

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Fabel Antonio LEMUS CARDONA

Petitioner,

No. 8:26-cv-00606-DLB

v.

Kristi Noem, et. al

Respondents.

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

AMENDED MOTION AND MEMORANDUM OF LAW

Petitioner Fabel Antonio LEMUS CARDONA respectfully moves this Honorable Court for an emergency temporary restraining order preventing his continued detention, in violation of, inter alia, her constitutional rights.

I. INTRODUCTION

Petitioner is a 54 years old native and citizen of Guatemala who has resided in the United States for decades. He last entered lawfully on a B-2 visa on or about February 24, 2000. He was ordered removed in 2020, but was permitted by Respondents to remain in the United States for years, until this month, under an Order of Supervision. (See Petitioner's Exhibit 7).

Petitioner has two meritorious U-Visa petitions pending with USCIS based on his status as a twice-victimized survivor of aggravated assaults in the Baltimore area and his continued cooperation with U.S. law enforcement. (See Petitioner's Exhibits 2-3). DHS's longstanding practice has been to defer execution of removal orders while U-visa petitions remain pending. Petitioner is also seeking a stay of removal from ICE via Form I-246. (See Petitioner's Exhibit 4).

Petitioner has four U.S. citizen children, two of whom are minors, and lived with his partner in Baltimore, Maryland. Petitioner and his partner are expecting another child next month. His **partner's pregnancy is high-risk: she has Type 2 and gestational diabetes, requires regular medical care, and must take insulin twice daily.** She and their children depend on Petitioner for financial, emotional, and caregiving support. (See Petitioner's Exhibits 1 and 6).

Petitioner himself suffers from Type 2 diabetes and high blood pressure, requiring medication multiple times per day. Despite his son delivering his necessary medication to ICE in Baltimore, Petitioner received his medication only once during approximately a week in Baltimore ICE custody, and his partner reports that, even now, he only "sometimes"

receives medication, often without the necessary food he must take with it. Immediately before his re-detention, Petitioner underwent a colonoscopy and was still recovering when he was taken into custody; he was extremely weak, in significant pain, and vomiting repeatedly during his first day in ICE detention, yet was not provided appropriate medical evaluation or care. (See Petitioner's Exhibits 5-6).

For years, Petitioner complied with his order of supervision, reporting regularly to ICE/ISAP. On February 13, 2026, when he appeared for his annual check-in at the ICE Baltimore Field Office, ICE officers warrantlessly re-arrested him and subsequently re-detained him, first at the Baltimore Field Office and then transferred to Pine Prairie, Louisiana, without any prior written notice, without a pre-deprivation hearing, and without any individualized explanation as to why his long-standing supervised release was suddenly revoked.

As set forth in his Amended Petition for Writ of Habeas Corpus, Petitioner challenges this unlawful re-arrest and re-detention on multiple grounds, including violations of the Fifth Amendment's Due Process Clause, the Fourth Amendment, the Administrative Procedure Act, and 28 U.S.C. § 1361. Recent Federal Court decisions, including *Palencia v. Hermosillo*, 2026 U.S. Dist. LEXIS 9241 (W.D. Wash. Jan. 16, 2026), and *Oliveira v. Edlow*, 2025 U.S. Dist. LEXIS 251364 (D. Mass. Dec. 30, 2025), have granted habeas relief to similarly situated U-visa petitioners re-detained without notice or hearing. Petitioner now seeks an emergency temporary restraining order ("TRO") to halt his ongoing unlawful detention.

II. FACTUAL BACKGROUND

A. Petitioner LEMUS CARDONA's background and case posture

Petitioner Fabel Antonio LEMUS CARDONA is a fifty-four-years-old native and citizen of Guatemala. He first entered the United States without inspection in approximately 1987, when he

was sixteen years old. On or about June 29, 1994, Petitioner was convicted in the U.S. District Court for the Northern District of Texas for fraudulent use and possession of an alien registration card and was sentenced to six months of detention. Thereafter, in September 1994, he was ordered removed by an immigration judge and was subsequently removed to Guatemala in October 1994.

Petitioner later re-entered the United States lawfully on a B-2 visitor's visa on or about February 24, 2000. On or about September 17, 2012, he was convicted in Montgomery County, Maryland, of a DWI and received probation before judgment. On March 4, 2015, DHS issued Petitioner a Notice to Appear, alleging, inter alia, that he entered on a B-2 visa on or about December 19, 2013 (later amended to February 24, 2000) and remained beyond June 19, 2014 (later amended by DHS to August 23, 2000), and referencing his 1994 Texas conviction.

In approximately 2015, Petitioner was detained by ICE for a brief period and then released under an order of supervision. On August 11, 2016, he filed an application for cancellation of removal under INA § 240A(b)(1). On or about March 13, 2020, an immigration judge denied the application and ordered him removed. Petitioner thereafter filed a motion to reopen, which was denied, and appealed to the Board of Immigration Appeals. On June 6, 2022, the BIA dismissed the appeal.

On August 11, 2021, ICE issued Petitioner a new order of supervision. Petitioner complied fully with the conditions of his supervision, reporting regularly to ICE and/or ISAP. He maintained stable residence, employment, and community ties in Maryland throughout this period. On February 13, 2026, when Petitioner appeared for his scheduled annual check-in with counsel, he was immediately re-arrested, without a warrant, by Baltimore ICE officials, despite years of compliance and no change in relevant circumstances. He was briefly held at the Baltimore Field Office before being transferred to the ICE detention facility at Pine Prairie, Louisiana.

This re-arrest and re-detention occurred notwithstanding Petitioner's strong equities, long-term residence, deep family and community connections, compliance with supervision, and his two pending meritorious U-Visa petitions, which, under longstanding DHS practice, should result in continued deferral of enforcement.

Petitioner has two pending U-Visa petitions with USCIS based on his status as a victim of serious crimes (two aggravated assaults) in the Baltimore area and his cooperation with U.S. law enforcement. He is also pursuing a stay of removal with ICE via Form I-246. Historically, DHS has deferred execution of removal orders while U-visa petitions are pending.

Petitioner lived in Baltimore, Maryland, with his partner and U.S. citizen minor children. He has four U.S. citizen children, and he and his partner are expecting another child next month. His partner's pregnancy is medically high-risk; she has Type 2 and gestational diabetes and requires daily insulin and regular medical appointments. She does not work and relies on Petitioner for financial and caregiving support. Petitioner's minor children likewise depend heavily on him.

Further, Petitioner suffers from Type 2 diabetes and hypertension, requiring medication multiple times per day. His son delivered his medications to ICE in Baltimore, yet Petitioner received his medicine only once during approximately one week in Baltimore ICE custody. His partner now reports that he "sometimes" receives his medication, often without the necessary food to safely take with those medications.

Additionally, immediately before his re-detention, Petitioner underwent a colonoscopy and was still in the recovery period. Because he had not been given adequate time to recover, he was extremely weak, in significant pain, and vomiting repeatedly on his first day in ICE custody.

Despite his obvious and fragile medical condition, ICE did not provide appropriate medical evaluation or treatment.

III. 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.

IV. 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," *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 813 (4th Cir. 1991).

V. 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.

Alternatively, Petitioner has "raised serious questions going to the merits" and the "hardships tip sharply in the Plaintiff's favor." *See id.*

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

If this Court does not grant a temporary restraining order, ill Petitioner will continue to be detained by ICE officials. His continued detention will result in Petitioner not being able to support his currently expecting and high-risk partner and his minor U.S. citizen children.

Respondents' actions already are and will continue to cause irreparable harm to Petitioner (and his family) by unlawfully separating him from his family and community in the United States. If Petitioner remains detained, his minor children and partner, who depend on him for their emotional, psychological, and financial support, will suffer profound and unbearable hardship. The harm is acute given that Petitioner's partner is currently pregnant and the couple is expecting eight months, and his partner is at high risk. Petitioner also plays a very essential and irreplaceable role in his minor children's lives during their formative years, a critical period of emotional, cognitive, and social development. His daily presence provides stability, guidance, and a sense of security that cannot be replicated in his absence. Prolonged separation at this stage risks lasting emotional harm and disruption to the minor children's well-being. Petitioner should be present for the birth of his newborn child and the immediate postpartum period, both to support his partner physically and emotionally and to assume his responsibilities as a father from the very beginning of the child's

life. The birth of a child is a pivotal and irreplaceable moment. Preventing Petitioner from being present would not only deprive him of that foundational experience but would also deprive his newborn of the early bonding and stability that are essential in the earliest days of life. Such separation constitutes precisely the type of irreparable harm that warrants immediate judicial intervention. *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).

Importantly, Petitioner suffers from Type 2 diabetes and hypertension and is recovering from a recent colonoscopy. He requires consistent medication, proper diet, and medical follow-up. ICE's documented failures to provide his prescribed medication regularly and with adequate food, and to properly monitor his post-procedure condition, place him at serious risk of acute medical complications (including uncontrolled blood pressure or blood sugar, syncope, or other medical crises). Here, ICE's failure to provide consistent treatment for Petitioner's chronic and acute conditions transforms his civil detention into a punitive and medically dangerous confinement.

Additionally, Petitioner's continued detention will also deprive him of proximity to his 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 she has to thread a labyrinth almost as impenetrable as the Internal Revenue Code.”).

As alleged in Petitioner’s amended habeas petition, Respondents’ actions 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

The Fifth Amendment protects all “persons” within the United States from deprivation of liberty without due process of law, including noncitizens, regardless of status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Freedom from physical restraint lies at the core of the liberty the Due Process Clause protects. *Id.* at 690. Petitioner was released under an order of supervision and complied fully with all reporting requirements for many years. He maintained residence, employment, and deep family ties in Maryland. He also has two pending, meritorious U-Visa petitions based on his status as a twice-victimized survivor of aggravated assault who cooperated with U.S. law enforcement, **precisely the category of individuals Congress intended to protect through the Victims of Trafficking and Violence Protection Act (“VTVPA”)**. Despite this, ICE re-arrested him at a routine annual check-in without prior written notice, without a pre-deprivation hearing, and without articulating any individualized change in circumstances justifying revocation of supervised release.

Recent federal decisions confirm that such conduct violates due process. In *Palencia v. Hermosillo*, 2026 U.S. Dist. LEXIS 9241 (W.D. Wash. Jan. 16, 2026), and *Oliveira v. Edlow*, 2025 U.S. Dist. LEXIS 251364 (D. Mass. Dec. 30, 2025), district courts granted habeas relief to noncitizens with pending U-Visa petitions who were re-detained at routine ICE check-ins after having been previously released under supervision. Both courts held that re-detention without advance written notice and without a meaningful opportunity to be heard violated procedural due process under the balancing framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976). Applying that same framework here compels the same result. Petitioner's private interest, freedom from physical detention, is the most fundamental liberty interest. The risk of erroneous deprivation is extraordinarily high where ICE revokes supervised release without prior notice or hearing. And the government's interest in immediate detention without process is minimal where, as here, Petitioner has complied with ICE's supervision for years, poses no danger, has strong and deep family and community ties, and has two pending U-Visa petitions that Congress designed to encourage cooperation with law enforcement rather than punish it.

Moreover, ICE's recent practice of re-arresting and re-detaining immigrant survivors with pending U- and T-Visa petitions is currently being challenged in a class action in *National Women's Center et al. v. Noem et al.*, No. 2:25-cv-09848 (C.D. Cal. filed Oct. 14, 2025). This litigation itself underscores the serious constitutional and statutory concerns raised by ICE's abrupt shift away from decades-long practice of deferring enforcement for crime victims with pending applications. Plaintiffs in that action allege that ICE has adopted a blanket practice of re-arresting survivors without conducting the statutorily mandated inquiry into prima facie U- or T-Visa eligibility, contrary to the VTVPA's protective framework. The ongoing judicial scrutiny of that

policy further supports Petitioner's substantial likelihood of success here, where he falls squarely within the protected class Congress intended to shield.

Petitioner's detention also violates substantive due process. Under *Zadvydas*, civil immigration detention must bear a reasonable relation to its regulatory purpose and may not become arbitrary or effectively indefinite. 533 U.S. at 690–701. Here, removal is not reasonably foreseeable while Petitioner's two U-Visa petitions remain pending. DHS has historically deferred execution of removal orders under these circumstances. Re-detention therefore does not serve a legitimate regulatory purpose and instead functions as arbitrary confinement. Courts assessing the reasonableness of immigration detention may consider conditions of confinement as part of that analysis. See *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Petitioner suffers from Type 2 diabetes and hypertension and recently underwent a colonoscopy immediately prior to re-detention. ICE has failed to consistently provide his prescribed medications and appropriate medical monitoring. Civil immigration detention may not become a vehicle for medical neglect. Under these circumstances, continued confinement is excessive and constitutionally infirm.

Petitioner is also likely to succeed on his Fourth Amendment claim. The Fourth Amendment prohibits unreasonable seizures. Warrantless civil immigration arrests are lawful only where officers have reason to believe the individual is in violation of immigration law and "is likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2). Petitioner was re-arrested at a scheduled annual ICE check-in, where he appeared voluntarily and in compliance with supervision, without a judicial warrant and without any individualized showing that he posed a risk of flight. In *Escobar Molina et al. v. DHS*, Civ. Action No. 25-3417 (D.D.C. Dec. 2, 2025), the court held that warrantless civil immigration arrests lacking an individualized pre-arrest escape-risk

determination violate the Fourth Amendment. As in that case, ICE here made no individualized finding that Petitioner would abscond before a warrant could be obtained. Arresting a compliant individual at an annual routine check-in without exigent circumstances constitutes an unreasonable seizure, and his continued detention flowing from that arrest remains constitutionally defective.

Finally, Petitioner is likely to succeed under the Administrative Procedure Act. Under 5 U.S.C. § 706(2)(A), courts must set aside agency action that is arbitrary and capricious. ICE abruptly revoked Petitioner's supervised release and re-detained him despite years of compliance, strong family ties, serious medical conditions, and two pending meritorious U-Visa petitions. Respondents articulated no change in factual circumstances, no public-safety concern, and no flight-risk determination. ICE further failed to conduct the statutorily mandated inquiry into Petitioner's prima facie U-Visa eligibility before subjecting him to re-detention. An unexplained departure from longstanding agency practice and failure to consider important aspects of the problem render the action arbitrary and capricious under *State Farm* and its progeny.

For all of these reasons, individually and collectively, Petitioner has demonstrated a strong likelihood of success on the merits. The constitutional violations are substantial, the statutory framework favors protection of crime victims with pending U-Visa petitions, recent federal courts' decisions addressing materially indistinguishable re-detention practices have granted relief, and ongoing litigation in *NWC v. Noem* highlights the serious legal infirmities in ICE's current approach. This factor weighs heavily in favor of granting emergency injunctive relief.

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 [his] 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 continued detention would harm not only him, but also his U.S. citizen children, pregnant partner, and community. Petitioner lives in Baltimore, Maryland, has stable employment, and has local counsel. Without immediate intervention from this Court, Petitioner, his U.S. citizen children, and his high-risk pregnant partner 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 U.S. citizen children and pregnant partner 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 his criminal record is minimal, has two pending meritorious U-Visa petitions, and is neither a flight risk nor a danger to the community.

By contrast, any public interest favoring Petitioner's continued detention, 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 continued detention is outweighed by Petitioner's exceptional qualities.

VI. CONCLUSION

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

Dated: February 24, 2026

/s/ Ronald D. Richey
Ronald D. Richey, Esq.
MD Bar# 0906240005
Law Office of Ronald D. Richey
19785 Crystal Rock Dr., Ste. 307
Germantown, MD 20874
T: (301) 738-2338
info@immigrationlawrichey.com
Attorney for Petitioner

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Fabel Antonio LEMUS CARDONA

Petitioner,

No. **8:26-cv-00606-DLB**

v.

Kristi Noem, et. al

Respondents.

ORDER

Upon consideration of Petitioner's Motion for a Temporary Restraining Order and Memorandum in support thereof, it is on this _____ day of February 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.

United States District Judge