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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GENEROSO VELASQUEZ SALAZAR,

Petitioner,

vs.

**GEORGE DEDOS, WARDEN, CIBOLA
COUNTY CORRECTIONAL CENTER**

**MARY DE ANDA-YBARRA, DIRECTOR
OF EL PASO FIELD OFFICE, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT;**

**KRISTI NOEM, SECRETARY OF THE U.S.
DEPARTMENT OF HOMELAND
SECURITY; AND**

**PAM BONDI, ATTORNEY GENERAL OF
THE UNITED STATES,**

IN THEIR OFFICIAL CAPACITIES,

Respondents

CASE NO.: 1:25-CV-00835 -DHU-JMR

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner Generoso Velasquez Salazar, through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order (“TRO”) pursuant to Federal Rule of Civil Procedure 65(b) and the All Writs Act, 28 U.S.C. § 1651(a). In support, Petitioner incorporates the factual record and arguments set forth in his concurrently filed Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.

Mr. Velasquez has lived in the United States for nearly forty years, with deep family and community ties and no criminal record, yet he is now detained without access to a bond hearing and faces continued unlawful custody.

As set forth below and in the accompanying memorandum of law, Petitioner is entitled to immediate injunctive relief to preserve this Court’s jurisdiction and to prevent irreparable harm.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

LEGAL STANDARD

A temporary restraining order is an extraordinary remedy intended to preserve the status quo and ensure the Court’s jurisdiction is not defeated before the merits are adjudicated. The familiar four-factor test applies: (1) likelihood of success on the merits; (2) irreparable harm absent relief; (3) balance of equities; and (4) the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The first two factors are the most critical, and when the Government is the opposing party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

In addition, the All Writs Act, 28 U.S.C. § 1651(a), provides an independent basis for interim relief where necessary to protect the Court's jurisdiction. See *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *9 (D. Colo. Aug. 8, 2025) cf. *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977) (All Writs Act authorizes orders "necessary or appropriate in aid of" jurisdiction).

Courts have consistently recognized that they possess jurisdiction to enjoin both transfer and removal while a habeas petition is pending, in order to protect their ability to decide the case. *D.B.U. v. Trump*, No. 1:25-CV-01163-CNS, 2025 WL 1304288, at *5 (D. Colo. May 6, 2025)

In *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *9 (D. Colo. Aug. 8, 2025), a district court in the 10th Circuit invoked the All Writs Act, 28 U.S.C. § 1651, to prohibit ICE from removing the petitioner from the United States or transferring him outside the district during the pendency of his habeas proceeding. Similarly, in *Escalante v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2212104, at *1 (D. Minn. July 31, 2025), the court granted an emergency TRO to restrain transfer pending resolution of a habeas petition challenging detention under § 1226. And in *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) the court immediately enjoined removal to preserve habeas jurisdiction where ICE detained the petitioner after years of release on recognizance.

In other words, interim relief is warranted under either framework: the traditional Rule 65 factors or the All Writs Act. The Rule 65 analysis favors a TRO here, and the All Writs Act independently authorizes orders necessary to preserve this Court's jurisdiction against transfer or removal.

These cases underscore that temporary injunctive relief is essential in immigration habeas actions to prevent irreparable harm and to ensure judicial review is not mooted by transfer or deportation. As *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. Apr. 24, 2025), observed, when liberty and due process are at stake, irreparable injury, equities, and the public interest converge in favor of preserving the petitioner’s rights until the Court can reach the merits.

ARGUMENT

Likelihood of Success on the Merits

A movant need not prove certain victory on the underlying claim; it is enough to show a “fair chance of success” or that the petition raises “serious questions going to the merits.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247–48 (W.D. Wash. Apr. 24, 2025). Petitioner goes well beyond that standard here.

As articulated in his Habeas Petition, the governing statutory framework makes clear that Petitioner’s detention falls under 8 U.S.C. § 1226, not § 1225. Section 1225 applies to noncitizens who present themselves at the border seeking initial admission. By contrast, § 1226 governs the arrest and detention of individuals “pending a decision on whether the alien is to be removed from the United States.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). As the Supreme Court explained, § 1226 establishes a discretionary detention framework, under which noncitizens are entitled to a bond hearing before an Immigration Judge to determine whether they present a danger or flight risk. *Id.* at 838–39. Section 1225’s mandatory detention provision has no application to long-settled residents like Petitioner who were apprehended inside the United States, often years or decades after admission. To collapse the two statutes, as the

government urges, would render § 1226 largely superfluous — a reading courts have uniformly rejected *Rodriguez*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025), citing *Gomes v. Hyde*, 2025 WL 1869299, at *5–8 (D. Mass. July 7, 2025).

Because Petitioner is detained under § 1226, he is entitled to an individualized bond hearing where the government bears the burden to justify continued detention by clear and convincing evidence. See, e.g., *Gomes v. Hyde*, 2025 WL 1869299, at *5–8 (D. Mass. July 7, 2025). The denial of such a hearing is not only contrary to statute but also violates the Fifth Amendment’s guarantee of due process.

Recent decisions across the country confirm this interpretation. In *Gomes v. Hyde*, the court held that ICE could not reclassify a long-term resident as subject to § 1225 when he had been apprehended on a warrant inside the United States, ordering a bond hearing under § 1226. Similarly, in *Martinez v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025), the court rejected ICE’s attempt to detain a petitioner under § 1225 after she had already been placed in § 1229a proceedings, finding that only § 1226 applied. *Lopez Benitez v. Francis*, --- F. Supp. 3d ----, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025), likewise enjoined ICE’s re-detention of a long-settled noncitizen without any individualized custody determination, recognizing that the statutory scheme entitled him to a bond hearing under § 1226. And in *Rodriguez v. Bostock*, the Western District of Washington emphasized that challenges to detention under § 1226 raise serious questions on the merits and granted preliminary injunctive relief to ensure access to bond proceedings.

Together, these decisions underscore that the government’s reliance on § 1225 in this case is untenable. The statute does not apply to Petitioner’s circumstances, and by denying him the protections of § 1226 — including an individualized bond hearing — Respondents have violated

both the INA and Petitioner's constitutional rights. Petitioner therefore demonstrates not just "serious questions," but a strong likelihood of success on the merits.

Irreparable Harm

Petitioner easily satisfies the irreparable harm requirement. The threatened injuries here are not speculative; they are certain and imminent absent this Court's intervention.

First, transfer or removal would defeat this Court's jurisdiction over the habeas petition. As the court explained in *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *3 (D. Colo. Aug. 8, 2025), the risk of transfer or removal before adjudication of a habeas petition constitutes irreparable harm because it "would prevent the Court from exercising its jurisdiction and providing effective relief." Similarly, in *Escalante v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2212104, at *5 (D. Minn. July 31, 2025), the court recognized that transfer outside the district could frustrate judicial review and therefore enjoined ICE from moving the petitioner during the pendency of his § 2241 case. And in *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *2 (S.D.N.Y. Aug. 8, 2025), Judge Ho immediately prohibited removal precisely to preserve habeas jurisdiction. These cases establish that the loss of judicial review itself is irreparable harm.

Second, Petitioner faces the ongoing deprivation of liberty without due process, which courts uniformly recognize as a paradigmatic irreparable injury. In *Rodriguez v. Bostock*, 2025 WL 1869299, at *3 (W.D. Wash. Apr. 24, 2025), the court held that continued immigration detention without a proper statutory basis or bond hearing inflicts irreparable harm every day it persists. *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *3 (D. Colo. Aug. 8, 2025),

likewise emphasized that unlawful detention and the threat of removal constitute irreparable injuries justifying preliminary injunctive relief.

Finally, transfer or removal would cause severe personal and familial disruption — separating Petitioner from his U.S. citizen family and community ties. Petitioner has lived in California for nearly four decades, built his family and career there, and now serves as the sole caregiver to his young U.S. citizen nephew. Any transfer outside the District of New Mexico would sever him even further from his California community, family, and counsel, compounding the injury caused by his detention. Courts have long recognized that such harms are not compensable by later relief and therefore qualify as irreparable. See *Rodriguez*, 779 F. Supp. 3d at 1248.

In short, absent emergency relief, Petitioner faces the precise irreparable harms that TROs are designed to prevent: loss of judicial review, continued unlawful detention, and separation from family and community.

Balance of Equities and Public Interest

When the Government is the opposing party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Both weigh decisively in Petitioner's favor here.

Courts have consistently held that the Government suffers no legally cognizable harm from maintaining the status quo while habeas proceedings are pending. As the District of Minnesota recently explained in *Escalante v. Bondi*, 2025 WL 2212104, at *5 (D. Minn. July 31, 2025), “[t]he Government has no legitimate interest in moving Petitioner outside the District while this Court determines the legality of his detention,” whereas the harm to the individual

from such a transfer is substantial. Similarly, in *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025), the court held that the Government “has no legitimate interest in detaining a noncitizen under an unlawful theory of authority,” while the petitioner faced profound liberty deprivations. And in *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *3 (D. Colo. Aug. 8, 2025), the court found that enjoining transfers pending habeas review both “preserves judicial jurisdiction” and avoids irreparable harm to the petitioner without imposing any meaningful burden on Respondents.

The public interest is likewise aligned with Petitioner. Courts repeatedly emphasize that “the public has a strong interest in ensuring that the Government acts within its statutory and constitutional limits” (*Rodriguez*, 779 F. Supp. 3d at 1248), and in preserving judicial review of immigration detention (*Escalante*, 2025 WL 2212104, at *5). Preventing unnecessary transfers or removals serves not only the interests of the individual but also the broader community, which benefits when immigration enforcement is conducted within the bounds of law.

In short, where the only effect of an injunction is to preserve the Court’s jurisdiction and ensure lawful process, the equities and public interest factors converge to support relief.

Conclusion and Relief Requested

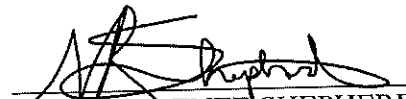
For the foregoing reasons, and pursuant to both Rule 65 and the All Writs Act, Petitioner respectfully requests that this Court issue an immediate Temporary Restraining Order, and thereafter a Preliminary Injunction, as follows:

1. Enjoining Respondents from transferring Petitioner to any facility outside the District of New Mexico during the pendency of this habeas action;

2. Enjoining Respondents from removing Petitioner from the United States during the pendency of this habeas action;
3. Directing that any hearing the Court may set on this Motion be conducted remotely by videoconference or telephone;
4. In the alternative, issuing an Order to Show Cause requiring Respondents to show cause within three days why the requested relief should not be granted; and
5. Granting such other and further relief as the Court deems just and proper.

DATED: September 2, 2025

Respectfully submitted,


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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Generoso Velasquez Salazar

Plaintiff(s),

vs.

No. CIV 1:25-cv-00835-DHU-JMR

George Dedos, Warden, Cibola County Correctional Center; Mary De Anda-Ybarra, Director, El Paso Fi
Defendant(s).

INFORMATION SHEET FOR T.R.O.

Attorney(s) for Plaintiff(s): *(include phone #)*

Natalie Renee Shepherd, Esq.; Los Angeles Legal Advocates; (805) 907-5309

Attorney(s) for Defendant(s): *(include phone #)*

Nature of Underlying Claim: *(contract, tort, environment, etc.)*

Habeas Corpus under 28 U.S.C. § 2241 challenging unlawful detention and seeking immediate
release / bond hearing

Jurisdiction: *(Cite Statutes)*

28 U.S.C. §§ 1331, 1343, and 2241.

Precise statement of activity sought to be restrained or compelled:

Petitioner seeks to restrain Respondents from transferring him to any facility outside the District of
New Mexico or removing him from the United States during the pendency of his habeas action.

HEARING

Estimated length of hearing: 1 hour

Request hearing to be set for: *(Select one)*

☒ Today ☐ Tomorrow ☐ Within One Week ☐ Within Ten Days

NOTICE

Are all parties represented by counsel at this time? ☐ Yes ☐ No

Have the opposing party(ies) and their attorney(s) been notified? ☒ Yes ☐ No

If answer is yes, when? September 2, 2025, by email to the U.S. Attorney's Office for the Dist

If answer is no, why not?

Notice given by: ☐ Phone ☐ Fax ☐ Letter ☐ In Person ☒ Other