

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEANDRO AVILA, SAEL,  
Petitioner,

V.

Case No. \_\_\_\_\_

WARDEN, NORTH LAKE  
CORRECTIONAL FACILITY;  
SECRETARY OF THE DEPARTMENT  
OF HOMELAND SECURITY;  
DIRECTOR, U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT; ICE DETROIT  
FIELD OFFICE DIRECTOR; ICE CHICAGO  
FIELD OFFICE DIRECTOR; UNITED  
STATES ATTORNEY GENERAL; AND  
DIRECTOR, EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW,  
Respondents.

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

Petitioner, LEANDRO AVILA, SAEL, by counsel, respectfully moves this Court for an Emergency Temporary Restraining Order under Federal Rule of Civil Procedure 65(b). Petitioner seeks (1) immediate release from immigration detention, or (2) in the alternative, a constitutionally adequate custody hearing within 48 hours with appropriate procedural safeguards. This extraordinary relief is warranted because Petitioner is suffering ongoing, irreparable harm from unlawful detention, and no administrative mechanism exists for obtaining a meaningful custody review.

## INTRODUCTION

Petitioner has been detained since November 3, 2025. He has received no lawful custody determination. The Immigration Judge declined jurisdiction under *Matter of Hurtado* and refused to provide a bond hearing. ICE subsequently denied parole through a one-sentence, unexplained decision that violated both the APA and ICE's own regulations requiring individualized review. As a result, Petitioner is trapped in a constitutional vacuum where neither ICE nor EOIR provides any mechanism to assess flight risk, danger, or alternatives to detention. His continued confinement violates the Fifth Amendment, the INA, and the APA.

A Temporary Restraining Order is necessary to prevent irreparable harm and preserve Petitioner's core constitutional rights while the Court adjudicates the habeas petition.

## **LEGAL STANDARD**

A TRO may issue where the movant demonstrates (1) likelihood of success on the merits, (2) irreparable harm, (3) balance of equities in his favor, and (4) consistency with the public interest. *Winter v. NRDC*, 555 U.S. 7 (2008). Each factor strongly favors Petitioner.

## **ARGUMENT**

1. Petitioner is likely to succeed on the merits.

Petitioner's detention is unlawful because he has never been afforded a constitutionally adequate custody determination. EOIR refused to hold a bond hearing under *Matter of Hurtado*. ICE denied parole with no reasoning, violating the APA, the *Accardi* doctrine, and 8 C.F.R. § 212.5. Detention without any meaningful process violates due process. Courts have repeatedly held that civil immigration detention requires individualized review. See *Singh v. Holder*; *Velasco Lopez v. Decker*; *Velesaca v. Decker*.

2. Petitioner will suffer irreparable harm without a TRO.

Petitioner is separated from his partner and U.S. citizen daughter and is experiencing escalating emotional and financial harm. Each day of unlawful detention constitutes irreparable constitutional injury.

3. The balance of equities favors Petitioner.

The Government suffers no harm from providing a constitutionally required custody hearing or from releasing a non-dangerous, non-flight-risk father with deep community ties. Petitioner, by contrast, suffers severe hardship from continued confinement.

4. The public interest favors granting a TRO.

The public has a strong interest in ensuring that detention is lawful and consistent with constitutional principles.

### **REQUESTED RELIEF**

Petitioner respectfully requests that the Court:

1. Order Respondents to immediately release Petitioner from civil immigration detention;  
OR
2. In the alternative, order Respondents to provide a constitutionally adequate custody hearing within 48 hours with the following safeguards:
  - a. The Government bears the burden of proof by clear and convincing evidence;
  - b. The adjudicator must consider Petitioner's ability to pay;
  - c. The adjudicator must consider alternatives to detention;
  - d. The adjudicator must consider Petitioner's extensive equities;
  - e. Written findings must issue.

3. Enjoin Respondents from transferring Petitioner outside this judicial district during the pendency of these proceedings.
4. Grant any further relief the Court deems just and proper.

Respectfully submitted,

/s/ Kimberly Sabrina Weiss  
Kimberly Sabrina Weiss  
Spagui Law  
736 N. Western Avenue, Suite 420  
Lake Forest, IL 60045  
(847) 780-7080  
[kspagui@spaguilaw.com](mailto:kspagui@spaguilaw.com)  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I certify that on the date of filing, I served a true and correct copy of this Emergency Motion for Temporary Restraining Order on all Respondents through the Court's CM/ECF system, and by mail to any Respondent not registered to receive electronic notifications, pursuant to Rule 5.

/s/ Kimberly Sabrina Weiss  
Kimberly Sabrina Weiss