

UNITED STATES DISTRICT COURT FOR  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ORLANDO MARQUEZ-AMAYA,

*Petitioner,*

v.

**Bobby Thompson**, Warden, South Texas ICE Processing Center; **Miguel Vergara**, Field Office Director of Immigration & Customs Enforcement, Enforcement and Removal Operations San Antonio Field Office, **Todd Lyons**, Acting Director, ICE, **Kristi Noem**, Secretary of the U.S. Department of Homeland Security; and **Pamela Bondi**, Attorney General of the United States, in their official capacities,

*Respondents.*

Civil Action No.: 5:25-cv-01503

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER OR, IN THE  
ALTERNATIVE, FOR A PRELIMINARY INJUNCTION**

Petitioner Orlando I Marquez-Amaya (Petitioner) files this motion requesting the Court's request for a temporary restraining order (TRO) or, in the alternative, for a preliminary injunction preventing his removal pending a final decision in his petition for a writ of habeas corpus.

Petitioner is a Salvadorian national presently detained by Respondents in The South Texas ICE Processing Center in Pearsall, Texas. Mr. Marquez-Amaya has been in ICE custody since

October 21, 2025. On January 30, 2023, An Immigration Judge granted Mr. Marquez-Amaya withholding of removal and protection under the Convention Against Torture (CAT), recognizing that he faces clear probability of torture if returned to El Salvador. Despite this protection order, ICE detained him without any lawful basis or foreseeable prospect of removal.

Mr. Marquez Amaya is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ. due to a substantial risk of persecution or torture in their home country. 8 U.S.C. §1231(a)(1)(B)(i). Mr. Marquez Amaya's removal order and accompanying relief grant became final when ICE failed to timely appeal his relief grant. 8 C.F.R. § 1241.1.

Mr. Marquez Amaya's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his home country of because he was granted protection under the Convention Against Torture (CAT) with respect to that country. 8 C.F.R. § 1208.17. ICE's half-hearted attempts to remove Mr. Marquez Amaya to a random collection of unspecified alternative countries—to which he has no ties, and which have no policy or history of accepting non-citizen deportees—are speculative and futile.

Respondents' expressed intent to remove Petitioner is prohibited by federal law. Petitioner requests this Court's assistance to ensure that Respondents comply with federal law and prevent Petitioner's removal.

## **I. FACTUAL BACKGROUND**

Petitioner came to the United States in 2013, He received (CAT) Convention Against Torture on January 30,2023, an Immigration Judge granted Petitioner withholding of removal under the Convention Against Torture (CAT), finding that he faces a substantial risk of torture

if returned to El Salvador.

ICE officers took Petitioner into custody on October 21, 2025 and he is currently detained at The South Texas ICE Processing Center in Pearsall, Texas.

Despite the CAT withholding order, ICE has continued to detain Petitioner, even though his removal is not reasonably foreseeable and no lawful basis exists for continued confinement. Harm from Detention: Petitioner's continued detention has caused significant physical and emotional hardship, interrupted his life with his spouse, and deprived him of his liberty without legal justification.

Petitioner, through counsel, filed his pending Petition for Writ of Habeas on November 17, 2025 and is pending before this Court. On November 19, 2025, ICE Officers at the South Texas ICE Processing Center met with petitioner and informed him that he was going to be sent to Mexico within the next 24 hours.

#### **ARGUMENT**

Petitioner's detention is governed by federal law, including §§ 1226 and 1231, and by the Constitution's Fifth Amendment, which guarantees that no person shall be deprived of liberty without due process of law. under 8 U.S.C. § 1231(a)(1)(c), the government may not detain an individual indefinitely if removal is not reasonably foreseeable. in *Zadvydas v. Davis*, 533 u.s.678 (2001), the Supreme Court held that prolonged detention of noncitizens whose removal is not reasonably foreseeable violates the Constitution. individuals granted withholding of removal under the Convention Against Torture (CAT) cannot be lawfully removed to the country of concern, making detention without a lawful basis unlawful and indefinite.

Petitioner seeks this TRO to prevent his removal from the United States while his Petition is before this Court. To not allow him to remain in the United States during his proceedings is a direct violation of his right to Due Process.

Respondents have expressed their intent to remove Petitioner in violation of federal law. If removed, Petitioner will suffer irreparable harm if his removal is not enjoined. Respondents will suffer no harm since an order from this Court will simply instruct them to comply with federal law. Lastly, granting a TRO or preliminary injunction is in the public interest because it upholds the important principle that federal officers are bound to comply with the regulations that bind them. Accordingly, this Court should enter an order enjoining Respondents from executing Petitioner's removal order prior to his hearings and a final disposition in the case.

#### **A. The Legal Standard for a Preliminary Injunction**

A plaintiff is entitled to a preliminary injunction to preserve the status quo and prevent irreparable harm until the parties' rights can be determined at trial on the merits. *City of Dallas v. Delta Air Lines, Inc.*, 847 F.3d 279, 285 (5th Cir. 20217). The "status quo" sought to be restored is "the last peaceable uncontested status existing between the parties before the disputed developed." Charles Alan Wright & Arthur R. Miller, 11A FEDERAL PRACTICE & PROCEDURE § 2948 (3d ed. 2013). Thus, the status quo in this case means preventing Respondents from executing Petitioner's removal order..

To obtain a preliminary injunction, a plaintiff must show (1) a substantial likelihood of prevailing on the merits; (2) a substantial likelihood of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the nonmovant if the injunction is not granted; and (4) the injunction will not disserve the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 374 (2008). The first two factors,

substantial likelihood of prevailing on the merits and of irreparable harm, are the most critical. *Nken v. Holder*, 556 U.S. 418, 434 (2009). In this circuit, the first factor, likelihood of success on the merits, is the most important. *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005). Further, “where there is a serious legal question involved and the balance of the equities heavily favors [an injunction], the movant only needs to present a substantial case on the merits.” *Lake Eugenie Land & Dev., Inc. v. BP Exploration & Prod. (In re Deepwater Horizon)*, 732 F.3d 326, 345 (5th Cir. 2013) (quoting *Weingarten Realty Investors v. Miller*, 661 F.3d 904, 910 (5th Cir. 2011)).

**B. Petitioner is entitled to a TRO and/or a Preliminary Injunction Because Respondents’ threatened action violates federal law**

**1. Petitioner has a substantial likelihood of prevailing on the merits of his case.**

Petitioner’s petition for writ of habeas only seeks to have him released while ICE officers seek to locate a third-party country that will receive him. He has no pending court case before the immigration courts. Furthermore, he has no fixed release date. Based on this argument and the arguments contained in his petition, Petitioner case has a substantial likelihood of success on the merits.

**2. Petitioner will suffer irreparable harm is Respondents are allowed to execute his removal order**

Petitioner will suffer immediate and irreparable harm if Respondents execute his removal order at this time. As stated above, Respondent has a pending petition before this court and his right to due process merit that he stay in the country while his case is decided. To do so would case petitioner irreparable harm.

Additionally, Respondents' refusal to conduct a lawful custody review or recognize Petitioner's CAT protection deprives him of due process under the Fifth Amendment. Constitutional violations—particularly those involving physical liberty—are presumed to be irreparable. The continuation of detention and the threat of an unlawful removal together create a degree of irreparable harm that no later court ruling can cure.

“In general, a harm is irreparable where there is no adequate remedy at law, such as monetary damages.” *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2000). No amount of money physically restores Petitioner's status in the United States. If denied preliminary relief, Petitioner will suffer irreparable harm, namely the loss of his CAT Withholding, the ability to live with his family, and the opportunity to work in this country.

**3. The Balance of Equities Tips Heavily in Favor of Petitioner and an Injunction is in the Public Interest**

The threatened injury to Petitioner far outweighs any harm that will result to Respondents if the Court issues a TRO or an injunction. Further, the issuance of an injunction does not disserve the public interest but rather promotes it because it upholds the rule of law.

Petitioner is presently detained and Respondents have advised him that he will be removed on Wednesday, November 19, 2025. He is protected from removal. His removal in violation of federal law will result in separation from his family, the loss of his lawful status and the opportunity to contest his removal. The resulting harms to the Defendants are nonexistent or at most minimal. They are simply held to the rule of law.

In addition, granting the injunction does not disserve the public interest but rather promotes it. It is in the public interest for government officials to comply with federal law. *MCR Oil Tools, L.L.C v. United States DOT*, 2024 U.S. App. LEXIS 14297 at \*19 (5th Cir. June 12, 2024) (“There is a ‘substantial public interest in having governmental agencies abide by the federal laws that

govern their existence and operations.”) (quoting *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022)). And in this case, the law is clear that Respondents have no authority to execute Petitioner’s removal order. Granting the injunction promotes the rule of law.

## II. CONCLUSION

For the foregoing reasons, this Court should issue a restraining order or preliminary injunction and instruct Respondents to abstain from executing Petitioner’s removal order.

Dated: November 19, 2025

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

On November 19, 2025, undersigned counsel served a copy of this motion on the U.S. Attorney for the Western District of Texas as required by serving one of his designated agents for service of process. In addition, undersigned counsel emailed this motion to Assistant U.S. Attorney Lacy McAndrew at to the following address: [Lacy.McAndrew@usdoj.gov](mailto:Lacy.McAndrew@usdoj.gov).

Respectfully submitted,



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**ORDER**

Pending before the Court is Plaintiff's Motion for a Temporary Restraining Order or, in the Alternative, for a Preliminary Injunction. After having reviewed the motion and the evidence in support of the motion, the parties' arguments and the applicable law, the Court is of the opinion that the motion should be GRANTED.

The Court concludes that Plaintiff has satisfied the factors necessary for issuance of a preliminary injunction. He is likely to succeed on the merits of his claim and he is likely to suffer irreparable harm. Further, the balance of equities tilts in his favor and an injunction promotes the public interest by requiring federal officers to comply with regulations that bind them.

It is ORDERED that Defendants shall be prohibited from removing the Plaintiff until his hearings have held and a final order has been issued regarding the merits of his Petition for a Writ of Habeas.

Signed this \_\_\_ day of November, 2025.

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UNITED STATES DISTRICT JUDGE