

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

Date: November 13, 2025

Respectfully submitted,

AZMERA KESETE,

Petitioner

v.

HERIBERTO TELLEZ, *et al.*,

Respondents.

Civil Action No. 3:25-cv-01749

Judge Doughty

Magistrate Judge Kayla D. McClusky

David J. Jones

David Jones

11/13/25 10:08 AM

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**PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Petitioner Azmera Kesete respectfully requests, in accordance with Local Rule 65.1, that this Honorable Court grant a temporary restraining order ("TRO") and preliminary injunction against Respondents because, as demonstrated in the attached memorandum of law and other supporting documents, his detention by Respondents is unlawful.

Petitioner therefore requests an order enjoining Respondents from further detaining him. Upon filing of his underlying petition, undersigned counsel contacted the United States Attorney's Office for the Western District of Louisiana on their position on this Motion on November 13, 2025 and upon information and belief they oppose this temporary restraining order.

Dated: November 13, 2025

Respectfully submitted,

/s/ David Rozas

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** Motion to Appear Pro Hac Vice Pending*

CERTIFICATE OF SERVICE PURSUANT TO LOCAL RULE 65.1

I hereby certify November 13, 2025, I electronically filed the foregoing document, supporting memorandum, and proposed order with the Clerk of the Court using the CM/ECF system.

I will email this Motion and its supporting documents to the following addresses for the United States Attorney's Office, Western District of Louisiana:

/s/ David Rozas

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INTRODUCTION

Petitioner Azmera Kesete respectfully petitions for a temporary restraining order against Respondents pursuant to Rule 65 and the All Writs Act. Petitioner is a civil immigration detainee in Immigration and Customs Enforcement (“ICE”) custody. He has been in ICE Custody since arriving in the United States on or about April 6, 2023. Upon arrival, he underwent a credible fear interview and was placed in removal proceedings, where he sought asylum, withholding of removal, and relief under the Convention Against Torture. On October 26, 2023, an immigration court denied his application for asylum, finding that Petitioner had firmly resettled in Germany prior to coming to the United States. However, the Court granted Petitioner’s applications for Withholding of Removal and relief under the Convention Against Torture. Thus, he was ordered removed to Eritrea, but Respondents were statutorily barred from effectuating such removal. The Board of Immigration Appeals affirmed the Immigration Court’s Decision on April 3, 2024. Petitioner has cooperated with efforts to remove him to a third country, but to date, Respondents have been unwilling or unable to do so, and he remains detained in ICE Custody, more than 31 months after he was initially detained, and 24 months after he was ordered removed, and 19 months that order became administratively final. Petitioner therefore requests that the Court enjoin Respondents from transferring Petitioners outside of the Court’s jurisdiction and order that Respondents to release Petitioner from ICE Custody within seven days.

ICE detains Petitioner despite the fact that he has been granted Withholding of Removal, has not been convicted of a crime, has family ties in the United States, and above all, that the length of his detention far exceeds the maximum proper detention set forth by the Supreme Court in *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

Absent this Court's intervention, Petitioner will remain unlawfully detained. The public interest lies in discouraging unlawful government detention like the detention of Petitioner. As such, this Court should grant the instant Temporary Restraining Order ("TRO") motion.

FACTUAL BACKGROUND

Petitioner Mr. Kesete is a national and citizen of Eritrea who fled his country at the age of 15, after being hunted, detained, and tortured by the Eritrean government, following an unsuccessful attempt to cross the border in order to avoid being conscripted as a child soldier. Mr. Kesete was eventually able to escape detention in Eritrea, cross the Ethiopian border, and make his way to Germany, where he sought asylum. *See Verified Petition for a Writ of Habeas Corpus* at 14.

But having received asylum, Mr. Kesete faced persistent uncertainty about his ability to obtain permanent residency in Germany, as well as severe discrimination, causing him to leave Germany for the United States in April 2023. *Id.* at 15. Mr. Kesete arrived in the United States near the San Diego Border on April 6, 2023, and was immediately placed in removal proceedings and taken into ICE custody. *Id.* at 16.

On October 26, 2023, Immigration Judge Eric Schultz granted Mr. Kesete's applications for relief under the Convention Against Torture and withholding of removal, ordered Mr. Kesete removed to Eritrea, and denied his application for asylum. *Id.* at 17.

Mr. Kesete filed a timely appeal, and the Board of Immigration Appeals affirmed the Immigration Court's decision on April 3, 2024. *Id.* at 18.

Mr. Kesete has never been arrested or committed a crime anywhere in the world, and there is no basis to conclude that he poses a threat of any kind to his community, or to national security. *Id.* at 19.

Mr. Kesete has consistently cooperated with ICE in their removal operation, repeatedly reached out to ICE and sought to assist in their efforts to effectuate his deportation to a third country, and has never refused to give ICE any information or documents required in order to remove him. Despite ICE's past indications that they were working to effectuate his deportation, they have not done so. *Id.* at 20.

Mr. Kesete remains in ICE custody today, despite more than 31 months having passed since he was first taken into custody upon arriving in the United States. *Id.* at 21.

ARGUMENT

A movant seeking a TRO must establish that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Petitioner is likely to succeed on the merits: he has been detained for more than 31 months, despite unequivocal clear Supreme Court precedent holding that such detention is a violation of a person's due process rights. Likewise, courts in this circuit and elsewhere are clear that violations of fundamental constitutional rights constitute irreparable harms, making every passing day that Mr. Kesete is detained an additional, irreparable harm. Moreover, the balance of equities tips overwhelmingly in Mr. Kesete's favor: he has no criminal record, does not represent a risk to national security of any kind, has obtained immigration relief in the form of withholding of removal and relief under the Convention Against Torture, and he has been deprived of his liberty for an unconscionable amount of time. Finally, the public's interest lies in liberty, and his continued detention, at taxpayer expense, serves no discernable public interest. As such, the TRO should issue.

I. This Court Has Jurisdiction Over Petitioner's Motion

The Court has ample authority under 28 U.S.C. § 2241 and under Rule 65 of the Federal Rules of Civil Procedure to hear this motion and the attached habeas corpus petition. Habeas corpus invests in federal courts broad, equitable authority to “dispose of the matter as law and justice require,” 28 U.S.C. § 2243, as the “very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 292 (1969).

This Court has jurisdiction over Petitioner's due process claim as it does not challenge any discretionary decision, but rather whether Respondents have the legal authority to continue to detain him. *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *2 (W.D. La. Aug. 27, 2025). Rule 65 provides this Court jurisdiction to issue a TRO requiring bond hearings *Id.* at *4.

II. Petitioner's Motion Should Be Granted and Petitioner Should Be Released Forthwith

A. Petitioner's Habeas Claim is Likely to Succeed on the Merits

Petitioner's due process claim is likely to succeed because Respondents, arbitrarily and without legal authority, have kept Mr. Kesete in custody for years beyond the limit set clearly by the Supreme Court. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In *Zadvydas*, the U.S. Supreme Court held that 8 U.S.C. § 1231(a)(6), when “read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States.” 533 U.S. at 689. A “habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* at 699. If the individual's removal “is not reasonably foreseeable, the court should hold

continued detention unreasonable and no longer authorized by the statute.” *Id.* at 699-700. In *Clark v. Martinez*, 543 U.S. 371 (2005), the U.S. Supreme Court held that *Zadvydas* applies to aliens found inadmissible as well as removable.

In determining the length of a reasonable removal period, the Court adopted a “presumptively reasonable period of detention” of six months. *Id.* at 701. After six months, the government bears the burden of disproving an alien’s “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *See Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*). Moreover, “for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701. ICE’s administrative regulations also recognize that government authorities have a six-month period for determining whether there is a significant likelihood of an alien’s removal in the reasonably foreseeable future. *See* 8 C.F.R. §241.4 (k)(2)(ii).

Respondent was taken into custody by ICE on or about April 6, 2023, roughly 31 months ago. He was granted withholding of removal and relief under the Convention Against Torture, but ordered removed to Eritrea on October 26, 2023, more than 24 months ago. And his removal order became administratively final on April 3, 2024, some 19 months ago. The government’s ability to rebut the presumption “that there is no significant likelihood of removal in the reasonably foreseeable future” has thus effectively vanished. The government having failed to date to effectuate Mr. Kesete’s removal order, Mr. Kesete should be released forthwith.

B. Petitioner Will Suffer Irreparable Harm Absent a TRO

Preventing irreparable harm is the “central purpose of a preliminary injunction.” *Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975). As such, an injunction should usually issue if “the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Monumental Task Comm., Inc. v. Foxx*, 157 F. Supp. 3d 573, 582–83 (E.D. La. 2016), *aff’d sub nom. Monumental Task Comm., Inc. v. Chao*, 678 F. App’x 250 (5th Cir. 2017) (quotations omitted). The Fifth Circuit requires only a “substantial threat” of irreparable injury, which is defined as “harm for which there is no adequate remedy at law.” *DSC Commc’ns Corp. v. DGI Techs., Inc.*, 81 F.3d 597, 600 (5th Cir.1996).

Where “an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Book People, Inc. v. Wong*, 91 F.4th 318, 340–41 (5th Cir. 2024). This Court recently held in a similar context to this case that the “unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm.” *Kostak*, 2025 WL 2472136, at *3; *see also Ventura Martinez v. Trump*, No. 3:25-cv-01445-JE-KDM at *6 (W.D. La. Oct. 22, 2025).

Under the circumstances, Mr. Kesete’s lengthy detention represents an ongoing, irreparable harm that compounds with each passing day. The constitutionally appropriate time for the government to either effectuate Mr. Kesete’s removal order or release him has long since passed. There is no conceivable basis for keeping Mr. Kesete in detention now, in order to grant the government *even more time* to take the action that it was required to take well over a year ago.

C. The Balance of the Equities and the Public Interest Favor a TRO

Where the government is a party to the case, the third and fourth injunction factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As an initial matter, the public interest is

served by the protection of constitutional rights. *See Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996). More specifically, the public interest lies in requiring “the Government to ensure compliance with its own laws.” *Kostak*, 2025 WL 2472136, at *4. By contrast, as this Court recently held, “the public has no interest in incarcerating people who have no basis to be detained.” *Ventura Martinez*, No. 3:25-cv-01445-JE-KDM at *6.

Petitioner has no criminal record, and there is no basis to find that he is a danger of any kind to his community or to national security. Nor are there grounds to conclude that he represents a flight risk: indeed, Mr. Kesete has been accorded immigration relief, rendering him eligible for work authorization, providing a clear incentive to cooperate with immigration authorities going forward.¹

III. Petitioner Requests a Waiver of Rule 65(c) Security.

Petitioner's requests that the Court exercise its authority to waive Rule 65(c)'s security requirement. The Court may waive security in its discretion. *Kostak*, 2025 WL 2472136, at *4. Respondents will not incur any costs or damages if the requested relief is granted. Therefore, Petitioners request that the Court waive any security.

CONCLUSION

Respondent's continued detention of Petitioner is a manifest violation of the Fifth Amendment. Each passing day that the Petitioner remains detained compounds that violation, and represents an irreparable harm. The public's interest weighs against unlawful detention, and Respondents could make no meaningful showing that the public has any interest whatsoever in

¹ The “vast majority...of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.” *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 *12 (W.D. Tex. Sept. 22, 2025); *see also Vieira Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 at *7 (W.D. Tex. Oct. 16, 2025), at *7 (collecting cases). This Court should do the same if it finds in Petitioners’ favor.

his continued detention. As such, the Court should enjoin Respondents from continuing to detain Petitioner.

Dated: November 13, 2025

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