

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

Celeste Yuliani Betancourt Izaguirre,  
*Petitioner,*

v.

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


TAMMY MARICH,  
In her official capacity as 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-1202

Immigration No. 

PETITIONER'S NOTICE OF  
MOTION FOR AN *EX PARTE*  
TEMPORARY RESTRAINING  
ORDER AND AN EXPEDITED  
HEARING AND  
INCORPORATED  
MEMORANDUM OF LAW

*Oral Argument Requested*

PETITIONER'S NOTICE OF MOTION FOR AN *EX PARTE* TEMPORARY  
RESTRAINING ORDER AND AN EXPEDITED HEARING AND INCORPORATED  
MEMORANDUM OF LAW

PLEASE TAKE NOTICE that Petitioner through counsel, Matthew K. Borowski, Esq., hereby moves this Court for an order: (i) pursuant to Fed. R. Civ. P. 65 and Local Rule 7(d)(1), enjoining Respondents from moving Petitioner outside of the jurisdiction of this Court, and also ordering Respondents to release her immediately or provide her with a bond hearing where the burden is on the government to establish by clear and convincing evidence that she is a flight risk or a danger to

the community. Petitioner requests that this relief be granted *ex parte* as she is facing imminent movement by ICE to a distant location. This motion is supported by the accompanying Memorandum of Law.

**PLEASE TAKE NOTICE THAT** the motion will be heard at the United States Courthouse, 2 Niagara Square, Buffalo, New York at a date and time to be set by the Court.

**PLEASE TAKE FURTHER NOTICE** that defendant intends to serve and file reply papers and, therefore, any papers in opposition to this motion are due fourteen days after service of this motion, pursuant to Local Rule 7(b)(2)(B), unless otherwise ordered by the Court.

#### **INCORPORATED MEMORANDUM OF LAW**

1. Ms. Celeste Yuliani Betancourt Izaguirre (“Ms. Betancourt”) is a citizen of Venezuela who entered the United States without inspection on or about 04/26/2023 at Brownsville, TX. Upon information and belief, she has no criminal record. She possesses a valid employment authorization document (EAD) and has a pending asylum case. In spite of this, on or about November 5, 2025, ICE detained her at her check-in appointment. She is presently detained at the Allegany County Jail in Belmont, New York. Upon information and belief, Ms. Betancourt will be imminently moved by ICE to a facility out-of-state, which will impede her ability to participate in these proceedings and confer with counsel.

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. This Court has held recently that these actions are illegal. See *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV (W.D.N.Y. November 4, 2025). Thus, The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

3. Petitioner suffers irreparable harm to a substantial liberty interest as a result of her ongoing detention in violation of her statutory rights under the INA and her 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).

4. 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. In that matter, the Court also issued a TRO preventing Mr. Alvarez from being moved outside of the jurisdiction of this Court.

5. 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, she will not have access to local counsel and will be placed in a position where she will not be able to meaningfully assist counsel with the preparation of his defense. This emergency

motion for an *ex parte* 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.

6. Therefore, Petitioner asks this court to without delay issue a temporary restraining order to prevent Petitioner from being moved outside the jurisdiction until such time as the Court may decide the matters on the merits. Further, Petitioner asks this Court to either grant this TRO with respect to her detention or otherwise handle the underlying habeas corpus petition in an expedited manner.

Dated: November 17, 2025

/s/ Matthew K. Borowski

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