

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

BRANDON ABEL FAJARDO  
GALICIA,  
*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-1275

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 AND INCORPORATED MEMORANDUM OF  
LAW FOR AN *EX PARTE* TEMPORARY RESTRAINING ORDER AND AN EXPEDITED  
HEARING

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 him immediately or provide him with a bond hearing where the burden is on

the government to establish by clear and convincing evidence that he is a flight risk or a danger to the community. Petitioner requests that this relief be granted *ex parte* as he faces likely 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. Brandon Abel Fajardo Galicia (“Mr. Fajardo”) is a citizen of Guatemala who arrived in the U.S. without inspection on or about August 15, 2019 at or near Eagle Pass, Texas. He filed an I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture on or about August 6, 2020 with the Immigration Court in San Francisco, California. On September 30, 2023, he married Emily Rose Costa, a U.S. Citizen. His wife filed an I-130 “Petition for Alien Relative” on his behalf, and at the interview at the USCIS Albany office yesterday, November 25, 2025, Mr. Fajardo was detained by ICE. He was taken to the Buffalo Federal Detention Facility (BFDF) where he remains detained without bond.

2. Upon information and belief, Petitioner faces a substantial likelihood of being imminently moved by ICE to a facility out-of-state, which will impede his ability to participate in these proceedings and confer with counsel.

3. 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 his continued detention and violates the INA.

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

5. 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.

6. 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, he will not have access to local counsel and will be placed in a position where he 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.

7. 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 his detention or otherwise handle the underlying habeas corpus petition in an expedited manner.

Dated: November 26, 2025

/s/ Matthew K. Borowski

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