

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

NESTOR ANTONIO DUQUE CRUZ

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Petitioner,

v.

MICHAEL BRECKON, Warden of
FOLKSTON ICE PROCESSING
CENTER, LADEON FRANCIS, Field
Office Director of Enforcement and
Removal Operations, Atlanta Field
Office, Immigration and Customs
Enforcement; TODD LYONS, Acting
Director, U.S. Immigration Customs
Enforcement, KRISTI NOEM, Secretary,
U.S. Department of Homeland Security;
PAM BONDI, U.S. Attorney General;
DAREN K. MARGOLIN, Director,
Executive Office for Immigration
Review (EOIR);

Respondents.

Case No.

**REQUEST FOR INTERIM
RELIEF**

REQUEST FOR INTERIM RELIEF

I. Introduction

Petitioner respectfully moves this Honorable Court for interim release from immigration detention and for an order prohibiting ICE and the Department of Homeland Security ("DHS") from transferring him to any other detention facility within the United States while his petition for writ of habeas corpus remains pending.

This request is made pursuant to the Court's inherent authority under 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651(a), and binding Eleventh Circuit precedent recognizing the Court's power to grant interim relief to preserve the effectiveness of habeas corpus review. *See Wilcox v. Ford*, 812 F.2d 1140 (11th Cir. 1987); *Gomez v. United States*, 899 F.2d 1124 (11th Cir. 1990); *see also Mapp v. Reno*, 241 F.3d 221, 225 (2d Cir. 2001).

II. Legal Standard

Federal courts possess inherent equitable authority to order temporary release or other interim relief when the petitioner demonstrates:

1. A likelihood of success on the merits of a substantial constitutional claim, and
2. Extraordinary or exceptional circumstances that make release necessary to preserve the effectiveness of the habeas remedy. *See Wilcox*, 812 F.2d at 1143; *Gomez*, 899 F.2d at 1125; *Mapp*, 241 F.3d at 225.

III. Argument

A. Petitioner Is Likely to Succeed on the Merits of His Substantial Constitutional Claim.

Petitioner has been detained since on or about November 6, 2025, when ICE officers arrested him for having dark tints on the windows of his vehicle. He has lived in the United States since 2012, has no disqualifying criminal convictions, and is eligible to file an Application for Cancellation of Removal under INA § 240A(b).

Petitioner's detention is based solely on his alleged entry without inspection under 8 U.S.C. § 1182(a)(6)(A)(i). Pursuant to a new DHS policy issued July 8, 2025, ICE has classified all individuals charged under this section as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). That interpretation was subsequently adopted by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that immigration judges lack jurisdiction to consider bond for any person who entered without inspection.

This interpretation directly conflicts with the plain text of the Immigration and Nationality Act. Section 1225(b)(2)(A) applies only to arriving aliens—those seeking admission at the border—not to long-term residents like Petitioner who entered years ago and are charged as inadmissible under § 1182(a)(6)(A)(i). For decades, such individuals have been detained under 8 U.S.C. § 1226(a), which allows for bond or conditional parole. DHS's abrupt reclassification is therefore contrary to law and long-standing agency practice, and it results in unconstitutional, indefinite detention without individualized review.

Because Petitioner is detained under the wrong statute and denied a bond hearing to which he is entitled, he has a substantial likelihood of success on the merits of his habeas petition

1 **B. Extraordinary and Exceptional Circumstances Make Release Necessary**

2 Extraordinary and compelling circumstances justify Petitioner's temporary release while
3 this Court considers the merits of his habeas petition.

4 Petitioner is the father of two U.S. Citizen children both of whom have chronic medical
5 condition that if left untreated would be debilitating. His youngest daughter, age 8, was born with
6 kidney dysfunction which requires constant medical treatment and a special diet to stabilize her
7 condition. However, her doctor has advised that she is at risk of obtaining a future infection if she
8 does not continue treatment. Furthermore, Petitioner's eldest daughter, age 11, has had to undergo
9 two surgeries for episodic deafness and now needs a third surgery because she is currently deaf in
10 both ears. These health concerns, combined with the extraordinary humanitarian hardship facing
11 his U.S. Citizen children, constitute exceptional circumstances warranting interim relief.
12 Petitioner's family solely relies on him as the family's breadwinner. Since Petitioner's detention,
13 the children fear that they will be left without a father, leaving them with immense mental anguish.
14 The family has become emotionally destabilized and financially imperiled by the loss of their
15 father and provider.

16 Continued detention would also render any eventual *habeas* relief ineffective, as the
17 prolonged separation may cause irreparable psychological harm to his children and irreversible
18 damage to the family unit. Interim release is necessary "to preserve the effectiveness of the habeas
19 corpus relief sought." *Wilcox*, 812 F.2d at 1143; see also *Mapp*, 241 F.3d at 225.

20 **C. Prohibition on Transfer Is Necessary to Protect the Court's Jurisdiction**

21 Petitioner further requests that the Court issue an order prohibiting ICE from transferring
22 him from the Folkston Detention Center to any other facility within the United States during the
23 pendency of this habeas action. Transfer would interfere with counsel's ability to communicate
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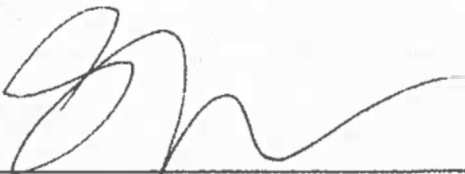
1 with Petitioner, hinder the presentation of evidence, and could divest this Court of jurisdiction over
2 the custodian. Courts routinely enjoin transfers under similar circumstances to safeguard judicial
3 review and ensure the availability of effective relief. *See Ex parte Endo*, 323 U.S. 283 (1944).

4 **IV. Conclusion**

5 For the foregoing reasons, Petitioner respectfully requests that this Honorable Court:

- 6 1) Grant interim release from ICE custody pending resolution of the habeas corpus petition;
7 2) Prohibit ICE and DHS from transferring Petitioner from the Folkston Detention Center to
8 any other facility within the United States while this action is pending; and
9 3) Grant such further relief as the Court deems just and proper.

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11 DATED this 20th day of November, 2025.



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13 Shirley C. Zambrano
14 GA BAR 741429
15 Zambrano Law LLC
16 1995 N. Park Place, Suite 360
17 Atlanta, GA 30339
18 T: (770) 769-5820
19 F: (770) 769-5810
20 E: szambrano@zambranolaw.com
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22
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