

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF NEW JERSEY

Civil Action No.: 1:26 cv 0014

KELVIN GERARDO SILVA LUCENA

v.

LUIS SOTO, Warden, Delaney Hall Detention Facility, **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **JOHN TSOUKARIS**, Newark Field Office Director; **PAMELA BONDI**, Attorney General of the United States; and **TODD LYONS**, Director, Immigration and Customs Enforcement, in their official capacities,

Respondents-Defendants.

PETITIONER'S NOTICE OF MOTION FOR A TEMPORARY RESTRAINING ORDER

Moving Party: KELVIN GERARDO SILVA LUCENA

Place: Hon. _____
United States District Judge

Relief Sought: Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1, Petitioner respectfully moves this Court for the issuance of a Temporary Restraining Order enjoining Respondents from continuing Petitioner's unlawful detention and from removing Petitioner from New Jersey or the United States pending adjudication of his Petition for Writ of Habeas Corpus.

Papers Submitted in Support: Memorandum of Law, Proposed Order

Intent to Reply:

Petitioner respectfully requests leave to file a reply should Respondents file opposition papers.

Respectfully submitted,

DATED: January 9, 2026

/s/ Stephanie M. Duque Isern
Counsel for Kelvin Gerardo Silva Lucena

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Respondents-Defendants.

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

PRELIMINARY STATEMENT

Petitioner Kelvin Gerardo Silva Lucena (“Petitioner”) is a native and citizen of Venezuela who is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at Delaney Hall Detention Facility in Newark, New Jersey. On January ^{8th} 2026, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 challenging the lawfulness of his continued detention. Petitioner now respectfully moves this Court for a Temporary Restraining Order (“TRO”) to preserve the status quo while his habeas petition is adjudicated.

Petitioner has been detained since November 10, 2025, after he voluntarily appeared for a scheduled ICE reporting appointment in compliance with instructions from the Newark Field Office of Enforcement and Removal Operations (“ERO Newark”). Petitioner received no advance notice that he would be detained, no written summons or charging documents prior to his appearance, and no contemporaneous explanation of the legal or factual basis for his detention.

Since his detention, Petitioner has not received any individualized custody determination. Immigration Judges have declined to exercise jurisdiction over cases like Petitioner’s custody, asserting that they lack authority to conduct a bond hearing pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).. As a result, Petitioner has been left without any neutral decision-maker to assess whether his continued detention is necessary.

Petitioner seeks emergency relief to prevent his transfer from Delaney Hall during the pendency of this action. Petitioner’s counsel is licensed and authorized to practice at Delaney Hall, and any transfer would severely impair Petitioner’s access to counsel, disrupt ongoing habeas litigation, and frustrate this Court’s ability to exercise jurisdiction over the pending petition.

Absent immediate injunctive relief, Petitioner will continue to suffer irreparable harm through the ongoing deprivation of his liberty, confinement under restrictive jail-like conditions, interference with his access to counsel, and separation from his family. Because Petitioner is likely to succeed on the

merits of his habeas claims, and because the balance of equities and public interest weigh heavily in favor of relief, this Court should issue a Temporary Restraining Order preventing Petitioner's transfer pending adjudication of the habeas petition.

NOTICE TO RESPONDENTS-DEFENDANTS

Pursuant to Local Civil Rule 65.1, undersigned counsel provided notice to the United States Attorney's Office for the District of New Jersey on January 8th, 2026 advising of Petitioner's unlawful detention, the imminent filing of a habeas petition, and the request for emergency relief. Upon filing, undersigned counsel will promptly transmit copies of the Petition, this Motion, the supporting Memorandum, and the proposed Order to Respondents.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Venezuela who entered the United States in or about December 2021. He is married and the father of one child, both of whom reside in the United States. Petitioner has no violent criminal history and completed all conditions related to a prior misdemeanor offense years ago. He poses no danger to the community.

On November 10, 2025, Petitioner appeared for a scheduled ICE reporting appointment at ERO Newark in compliance with instructions from immigration authorities. Petitioner was not provided advance notice that he would be detained, nor was he given a warrant or written explanation of the basis for his detention at the time he appeared. Upon appearing as instructed, Petitioner was immediately taken into custody by ICE officers and transferred to Delaney Hall Detention Facility.

Since that date, Petitioner has remained continuously detained. Immigration Judges have continuously declined to exercise jurisdiction over custody of noncitizens, asserting that they lack authority to conduct a bond hearing. As a result, Petitioner has no access to any individualized custody determination or neutral review of his continued confinement.

ARGUMENT

The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins governmental action, the party must demonstrate that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of the preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

I. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

Unlawful civil detention constitutes per se irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Petitioner remains detained solely as a result of his voluntary compliance with ICE instructions and without a constitutionally adequate custody determination.

Petitioner is confined at Delaney Hall under restrictive, jail-like conditions that severely limit his liberty and access to family and counsel. Each additional day of detention inflicts harm that cannot be remedied retroactively.

Moreover, absent a TRO, Respondents may transfer Petitioner out of this District at any time. Such a transfer would impair Petitioner’s access to counsel, disrupt ongoing habeas litigation, and frustrate this Court’s jurisdiction. Courts routinely find that interference with access to counsel and loss of jurisdiction constitute irreparable harm.

II. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

Petitioner’s detention violates the Due Process Clause of the Fifth Amendment. He was detained without notice, without any contemporaneous individualized determination that detention was necessary, and remains confined despite the absence of any finding of danger or flight risk.

Critically, Immigration Judges have declined to exercise jurisdiction over Petitioner’s

custody, leaving him without access to any neutral decision-maker capable of reviewing the lawfulness or necessity of his detention. Due process does not permit the Government to detain an individual while simultaneously disclaiming the existence of any forum capable of reviewing that detention.

Civil immigration detention must bear a reasonable relation to its purported purpose and may not be arbitrary or punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention imposed as a consequence of compliance with reporting requirements—and maintained without any avenue for judicial review—fails this constitutional standard.

III. PREVENTING TRANSFER IS NECESSARY TO PRESERVE ACCESS TO COUNSEL AND JURISDICTION

Petitioner seeks a TRO preventing his transfer from Delaney Hall during the pendency of this action. Petitioner's counsel is licensed and authorized to practice at Delaney Hall, and a transfer would substantially interfere with Petitioner's ability to consult with counsel and litigate his habeas petition.

Preventing transfer preserves the status quo, protects Petitioner's right to counsel, and ensures that this Court can meaningfully exercise jurisdiction over the habeas petition.

IV. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR RELIEF

Petitioner has no criminal history, poses no danger, and has complied with immigration authorities. The Government faces minimal burden in maintaining the status quo. The public interest is served when detention complies with constitutional requirements and remains subject to judicial oversight.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a Temporary Restraining Order preventing Respondents from transferring Petitioner out of the District of New Jersey

pending adjudication of his Petition for Writ of Habeas Corpus.

DATED: January 9, 2026

/s/ Stephanie M. Duque Isern

Counsel for Kelvin Gerardo Silva Lucena

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FOR THE DISTRICT COURT OF NEW JERSEY

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KELVIN GERARDO SILVA LUCENA

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LUIS SOTO, Warden, Delaney Hall Detention Facility, **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **JOHN TSOUKARIS**, Newark Field Office Director; **PAMELA BONDI**, Attorney General of the United States; and **TODD LYONS**, Director, Immigration and Customs Enforcement, in their official capacities,

Respondents-Defendants.

[PROPOSED] ORDER

This matter having come before the Court on Petitioner Kelvin Gerardo Silva Lucena's Motion for a Temporary Restraining Order, and the Court having reviewed the Motion, Memorandum of Law, and supporting papers, and for good cause shown;

1. Petitioner's Motion for a Temporary Restraining Order is GRANTED.
2. Granting an individualized bond hearing before an immigration judge who shall assess whether he presents a flight risk or a danger to the community, pursuant to 8 C.F.R. § 236.1(c)(8), (d)(1).
3. Pursuant to the Court's authority under the All Writs Act, 28 U.S.C. § 1651(a), RESPONDENTS are temporarily ENJOINED from transferring Petitioner out of the District of New Jersey, from transferring Petitioner from Delaney Hall Detention Facility,

or from removing Petitioner from the United States, pending further Order of the Court.

4. Respondents shall electronically file a full and complete Answer to Petitioner's Petition for Writ of Habeas Corpus, responding to all factual and legal allegations therein, within fourteen (14) days of the entry of this Order.

IT IS SO ORDERED:

DATED: _____,

Hon.
United States District Judge