

RECEIVED
U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

DEC 12 2025

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

DANIEL J. McCOY, CLERK



BY: _____

Guilherme Cavalcante Mol
Plaintiff

Case No. 1:25-cv-2023

VS.
Eleazar Garcia and Kristi Noem
Defendants

Judge
Magistrate Judge

**MOTION FOR TEMPORARY RESTRAINING ORDER AND MEMORANDUM IN
SUPPORT**

I. INTRODUCTION

Petitioner, through undersigned counsel, respectfully moves this Honorable Court for a Temporary Restraining Order (“TRO”) pursuant to Fed. R. Civ. P. 65 to prevent Respondents from:

1. Continuing Petitioner’s unlawful detention without statutory authority under INA § 236(a);
2. Transferring Petitioner outside the jurisdiction of this Court; and
3. Removing Petitioner from the United States before this Court has an opportunity to adjudicate the pending Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.

Immediate relief is necessary to preserve the Court’s jurisdiction, prevent irreparable harm, and enforce the constitutional and statutory rights implicated in this case.

Petitioner is detained under INA § 236(a) and charged only as a visa overstay under INA § 237(a)(1)(B)—a non-criminal, non-mandatory detention category. The government acknowledges in the Notice to Appear that Petitioner entered the United States with a visa and

remained beyond the authorized period, and that he is charged as removable under INA § 237(a)(1)(B). Despite this, two different Immigration Judges—on October 23, 2025, and November 21, 2025—refused to adjudicate Petitioner’s bond request, incorrectly claiming lack of jurisdiction.

As a result, Petitioner has been held without any lawful authority, without a custody determination, and without any finding of danger or flight risk. His detention is therefore ultra vires, arbitrary, and unconstitutional.

Petitioner faces imminent and irreparable harm, including:

- Continued unlawful detention;
- The risk of transfer to distant facilities (a common ICE practice in Louisiana detention centers); and
- The risk of removal before judicial review can occur.

A TRO is needed immediately to preserve the status quo and allow this Court to adjudicate the habeas petition.

II. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest.”

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips

“sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies both standards.

III. ARGUMENT

A. Petitioner Warrants a Temporary Restraining Order

A TRO should issue where “immediate and irreparable injury, loss, or damage will result” in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a TRO is to prevent irreparable harm while the Court considers more complete briefing or a preliminary injunction. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974). Here, Petitioner is likely to remain in unlawful custody in violation of the INA and the Due Process Clause unless this Court intervenes.

1. Petitioner Is Likely to Succeed on the Merits (or Raises Serious Questions) that His Ongoing Detention Under § 236(a) Without a Bond Hearing Is Unlawful

First, as a threshold matter, nothing in the INA authorizes Petitioner’s detention as mandatory. He is detained under INA § 236(a) and charged only as a visa overstay under § 237(a)(1)(B). Section 236(c) mandatory detention applies only to narrow categories of noncitizens charged with specific enumerated criminal or security-related grounds, which do not apply to Petitioner. Accordingly, his detention is discretionary and subject to bond consideration under § 236(a) and 8 C.F.R. § 1236.1.

Second, Petitioner’s continued detention without any bond hearing violates both the statute and the Constitution. Multiple courts and class-wide actions—including *Maldonado, Bautista*, and *Riley v. Bondi*—have recognized that § 236(a) detainees are entitled to custody

hearings before a neutral decisionmaker, and that systemic refusal by Immigration Judges to exercise jurisdiction over such bond requests is unlawful.

Petitioner fits squarely within the Maldonado/Bautista class definition: a § 236(a) detainee, charged only as a visa overstay, whose bond request has been categorically rejected on jurisdictional grounds. The government may not, consistent with due process, deny him any opportunity to show he is neither a danger nor a flight risk.

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Due Process Clause requires, at minimum, a meaningful opportunity to be heard at a meaningful time before the government deprives a person of this core liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Here, Petitioner has had no hearing at all about his custody.

Moreover, “the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). Detention that is not authorized by statute, or that is imposed without constitutionally adequate procedures, is unlawful. Because there is no statutory basis to treat Petitioner as mandatorily detained and no constitutional basis to hold him without any custody hearing, he is likely to succeed on his habeas claim—or at the very least raises serious questions going to the merits.

2. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

Every day Petitioner remains detained causes irreparable harm. Immigration detention facilities are “prison-like” environments, with the well-documented physical and psychological

harms of incarceration. See *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016); *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972). Petitioner has lost his ability to work, is separated from his family, and faces the constant stress and fear of indefinite detention and removal.

The harms to his family—especially his U.S. citizen spouse cannot be undone by money damages. They are facing potential housing instability, food insecurity, and emotional trauma. Such harms are the epitome of irreparable injury.

Additionally, “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Petitioner is currently detained in violation of his Fifth Amendment right to due process. Each day that passes without a TRO compounds that constitutional harm.

3. The Balance of Equities and Public Interest Strongly Favor Granting the TRO

The balance of equities overwhelmingly favors Petitioner. On his side is freedom from unlawful confinement and the preservation of his family’s stability. On the government’s side, the only “burden” is being required to follow the law: to release a § 236(a) detainee who has never received a bond hearing, or at minimum to refrain from holding him without constitutionally adequate process.

The government “cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Nor can the government claim legitimate harm from an order requiring it to comply with statutory bond authority and class-wide orders designed to protect exactly this category of detainees.

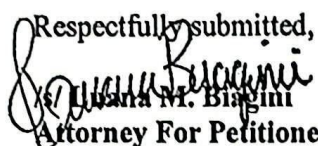
The public interest likewise favors an injunction. “It would not be equitable or in the public’s interest to allow [the government] to violate the requirements of federal law.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). The public has a strong interest in ensuring that people are not detained in violation of the Constitution and that federal agencies adhere to class-wide relief and statutory limits on detention.

Releasing Petitioner (or at least enjoining his transfer and removal and prohibiting re-detention without a lawful hearing) will not undermine any legitimate governmental interest. He has no disqualifying criminal record, strong community ties, and a history of compliance. If the government believes he is a danger or flight risk, it can seek a custody redetermination and attempt to meet its burden before a neutral decisionmaker. Until then, he should not be deprived of his liberty.

IV. REQUESTED RELIEF

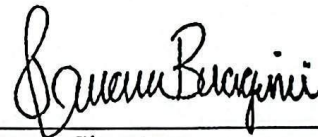
For the foregoing reasons, Petitioner respectfully requests that this Court issue an order:

1. Enjoining Respondents from removing Petitioner from the United States during the pendency of this litigation;
2. Enjoining Respondents from transferring Petitioner outside the Western District of Louisiana without 72 hours’ prior notice to counsel and the Court;
3. Ordering Petitioner’s immediate release, OR
4. In the alternative, ordering DHS to provide a constitutionally adequate custody redetermination hearing within 48 hours, where the government must prove danger or flight risk by clear and convincing evidence;
5. Granting any other relief the Court deems just and proper.

Respectfully submitted,

s/ Luana M. Biagini
Attorney For Petitioner
Biagini Law Group
1999 N. University Drive, Suite 214
Coral Springs, FL 3371
857-206-9801
luana@biaginilaw.com
Counsel for Petitioner (Pro Hac Vice Pending)

Certificate of Service

I hereby certify that on December 10, 2025, I presented the foregoing Motion for a Restraining Order to the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following: Eleazar Garcia and Kristi Noem.



Signature

Name: Luana M. Biagini
Firm: Biagini Law Group LLC
Address: 3301 N University drive suite 100
Coral Springs, FL 33065
Telephone: 857-206-9801
Fax: 954-780-3778
E-mail: luana@biaignilaw.com