UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ROBERTO EFRAIN PEREZ CASTRO, Petitioner, v. KRISTI NOEM, Secretary of Homeland Security, in her official capacity, et al. Respondents.	Civil Action No. EP-25-CV-623 **HEARING REQUESTED**

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner Roberto Efrain Perez Castro ("Mr. Perez") respectfully moves for the issuance of a Temporary Restraining Order ("TRO") and Preliminary Injunction (the "Application"), based on the grounds contained in his Original Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, filed on December 6, 2025. *See* ECF No. 1.

Pursuant to Federal Rule of Civil Procedure 65(b)(3) and Local Civil Rule 78.1, Mr. Perez requests that the Court set the Application for oral argument at the earliest practicable time—ideally within forty-eight (48) hours—given the nature of the issues presented and the illegality of ICE's detention of Mr. Perez following his unlawful detention by ICE officers near his home in Queens, New York.

Immediate judicial consideration is necessary because Mr. Perez faces ongoing, irreparable harm: he is presently in civil immigration custody, with a last known location

of detention at the at ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, TX 79936, despite due to the fact that the Board of Immigration Appeals has unlawfully restrained immigration judges from exercise jurisdiction over most immigration bond requests contrary to the plain language of the relevant statute, *i.e.*, 8 U.S.C. § 1226(a).

A. Mr. Perez Is Likely to Succeed on the Merits of His Petition.

The Supreme Court has made clear that such extraordinary relief depends on a four-factor test: likelihood of success on the merits, irreparable harm, the balance of equities, and the public interest. *Nken v. Holder*, 556 U.S. 418, 434–35 (2009). As explained below, Petitioner satisfies each of these factors.

Mr. Perez has a strong likelihood of success on the merits of his claims. As explained more fully hereinabove, numerous district courts including some from within the Fifth Circuit, have already determined that noncitizens in circumstances substantially similar to that of Mr. Perez, who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge.

Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Perez might file—due to the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the clear and unambiguous language of Section 236(a).

Additionally, Mr. Perez raises valid constitutional claims under: (1) the Fourth Amendment, due to the unlawful nature of his arrest by ICE officers absent indicia of criminal activity that would give rise to a reasonable suspicion to detain or probable cause

to arrest him, and (2) the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violates due process.

Taken together, these statutory and constitutional grounds present not merely a plausible claim, but a compelling one. Under *Nken v. Holder*, 556 U.S. 418, 434 (2009), likelihood of success is the most critical factor in evaluating interim relief. Here, Petitioner's claim is exceptionally strong.

B. Mr. Perez Will Suffer Irreparable Harm If an Injunction Does Not Issue.

If this Court does not grant immediate relief, Mr. Perez will continue to suffer irreparable harm. The Supreme Court has recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Every day Mr. Perez remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

Even if Mr. Perez were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—loss of liberty, disruption of family life, psychological strain, and reputational damage—could never be undone. As *Nken* instructs, irreparable harm cannot be speculative; it must be actual and concrete. 556 U.S. at 435. Mr. Perez's ongoing imprisonment without a lawful hearing meets that standard.

Moreover, Petitioner is concurrently seeking this TRO for a narrow and limited purpose. Specifically, Petitioner requests a brief temporary release so that he may appear in person to testify in a pending civil action in New York state court. That civil matter involves substantial monetary claims and is presently set for trial. Petitioner is a named party and material witness, and his in-person testimony is essential to the fair adjudication

of his claims. The grant of a TRO authorizing Mr. Perez's release would also work to mitigate the damage from ICE's violation of his Fourth Amendment rights triggered by the unlawful manner in which Mr. Perez was arrested—namely, without a warrant, probable cause, or even reasonable suspicion of an immigration violation. *Cf. United States v. Brignoni-Ponce*, 422 U.S. 873, 885-87 (1975) (holding that apparent Mexican ancestry alone cannot justify a stop by immigration officers).

Absent temporary release, Petitioner will suffer irreparable harm, as removal or continued detention would effectively foreclose his ability to prosecute the civil action and could result in dismissal, default, or severe prejudice to his legal rights. The requested TRO would merely preserve the status quo long enough to allow Petitioner to fulfill his obligations to testify in person in the civil case in New York state court.

As further set forth in the attached declaration of Petitioner's New York civil counsel, Petitioner's presence is indispensable to the proceedings, and remote participation is not a viable alternative. Petitioner has further indicated his willingness, upon completion of his court-ordered testimony, to depart the United States voluntarily. The declaration of civil counsel is submitted in support of this limited and equitable request.

Mr. Perez also fears being transferred outside this District now that Respondents have issued an administrative removal order against Mr. Perez without affording him his right to counsel after he sought habeas relief. Indeed, Respondents have attempted to do precisely that in similar cases in the last several months in other federal districts in Texas. *See, e.g., Vera Vergara v. Noem*, No. 3:25-cv-02075-E-BT, ECF No. 9 (N.D. Tex. Aug. 21, 2025) (acknowledgment by Respondents of transfer of noncitizen in apparent violation

of court's directive). Therefore, it is clear that Mr. Perez will suffer irreparable injury unless the Court grants a TRO.

C. Balance of Equities Weighs in Mr. Perez's Favor.

The balance of equities tips decisively in Petitioner's favor. On his side lies the interest in safeguarding one of the most fundamental rights recognized in our legal system—the right not to be arbitrarily detained without process. This interest is further bolstered by his right to participate in his civil case in New York state court, which is simply not feasible unless he is released from custody as a temporary, limited remedy for ICE's violation of his Fourth Amendment right to be free from unreasonable search and seizure. On the government's side, the only asserted interest is administrative convenience in applying the BIA's recent, and in this Circuit nonbinding, precedents.

There is no evidence that Petitioner poses a danger to the community or a risk of flight, and the dismissal of his recent criminal indictment further diminishes any legitimate basis for continued detention. In contrast, every additional day of unlawful confinement inflicts significant harm on Petitioner. When weighed against each other, the equities clearly support granting immediate relief.

D. There Is Strong Public Interest In Maintaining the Pre-2025 Status Quo.

Finally, the public interest strongly supports the issuance of an injunction. The Supreme Court in *Nken* explained that when the government is the opposing party, the balance of equities and the public interest merge. 556 U.S. at 435. The public has no interest in perpetuating unlawful detention; rather, the public's interest is served by ensuring that government agencies act within the bounds of statutory and constitutional authority.

Granting Petitioner an individualized bond hearing promotes confidence in the integrity of the immigration system, reinforces respect for the rule of law, and prevents the arbitrary deprivation of liberty. Protecting fundamental due process rights is not just in Petitioner's interest, but in the interest of the public at large.

Each factor of the equitable test weighs heavily in Mr. Perez's favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(a) by various federal district courts and the Due Process Clause; he faces irreparable harm each day he remains detained without lawful process; the equities tilt overwhelmingly toward protecting his liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

For these reasons, this Court should issue an injunction at the earliest possible opportunity, requiring Respondents to release him immediately under reasonable conditions, or in the alternative, to provide him with a bond hearing.

E. Request for Hearing

Absent prompt intervention by this Court, Mr. Perez reasonably fears he could be unlawfully forced to depart the United States—or placed beyond this Court's reach—before meaningful judicial review can occur in this habeas case, despite the fact that Mr. Perez's continued detention in Respondents' custody is a direct result of the government's unlawful apprehension of Mr. Perez in violation of his Fourth Amendment right to be free of unlawful searches and seizure. Worse yet, Respondents' actions in unlawfully arresting Mr. Perez without a warrant or probable cause will result in his inability to testify in his civil case in New York starting on January 22, 2026—a case in which millions of dollars are at stake.

Under Fed. R. Civ. P. 65(b)(3), the Court must set a hearing on a request for injunctive relief "at the earliest possible time," and the Supreme Court has emphasized that a TRO is a short-term measure designed only to preserve the status quo until a full hearing can be held. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974). Consistent with that mandate, courts in this Circuit set such matters swiftly where irreparable harm is imminent in order to "preserve the district court's power to render a meaningful decision after a trial on the merits." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572-73 (5th Cir. 1974).

Furthermore, the undersigned Local Counsel has recently conferred via email with Mr. Fidel Esparza, Assistant U.S. Attorney for the Western District of Texas, who represents federal governmental respondents in habeas petitions. Prior to the filing of this motion, Mr. Esparza indicated that he spoke with his agency clients and that Respondents do oppose the TRO as requested in this motion.

Counsel for Mr. Perez is prepared to present argument and evidence by in-person appearance or, if the Court prefers, by videoconference. Should the Court require live testimony, Petitioner requests to be produced at the hearing.

CONCLUSION & PRAYER

WHEREFORE, Petitioner respectfully prays that the Court issue a TRO, and that the Court enter an order setting this motion for a hearing at the earliest practicable time and granting such other relief as the Court deems just and proper.

DATE: January 6, 2026.

Respectfully submitted,

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* Lead Counsel for Petitioner is licensed in New York and has applied for admission *pro hac vice*, which remains pending at this time.

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing *Petitioner's Motion for Temporary Restraining Order*, as well as any and all attachments thereto, on Counsel for Respondents by serving the same by filing the same using the Court's CM/ECF system and via email to the U.S. Attorney's Office for the Western District of Texas to the following email address:

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DATE: January 6, 2026.