

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

ORLANDO IMBERT-MARRERO,

Petitioner,

v.

WARDEN, ERO El Paso Camp East
Montana, GARRET RIPA, Miami Field
Office Director, TODD LYONS, Director
U.S. Immigration & Customs Enforcement,
and KRISTI NOEM, U.S. Secretary of
Homeland Security,

Respondents.

Case No. 3:26-cv-00349

**PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION**

Petitioner Orlando Imbert-Marrero, respectfully moves this Court *ex parte* for an emergency Temporary Restraining Order ("TRO") and/or a Preliminary Injunction. Petitioner seeks an immediate order compelling Respondents to release him from the custody of U.S. Immigration and Customs Enforcement ("ICE"). This motion is filed shortly after Petitioner's Petition for a Writ of Habeas Corpus, the most relevant aspects of which are summarized below. Petitioner respectfully requests that this Court immediately order Respondents not to move him from this Court's jurisdiction, to respond to this motion within one business day, and, if the Court deems appropriate, set this matter for an emergency evidentiary hearing.

INTRODUCTION

As detailed in the Habeas Petition pending before the Court and discussed below, Petitioner's detention by ICE is unlawful and it has been since the moment they detained him when he showed up for his regular check-in—just as he had for years since ICE determined his removal was not reasonably likely in the foreseeable future and released him from detention.

On July 29, 2025, ICE unlawfully detained Petitioner during a routine, scheduled check-in, ending 19 years of liberty under an Order of Supervision (“OSUP”). This re-detention is a flagrant violation of federal regulations, particularly 8 C.F.R. § 241.13, which requires ICE to follow specific procedures and make an individualized finding of changed circumstances rendering removal significantly likely in the reasonably foreseeable future before it can revoke supervised release. Respondents failed to follow this mandatory process. Moreover, Petitioner's removal to Cuba is not likely in the foreseeable future and is thus unlawful.

STATEMENT OF FACTS

Petitioner is a native of Cuba who has resided in the United States since his entry in 1999. Following a criminal conviction, he was detained and placed in removal proceedings. Petitioner was issued an order of removal to Cuba on January 12, 2006 and the order became final that same day. Petitioner remained detained until ICE finally released him with an OSUP in April of 2006.

Petitioner faithfully reported to ICE for 19 years pursuant to his OSUP. When he appeared at the ICE office on July 29, 2025, ICE officers arrested and detained him. He was not provided with any notice or explanation as to why he was being detained. Id.

LEGAL STANDARD

The purpose of a TRO is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief. *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974). A party seeking a TRO or a preliminary injunction must establish four elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and (4) that the injunction will not disserve the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Jones v. Tex. Dep't of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018)(per curiam)(quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)).

The party seeking injunctive relief must meet all four requirements. *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016)(quoting *Bluefield Water Ass'n v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009)). However, even if Petitioner here does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the

balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). Petitioner merits relief under either standard.

I. Petitioner is Likely to Succeed on the Merits.

Petitioner’s re-detention is unlawful because he has been detained well beyond the statutory period, his removal is not likely in the reasonably foreseeable future, ICE flagrantly disregarded its own mandatory regulations when detaining him, and he has been deprived of due process.

A. Petitioner’s Detention Violates *Zadvydas*

Petitioner’s removal order became final on January 12, 2006 and the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired on April 12, 2006. Petitioner was detained for the removal period before being released with an OSUP. Both the initial removal period and the presumptively reasonable six months of post-removal period detention have long expired in this matter. Petitioner was re-detained July 29, 2025 and has now been in custody for over 180 days. He has been cumulatively detained, since the date his removal order became administratively final, for almost a year. His re-detention does not restart the clock for purposes of prolonged detention analysis. *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *4 (S.D. Tex. Oct. 16, 2025)(collecting cases). Accordingly, this Court is likely to find that his prolonged detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

This Court is also likely to find that Petitioner's removal is unlikely in the reasonably foreseeable future. He has been detained for extended periods of time twice without ICE being able to effectuate his removal and there currently exists no travel document for him to be removed to any country. Petitioner has been detained now for 6 months and still no document has been issued. The circumstances of this case make it clear that removal of Petitioner is unlikely in the reasonably foreseeable future and "once removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Zadvydas*, 533 U.S. at 699.

B. ICE Violated Their Own Regulations

The decision to re-detain a noncitizen already free on supervised release is governed by 8 C.F.R. § 241.13(i). This regulation requires ICE to conduct an individualized determination, based on changed circumstances, that the noncitizen's removal has become significantly likely in the reasonably foreseeable future. *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *see also Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4–6 (E.D. Cal. July 16, 2025)(discussing the regulatory requirements for re-detention in the context of a habeas petition and request for a TRO seeking the immediate release of a "re-detained" pre-1995 Laos immigrant); *Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025)(same); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)(same).

ICE failed to meet this standard in revoking Petitioner's supervised release and detaining him. There has been no material change in regard to removals to Cuba and nothing about the circumstances of Petitioner's case has changed—specifically, ICE still has not secured any document that would allow them to remove him from the United States. Petitioner is thus likely to prevail on the regulatory violation as well.

C. Petitioner's Due Process Rights Have Been Violated

Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003). To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Matthews*, courts weigh the following factors:

- (1) the private interest that will be affected by the official action;
- (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
- (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Matthews*, 424 U.S. at 335.

Petitioner addresses the *Matthews* factors in turn.

It is undisputed Petitioner has a significant private interest in being free from

detention. “The interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Moreover, he is being held in conditions indistinguishable from criminal incarceration, thus giving more weight to his interest in being free from unlawful confinement. *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021)). The first *Matthews* factor supports Petitioner’s claim of a Fifth Amendment violation.

Petitioner also faces a substantial risk of erroneous deprivation. Under this factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Id.* at *8. ICE’s re-detention of Petitioner is the only reason that he is currently being detained. The risk of erroneous deprivation is substantial where, as happened here, a noncitizen is re-detained without the particularized assessment of changed circumstances required by the law. That is the exact cause of Petitioner being detained even though ICE is no more able to remove him now than they were before. If Petitioner is released from custody, ICE officials have an alternative procedure that was already in place—an OSUP—and can continue to pursue obtaining travel documents in an effort to formally remove Petitioner from the country—he does not need to be in custody for this to happen. This *Matthews* factor also weighs in favor of Petitioner.

Finally, Respondents’ competing interests do not outweigh the private

interests at stake. Petitioner does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. But he does not need to be detained while ICE works out whether he can be removed. Moreover, the Government can never have a compelling interest in violating the law or their own regulations. Accordingly, this factor weighs in Petitioner's favor as well.

Because all three *Matthews* factors favor Petitioner's position, this Court should determine that he is likely to succeed in demonstrating that his re-detention contravenes his due process rights under the Fifth Amendment.

II. Petitioner Faces Immediate and Irreparable Harm.

Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that "[f]reedom from imprisonment . . . lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. Every day Petitioner remains in custody, he is irreparably harmed by the loss of his fundamental liberty and separation from his family.

III. The Balance of Equities Tips Decisively in Petitioner's Favor.

The balance of harms weighs overwhelmingly in Petitioner's favor. The injury to Petitioner—unconstitutional detention, family separation, and risk to his well-being—is severe and immediate.

Conversely, the harm to Respondents is nonexistent. Petitioner is not a danger to the community; he has lived peacefully and productively as an employed member of the community. He is not a flight risk; he has complied with his OSUP and

reported to ICE on July 29, 2025, fully aware of the risks that he would be detained. As the Supreme Court noted in *Zadvydas*, the flight risk justification is "weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533 U.S. at 691. Releasing Petitioner pursuant to his OSUP poses no conceivable harm to the government.

IV. An Injunction Serves the Public Interest.

The public has a profound interest in ensuring that government agencies abide by the Constitution and their own regulations. Granting this injunction upholds the rule of law and prevents the government from exercising unchecked power to deprive individuals of their liberty. Furthermore, the public interest is served by preserving family unity, especially where U.S. citizen children are involved, and by preventing the waste of taxpayer resources on unlawful and indefinite detention.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this Emergency Motion and issue a Temporary Restraining Order and/or Preliminary Injunction ordering his immediate release from ICE custody under his previous Order of Supervision, pending a final resolution of his Petition for a Writ of Habeas Corpus

1. GRANT this Emergency Motion;
2. ISSUE a Temporary Restraining Order immediately ENJOINING and RESTRAINING Respondents, their officers, agents, servants, employees, and all persons in active concert or participation with them, from continuing to

detain Petitioner;

3. ORDER Respondents to appear and show cause immediately as to why a Preliminary Injunction should not issue;
4. Set an Emergency Hearing at the Court's Convenience; and
5. GRANT Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Date: February 5, 2026

/S/ Amanda Waterhouse

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Certificate of Service

I hereby certify that I sent this document along with all the other filings in this case via email to counsel for the government, the US Attorney for the Western District of Texas, on February 5, 2026, to usatxw.civil.immigration.notices@usdoj.gov along with the following individual email addresses: Lacy.McAndrew@usdoj.gov, Fidel.Esparza@usdoj.gov, Anne.Marie.Cordova@usdoj.gov, Mary.Kruger@usdoj.gov,

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/s/ Amanda Waterhouse
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Attorney for Petitioner

Certificate of Conference

Pursuant to Federal Rule of Civil Procedure 65(b)(1)(B), I certify that this Motion for Temporary Restraining Order is being filed on an *ex parte* basis. It is presumed that the requested relief is opposed. However, given the emergency nature of this matter, and the fact that opposing counsel has yet to file an appearance in this matter, it was not possible to confer with opposing counsel prior to filing. Immediate and irreparable injury will result before the adverse parties can be heard, and therefore notice should not be required.

/s/ Amanda Waterhouse
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