

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jose Eduardo Marmolejo Hurtado

20

§

Cause No. 5:26-CV-685-XR

202

Petitioners-Plaintiffs,

§

20

v.

20

con

PAMELA BONDI,
United States Attorney General;

son

20

**MEMORANDUM IN SUPPORT OF
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

202

KRISTI NOEM,
Secretary of the United States Department
of Homeland Security;

20

20

20

TODD M. LYONS,
Director of United States Immigration and
Customs Enforcement;

son

son

2003

20

SYLVESTER ORTEGA
Field Office Director for Detention and
Removal, U.S. Immigration and Customs
Enforcement,

20

202

20

20

20

JOSE RODRIGUEZ, in his official capacity
as Warden of the Dilley Immigrant
Processing Center;

20

20

20

22

22

Respondents.

02

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER**

I. INTRODUCTION

1. Petitioner a citizen of Mexico, has resided in the United States since approximately 2020. Petitioner is currently in the physical custody of Respondents at the South Texas ICE Processing Center in Pearsall, Texas. He has been unlawfully detained since January 2026. Through his previously filed Petition for Writ of Habeas Corpus, incorporated herein by reference, Petitioner challenges his unlawful detention and seeks immediate injunctive relief to remedy the ongoing constitutional violation. ***See ECF 1, Petition for Writ of Habeas Corpus***
2. As discussed in his Petition for Writ of Habeas Corpus, Petitioner's detention violates the Due Process Clause of the Fifth Amendment and the statutory language of the Immigration and Nationality Act because Petitioner is being held without the opportunity to request release from custody. Across the country, immigration judges are accepting this illegal theory and declining jurisdiction, thereby denying Petitioner any opportunity for an individualized custody determination. This deprivation of meaningful hearing violates substantive and procedural due process.
3. Immediate relief is necessary to remedy this ongoing constitutional violation, but also to alleviate the severe harm that the Petitioner is facing in detention. The last uncontested status - the *status quo ante* - is Petitioner's release. Federal district courts throughout the country, including courts in this District and Circuit, have

overwhelmingly granted relief to immigrant detainees in virtually identical circumstances.

4. The courts have recognized that mandatory detention offends due process when applied to applicants for admission who had previously been permitted to reside freely within the United States during the pendency of their removal proceedings law. Accordingly, Petitioner respectfully requests that this Court issue a temporary restraining order requiring their immediate release to restore the *status quo ante*, followed by a preliminary injunction maintaining their release pending final resolution of their habeas petition.

II. STATEMENT OF FACTS

5. Petitioner is a native and citizens of Mexico who has lived in the United States since approximately 2020. Mr. Marmolejo Hurtado has maintained a hardworking, honorable life. He has a United States Citizen Partner and the two share a life together with her five United States Citizen Children. He is currently detained at the South Texas ICE Processing Center. *See* ECF 1, Petition for Writ of Habeas Corpus ¶ 25.
6. On or about January 6, 2026 Petitioner was detained by ICE. He was subsequently transferred to the South Texas ICE Processing Center, where he remains detained. He has no criminal arrests or convictions. *See* ECF 1, Petition for Writ of Habeas Corpus ¶ 26.
7. Respondents and their agents have provided no indication to show that Petitioner is a danger to society or a flight risk and his detention serves no legitimate governmental purpose and is therefore unlawful.

III. Argument

Factors governing the application for a request for Temporary Restraining Order

8. The factors that govern an application for a temporary restraining order are the same as those that govern a request for preliminary injunction. *Hill v. Green County Sch. Dist.*, 848 F. Supp. 697, 703 (S.D. Miss. 1994) (citing *Canal Auth. v. Callaway*, 489 F.2d 567 (5th Cir. 1974)). Under well-settled Fifth Circuit precedent, the movant must show: (1) there is a substantial likelihood that the plaintiff will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs whatever damage the proposed injunctive relief would cause the defendant; and (4) the granting of the injunction is not adverse to the public interest. *Anderson v. Jackson*, 556 F.3d 351,360 (5th Cir. 2009) (quoting *Canal Auth.*, 489 F.2d at 572).
9. On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *See Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000). The decision of whether to grant or deny a TRO is within the Court's discretion. *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017). To show immediate and irreparable harm, a plaintiff must demonstrate it is likely it will suffer irreparable harm in the absence of preliminary relief. *Winter v. Nat. Res. Def Council*, 555 U.S. 7, 20 (2008). However, a "[s]peculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001). When the government is a party, the balance of equities and public interest

merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Lake Charles Diesel, Inc. v. General Motors Corp.*, 328 F.3d 192, 195 (5th Cir. 2003). As demonstrated below, all four factors weigh heavily in Petitioners' favor.

Petitioner is likely to succeed on the merits of their claims.

10. Petitioner is likely to succeed on the merits of their claim that his detention violates Due Process. Prior to and since *Buenrostro-Mendez*, many courts have agreed, finding that mandatory detention offends due process when applied to applicants for admission who had previously been permitted to reside freely within the United States during the pendency of their removal proceedings. *See Lopez-Arevelo*, 801 F. Supp. 3d at 674, 685–88 (using *Mathews v. Eldridge* balancing test and granting habeas relief on procedural due process grounds to petitioner who had previously been detained upon entry and then paroled into the country) (citing 424 U.S. 319(1976)); *Parada-Hernandez v. Johnson*, No. 25-CV-2729-K-BN, 2025 WL 3465958, at *1, 3–6 (N.D. Tex. Oct. 29, 2025) (same, in habeas case brought by petitioner who had previously been released under an ORR and finding that denial of a bond hearing based on application of § 1225(b)(2) violated procedural due process), *report and recommendation adopted*, No. 25-CV-2729-K-BN, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *Hernandez-Fernandez*, 2025 WL 2976923, at *1, 8–10 (same); *Ordonez-Lopez v. U.S. Dep't of Homeland Sec.*, No. 25-CV-470-KC, 2025 WL 3123828, at *1, 3–5 (W.D. Tex. Nov. 7, 2025) (same, in habeas case brought by petitioner who entered without inspection, was apprehended years later, applied for asylum, and then was paroled into the country); *Santiago v. Noem*, No. 25-CV-361-KC, 2025 WL 2792588, at *1, 6–14 (W.D. Tex. Oct. 2, 2025) (same, in habeas case brought by petitioner who

had protection from deportation under DACA); *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 700–01 (W.D. Tex. 2025) (same, in habeas case brought by petitioner who was apprehended upon entry and then released under an ORR); *see also Hassen v. Noem*, No. 26-CV-48-DB, 2026 WL 446506, at *1–2 (W.D. Tex. Feb. 9, 2026) (citing *Vieira*, 806 F. Supp. 3d 690) (same, post-*Buenrostro-Mendez*, in habeas case brought by petitioner who initially presented at a port of entry, was placed in expedited removal proceedings and detained pending a credible fear interview, and was ultimately granted humanitarian parole under § 1182(d)(5)(A)); *see also Clemente Ceballos v. Garite*, No. 26-CV- 312-DB, 2026 WL 446509, at *2 (W.D. Tex. Feb. 10, 2026) (extending the *Mathews* analysis to find due process violation as applied to alien who entered without inspection in 2004 and had never been paroled or otherwise released into the country by DHS prior to his first encounter with, and resulting detention by, ICE in 2026); *cf. Black v. Decker*, 103 F.4th 133, 149 (2d Cir. 2024) (using *Mathews* test to find mandatory detention under § 1226(c) violated due process as applied to alien whose detention pending removal had become unreasonably prolonged).

11. Because Petitioner demonstrates unlawful detention that violates due process they have shown a strong likelihood of success on the merits sufficient to warrant issuance of a Temporary Restraining Order. Petitioner further discussed their Due Process and statutory arguments in their Petition for Writ of Habeas Corpus, and hereby incorporates those arguments by reference.

Petitioner is suffering irreparable harm in detention

12. Unlawful detention in an immigration context is inherently a substantial threat of irreparable injury. *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) (finding that plaintiffs "established a likelihood of irreparable harm by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time.")
13. Further, Respondent has a U.S.C. partner who has five children (Petitioner's future step-children) who are suffering in his absence.
14. To the extent Respondents would argue there is a benefit to Petitioners remaining in custody promotes administrative efficiency, is significantly outweighed by Petitioner's loss of liberty and the harm being caused to them by his detention. The concrete harm to Petitioner vastly exceeds any inconvenience to the government.

Balance of the Equities and Public Interest

15. The final two factors for injunctive relief-the balance of equities and the public interests merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009), *Mock v. Garland*, 75 F.4th 563, 577 (5th Cir. 2023). Here, the Petitioner faces harm through unlawful and arbitrary detention depriving him of his liberty, and robbing him of time with his family.
16. Petitioners anticipate that Respondents will assert a countervailing public interest in enforcement of the country's immigration laws. "But the public also has an interest in the government following those laws." *Hernandez Ramiro v. Bondi et al.*, 5:25-CV-01207-XR (W.D. Tex. Oct. 15, 2025) (citing *Kostak v. Trump*, No. 3:25-CV-1093 , 2025 WL

2472136, at *2 (W.D. La. Aug. 27, 2025)). The Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice..." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

Release is necessary to maintain the Status Quo

17. In granting temporary restraining orders, courts must only grant such relief as necessary to maintain the status quo. *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822 (5th Cir. 1976) ("[T]he office of a temporary restraining order is to preserve, for a very brief time, the status quo, so as to avoid irreparable injury pending a hearing on the issuance of a preliminary injunction.") The status quo is the "last uncontested status." *United States v. F.D.I.C.*, 881 F.2d 207,210 (5th Cir. 2010).

18. Here, the status quo is Petitioner's unequivocal release from detention. "The appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to status quo ante, i.e., the last uncontested status which preceded the pending controversy."

Cardin Alvarez v. Rivas, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). "With regard to the specifics of the relief that might be ordered, in recent months many federal district courts" including the Western District, have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights." *Id*; *See Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025) (holding detention under § 1225(b) is unlawful and ordering release from custody). *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025)(ordering release from custody reasoning Respondent did not argue that Petitioner was being detained pursuant to section 1226 and so finding "no reason to consider" Section 1226 as a basis for Petitioner's current detention); *Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at* 13 (W.D. Tex. Oct. 1, 2025); *See also JU. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at 11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at 19 (D. Ariz. Aug. 11, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267, at 1 (D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025).

19. Alternatively, the court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed "as of 2020, the 'vast majority'-an 'overwhelming consensus '-of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasco Lopez*, 978 F.3d

at 855 n.14 (citations omitted). "Allocating the burden in this manner reflects the concern that '[b] ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" (citing *German Santos*, 965 F.3d at 214). "And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence." *Id.*; *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at 9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at 1 (W.D. Pa. Sept. 16, 2025); *JMP. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at 14; *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at 12 (D. Colo. Aug. 8, 2025).

IV. CONCLUSION

20. For the foregoing reasons, Petitioner respectfully requests that this Court grant
Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

DATED this 12th day of March, 2026.

/s/Amanda Aguilar
Attorney for Petitioner
P.O. Box 12104
San Antonio, Texas 78212
Phone: 512-662-9459
Email: amandaaguilar33@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on March 12th a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

Justin R. Simmons | U.S. Attorney's Office for the Western District of Texas
ATTN: Civil Process Clerk
601 NW Loop 410,
San Antonio, Texas 78216
and by email at: USATXS.CivilNotice@usdoj.gov

Bobby Thompson, Warden
South Texas ICE Processing Center
566 Veterans Drive
Pearsall, TX 78061
United States

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 12th of March 2026.

/s/Amanda Aguilar
Attorney for Petitioner
P.O. Box 12104
San Antonio, Texas 78212
Phone: 512-662-9459
Email: amandaaguilar33@gmail.com