

Enforcement (“ICE”) from the United States during the pendency of his petition for writ of habeas corpus. Petitioner is currently in ICE custody at the Joe Corley Processing Center, located at 500 Hilbig Road, Conroe, Texas 77301, and seeks emergency relief to obtain his release and prevent his unlawful removal to El Salvador. In support thereof, Petitioner states the following:

I. FACTUAL BACKGROUND

Petitioner is a forty-six-year-old Mexican national who has lived continuously in the United States since entering through Texas on or about May 26, 1998, at age nineteen. *See* Exhibit A: Mexican Passport. He has lived here for more than 25 years, has established deep community ties, and has no criminal history whatsoever.

Petitioner is married to a United States citizen, who filed an I-130 Petition for Alien Relative, approved on November 13, 2025. *See attached*, Exhibit D: I-797 Notice of Action. Petitioner is actively pursuing lawful status and also filed Form EOIR-42B, Cancellation of Removal for Non-Permanent Residents, based on his more than two decades in the country, strong equities, and U.S. citizen family. Petitioner is the biological father of two U.S. citizen children and the stepfather of four additional U.S. citizen children, all of whom he has raised and financially supported. *See attached*, Exhibit C: Petitioner’s Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.

On September 5, 2025, Petitioner was taken into ICE custody after a traffic stop. On November 10, 2025, the Immigration Judge ordered him removed. Petitioner timely filed a BIA appeal on November 14, 2025, rendering the removal order nonfinal under 8 C.F.R. § 1003.6, which imposes an automatic stay. *See attached*, Exhibit E: Petitioner’s Filing Receipt for Appeal.

Petitioner now remains detained with no lawful statutory basis.

Family Medical Crisis

Petitioner's wife is currently eight months pregnant with a high-risk pregnancy. Prenatal testing revealed possible chromosomal abnormalities, meaning the baby may be born with a congenital syndrome; the extent of medical complications will not be known until delivery. She also suffers from documented PTSD and anxiety and is unable to work during this pregnancy. *See attached*, Exhibit H: Wife's Medical Records.

Despite having extended family in the United States, no family members have stepped in to assist with childcare, transportation, finances, or prenatal care during Petitioner's detention.

As a result, the family has fallen behind on house payments, faces imminent financial collapse, and has no resources to afford childcare either now or after the baby is born. The wife will require assistance caring for the newborn and the six minor children in the home.

Every day Petitioner remains detained endangers his wife, unborn child, and dependent U.S. citizen children, making this an emergency under Rule 65.

II. LEGAL STANDARD

The standard for granting a temporary restraining order ("TRO") in the Fifth Circuit requires the petitioner to demonstrate:

- (1) a substantial likelihood of success on the merits;
- (2) a substantial threat of irreparable injury if the injunction is not granted;
- (3) that the threatened injury outweighs any harm the injunction may cause the government; and
- (4) that the injunction will not disserve the public interest.

Mississippi Power & Light Co. v. United Gas Pipe Line Co., 760 F.2d 618, 621 (5th Cir. 1985).

In the immigration habeas context, a TRO serves to preserve this Court's jurisdiction and prevent continued unlawful restraint of liberty in violation of the Constitution and federal law. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

III. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

Petitioner is detained without statutory authority. A timely BIA appeal automatically stays execution of a removal order. 8 C.F.R. § 1003.6(a). Thus, his removal order is not final, and he cannot be lawfully held under § 1231. Pre-final-order detention falls under 8 U.S.C. § 1226, requiring individualized justification which ICE has never provided.

Detention violates due process. Petitioner has been detained since September 5, 2025, for three months without any individualized assessment of flight risk or danger, despite having no criminal history, an approved I-130, 25+ years of residence, and a spouse and seven U.S. citizen children relying on him. This violates the Fifth Amendment and the principles of *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Detention under current circumstances is arbitrary and unlawful. ICE has not provided, and cannot provide, any legitimate governmental purpose for this continued detention.

Petitioner's request for bond was denied on October 24, 2025, by Immigration Judge, citing a lack of jurisdiction. As a result, Petitioner has no administrative avenue for release and remains indefinitely detained without judicial review, an ongoing deprivation of his most fundamental liberty interest.

B. Petitioner Faces Immediate and Irreparable Harm from Continued Detention

The harm to Petitioner’s family is not speculative—it is immediate, severe, and ongoing. His wife has a high-risk pregnancy with possible chromosomal abnormalities in the unborn child. She suffers from PTSD, anxiety and cannot work. No family has stepped in to help with childcare or finances. The family is falling behind on house payments. Without Petitioner, the wife cannot afford childcare if she attempts to return to work postpartum. The children face instability, lack of care, and financial insecurity. Courts recognize that such harm constitutes irreparable injury. See *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 343 (S.D. Tex. 2020).

Continued confinement of a noncitizen without lawful authority constitutes irreparable harm. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 529–30 (2003). Each additional day of unlawful detention deepens the constitutional injury and cannot be remedied by monetary damages. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Petitioner’s prolonged confinement also exacerbates the wife’s medical conditions, further establishing immediate and irreparable harm absent this Court’s intervention.

C. The Balance of Harms Favors Petitioner

The harm to Petitioner from continued unlawful detention—loss of liberty in a facility meant for criminal aliens, deterioration of health, and ongoing constitutional injury—vastly outweighs any administrative burden on the government in effecting his release under appropriate conditions. The government retains full authority to supervise Petitioner through reporting or monitoring conditions, rendering detention unnecessary to ensure appearance.

The Government identifies no risk of danger or flight. Petitioner, meanwhile, is the sole caregiver and provider for seven U.S. citizen children and a pregnant wife in medical crisis. The equities weigh overwhelmingly in his favor.

D. The Public Interest Supports Immediate Release

The public interest is served by ensuring that government detention authority is exercised within constitutional and statutory bounds. Upholding due process and preventing unlawful imprisonment preserves confidence in the rule of law and the integrity of immigration proceedings.

The public also has an interest in the family unity, preventing medical and financial crises affecting U.S. citizen children, and ensuring due process in civil detention.

Granting the requested relief also promotes judicial economy by ensuring this Court can fully adjudicate the habeas petition without the case becoming moot due to prolonged or arbitrary detention.

IV. CONCLUSION

Because Petitioner has shown (1) a substantial likelihood of success on the merits of his habeas claim; (2) irreparable harm from continued detention; (3) that the balance of equities strongly favors release; and (4) that release under appropriate safeguards serves the public interest, this Court should grant the temporary restraining order and order Petitioner's **immediate release from ICE custody under appropriate safeguards determined by DHS.**

V. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court **IMMEDIATELY** issue a temporary restraining order:

- 1. Directing Respondents to immediately release Petitioner from custody;**

2. Restraining and enjoining Respondent, their agents, employees, and successors from removing Petitioner from the United States;
3. Directing Respondent to take all necessary steps to halt any removal preparations;
4. Requiring Respondent to notify all relevant personnel that Petitioner shall not be removed;
5. Set an expedited hearing on Petitioner's motion for preliminary injunction;
6. After hearing, issue a preliminary injunction maintaining the relief requested above during the pendency of this action;
7. Waive or set security in a nominal amount;
8. Award attorney's fees and costs; and
9. Grant such other relief as this Court deems just and proper.

VII. SECURITY AND NOTICE

Petitioner respectfully requests that the Court waive the security requirement under Fed. R. Civ. P. 65(c) due to his indigent status, or set security in a nominal amount.

Petitioner has taken reasonably calculated steps to effect service of process on each of the Respondents named herein, and has provided them with copies of the present motion as described in the Certificate of Service, below.

Respectfully submitted,

//s// Mathew Mendez
Matthew Mendez

Attorney for Petitioner
State Bar No. 24098092
6300 Gulfton Street
Houston, Texas 77081
Tel. (346) 205-4343
matt@mendezlawoffice.com

CERTIFICATE OF EMERGENCY

I hereby certify that this motion seeks emergency relief due to Petitioner's imminent risk of removal, which would render his habeas corpus petition moot and cause irreparable constitutional harm.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

_____12/16/2025_____
Date

CERTIFICATE OF CONFERENCE

I hereby certify that due to the emergency nature of this motion and the imminent threat of removal, I have been unable to confer with opposing counsel regarding this motion.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

_____12/16/2025_____
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of the Federal Rules of Civil Procedure, upon the **Respondent, Grant Dickey, in his Official Capacity as Co-Associate Warden of the Joe Corley Processing Center**, at the Office of the Warden, 500 Hilbig Road, Conroe, Texas 77301.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

_____12/16/2025_____
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Raymond Thompson, in his Official Capacity as Co-Associate Warden of the Joe Corley Processing Center**, at the Office of the Warden, 500 Hilbig Road, Conroe, Texas 77301.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

12/16/2025_
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Bret Bradford, in his Official Capacity as Field Office Director, of ICE Enforcement and Removal Operations Houston Field Office**, at the Office of the Field Office Director, Enforcement and Removal Operations, Houston Field Office, 126 Northpoint Drive, Houston, Texas 77060.

//s// Matthew Mendez
Matthew Mendez
Attorney for Petitioner

12/16/2025_
Date

CERTIFICATE OF SERVICE

On December 16, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Kristi Noem, in her Official Capacity as Director of U.S. Department of Homeland Security**, at the Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530.

BRET BRADFORD, in his official capacity as
Field Office Director of ICE Enforcement and
Removal Operations Houston Field Office;

KRISTI NOEM,
in her official capacity as Secretary
of the Department of Homeland Security;

PAM BONDI, in her official capacity as
Attorney General of the United States,
Respondents.

§
§
§
§
§
§
§
§
§
§
§

**PROPOSED ORDER GRANTING TEMPORARY RESTRAINING ORDER
AND INJUNCTIVE RELIEF**

Having considered Petitioner's Motion for Temporary Restraining Order, and good cause appearing, IT IS HEREBY ORDERED that:

1. The Court ORDERS the immediate release of Petitioner, Jose Cruz Garcia Pescador, from the Department of Homeland Security (“DHS”) custody at the Joe Corley Processing Center, located at 500 Hilbig Road, Conroe, Texas 77301, under appropriate safeguards to be determined and implemented by DHS;
2. Petitioner shall comply with all reporting and supervision requirements set by DHS/ICE while her removal proceedings remain pending before the Houston Immigration Court;
3. Respondents, their agents, employees, and successors are RESTRAINED AND ENJOINED from removing Petitioner from the United States during the pendency of his removal proceedings;

4. Respondents shall immediately notify all relevant personnel, including but not limited to ICE Enforcement and Removal Operations, that Petitioner shall not be removed from the United States;
5. Petitioner must be present for the next hearing in this Court, if any;
6. This Order may be served by facsimile, email, or other means reasonably calculated to provide immediate notice.

SIGNED this ____ day of _____, 2025.
