

Gina Herrera
Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
415-283-9923

DETAINED

Robert G. Cummings
Lead Attorney
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
650-363-7280

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

FILIPPO ELEUTERI,

Petitioner,

Case No.

vs.

**EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER FOR IMMEDIATE
RELEASE UNDER FED. R. CIV. P. 65(b)**

GREGORY J. ARCHAMBRAULT, Field
Office Director, ICE/San Diego;
CHRISTOPHER J. LAROSE, Warden, Otay
Mesa ICE Processing Center;
KRISTI NOEM, Secretary of Homeland
Security;
PAMELA BONDI, Attorney General of the
United States,

Respondents

**EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
ORDER FOR IMMEDIATE RELEASE PURSUANT TO FED. R. CIV. P. 65(b)**

Petitioner **Filippo Eleuteri**, by and through counsel, hereby moves this Court for an **Emergency Temporary Restraining Order (“TRO”) and Order for Immediate Release** pursuant to **Federal Rule of Civil Procedure 65(b)** and the Court’s inherent habeas powers, to prevent irreparable harm arising from his **ongoing unlawful civil immigration detention**.

I. INTRODUCTION

This is an **extraordinary case requiring immediate judicial intervention**.
Petitioner is a **young Italian national**, lawfully admitted to the United States, **married to a U.S. citizen**, with an **approved I-130** and a **pending I-485 adjustment of status application**, **no criminal history**, and no statutory basis for mandatory detention. Despite these undisputed facts,

ICE has detained Petitioner without issuing a Notice to Appear, without providing a lawful custody determination, without affording a bond hearing, and without responding to counsel's repeated written demands.

ICE has now transferred Petitioner to **Otay Mesa Detention Center**, further entrenching unlawful detention while remaining entirely unresponsive. This detention serves **no legitimate governmental purpose**, violates **substantive and procedural due process**, and constitutes **arbitrary agency action**.

Absent emergency relief, Petitioner faces **continued unlawful confinement**, coercive pressure to sign custody waivers while represented by counsel, and imminent risk of further agency action that could irreparably impair his liberty interests.

II. EMERGENCY NATURE OF RELIEF

Rule 65(b) authorizes a TRO **without notice** where immediate and irreparable injury will occur before the opposing party can be heard.

Here:

- Petitioner remains **physically detained** at Otay Mesa;
- ICE has **refused to respond** to counsel;
- ICE has attempted to solicit Petitioner's signature on custody documents **while represented**;
- No NTA has been issued;
- No bond hearing has been provided;
- Each day of detention compounds constitutional harm.

Courts consistently recognize that **unlawful civil detention constitutes per se irreparable harm**.

See *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

III. LEGAL STANDARD

To obtain a TRO, Petitioner must show:

1. Likelihood of success on the merits
2. Irreparable harm
3. Balance of equities favors relief
4. Relief is in the public interest

Winter v. NRDC, 555 U.S. 7, 20 (2008).

In habeas cases involving unlawful detention, courts routinely find this standard satisfied where detention lacks statutory or constitutional justification.

IV. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

1. ICE Lacks Statutory Authority to Continue Detention

Petitioner is detained, at most, under INA § 236(a) — a discretionary detention statute.

Section 236(a) does not authorize prolonged or arbitrary detention and requires individualized custody determinations.

Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

Petitioner is not subject to mandatory detention, has no criminal history, and has an active path to lawful permanent residence. ICE's failure to release him or provide a bond hearing violates both statute and due process.

2. Due Process Prohibits Arbitrary Civil Detention

Civil detention must be reasonable, necessary, and proportionate.

Demore v. Kim, 538 U.S. 510, 527 (2003).

Here, detention serves no regulatory purpose:

- No flight risk
- No danger
- Strong family ties
- Pending lawful status

Prolonged detention under these circumstances violates substantive due process.

Hernandez v. Sessions, 872 F.3d at 990.

3. ICE's Conduct Is Arbitrary and Capricious Under the APA

ICE's refusal to respond to counsel, failure to issue a custody determination, and continued detention without explanation constitutes agency action "not in accordance with law."

5 U.S.C. § 706(2)(A); *Arrington v. Daniels*, 516 F.3d 1106, 1113 (9th Cir. 2008).

B. PETITIONER SUFFERS IRREPARABLE HARM

Loss of liberty — even briefly — is irreparable.

Elrod v. Burns, 427 U.S. 347, 373 (1976).

Petitioner's detention:

- Separates him from his U.S. citizen spouse
- Disrupts his pending immigration case
- Subjects him to coercive custodial pressure
- Causes daily constitutional injury

C. BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR RELEASE

ICE has **no legitimate interest** in detaining a non-criminal immediate relative of a U.S. citizen actively pursuing lawful status.

The public interest is served by:

- Upholding constitutional limits
- Preventing arbitrary detention
- Preserving family unity

Rodriguez v. Robbins, 715 F.3d at 1144.

V. REQUESTED RELIEF

Petitioner respectfully requests that the Court:

1. Issue an **Emergency TRO** enjoining ICE from continuing detention;
2. Order **immediate release**, with or without conditions;
3. Enjoin ICE from soliciting waivers or custody signatures;
4. Set an expedited briefing and hearing schedule;
5. Grant any other relief deemed just and proper.

Respectfully submitted,

Date: December 15, 2025

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner

Gina Herrera
Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
415-283-9923

DETAINED

Robert G. Cummings
Lead Attorney
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
650-363-7280

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

FILIPPO ELEUTERI,

Case No.

Petitioner,

vs.

**MEMORANDUM OF POINTS AND
AUTHORITIES**

GREGORY J. ARCHAMBRAULT, Field
Office Director, ICE/San Diego;
CHRISTOPHER J. LAROSE, Warden, Otay
Mesa ICE Processing Center;
KRISTI NOEM, Secretary of Homeland
Security;
PAMELA BONDI, Attorney General of the
United States,

IN SUPPORT OF EMERGENCY
APPLICATION FOR TEMPORARY
RESTRAINING ORDER
AND ORDER FOR IMMEDIATE RELEASE

Respondents

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND ORDER FOR IMMEDIATE RELEASE**

I. INTRODUCTION

This case presents a textbook example of **unlawful civil immigration detention** in violation of the Immigration and Nationality Act (“INA”), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (“APA”).

Petitioner **Filippo Eleuteri** is a young Italian national with **lawful entry, no criminal history, an approved Form I-130, and a pending Form I-485** adjustment application based on a bona fide marriage to a U.S. citizen. He is not subject to mandatory detention. Yet ICE has continued to detain him at **Otay Mesa Detention Center**, refused to provide a written custody determination, ignored counsel's repeated demands, attempted to solicit his signature on custody-related documents **after notice of representation**, and has failed to articulate any lawful basis for continued detention.

This Court's immediate intervention is required. Absent emergency relief, Petitioner faces **irreparable constitutional harm**, continued unlawful detention, and the imminent risk of coerced waivers or accelerated removal actions.

II. JURISDICTION AND VENUE

This Court has jurisdiction under **28 U.S.C. § 2241** to review the legality of Petitioner's detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Jurisdiction also exists under **28 U.S.C. §§ 1331 and 1361**, and the **Administrative Procedure Act**, 5 U.S.C. § 701 et seq.

Venue is proper in the **Southern District of California, San Diego Division**, because Petitioner is physically detained at **Otay Mesa Detention Center**, and the responsible ICE officials operate within this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

III. FACTUAL BACKGROUND

Petitioner entered the United States lawfully on an **F-1 student visa**. He later married a U.S. citizen in a bona fide marriage that has already been **reviewed and approved by USCIS**, as evidenced by the **approved Form I-130 following USCIS interview**. His **Form I-485 adjustment application remains pending**, and he has fully complied with all immigration requirements.

On **December 11, 2025**, ICE arrested Petitioner despite the absence of any criminal history, security concern, or immigration fraud allegation. To date:

- ICE has **not provided a written custody determination**;
- ICE has **failed to identify the statutory basis for detention**;
- ICE has **refused to allow counsel access to the assigned Deportation Officer**;
- ICE **transferred Petitioner to Otay Mesa after counsel demanded release**;

- ICE personnel attempted to **solicit Petitioner’s signature on a “custody redetermination” document after notice of representation**, raising serious due process concerns.

ICE has ignored repeated deadlines set by counsel and remains silent despite explicit notice of imminent federal litigation.

IV. LEGAL STANDARD

A temporary restraining order may issue under **Federal Rule of Civil Procedure 65(b)** where the movant demonstrates:

1. Likelihood of success on the merits;
2. Irreparable harm absent relief;
3. Balance of equities tips in movant’s favor; and
4. Injunctive relief serves the public interest.

Winter v. Nat. Res. Def. Council, 555 U.S. 7, 20 (2008).

In immigration detention cases, courts routinely grant emergency relief where detention lacks statutory authority or violates due process. See *Zadvydas*, 533 U.S. at 690.

V. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

1. ICE Lacks Statutory Authority to Detain Petitioner

Petitioner is detained, if at all, under INA § 236(a), which governs **discretionary** detention. He is **not subject to mandatory detention under INA § 236(c)**, as he has **no criminal convictions**.

Discretionary detention under § 236(a) **requires an individualized, lawful custody determination** and cannot be prolonged arbitrarily. *Demore v. Kim*, 538 U.S. 510, 527–28 (2003); *Casas-Castrillon v. DHS*, 535 F.3d 942, 951 (9th Cir. 2008).

ICE has provided **no written determination**, no flight-risk analysis, and no danger assessment. Continued detention under these circumstances is unlawful.

2. Civil Immigration Detention May Not Be Arbitrary

Civil detention must bear a reasonable relation to its purpose and may not be punitive or arbitrary. *Zadvydas*, 533 U.S. at 690.

Petitioner:

- Is **not a flight risk**;
- Is **not a danger to the community**;

- Has every incentive to appear due to his pending adjustment;
- Has substantial equities recognized by USCIS itself.

Detention here serves **no legitimate governmental purpose**.

3. ICE's Conduct Violates Due Process

The Fifth Amendment requires that detention decisions be made through **fair, non-coercive procedures**. *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).

ICE's attempt to obtain Petitioner's signature on custody-related documents **after notice of representation** constitutes an **invalid and coerced waiver**, and independently violates due process. See *United States v. Ramos*, 623 F.3d 672, 680 (9th Cir. 2010).

4. ICE's Inaction Constitutes Arbitrary and Capricious Agency Action

Under the APA, agency action that is arbitrary, capricious, or unlawfully withheld must be set aside. 5 U.S.C. § 706(2).

ICE's silence, failure to act, and refusal to provide a custody determination violate this standard. See *Arrington v. Daniels*, 516 F.3d 1106, 1113 (9th Cir. 2008).

B. Petitioner Is Suffering Irreparable Harm

Unlawful detention is **per se irreparable harm**. *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013).

Petitioner is separated from his U.S. citizen spouse, subjected to coercive practices, and deprived of liberty without lawful justification.

No monetary remedy can cure this harm.

C. The Balance of Equities and Public Interest Favor Release

ICE suffers **no harm** from releasing a non-dangerous individual with a pending adjustment application.

The public interest strongly favors **constitutional compliance**, family unity, and lawful agency conduct. See *Nken v. Holder*, 556 U.S. 418, 436 (2009).

VI. REQUEST FOR ATTORNEYS' FEES AND COSTS

Petitioner seeks attorneys' fees and costs under the **Equal Access to Justice Act**, 28 U.S.C. § 2412, because ICE's continued detention of Petitioner—despite clear statutory authority, controlling Supreme Court and Ninth Circuit precedent, and repeated notice—is **not "substantially justified."**

See *Thangaraja v. Gonzales*, 428 F.3d 870, 873–75 (9th Cir. 2005). ICE was placed on explicit notice and chose silence and inaction, forcing emergency litigation.

VII. CONCLUSION

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

1. Issue an **Emergency Temporary Restraining Order**;
2. Order **immediate release** of Petitioner on recognizance or minimal bond;
3. Enjoin ICE from removal or coercive custody actions;
4. Retain jurisdiction over the habeas petition; and
5. Award attorneys' fees and costs under EAJA.

Respectfully submitted,

Date: December 15, 2025

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner