

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

JOSE AMILCAR BENITEZ  
CASTRO,  
Petitioner,

Case No. **2:25-cv-17598**

v.

LUIS SOTO, et al.  
Respondents.

**NOTICE OF MOTION**

Now comes the Petitioner, Jose Amilcar Benitez Castro, by and through his undersigned counsel, and hereby moves this Honorable Court for a Temporary Restraining Order (“TRO”), pursuant to Rule 65 of the Federal Rules of Civil Procedure and Rule 65.1 of the Local Rules of Civil Procedure, enjoining the Respondents from moving the Petitioner outside of the State of New Jersey during the pendency of these proceedings.

**MOTION FOR TEMPORARY RESTRAINING ORDER**

**I. PRELIMINARY STATEMENT**

Petitioner respectfully moves this Court for a temporary restraining order pending its adjudication of his Petition for Writ of Habeas Corpus filed pursuant to 28

U.S.C. § 2241. Specifically, Petitioner requests the Court to order Respondents to cease any ongoing actions and refrain from taking any additional actions towards effectuating Petitioner's removal, transfer or transport from the State of New Jersey and the jurisdiction of this Court until the Court has adjudicated his habeas petition.

## **II. GROUNDS FOR RELIEF**

Petitioner is entitled to a TRO because:

- a. Immediate and Irreparable Injury:** Petitioner will suffer immediate and irreparable injury, loss or damage if the Respondents are not enjoined. The transfer of the Petitioner out of the District of New Jersey will render his pending habeas corpus petition moot or severely prejudice his ability to prosecute the case in this jurisdiction, as habeas is generally tied to the petitioner's physical location and the custodial respondent.
- b. Likelihood of Success on the Merits:** Petitioner has a strong likelihood of success on the merits of his habeas petition, which challenges the legality of his detention on the grounds that:
  - i.** Petitioner's detention is in violation of 8 U.S.C § 1226(a) in that mandatory detention does not apply to the Petitioner, who has been living in the United States since 2004, prior to being

apprehended and placed into removal proceedings by the respondents. Petitioner is detained under § 1226(a) and is eligible for release on bond. Respondents' unlawful application of § 1225(b)(2) to Petitioner violates the Immigration and Nationality Act;

- ii.** Petitioner's detention is in violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19, in that Petitioner is present in the U.S. without having been admitted or paroled and is eligible for bond and bond redetermination. Petitioner is not subject to mandatory detention and is entitled to a bond hearing. BIA's interpretation thus violates the regulations and unlawfully denies Petitioner a bond hearing;
- iii.** Petitioner's detention is in violation of the Administrative Procedures Acts, Contrary to Law, and Arbitrary and Capricious Agency Policy. Mandatory detention does not apply to the petitioner, who has been living in the United States since April 2004 prior to being apprehended and placed into removal proceedings by respondents. Petitioner is eligible for release on bond;

iv. Petitioner's detention is in violation of the Fifth Amendment Due Process Clause, Substantive and Procedural Due Process in that Petitioner's detention is not reasonably related to the goals of mandatory immigration detention without bond because he is neither a flight risk nor a danger to society. Petitioner has been living in the United States for approximately 21 years, has worked same company for the last 13 years, has three U.S. citizen children, has been tax compliant and is the primary financial support for his family. He has a DWI from 2018 and one from Spring 2025, and he has attended any/all court appearances and complied with all judicial orders for both. Aside from these incidents, he has had no criminal arrests or encounters with law enforcement during his more than two decades in the United States. He has lived in the same community in Glen Cove, NY for the duration of his time in the United States, and has strong ties to his community there.

c. **Balance of Equities:** The harm to the Petitioner from a transfer significantly outweighs the harm the injunction would cause the Respondents, as preventing an immediate transfer pending a judicial review is a minimal burden on correctional/detention authorities,

whereas this movement would cause significant harm to Petitioner. First, physical relocation often results in severe disruption to the attorney/client working relationship. Additionally, such movement places unnecessary and undue stress on the Petitioner and his family members who live in New York, within a reasonable distance from Delaney Hall Detention Facility, and who are therefore able to visit the Petitioner while he is detained.

- d. Public Interest:** The public interest is served by ensuring that individuals challenging the legality of their detention have access to judicial review and that the authority of the federal courts to adjudicate pending cases is preserved.

### **III. PRAYER FOR RELIEF**

**Wherefore,** Petitioner respectfully asks that this court:

- a. Grant the Motion for a Temporary Restraining Order;
- b. Enjoin the Respondents, their agents, and all persons acting in concert with them from moving Petitioner from the State of New Jersey during the pendency of the habeas corpus proceedings; and
- c. Grant such other and further relief as the Court may deem just and proper.

Based on these signed documents and under the Federal Rules of Civil Procedure 65 and the Local Rules of Civil Procedure 65.1, the Petitioner respectfully requests a Temporary Restraining Order in support of his Petition for Writ of Habeas Corpus.

Dated: November 14, 2025

Respectfully submitted,

/s/Catherine E. Reilly

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record. I also certify that I served the following via email:

US Attorney Frances Bajada at frances.bajada@usdoj.gov

US Attorney John Basiak at John.Basiak@usdoj.gov

*/s/Catherine E. Reilly*  
Catherine E. Reilly, Esq.  
Attorney for Petitioner