UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

WILBER RAFAEL GARCES PEREZ, Petitioner, v. BOBBY THOMPSON, Warden, South Texas ICE Processing Center; SYLVESTER M. ORTEGA, in his official capacity as Acting Field Office Director, San Antonio Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; DAVID VENTURELLA, in his official capacity as Acting Director U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, in his official capacity as U.S. Secretary of Homeland Security; TODD BLANCHE, in his official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	§ § § § § § § § § § § § § § § § § § § §	Civil Action No. 5:26-cv-06038

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ORDERING RELEASE AND A STAY OF REMOVAL PENDING FINAL JUDGMENT

Petitioner Wilber Rafael Garces Perez moves, on an emergency basis, for an order staying his removal from the United States for a limited period so that he may pursue the U nonimmigrant status for which he is prima facie eligible as the victim of a violent crime. Because Petitioner faces imminent removal, he requests an immediate ruling and, if necessary, relief under Federal Rule of Civil Procedure 65(b).

I. INTRODUCTION

An ICE officer shot Petitioner. He survived, was taken from his hospital bed into ICE custody, and now faces removal from the country before he can even apply for the victim-based immigration relief Congress created for people in exactly his position. Petitioner does not ask this Court to disturb his removal order. He asks only that the Court hold removal in place for a limited time so that the opportunity to seek U nonimmigrant status — an opportunity that removal would destroy forever — is not extinguished without any process at all. The Due Process Clause, as applied through *Mathews v. Eldridge*, 424 U.S. 319 (1976), requires that much.

II. BACKGROUND

1. On September 20, 2026, an ICE officer shot Petitioner in North Austin at approximately 12:56 p.m. He was hospitalized with a gunshot wound and, at approximately 4:30 p.m., released from the hospital into ICE custody. He is now held at the South Texas ICE Processing Center in Pearsall.

2. On information and belief, a bullet remains lodged in Petitioner's body. Petitioner continues to experience severe pain and weakness and has not received pain medication or adequate medical treatment. Despite his ongoing medical condition, and without counsel present, Respondents have subjected Petitioner to interrogation.

3. Petitioner is the victim of, and a witness to, a violent crime — the shooting. He suffered substantial physical harm, possesses information about the offense, and can assist the authorities investigating it. He is therefore prima facie eligible to seek U nonimmigrant status. 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14.

4. Petitioner intends to seek a law-enforcement certification and to file a U petition with USCIS, and needs a brief, reasonable opportunity to do so. Respondents, on information and belief, intend to remove him imminently. [Update with certification status once known.]

III. THIS COURT HAS JURISDICTION

This Court has habeas jurisdiction under 28 U.S.C. § 2241. The immigration laws' channeling provisions do not strip it, because Petitioner does not challenge his removal order or its execution.

IV. STANDARD OF REVIEW

This court has two avenues under which it can grant preliminary relief to Petitioner. First, under Federal Rule of Civil Procedure 65, this Court can issue a preliminary injunction ("PI") and Temporary Restraining Order (TRO). To enter a PI or TRO, the Court must find four factors, on balance, weigh in Petitioner's favor:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Speaks v. Kruse, 445 F.3d 396, 399–400 (5th Cir. 2006) (quotations omitted).

V. ARGUMENT

Petitioner satisfies the standard for a Temporary Restraining Order. He is likely to succeed on the merits of his claims. Furthermore, this case involves exceptional circumstances concerning both the nature and timing of Petitioner's arrest and detention as well as Petitioner's health sufficient for relief under *Mapp*. Petitioner also satisfies the other requirements for a PI and TRO.

A. Petitioner Raises Substantial Claims That Are Likely to Succeed on the Merits.

1. *Petitioner is likely to succeed on the merits of his procedural due process claim that his detention and imminent removal are in violation of his procedural due process rights.*

B. The Equities Favor a Temporary Restraining Order and Preliminary Injunctive Relief.

The remaining factors favor granting a preliminary injunction, *see Book People, Inc. v. Wong*, 91 F.4th 318, 340–41 (5th Cir. 2024), and this case presents exceptional circumstances warranting immediate release, *see Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001).

First, Petitioner faces irreparable harm. Courts have found that the violation of a constitutional right can, in and of itself, constitute sufficient irreparable harm to justify a TRO. *BST Holdings, L.L.C. v. Occupational Safety & Health Admin., United States Dep't of Lab.*, 17 F.4th 604, 618 (5th Cir. 2021). In this case, both the detention and the pending deportation merge to deny Petitioner his right to apply for a U-visa based on the fact an ICE agent used deadly force against him.

Second, Courts have long recognized that unlawful deportation can constitute irreparable harm. *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011). This is especially true where removal would prevent the noncitizen from accessing immigration relief to which he may be entitled. *Id.* Here, Petitioner's removal will prevent him from applying for the U-Visa for which he may be eligible as a result of the shooting, because such application must be filed while an individual is in the United States.

Additionally, "[i]n the immigration context, unlawful detention is a sufficient irreparable injury." *Arias Gudino v. Lowe*, No. 1:25-CV-00571, 2025 WL 1162488, at *13 (M.D. Pa. Apr. 21, 2025). This is because of the "evidence of subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention,

and the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

Further, Courts have found irreparable harm where continued detention would lead to specific negative health outcomes. *See, e.g.*, *Jones v. Tex. Dep't of Crim. Just.*, 880 F.3d 756, 760 (5th Cir. 2018) (risk of stroke or heart attack); *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 340 (S.D. Tex. 2020) (risk of contracting COVID-19). "A harm need not be inevitable or have already happened in order for it to be irreparable; rather, imminent harm is also cognizable harm to merit an injunction." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Further, for the *Mapp* and *Calley* framework "Examples of 'extraordinary circumstances' include the serious deterioration of the petitioner's health while incarcerated. . . ." *Kennedy v. Adler*, 35 F. App'x 386 (5th Cir. 2002) (per curiam) (citing *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974).

Petitioner was discharged with the bullet still lodged in his body and while he continued to experience pain. Rather than remain in a medical setting, Petitioner was transported to a temporary processing center, where he was forced to sleep on a cement floor. At approximately 4:00 a.m. on September 21, 2026, ICE transferred Petitioner to the South Texas ICE Processing Center in Pearsall, Texas. Given documented allegations of inadequate medical care at the facility, including delayed emergency treatment, Petitioner faces an immediate risk of further harm if he is denied necessary medical care, pain medication, and monitoring for his retained bullet and ongoing symptoms. These circumstances warrant emergency relief through a temporary restraining order, rather than a preliminary injunction alone. Petitioner is currently experiencing severe pain and weakness, and the continued deprivation of appropriate medical care presents an immediate and irreparable threat to his health and well-being.

The equities weigh in favor of granting Petitioner a PI. The hardships and public interest "factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). However, the Government "cannot suffer harm from an injunction that merely ends an unlawful practice . . . [.]" *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Indeed, the public interest weighs in favor of compliance with the law, protecting constitutional rights, and limiting government overreach. *See Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) ("public interest is enhanced" when procedure comports with basic constitutional due process protections).

The government will likely argue that it has an interest in enforcing immigration laws. While true, that hardly weighs in favor of the government's position here. "Granting preliminary injunctive relief will simply require Respondents to comply with their legal obligations and afford Petitioners procedural protections in connection with Respondents' exercise of discretion." *Abdi v. Duke*, 280 F. Supp. 3d 373, 410 (W.D.N.Y. 2017), *order vacated in part*, *Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019).

In addition, "unnecessary detention imposes substantial societal costs." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021). The needless detention of individuals not only causes those individuals to suffer but "removes from the community breadwinners, caregivers, parents, siblings and employees." *Id.* (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020)). Here, Petitioner's continued detention not only threatens his health and ability to recover but also prevents him from returning to his community, pursuing lawful employment, and contributing to his family and the economy. These harms further support immediate release.

VI. CONCLUSION

For the foregoing reasons, the Court should grant this Motion and stay Petitioner's removal from the United States for a period sufficient to permit him to seek a law-enforcement certification and to investigate and potentially file and have adjudicated a bona fide petition for U nonimmigrant status, or until further order of the Court, order Petitioner to be immediately released pursuant to a Temporary Restraining Order and pending resolution of this case on the merits. In the alternative, the Court should hold a prompt bond hearing for the Petitioner or order that one be held immediately before an immigration judge.

Respectfully submitted,

/s/ Kristin Etter
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CERTIFICATE OF CONFERENCE

I certify that on September 21, 2026, undersigned counsel contacted counsel for

Respondents by email informing them of the expected filing.

CERTIFICATE OF SERVICE

Under penalties as provided by law, the undersigned certifies that true and correct copies of this EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ORDERING RELEASE AND A STAY OF REMOVAL PENDING FINAL JUDGMENT will be served upon all counsel of record via the online CM/ECF system and or via electronic mail on September 21, 2026.

Date: September 21, 2026

/s/ Kristin Etter
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