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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

John Jairo Galvin Viancha,

Petitioner

v.

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

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

EVAN TJADEN, in his official capacity as
Acting ICE Field Deputy Officer Director,

Mike Smith, in his official capacity as the
warden of the Utah County Jail,

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: 2:26-cv-00059

EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER

IMMIGRATION HABEAS CASE

1 **I. INTRODUCTION**

2 Petitioner John Jairo Galvin Viancha respectfully moves this Court, pursuant to Federal Rule
3 of Civil Procedure 65(b), for an Emergency Temporary Restraining Order directing Respondents,
4 including the Department of Homeland Security and Immigration and Customs Enforcement (“ICE”),
5 to immediately withdraw and revoke the immigration detainer lodged against him.
6

7 This TRO is necessary to prevent imminent and irreparable deprivation of liberty. Petitioner is
8 lawfully present in the United States in valid F-1 nonimmigrant status, is not removable under the
9 Immigration and Nationality Act (“INA”), and is not subject to any statutory immigration detention
10 authority. Nevertheless, ICE has lodged a detainer that prevents his release from state custody and
11 mandates his imminent transfer into unlawful civil immigration detention.
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13 Absent immediate judicial intervention, Petitioner faces continued confinement and imminent
14 federal seizure without statutory authority, without process, and in direct violation of the INA and the
15 Fifth Amendment. A TRO limited to withdrawal of the detainer is necessary to preserve the status quo,
16 protect this Court’s habeas jurisdiction, and prevent irreparable harm while this action is adjudicated.
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18 **II. LEGAL STANDARD**

19 A Temporary Restraining Order is warranted where the movant demonstrates:

- 20 1. A likelihood of success on the merits;
21 2. A likelihood of irreparable harm absent emergency relief;
22 3. That the balance of equities tips in the movant’s favor; and
23 4. That the injunction is in the public interest.
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25 *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *Monsanto Co. v. Geertson Seed Farms*,
26 561 U.S. 139, 156 (2010).
27
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1 Where liberty interests are at stake and unlawful detention is ongoing or imminent, courts
2 routinely find these factors satisfied.

3 **III. ARGUMENT**

4 **A. Petitioner Is Likely to Succeed on the Merits**

5 ICE's detention authority is strictly circumscribed by statute and does not exist in the abstract.
6 Congress has authorized civil immigration detention only in narrow, defined circumstances, and only
7 where detention serves a legitimate regulatory purpose tied to removal. For noncitizens physically
8 present within the United States, that authority arises—if at all—under 8 U.S.C. § 1226, which permits
9 arrest and detention solely “pending a decision on whether the alien is to be removed.” By its plain
10 text, § 1226 presupposes that the government is lawfully engaged in a removal inquiry and is capable
11 of articulating a legally viable charge of removability under 8 U.S.C. § 1227. Where no such charge
12 exists, detention is not “pending” removal at all—it is detention without statutory predicate.
13

14 Here, that predicate is entirely absent. Petitioner is lawfully present in the United States in valid
15 F-1 nonimmigrant student status, admitted for duration of status, and has not violated the terms of that
16 admission. He is not removable under any provision of § 1227. ICE has not issued a Notice to Appear,
17 has not commenced removal proceedings, and has not identified any statutory ground on which
18 removal could lawfully be pursued.
19

20 Critically, the state criminal charges against Petitioner cannot give rise to removability even in
21 the event of conviction, because they do not categorically match any deportability ground enumerated
22 in 8 U.S.C. § 1227(a).¹ Immigration consequences turn not on the underlying facts alleged by the
23 prosecution, but on the statutory elements of the offense of conviction under the categorical and
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¹ It is important to note that a conviction would be required for the charges to render Petitioner removable. 8 U.S.C. § 1227.

1 modified categorical frameworks. Where the minimum conduct criminalized by a statute falls outside
2 the scope of a deportability ground, removability does not attach as a matter of law.

3 First, the charged offenses cannot qualify as aggravated felonies. An aggravated felony “crime
4 of violence” requires both (1) that the offense meet the federal definition of a crime of violence and (2)
5 that it result in a term of imprisonment of at least one year. 8 U.S.C. § 1101(a)(43)(F). The charged
6 offenses are misdemeanors carrying maximum possible sentences well below the one-year threshold,
7 and several of the statutory provisions permit conviction based on reckless or nonviolent conduct,
8 which categorically falls outside the federal crime-of-violence definition. As a result, no conviction
9 under the charged statutes can constitute an aggravated felony.
10

11 Second, the offenses do not constitute crimes involving moral turpitude (“CIMTs”). A CIMT
12 requires conduct that is inherently base, vile, or depraved, coupled with a sufficiently culpable mental
13 state—typically intent to defraud, intent to cause serious harm, or conscious disregard of a substantial
14 and unjustifiable risk. The statutes at issue criminalize a broad range of conduct, including reckless or
15 minimal conduct that does not involve depraved intent or moral baseness. Because the minimum
16 conduct necessary for conviction is not turpitudinous, the offenses fail the categorical test and cannot
17 support removability under 8 U.S.C. § 1227(a)(2)(A).
18

19 Third, the charges do not qualify as crimes of domestic violence under 8 U.S.C. § 1227(a)(2)(E).
20 That provision requires a conviction for a federal “crime of violence” committed against a qualifying
21 domestic victim. Where, as here, the underlying statute permits conviction based on reckless conduct
22 or conduct not involving the intentional use of violent force, it does not categorically qualify as a crime
23 of violence for immigration purposes. The presence or absence of a domestic relationship is legally
24 irrelevant unless the offense itself meets the federal violence definition—which these statutes do not.
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1 Finally, the charges do not fall within any other criminal deportability category, including
2 controlled substance offenses, firearms offenses, or child abuse-related provisions. Congress
3 deliberately limited deportability to specific, enumerated categories, many of which require not only a
4 conviction but also particular statutory elements and sentencing thresholds. None of those prerequisites
5 are met here.
6

7 Accordingly, even in the worst-case scenario of conviction, Petitioner would remain lawfully
8 present and not removable under the Immigration and Nationality Act.

9 Absent removability, ICE has no detention authority. Section 1226 does not authorize detention
10 for investigative convenience, speculative future removability, or as a placeholder while criminal
11 proceedings unfold. Nor does it permit ICE to impose a detainer that mandates future custody when
12 the agency lacks power to detain the individual directly. Detention authority under the INA is derivative
13 of removal authority; where removal is legally foreclosed, detention is likewise foreclosed.
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15 The immigration detainer at issue therefore exceeds ICE's statutory authority. By lodging a
16 detainer that ensures Petitioner's continued confinement and mandates his transfer into immigration
17 custody—despite the absence of any lawful basis for removal—ICE has acted *ultra vires*, exercising
18 power Congress did not confer. Civil detention imposed without statutory authorization is not merely
19 unlawful; it is constitutionally suspect. As the Supreme Court has emphasized, immigration detention
20 must be closely tethered to a valid regulatory purpose and may not be imposed arbitrarily or
21 indefinitely. “Freedom from imprisonment lies at the heart of the liberty protected by the Due Process
22 Clause,” and detention untethered to lawful removal authority violates both the INA and the
23 Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
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26 Because Petitioner is not removable as a matter of law—and cannot become removable based
27 on the charged offenses—ICE lacks authority to detain him, to command his continued custody through
28

1 a detainer, or to compel his transfer into immigration detention. The detainer is therefore unlawful on
2 its face and as applied. Petitioner has demonstrated a clear likelihood of success on his habeas claim
3 that the detainer violates the Immigration and Nationality Act, exceeds ICE's statutory authority, and
4 must be immediately withdrawn.

5
6 **B. Petitioner Will Suffer Immediate and Irreparable Harm Absent a TRO**

7 The harm here is concrete, immediate, and irreparable. The ICE detainer:

- 8 • Prevents Petitioner's release from state custody;
9 • Mandates his continued confinement and imminent transfer into federal immigration detention;
10 and ,
11 • Subjects him to unlawful civil detention without statutory authority or due process.

12
13 Loss of liberty—even for a brief period—constitutes irreparable harm as a matter of law. *Elrod*
14 *v. Burns*, 427 U.S. 347, 373 (1976). Once Petitioner is transferred into ICE custody, the harm cannot
15 be undone through later relief. Moreover, continued detention threatens to moot this Court's ability to
16 provide effective habeas relief.

17
18 Emergency relief is therefore required to prevent unlawful detention from occurring while this
19 Court adjudicates the merits.

20 **C. The Balance of Equities Strongly Favors Petitioner**

21 Requiring ICE to withdraw an unlawful detainer imposes no cognizable harm on the
22 government. ICE retains full authority to re-lodge a detainer or seek custody if and only if a lawful
23 ground of removability later arises.

24
25 By contrast, Petitioner faces ongoing and imminent deprivation of liberty based solely on an
26 ultra vires agency action. When the choice is between administrative convenience and unlawful
27 detention, the equities overwhelmingly favor protecting liberty.

1 **D. The Public Interest Supports Immediate Relief**

2 The public interest is always served by ensuring that executive agencies act within the bounds
3 set by Congress and the Constitution. The public has no interest in unlawful detention, and significant
4 interest in judicial oversight of immigration custody practices.

5 Granting a TRO narrowly limited to withdrawal of the detainer promotes:

- 6
- 7 • Compliance with the INA;
 - 8 • Respect for due process;
 - 9 • Preservation of habeas jurisdiction; and
 - 10 • Public confidence in lawful immigration enforcement.

11 **IV. RELIEF REQUESTED**

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

- 13
- 14 1. Issue an Emergency Temporary Restraining Order directing Respondents to immediately
15 withdraw and revoke the ICE detainer lodged against Petitioner;
 - 16 2. Prohibit Respondents from re-lodging the detainer absent a lawful statutory basis for
17 removability under 8 U.S.C. § 1227; and
 - 18 3. Schedule a prompt hearing on whether preliminary injunctive relief is warranted.
- 19

20 DATED: January 22, 2026

21
22 Respectfully submitted,

23
24 /S/ ALEC S. BRACKEN
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Certificate of Service

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I, Alec S. Bracken, certify that a true and complete copy of this Petition was served on

Respondents via email to the United States Attorney's Office for the District of Utah at:

Michael Kennedy - michael.kennedy@usdoj.gov

Dated: December 22, 2025

Respectfully submitted,

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