

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

Jose Jaime CABRERA-CHAVEZ

Petitioner,

No. 8:26-cv-00226-GLR

v.

Kristi Noem, et. al

Respondents.

**PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND  
MEMORANDUM IN SUPPORT THEREOF**

## **MOTION AND MEMORANDUM OF LAW**

Petitioner CABRERA-CHAVEZ respectfully moves this Honorable Court for an emergency order preventing his continued detention, in violation of, inter alia, his constitutional rights.

### **I. INTRODUCTION**

Petitioner CABRERA-CHAVEZ is a 59-year-old native and citizen of El Salvador. Petitioner entered the United States in or about October 2014. Petitioner was not apprehended at the border and has lived in the United States for over ten years without apprehension. Petitioner lives in Silver Spring, Maryland, and has two children, one of whom is a legal permanent resident, who depend on him for financial support and emotional stability.

Following the executive orders of President Donald Trump and their implementation by Respondents, Petitioner believes that Respondents have adopted a blanket policy to detain and immediately remove noncitizens, irrespective of any individualized circumstances, including dire circumstances. Respondents have demonstrated that they will apply this policy to him as they have him in physical custody.

Petitioner seeks an emergency order from this Court to halt his continued detention.

### **II. FACTUAL BACKGROUND**

#### **A. Petitioner CABRERA-CHAVEZ's background and case posture**

Petitioner CARBAJAL-ALVARADO is a fifty-nine-year-old male native and citizen of El Salvador who has resided in the United States since 2014. Petitioner was not apprehended at the border upon his entry and has lived in the United States for over ten years without apprehension by ICE, CBP, or DHS. Petitioner lives in Silver Spring, Maryland.

On Sunday, January 18, 2026, as Petitioner was on his way to work, he stopped at McDonald's for breakfast. After pulling into the parking lot, Petitioner was approached by ICE officials and immediately arrested without a warrant, detained, and transferred to Baltimore. Petitioner is being held at the Immigration and Customs Enforcement Baltimore Field Office at 31 Hopkins Plaza, Suite 630, Baltimore, MD 21201, in deplorable conditions.

### **B. Executive Orders and Respondents' Blanket Policy**

On January 20, 2025, President Donald Trump signed several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order ("EO") setting out a series of interior immigration enforcement actions. This EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures "that protect the public safety and national security interests of the American people, including by ensuring the successful enforcement of final orders of removal."

These actions have resulted in Respondents adopting a blanket policy, where ICE is currently arresting, detaining, and removing people like Petitioner, without an individualized consideration of their cases. Under these new policies, ICE/ERO has detained Petitioner.

### **C. LEGAL STANDARDS**

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The proper legal standard for preliminary injunctive relief requires a party to demonstrate (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence

of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011).

As an alternative to this test, a preliminary injunction is appropriate if “serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing preservation of the status quo when complex legal questions require further inspection or deliberation. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 813 (4th Cir. 1991).

### III. ARGUMENT

Petitioner’s Motion for a Temporary Restraining Order should be granted because he is likely to suffer irreparable harm in the absence of preliminary relief, he is likely to succeed on the merits, and the balance of the equities and public interest weigh in favor of emergency relief.

#### A. Petitioner will likely suffer irreparable harm if not granted preliminary relief

If this Court does not grant a temporary restraining order, Petitioner will continue to be detained by ICE officials. His continued detention will result in Petitioner losing contact with his children, family, partner, employment, and local counsel, and his immigration proceedings will be unnecessarily prolonged.

Respondents’ actions already are and will cause irreparable harm to Petitioner and separate Petitioner from his community in the United States. If Petitioner remains in detention, his children, one of whom is a legal permanent resident, suffer greatly. His children rely on him for emotional and financial support and well-being. These circumstances constitute irreparable harm. *See e.g., Int’l Refugee Assistance Project v. Trump*, 883 F.3d 233, 320 (4th Cir. 2018), *vacated on other grounds*, 138 S. Ct. 2710, 201 L. Ed. 2d 1094 (2018) (stating that “[p]rolonged and indefinite separation of parents, children, siblings, and partners create not only temporary feelings of anxiety but also lasting strains on the most basic human relationships” and therefore constitutes irreparable

harm); *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (stating that "separation from family members, medical needs, and potential economic hardship" are important factors when assessing irreparable harm).

Additionally, Petitioner's continued detention will deprive him of proximity to his family, friends, community support, distance him from access to his local counsel, and impede his ability to engage in these immediate judicial proceedings. *See Arroyo v. United States Dep't of Homeland Sec.*, 2019 WL 2912848, at \*17 (C.D. Cal. June 20, 2019) (observing that "a significant burden on the attorney-client relationship, without a showing of underlying prejudice to the removal proceedings, may be sufficient to establish a legal injury sufficient to justify injunctive relief"), citing *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir.), amended on other grounds, 807 F.2d 769 (9th Cir. 1986); *see also Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir.), amended on other grounds, 213 F.3d 1221 (9th Cir. 2000) ("Deprivation of the statutory right to counsel deprives [a noncitizen] asylum-seeker of the one hope he has to thread a labyrinth almost as impenetrable as the Internal Revenue Code.").

As alleged in Petitioner's habeas petition, Respondents' actions will also violate his constitutional right to due process. It is well established "that a deprivation of a constitutional right, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022), quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976).

**B. Petitioner is likely to succeed on the merits of his habeas petition**

Petitioner requests habeas relief from this Court on the grounds that Respondents' decision to continue to detain him under a blanket enforcement policy is (1) arbitrary and capricious and in violation of Respondents' own governing regulations and policies and (2) a violation of his Fourth and Fifth Amendment rights.

First, Petitioner is likely to succeed on his due process claim. The Fifth Amendment's Due Process Clause protects noncitizens from arbitrary government action. *See Romero v. Bondi*, 150 F.4th 332, 340 (4th Cir. 2025). Due process requires that detention and removal decisions be rational, individualized, and consistent with the law. By detaining Petitioner, Respondents have deprived him of liberty without lawful justification. Because there has been no articulated real change in his circumstances, the decision to detain him now is irrational and arbitrary, violating his right to due process.

Petitioner should at least be entitled to a bond hearing before being deprived of his liberty interest. Petitioner entered the United States in October of 2014 without a visa and was not inspected, apprehended, or admitted. He had no contact with DHS until January of this year. Therefore, he is covered until 8 U.S.C. § 1226(a) and not § 1225. A majority of federal courts have held that an individual similarly situated to Petitioner, who entered the United States without inspection and was not apprehended, and has been in the United States for more than two years without apprehension, is covered by 8 U.S.C. § 1226(a). He was never arrested or apprehended by ICE until January 18, 2026. *See Bautista, supra; Velasquez, supra; Maldonado de Leon, supra*. Thus, it is a violation of due process, *inter alia*, for Respondents to have arrested and detained Petitioner and not allowed him at least a bond hearing.

Moreover, before depriving Petitioner of his liberty interest, he should at least be afforded an opportunity to be heard. Procedural due process requires, at a minimum, an opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Applying the Mathews factors, courts consistently find that: (a) the private interest in freedom from physical restraint is "the most elemental of liberty interests"; (b) the risk of erroneous deprivation is high where detention occurs without a hearing; and (c) the government's

interest in immediate detention without process is minimal. *See P.T. v. Hermosillo*, No. 2:2025cv02259 (W.D.W.A) (applying *Mathews* and finding detention unconstitutional where ICE failed to provide pre-deprivation process); *see also Ngha v. Noem*, No. 8:25-C-V-04055-BAH, 2025 (D. Md. Dec. 11, 2025). Applying the facts of Petitioner’s case, the *Mathews, supra*, factors weigh heavily in his favor, particularly where his liberty interest was abridged without adequate procedural protections, the risk of erroneous deprivation of his liberty interest is high, as the government has articulated no change in circumstances to justify detention, and the government’s interest in his detention without process is minimal. *See See Artiga v. Genalo*, No. 25-CV-5208, Mem. & Order at 19 (E.D.N.Y. Oct. 5, 2025). Due to Petitioner’s unique circumstances, including his two children, one of whom is a legal permanent resident, and no criminal record, Petitioner should at least be provided an opportunity to be heard before he is deprived of his fundamental liberty interest.

Furthermore, a statute or policy permitting indefinite detention or removal to a country where a person faces grave danger raises serious constitutional concerns. As the Supreme Court has made clear, “[f]reedom 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 Fifth Amendment, therefore, prohibits the government from depriving an individual of liberty through indefinite detention. Furthermore, detention where removal cannot occur within the reasonably foreseeable future is unconstitutional. *Id.* Here, Petitioner’s detention is unconstitutional, as his removal is not reasonably foreseeable. Petitioner is still in immigration proceedings, which could potentially last many years. Therefore, his detention violates due process protections. *See id.*

Further, Petitioner is also likely to succeed on the merits of his Fourth Amendment claim. The Fourth Amendment protects individuals, including noncitizens, from unreasonable seizures. U.S. Const. amend. IV. Civil immigration arrests must be supported by lawful authority and cannot be arbitrary or unreasonable.

Here, Petitioner was arrested without a warrant when he was simply stopping to get breakfast while on his way to work. Respondents did not possess a judicial warrant and have articulated no exigent circumstances, probable cause, or individualized justification for their arrest.

The warrantless seizure of Petitioner under these circumstances was unreasonable. Petitioner was not fleeing and posed no risk to public safety. Arresting him while he was stopping to get breakfast, without articulation of probable cause or individualized circumstances, constitutes an arbitrary seizure in violation of the Fourth Amendment.

Further, the continued detention flowing from this unlawful arrest compounds the constitutional violation. A seizure that begins unlawfully cannot be justified retroactively by post-hoc enforcement rationales. Where, as here, Respondents lacked lawful authority to arrest Petitioner in the first instance, his continued detention remains constitutionally infirm.

Finally, Petitioner is likely to succeed on the merits of his claim under the Administrative Procedure Act (“APA”). Under the APA, a court shall “hold unlawful and set aside agency action” that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Here, ICE's decision to detain Petitioner, who has no criminal record and has strong family and community ties in Maryland, is arbitrary and capricious. Despite this, Respondents abruptly detained Petitioner without articulating any change in factual circumstances, legal authority, or public-safety justification.

Moreover, ICE's conduct contravenes its own detention and supervision framework under 8 C.F.R. §§ 241.4–241.5, which require individualized custody determinations and consideration of factors such as danger to the community and flight risk before taking a noncitizen into custody. Petitioner has no criminal record and poses no threat to public safety. The failure to consider these mandatory factors renders Respondents' actions arbitrary and capricious under, *inter alia*, *State Farm*, 463 U.S. at 43.

For the above-noted reasons, Petitioner is likely to succeed on the merits of his habeas corpus petition and/or TRO.

**C. The balance of the equities and public interest factors tip sharply in favor of preliminary relief.**

Petitioner has established that “the balance of the equities tip in [her] favor and that an injunction is in the public interest” because he is eligible for relief, he is not a flight risk, and he is not a danger to the community. *See Winter*, 555 U.S. at 20. When the federal government is a party, the balance of the equities and public interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

The balance of hardships tips substantially in favor of Petitioner. “[I]n addition to the potential hardships facing [Petitioner] in the absence of the injunction, the court ‘may consider . . . the indirect hardship to their friends and family members.’” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017), quoting *Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008).

Petitioner's detention and transfer would harm not only him, but also his family, children, partner, and community. Petitioner lives in Silver Spring, Maryland, has stable employment, and has local counsel. Without immediate intervention from this Court, Petitioner will suffer severe and irreparable harm. These circumstances constitute the very definition of irreparable injury warranting this Court's immediate intervention.

There is also a strong public interest in maintaining Petitioner's presence in his local community, where his children reside, where his local counsel is, and where he is known as a compassionate and caring member of the community.

The merits of the due process violations that Petitioner has raised in his habeas petition further weigh for the public interest toward emergency relief. Moreover, "it is well-established that the public interest favors protecting constitutional rights." *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021). In addition, "the public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions." *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

Even when considered from a fiscal perspective, the public interest in the efficient allocation of the government's fiscal resources weighs in favor of emergency relief here. As the Ninth Circuit has explained, "The costs to the public of immigration detention are "staggering": \$158 each day per detainee, amounting to a total daily cost of \$6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). The interests of the general public will not be served by Petitioner's continued detention, where he has no criminal record, is eligible for relief, and is neither a flight risk nor a danger to the community.

By contrast, any public interest favoring Petitioner's immediate transfer is weak or non-existent. Respondents do not appear to have any legitimate reason to suspect that the public safety or national security may somehow be at risk if the motion for a temporary restraining order is granted. Any interest in effectuating Petitioner's transfer or removal is outweighed by Petitioner's CABRERA-CHAVEZ exceptional qualities.

#### IV. CONCLUSION

For the foregoing reasons, Petitioner CABRERA-CHAVEZ respectfully requests that this Honorable Court grant his motion for a temporary restraining order to release Petitioner from detention.

Dated: January 20, 2026

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**ORDER**

Upon consideration of Petitioner's Motion for a Temporary Restraining Order and Memorandum in support thereof, it is on this \_\_\_\_\_ day of January 2026, by the United States District Court for the District of Maryland:

ORDERED that Petitioner's Motion for a Temporary Restraining Order BE and HEREBY IS GRANTED; and it is further

ORDERED that Respondents must immediately release Petitioner and/or refrain from transferring Petitioner from the state of Maryland, or removing Petitioner from the United States.

\_\_\_\_\_  
United States District Judge