

3. Petitioner therefore asks the Court to (1) preserve jurisdiction by preventing transfer or removal from this District; (2) direct Respondents to provide forty-eight hours' notice before any such action; and (3) consider immediate release under Alternatives to Detention (ATD) or other least-restrictive conditions during the pendency of these proceedings.

Statement of Emergency

4. Petitioner has been detained since July 2025—first at Bluebonnet Detention Center, then transferred to Eden Detention Center, more than 200 miles from counsel. ICE has issued a “Notice of Additional Charges” that lists no new charges and has scheduled an individual hearing for December 9, 2025. Given the imminent risk of transfer or removal, Petitioner seeks this protective order to maintain the status quo while the Government responds to the Court’s directive.

Jurisdiction & Proper Forum

5. Jurisdiction arises under 28 U.S.C. § 2241 and § 1651. Petitioner is in custody within this District, and his immediate custodian—the Dallas ICE Field Office Director—is subject to this Court’s authority. Venue lies properly in the Northern District of Texas, San Angelo Division.

Legal Standard

6. Federal courts may issue interim orders “in aid of their jurisdiction” under the **All Writs Act**, 28 U.S.C. § 1651(a). Such relief parallels traditional equitable standards: likelihood of success, irreparable harm, balance of equities, and public interest. *Texas v. United States*, 809 F.3d 134, 150 (5th Cir. 2015); *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). Because the Government is the opposing party, the balance-of-equities and public-interest factors merge. *Id.*

INCORPORATION BY REFERENCE

7. Petitioner attaches the following Exhibits as a separate attachment both for the Emergency Writ and this accompanying Emergency TRO. Petitioner incorporates by reference all facts, declarations, and documentary exhibits contained therein as if set forth fully here:

Exhibit 1: Petitioner's Family Documents, including his children's and his sister's proof of citizenship, his father's LPR status, and Petitioner's approved I-130.

Exhibit 2: November 2025 US Department of State Visa Bulletin, which shows his nearing Priority Date.

Exhibit 3: 25 letters from his community.

Exhibit 4: Notice to Appear; Notice of Address Bluebonnet

Exhibit 5: EOIR-42B application

Exhibit 6: Denial of EOIR 42B

Exhibit 7: Notice of Address Eden

Exhibit 8: Master and Individual Hearing Settings; Notice of Additional Charges

FACTS (ABBREVIATED)

8. Petitioner is a citizen/national of Mexico with two US Citizen children and ministers at the Eisenhower Church of Christ in Odessa, Texas. He is a well-established part of the community, with 25 letters of support. *See Exhibits 1 and 3.*

9. According to the Notice to Appear, he has lived in the US since 2001 *See Exhibit 2.*

10. Petitioner's US Citizen sister sponsored Petitioner with a form I-130 filed in 2003 and approved in 2005, with a Priority Date within two years of this filing. *See Exhibit 1.*

11. He was detained at a routine ICE check-in (check-ins ongoing for at least a decade), not due to an alleged crime. *See Exhibit 4.* In fact, Petitioner has no criminal record. He has never been arrested.

12. He has been detained since July, first at Bluebonnet Detention Center and now at Eden Detention Center in Eden, Texas, far from both family and counsel. *See Exhibits 4 and 7.*

13. Petitioner's family relies on him as the sole income, emotional and medical support. He has a father who is LPR, and two young boys, aged 12 and 10, with special needs. Family separation would be a tragic outcome and is disfavored under US law.

14. Petitioner filed an EOIR 42B Release for Humanitarian reasons. *See* Exhibits 1 and 5. The immigration judge denied it. *See* Exhibit 6.

15. Petitioner is a minister, firmly established in his home, church and community. He is the polar opposite of a danger to other Persons or a flight risk. Removing him from the US would cause irreparable harm to Petitioner, his children, and his community.

ARGUMENT

Likelihood of Success (28 U.S.C. § 2241; due process; All Writs)

16. Anti-transfer authority. The All Writs Act, 28 U.S.C. § 1651, authorizes orders necessary to preserve habeas jurisdiction, including anti-transfer, and anti-removal injunctions to prevent forum-divesting moves that would frustrate review, and reckless removals that cause irreparable harm. The 5th Circuit notes that this Court retains jurisdiction even if a transfer occurs, but there is no gain for the government in further transfer of Petitioner. He was already transferred once due to overcrowded conditions, and the Government can take zero action with him and achieve the same pre-hearing result, be it further detention or release by the Court or DHS action. *Santos v. Warden*, 860 F.3d 704, 708 (5th Cir. 2017) This Court may grant a TRO to prevent deportation and enjoin removal to protect jurisdiction. *Devitri v. Cronen*, 289 F. Supp. 3d 287, 295 (D. Mass. 2018); *Sied v. Nielsen*, 2018 WL 1142202, at *22 (N.D. Cal. Mar. 2, 2018).

17. Petitioner pleads with this Court, as well as Respondents, to acknowledge the crisis created by removal. Two children will be separated from their father, and unless compassion and

humanity prevail, a man will remain jailed and unable to visit his children for the foreseeable future, if not the rest of his life.

18. Unlawful/unduly prolonged custody & failure to consider least-restrictive alternatives under 8 U.S.C. § 1226(a) and the Fifth Amendment. ICE must consider non-punitive, less-restrictive conditions based on individualized factors, but it did not do so. In fact, ICE filed a Notice of Additional Charges that contained no additional charge. Respondents have started, as though it were fact, that in like cases, any such Petitioner should be jailed for the full period of the proceedings. Respondents fail to consider, or even acknowledge, that recognizance, bond or Alternatives to Detention exist. The 5th Circuit has explicitly recognized Alternatives to Detention exist when they have merit. *United States v. Esquivel-Bataz*, No. 25-20198 (5th Cir. Sept. 16 2025) In that case, the 5th Circuit acknowledged consideration of bail in a case where it had been granted by a US Magistrate. If the 5th Circuit wanted to state that no bail could be considered, we can reasonably presume they would have reached the issue up front in its opinion. In that case, Appellant was a convicted felon who had previously been deported, re-entered, and was accused of operating an illegal gambling parlor. In the case of Ubaldo Hernandez-Hererra, our Petitioner, he could not be more of a polar opposite. He is squeaky clean and firmly tied to his community.

19. For this consideration alone, continued incarceration of a married man with two US Citizen children in need of his ongoing custodial care, custodial care employed, with ongoing employment, no criminal record, and extensive community ties in Odessa, Texas, is arbitrary and excessive relative to the government's goals.

20. Further, the Fourteenth Amendment Due Process Clause requires procedures commensurate with the liberty at stake. When the Government seeks to curtail a liberty interest, even in a civil case, it should bear a heightened burden—clear and convincing evidence—

because the risk of erroneous deprivation is grave. *Addington v. Texas*, 441 U.S. 418 (1979). Therein the Supreme Court stated “This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” The Court held that “clear and convincing evidence” is the minimum standard of proof required to justify involuntary civil confinement, rejecting the lesser “preponderance” standard. *Addington*, 441 U.S., 425-427. The decision underscores that even in *civil* proceedings, when the consequence is a severe deprivation of liberty, heightened procedural protections are constitutionally required.

21. The same is true in parental rights cases, which this undoubtedly is. Removing Petitioner from the US, or even removing from his home on a four to five-month basis, is a family separation that has affected his children deeply. See Exhibit 1 Children’s Letters. The Due Process Clause protects the fundamental liberty interest of parents in the care, custody, and management of their children. *Santosky v. Kramer*, 455 U.S. 745 (1982). The Court emphasized the “commanding” nature of family-integrity interests and the need for heightened procedural safeguards when state action threatens to destroy that relationship. “The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents,” as ICE claims. *Santosky*, 455 U.S. at 753.

22. The Fourteenth Amendment does not tolerate civil incarceration by default; the Government must justify detention with specific, individualized proof that no lesser conditions will suffice, and the decisionmaker must consider ability to pay and alternatives. To jail a person for four to five months without an arrest or criminal charge, much less a conviction, is uncalled for, excessive and an assault on Petitioner’s Fifth and Fourteenth Amendment rights. He has lived in the US for over 20 years, is a credit to his community, and deserves the same protections

the Fifth Amendment gives to US Citizens. He is the definition of a person who is not a danger or flight risk.

Irreparable Harm

23. Unlawful detention itself constitutes irreparable harm. The Supreme Court has long recognized that “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 v. Davis*, 533 U.S. 678, 690 (2001). Every additional day of confinement that lacks a lawful basis inflicts a continuing, non-compensable injury. *See Doe v. McAleenan*, 415 F. Supp. 3d 971, 988 (N.D. Cal. 2019) (“Every additional day of unlawful detention is an irreparable injury.”); *Ochoa v. Barr*, 2019 WL 1227496, at 3 (*S.D. Tex. Mar. 15, 2019*) (ongoing detention in violation of constitutional rights constitutes irreparable harm); *Ibrahim v. Acosta*, 2018 WL 582520 (*S.D. Fla. Jan. 26, 2018*) (“Loss of liberty, even for minimal periods of time, unquestionably constitutes irreparable harm.”).

24. The harm here is aggravated by the 209-mile distance between Petitioner and his counsel, which severely impedes communication, document review, and case preparation. The 5th Circuit has recognized that restrictions on attorney access and the ability to assist in one’s defense themselves constitute constitutional injury. *See Agbada v. Garland*, 84 F.4th 427, 435 (5th Cir. 2023) (recognizing access-to-counsel as a core due-process component of immigration detention); *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 43 (D.D.C. 2020) (inability to communicate effectively with counsel due to detention conditions constitutes irreparable harm).

25. Detention also jeopardizes Petitioner’s family integrity—another liberty interest the Supreme Court has deemed fundamental. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents.”)—as DHS claims against Petitioner; *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (“The integrity of the family unit has found

protection in the Due Process Clause.”). Removal or prolonged confinement would separate a father from his children and cause psychological and emotional harm that cannot be undone. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (acknowledging that removal and family separation inflict irreparable harm not compensable by later relief); *Hamama v. Adducci*, 261 F. Supp. 3d 820, 831 (E.D. Mich. 2017) (“The threat of separation from family and loss of liberty are paradigmatic forms of irreparable injury.”).

26. Taken together, these circumstances easily satisfy the irreparable-harm prong of injunctive relief and confirm that the Court’s equitable powers should be exercised to preserve Petitioner’s liberty and family until his habeas petition can be fully adjudicated.

Balance of Equities & Public Interest

27. The balance of equities and the public interest overwhelmingly favor preserving this Court’s jurisdiction and Petitioner’s liberty until his habeas claims can be adjudicated. The Fifth Circuit applies a unified inquiry for these final two factors, asking whether “the threatened injury outweighs any harm that may result from the injunction to the non-movant and whether the injunction will not disserve the public interest.” *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997). When, as here, “the Government is the opposing party, the two factors merge.” *Texas v. United States*, 809 F.3d 134, 150 (5th Cir. 2015) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

A. The equities favor preservation of liberty and jurisdiction.

28. Petitioner faces continuing loss of liberty and potential permanent separation from his U.S.–citizen children if moved or removed before this Court can review his habeas petition. That injury is irreparable and outweighs any transient administrative burden on the Government. “The

purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits." *Canal Auth. of the State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974) (en banc). The Fifth Circuit has long recognized that equitable relief is appropriate to prevent removal or transfer that would "defeat the court's jurisdiction." *Leiva v. INS*, 72 F.3d 135, 138 (5th Cir. 1995); *see also Santos v. Warden*, 860 F.3d 704, 708 (5th Cir. 2017) (holding that transfer of a habeas petitioner does not divest jurisdiction). Maintaining the status quo ensures that this Court can render effective relief rather than a decision mooted by premature deportation.

B. The public interest lies in lawful and humane enforcement.

29. The public has no interest in the perpetuation of unlawful detention or removal that undermines constitutional safeguards. "Ensuring that agency decisions comply with the law serves the public interest." *Texas v. Biden*, 10 F.4th 538, 558 (5th Cir. 2021), vacated on other grounds, 142 S. Ct. 2528 (2022). The Government's interest is the faithful execution of the laws, *United States v. Mississippi*, 380 U.S. 128, 140 (1965), and the public interest is best served when those laws are applied in a manner consistent with due process and fundamental fairness. As the Supreme Court has cautioned, "the public interest is not served by shortcutting constitutional due process." *Nken*, 556 U.S. at 436 (Kennedy, J., concurring).

30. Here, continued detention at a facility more than 200 miles from counsel hampers representation and frustrates orderly adjudication. The Fifth Circuit has emphasized that access to counsel and the courts are critical due-process components of immigration detention. *Agbada v. Garland*, 84 F.4th 427, 435 (5th Cir. 2023). The public interest therefore favors maintaining Petitioner's access to counsel and the Court's review, not removing him beyond judicial reach.

31. For these reasons, the equities and the public interest decisively favor temporary injunctive relief to preserve Petitioner's liberty and this Court's jurisdiction pending resolution of the habeas petition.

32. The government suffers no cognizable harm from releasing Petitioner or maintaining the status quo while the Court adjudicates the legality of detention and removal proceedings, or even providing further remedy by allowing Petitioner to remain while his Visa is pending. He has been a benefit to his community, and the public interest is served by lawful, non-arbitrary detention and the efficient use of scarce detention resources. It imposes substantial taxpayer expense to jail a non-dangerous civil detainee with deep, verifiable ties and a near-term lawful immigration pathway. Less restrictive alternatives (recognizance, reporting, or ATD) accomplish the Government's goals at far lower cost and without inflicting unnecessary harm on Petitioner, his family and his community that is severely affected by his absence and wondering how this could have happened to one of their valued friends and neighbors.

PROPOSED ORDER

33. See Proposed Order below.

CONCLUSION AND PRAYER FOR RELIEF

34. The Court has ordered Respondents to show cause why the writ should not issue and to indicate whether they will commit not to remove Petitioner during the pendency of these proceedings. *Order to Show Cause (Nov. 10, 2025)*. Until those filings are received and the Court rules, Petitioner remains in custody under threat of imminent removal.

35. Petitioner Ubaldo Herrera-Hernandez therefore respectfully requests that this Court:

- A. Order Petitioner's immediate release on appropriate conditions or, in the alternative, order an individualized bond/release hearing within 48 hours with written findings and consideration of the least restrictive conditions;

- B. Alternatively, confirm or extend its existing protective order by directing that Petitioner shall not be transferred or removed from this District pending the Court's resolution of this matter on the merits;
- C. Require Respondents to provide at least forty-eight (48) hours' written notice to the Court and counsel before taking any action to transfer or remove Petitioner;
- D. Direct Respondents to include in their forthcoming response a clear statement regarding whether the Government will forbear from removal during the pendency of this habeas action; and
- E. Grant such further equitable or declaratory relief as may be necessary to preserve the Court's jurisdiction and ensure that Petitioner's liberty and family integrity are not irreparably harmed before the petition is fully adjudicated.

Dated: November 12, 2025.

Respectfully submitted,

/s/ Sean P. Cordobés

Attorney for Petitioner

TX Bar No. 00792106

El Cordobés Law & Advisory PLLC

4428 Wildwood, Dallas, TX 75209

Tel: 646-784-2376

Email: seancordobes@gmail.com

Admitted to the US District Court for the Northern District of Texas

