

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Victor Manuel Montes Martinez,
Petitioner,

v.

JOSEPH FREDEN,
in his official capacity as Field
Office Director, Buffalo Field
Office, U.S. Immigration &
Customs Enforcement;

STEVEN KURZDORFER,
In his official capacity as Acting
Field Office Director, Buffalo Field
Office, U.S. Immigration & Customs
Enforcement;

TODD LYONS,
In his official capacity as Acting
Director, U.S. Immigration and
Customs Enforcement,

KRISTI NOEM,
In her official capacity as Secretary
of Homeland Security,

Respondent.

Civil Action No. 25-cv-1171

Immigration No. 

**EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

*Oral Argument Requested If
Deemed Necessary By Court*

EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

1. Mr. Victor Manuel Montes Martinez (“Mr. Montes”) is a citizen of Mexico who entered the United States without inspection in 1994 near San Ysidro, California. He has resided in the United States since then. He has no criminal record and is the father of three U.S. Citizen children. He resides in Goshen, Indiana. He is presently detained at the Buffalo Federal

Detention Facility (BFDF) in Batavia, NY after being detained by ICE on July 28, 2025. He was denied a bond hearing by Immigration Judge Aviva Poczter on August 26, 2025, and on September 16, 2025, a Motion to Reconsider that denial of a bond hearing was denied by the same IJ. He is currently scheduled for a final Individual Hearing on December 19, 2025 before Immigration Judge Eric Schultz. He remains held without bond.

2. The Immigration Courts are following a nationwide bond denial policy wherein they are following flawed precedent from the Board of Immigration Appeals, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A). This legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

3. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

4. Petitioner suffers irreparable harm to a substantial liberty interest as a result of his ongoing detention in violation of his statutory rights under the INA and his due process rights under the Fifth Amendment to the U.S. Constitution. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

5. This Court recently addressed a nearly identical scenario in *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV (W.D.N.Y. November 4, 2025). In that matter, the Hon. Lawrence J. Vilardo issued an order granting a TRO and ordering the government to release Petitioner or provide him with a bond hearing within 7 days where the government bears the burden of

proving by clear and convincing evidence that petitioner is a danger to the community or a flight risk.

6. Additionally, ICE has been moving detainees without notice to remote facilities with no notice, regardless of whether the noncitizen is represented by local counsel or has an upcoming hearing at the immigration court with jurisdiction over the facility wherein he is detained. If Petitioner is moved, he will not have access to local counsel and will be placed in a position where he will not be able to meaningfully assist counsel with the preparation of his defense. This emergency motion for a temporary restraining order seeks to prevent irreparable harm that would be caused by his movement outside of this judicial district, to a remote facility where access to counsel is difficult or impossible.

7. Therefore, Petitioner asks this court to without delay issue a temporary restraining order to require Petitioner's release or for a bond hearing on the merits be held by Respondents within 7 days. In addition, Petitioner asks this Court to order that he not be moved outside the jurisdiction until such time as the Court may decide the matters on the merits.

Dated: November 12, 2025

/s/ Matthew K. Borowski

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