his ability to remain lawfully in
- 3 the United States.
- 4 d. The harm to Petitioner from denial of this TRO outweighs any minimal
- 5 inconvenience to Respondents.
- 6 e. The public interest favors granting relief to protect statutory and constitutional
- 7 rights.
- 8 7. Petitioner respectfully requests that this Court waive the bond requirement under Federal
- 9 Rule of Civil Procedure 65(c), as requiring a bond would impose financial hardship and
- 10 place Petitioner at further risk. The factual and legal bases for this Motion are further set
- 11 forth in the accompanying Memorandum of Points and Authorities.
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WHEREFORE, Petitioner respectfully requests that this Court issues a Temporary Restraining Order and/or Preliminary Injunction to enjoin Respondents from denying Petitioner's adjustment of status application, transferring him from his current place of detention, or removing him in violation of his constitutional rights and under the Administrative Procedure Act.

Date: August 19, 2024

Respectfully submitted,

/s/ Marcelo Gondim

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 Joao Alexandre Dos Reis Franco,
13 Petitioner,

14 vs.

15 CRAIG MEYER , ET AL

16 Respondents.

17 Case No.: 3:25-cv-09480-EKL

18
19 **MEMORANDUM OF POINTS AND**
20 **AUTHORITIES**

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner João Alexandre dos Reis Franco, through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order (TRO) and immediate release from ICE custody. In support of this Motion, Petitioner relies on the following memorandum of points and authorities, the verified petition for writ of habeas corpus under 28 U.S.C. § 2241, and all records and pleadings on file.

INTRODUCTION

Petitioner João Alexandre dos Reis Franco is a Brazilian citizen who entered the United States in January 2020 on a B-2 visitor visa and later filed a Form I-485, Application to Register Permanent Residence or Adjust Status, concurrently with a Form I-130 filed by his U.S. citizen spouse on March 18, 2025.

On November 3, 2025, Petitioner appeared at his scheduled USCIS adjustment interview in San Francisco, California. At the conclusion of that interview, ICE agents arrested Petitioner despite his pending adjustment application, lack of a Notice to Appear, and lawful presence under 8 C.F.R. § 245.2(a)(1).

Petitioner's detention is unlawful, arbitrary, and violates both statutory law and the Constitution. He has received no notice of charges, no opportunity to be heard, and has not been placed in removal proceedings according to law. Petitioner seeks this Court's immediate intervention to prevent irreparable harm, ensure due process, and preserve the integrity of the immigration system.

STATEMENT OF FACTS

Petitioner João Alexandre dos Reis Franco is a citizen of Brazil who entered the United States in January 2020 on a B-2 visitor visa. At a later date, Petitioner obtained an extension of

1 his visitor status through U.S. Citizenship and Immigration Services (USCIS). Petitioner's visitor
2 status expired in early 2021 during the COVID-19 pandemic, but he was unable to leave the
3 United States due to global travel restrictions. On March 18, 2025, Petitioner's U.S. citizen spouse
4 filed a Form I-130 Petition for Alien Relative on his behalf, and Petitioner simultaneously filed a
5 Form I-485, Application to Register Permanent Residence or Adjust Status, which remains
6 pending.

7 On November 3, 2025, Petitioner and his spouse attended a USCIS adjustment interview
8 in San Francisco, California. At the conclusion of the interview, ICE agents arrested Petitioner
9 without providing any written notice of charges, a Notice to Appear, or opportunity to consult
10 with counsel. Since his arrest, Petitioner has been detained at the ICE San Francisco Field Office.
11 Several hours after his arrest, Petitioner was not listed in ICE's Online Detainee Locator System,
12 making it difficult for his counsel and family to determine his location or communicate with him.

13 Petitioner is at risk of being transferred to a distant facility consistent with ICE's regular
14 practices. Such a transfer would impede his access to counsel, limit communication with his
15 family, and severely compromise his ability to pursue his pending adjustment application. The
16 ICE San Francisco Field Office, primarily an administrative facility, has been used as a temporary
17 detention center and lacks essential amenities, including proper sleeping arrangements, hygiene
18 products, medical care, and space for meaningful attorney-client meetings.

19 Petitioner has strong family and community ties in the United States, presents no flight
20 risk, and poses no danger to the community. His detention under these circumstances causes
21 irreparable harm, including deprivation of liberty, emotional distress, and interference with his
22 ability to safeguard his immigration rights. Immediate release and protection from transfer are
23

1 necessary to prevent further irreparable harm while this Court considers his habeas petition and
2 related claims.

3 **LEGAL STANDARD**
4

5 "Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary
6 restraining orders. Fed. R. Civ. P. 65. The standard for both forms of relief is the same.
7 *Stuhlbarg Int'l Sales Co. v. Brush & Co.*, 240 F.3d 832 (9th Cir. 2001).

8 A preliminary injunction is an "extraordinary remedy never awarded as of right." *Winter*
9 *v. Natural Res. Def. Council, Inc.*, 129 S.Ct. 365, 172 L.Ed.2d 249, 555 U.S. 7, 77 USLW 4001
10 (2008). The Court may issue a preliminary injunction plaintiff establishes: (1) likelihood of
11 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief;
12 (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest.

13 Where a case involves government action, courts also consider the public interest,
14 "Because 'the party opposing injunctive relief is a government entity' here, the third and fourth
15 factors 'merge.'". *Nken v. Holder*, 129 S.Ct. 1749, 173 L.Ed.2d 550, 556 U.S. 418, 77 USLW
16 4310 (2009).

17 The Ninth Circuit weighs these factors on a sliding scale, such that where there are only
18 "serious questions going to the merits", that is, less than a "likelihood of success" on the
19 merits—a preliminary injunction may still issue so long as "the balance of hardships tips sharply
20 in the plaintiff's favor" and the other two factors are satisfied. *Shell Offshore, Inc. v. Greenpeace, Inc.*,
21 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*,
22 632 F.3d 1127, 1135 (9th Cir. 2011)); *Short v. Brown*, 893 F.3d 671 (9th Cir. 2018).

ARGUMENT

PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

Petitioner moves for a TRO on at least two grounds.

First, Petitioner is the spouse of a U.S. citizen and has a pending I-485 adjustment of status application. Denying this application would be unjust and arbitrary given his eligibility for relief and his lawful basis to adjust status through her bona fide marriage to a U.S. citizen.

Second, Petitioner has not received a Notice to Appear. Without the filing of an NTA, there is no case or controversy before the EOIR, and therefore, no lawful basis for ICE to detain an individual on the grounds of pending removal proceedings.

A. The denial of Petitioner's adjustment of status would be unjust and arbitrary violation of the APA

First, Petitioner is married to a U.S. citizen and has a pending I-485 adjustment of status application. Denying this application would be unjust and arbitrary. The Ninth Circuit has held that the denial of an adjustment of status application is subject to judicial review under the Administrative Procedure Act (APA) and may be deemed arbitrary and capricious if the agency's decision lacks a rational basis or fails to consider relevant factors.

Second, Under 8 C.F.R. § 245.2(a)(1), any individual who has properly filed a Form I-485 Application to Register Permanent Residence or Adjust Status is considered to be in a “period of stay authorized by the Attorney General.” This regulation reflects a longstanding principle of immigration law: that once an adjustment application has been duly accepted for processing, the applicant is deemed to be in lawful presence for the duration of its pendency. In this period, the applicant’s right to remain in the United States is explicitly recognized by the Department of Homeland Security (“DHS”), and the accrual of unlawful presence is suspended.

1 The filing of the I-485 therefore confers a legally protected status of authorized stay, which ICE
2 officers are not free to disregard.

3 Federal courts have consistently reaffirmed this interpretation. In *United States v. Atandi*,
4 376 F.3d 1186 (10th Cir. 2004), the Tenth Circuit held that a properly filed I-485 “stops the
5 accrual of unlawful presence” and recognizes that the individual is in a lawful period of stay.
6 Similarly, in *Yesil v. Reno*, 958 F. Supp. 828 (S.D.N.Y. 1997), the court emphasized that
7 noncitizens with pending adjustment applications enjoy authorized presence in the United States
8 and cannot be treated as unlawfully present for purposes of detention or removal. Other courts
9 have reached the same conclusion, including *United States v. Brissett*, 720 F. Supp. 90 (S.D. Tex.
10 1989), and *Larrea v. U.S. Attorney General*, 494 F. App’x 935 (11th Cir. 2012), where the
11 Eleventh Circuit recognized that the pendency of a properly filed I-485 confers a period of lawful
12 stay. Collectively, these authorities make clear that DHS and ICE lack the discretion to disregard
13 an applicant’s lawful presence during the adjudication of an adjustment of status application.
14

15 In this case, Petitioner’s I-485 application was properly filed, accepted by USCIS, and
16 remains pending adjudication. As such, he is lawfully authorized to remain in the United States
17 and cannot lawfully be detained or removed on the basis of alleged “unlawful presence.” ICE’s
18 arrest and detention of Petitioner, ostensibly for a lack of valid immigration status, therefore
19 directly contravenes both the regulatory framework and established judicial precedent. By
20 treating Petitioner as if he were unlawfully present while his adjustment application is pending,
21 ICE has acted in excess of its statutory authority and contrary to the intent of the Attorney
22 General’s regulation, which explicitly protects such individuals from adverse enforcement
23 actions during adjudication.

24 Moreover, ICE’s conduct constitutes arbitrary and capricious agency action under the
25

1 APA, 5 U.S.C. § 706(2)(A). The agency has failed to articulate any rational basis for disregarding
2 the authorized stay conferred by the pending I-485, and its decision to detain Petitioner is
3 inconsistent with its own governing regulations and policies. Such arbitrary detention
4 undermines the fairness and predictability of the immigration system and chills participation in
5 lawful adjustment processes by discouraging noncitizens from attending USCIS interviews or
6 pursuing relief for which they are statutorily eligible.

7
8 In sum, because Petitioner is lawfully present in a period of authorized stay pursuant to 8
9 C.F.R. § 245.2(a)(1), his arrest and detention are unlawful. ICE's actions not only contravene
10 binding regulatory provisions and case law but also violate the fundamental principles of
11 administrative regularity and due process guaranteed under federal law.

12
13 **B. Removal Proceedings Have Not Been Lawfully Commenced**

14 Under 8 U.S.C. § 1229(a) and longstanding precedent, removal proceedings do not
15 commence until a Notice to Appear ("NTA") is filed with the Immigration Court. The NTA
16 serves as the jurisdictional charging document that formally initiates removal proceedings under
17 the Immigration and Nationality Act ("INA"). Without the filing of an NTA, there is no case or
18 controversy before the Executive Office for Immigration Review ("EOIR"), and therefore, no
19 lawful basis for ICE to detain an individual on the grounds of pending removal proceedings. The
20 Ninth Circuit in *Samayoa-Martinez v. Holder*, 558 F.3d 897 (9th Cir. 2009), made this principle
21 clear, holding that the government's jurisdiction to detain a noncitizen under INA § 1226(a)
22 arises only once removal proceedings have been properly commenced through the filing of an
23 NTA with the Immigration Court. Until that procedural step occurs, the Department of
24 Homeland Security ("DHS") lacks the authority to detain the individual for purposes of removal.

25
26 In this case, no NTA has been filed or served upon the Petitioner. ICE has neither produced
27
28

1 evidence of an existing removal order nor provided any formal notice of charges. Absent the
2 filing of an NTA, Petitioner's detention cannot be tied to any lawful statutory purpose under the
3 INA. The detention is therefore arbitrary, capricious, and in violation of due process, as it
4 deprives Petitioner of liberty without affording him the procedural protections guaranteed under
5 8 U.S.C. § 1229(a) and the Fifth Amendment. Detaining an individual without initiating formal
6 removal proceedings effectively circumvents the statutory safeguards Congress put in place to
7 ensure fairness, transparency, and judicial oversight in immigration enforcement.

9 Moreover, Petitioner's I-485 Application to Adjust Status was filed before any NTA or
10 removal proceedings were initiated. Under the INA and implementing regulations, a properly
11 filed adjustment application establishes lawful presence and confers the right to remain in the
12 United States during adjudication. Any subsequent issuance of an NTA, after the filing of the I-
13 485 would be procedurally invalid if intended to justify detention that had already occurred. The
14 government cannot retroactively invoke jurisdiction or construct a post hoc basis for detention
15 that was unlawful at its inception. This type of retroactive justification has been repeatedly
16 rejected by courts as inconsistent with both the INA's procedural framework and the Due Process
17 Clause.

18 ICE's arrest of Petitioner at his USCIS interview, before the commencement of any lawful
19 removal proceedings, represents an ultra vires exercise of enforcement authority, an action taken
20 outside the scope of its legal powers. Federal agencies are bound by the limits of the statutes that
21 create them, and ICE cannot detain individuals arbitrarily without adhering to the procedural
22 requirements Congress established. By detaining Petitioner without first commencing removal
23 proceedings, ICE has not only violated statutory procedure but also undermined the integrity of
24 the immigration system, which relies on transparency and predictable process.

1 Furthermore, ICE's actions offend fundamental due process principles by depriving
2 Petitioner of notice, a fair opportunity to contest the grounds for detention, and the ability to be
3 heard before an impartial adjudicator. The Due Process Clause prohibits the government from
4 depriving any person, citizen or noncitizen alike, of liberty without lawful process. The arbitrary
5 detention of an individual with a pending adjustment application, absent any filed NTA or
6 removal order, violates both the letter and spirit of these constitutional protections.
7

8 Because removal proceedings have not been lawfully commenced, ICE's detention of
9 Petitioner is without statutory authority, procedurally defective, and constitutionally
10 impermissible. The agency's attempt to justify detention without filing an NTA or providing
11 notice of removability is unlawful under 8 U.S.C. § 1229(a), contrary to binding precedent such
12 as *Samayoa-Martinez v. Holder*, and inconsistent with the fundamental guarantees of due process.
13 Accordingly, Petitioner's continued detention must be deemed unlawful, and immediate release
14 is warranted.
15

16 PETITIONER WILL SUFFER IRREPARABLE HARM

17 Absent immediate judicial intervention, Petitioner will continue to suffer ongoing and
18 irreparable harm of the most serious constitutional dimension. Detention implicates the
19 fundamental right to liberty protected by the Fifth Amendment's Due Process Clause, a right the
20 Supreme Court has repeatedly recognized as central to the fabric of a free society. *See Zadvydas*
21 *v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody,
22 detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process
23 Clause protects."). The deprivation of liberty, even for a short period, constitutes irreparable
24 harm that cannot later be undone by monetary compensation or post hoc remedies.
25

26 Petitioner faces the imminent risk of transfer to a distant detention facility, far from his
27

1 family, attorney, and supporting community. Such a transfer would effectively sever his access
2 to counsel, restrict his ability to participate meaningfully in his own defense, and hinder the
3 preparation of evidence for his pending immigration applications. Courts have consistently
4 recognized that interference with attorney-client communication, especially in the context of
5 immigration detention, constitutes a paradigmatic form of irreparable harm because it deprives
6 the detainee of a fair opportunity to be heard. See *Nken v. Holder*, 556 U.S. 418, 435 (2009)
7 (acknowledging that “the loss of opportunity to pursue one’s claims” may constitute irreparable
8 injury).

9 Furthermore, continued detention prevents Petitioner from meaningfully pursuing his
10 pending I-485 Application to Adjust Status, a lawful process expressly authorized by statute and
11 regulation. Detaining individuals who are actively seeking to regularize their status chills
12 participation in lawful immigration processes, undermining public trust in the system and
13 discouraging compliance with the law. The denial of an opportunity to complete an ongoing
14 immigration process, coupled with the threat of removal, is an injury that no later court ruling
15 can undo.

16 Each additional day Petitioner remains detained compounds these harms, inflicting
17 psychological suffering, isolating him from his family, and obstructing his ability to present
18 evidence relevant to his case. These are not abstract injuries, they strike at the core of Petitioner’s
19 ability to assert his legal rights, maintain familial relationships, and preserve his mental and
20 physical well-being. For these reasons, courts have long held that prolonged detention and the
21 loss of liberty without due process constitute irreparable harm warranting immediate injunctive
22 relief. See *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013).

23 **THE BALANCE OF HARDSHIPS TIPS IN PLAINTIFF’S FAVOR AND THE**

INJUNCTION IS IN THE PUBLIC INTEREST

The balance of equities overwhelmingly favors Petitioner's immediate release. Petitioner has demonstrated consistent compliance with all immigration requirements, including attending USCIS interviews, responding to agency requests, and maintaining open communication with counsel. He has no criminal record, poses no danger to the community, and has deep and long-standing family, community, and professional ties in California. These facts show his stability, reliability, and strong incentive to comply with future immigration and court proceedings. The risk of flight is virtually nonexistent, his only objective is to continue his lawful pursuit of permanent residence through his pending I-485 application.

In contrast, the harm to the government from granting temporary relief is minimal. Petitioner does not seek to terminate removal proceedings or to obstruct lawful enforcement of immigration laws. He merely asks to remain in the jurisdiction of this Court while pursuing the immigration benefits for which he is statutorily eligible. His release would not impede ICE's ability to monitor or enforce future immigration decisions. The government retains all its enforcement powers should his application be denied or if removal proceedings are lawfully commenced at a later time.

Further, the equities weigh heavily against allowing ICE to continue detaining an individual for whom removal proceedings have not been lawfully commenced. Without a filed and served Notice to Appear, there is no lawful predicate for custody. Detention in the absence of jurisdictional authority is an extraordinary deprivation of liberty that cannot be justified by general enforcement priorities or administrative convenience. The law does not permit the government to detain individuals merely because it can; it must do so within the clear limits Congress and the Constitution have established.

1 In short, the balance of hardships in this case is not close. The government's interest in
2 enforcement does not outweigh the profound deprivation of liberty suffered by Petitioner under
3 an unlawful detention. Granting temporary relief would simply maintain the status quo, allowing
4 Petitioner to remain available for future proceedings while protecting his due process rights,
5 whereas denying relief would sanction ongoing constitutional violations. Equity, justice, and
6 basic fairness therefore compel the issuance of injunctive relief.
7

8 Granting the requested relief serves the public interest by upholding the rule of law,
9 safeguarding constitutional rights, and maintaining public confidence in the fairness of the
10 immigration system. The public has a strong interest in ensuring that immigration enforcement
11 is carried out in a manner consistent with due process, statutory authority, and established
12 administrative norms. Protecting individuals from arbitrary detention by the government is a
13 fundamental public value deeply rooted in the Constitution.
14

15 Moreover, this Court's intervention would reinforce the integrity of the USCIS process,
16 ensuring that individuals who lawfully pursue adjustment of status are not punished for engaging
17 with the immigration system in good faith. Upholding liberty, due process, and agency
18 accountability are among the highest public interests this Court can protect.
19

20 **CONCLUSION**
21

22 For all the foregoing reasons, Petitioner respectfully requests that this Court issue a
23 Temporary Restraining Order and/or Preliminary Injunction to preserve his liberty, prevent
24 unlawful transfer or removal, and allow him to continue pursuing his adjustment of status
25 application while this action is pending.
26

27 Petitioner has met all the requirements for the issuance of a temporary restraining order
28 and preliminary injunction. He has demonstrated a strong likelihood of success on the merits,
29

1 as his continued detention is unlawful given that a properly filed I-485 places him in a period
2 of authorized stay and no valid Notice to Appear has been filed to initiate removal proceedings.
3 Furthermore, his detention violates due process under the Fifth Amendment and constitutes
4 arbitrary and capricious agency action in contravention of the Administrative Procedure Act.
5

6 Based and for the aforesaid, Petitioner hereby ask the court to grant injunctive relief by:

7 a. Enjoining Respondents from transferring or removing Petitioner pending resolution of
8 this case;

9 b. Enjoining Respondents from denying or interfering with the adjudication of
10 Petitioner's pending Form I-485 application; and

11 c. Ordering Petitioner's immediate release from custody.

13
14 Respectfully submitted on November 11, 2025.

15 /s/ Marcelo Gondim
16

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23 *Attorney for the Petitioner*
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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2025, I electronically filed the foregoing
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
IMMEDIATE RELEASE by using the CM/ECF system, in accordance with U.S.
District Court for the Central District of California's CM/ECF Administrative
Procedures and Local Rules. Notice of this filing will be sent out to all parties by
operation of the Court's electronic filing system.

/s/ Marcelo Gondim

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IN THE UNITED STATES DISTRICT COURT
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Joao Alexandre Dos Reis Franco,

Petitioner,

vs.

CRAIG MEYER, ET AL

Respondents.

Case No.: 3:25-cv-09480-EKL

[PROPOSED ORDER]

Fed. R. Civ. P. 65(a) and 65(b)

Location: Northern District of California

Judge: Hon. Eumi K. Lee

Date Action Filed: 11/03/2025

Trial Date: Not Yet Set

**[PROPOSED ORDER] GRANTING PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY
INJUNCTION**

ORDER

The Court finds that Petitioner have met the requirements for a temporary restraining order and preliminary injunction.

IT IS HEREBY ORDERED:

1. Petitioner's Motion for Temporary Restraining Order is **GRANTED**.
2. Respondents, their agents, employees, and all persons acting under their direction or control, are hereby **ENJOINED** from transferring Petitioner from his current location of detention or removing him from the United States pending further order of this Court.

- 1 3. Respondents are further **ENJOINED** from taking any adverse action on Petitioner's
- 2 pending I-485 Application to Adjust Status until the Court issues a final judgment on
- 3 the merits.
- 4 4. Respondents shall immediately notify Petitioner's counsel of any change in
- 5 Petitioner's custody status or location.
- 6 5. This Order shall remain in effect until further order of this Court.

8 **IT IS SO ORDERED.**

10
11
12 _____
13 Judge Eumi K. Lee
14 United States District Judge

15
16 Date: _____