

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Martin Rodriguez Hernandez,

Petitioner,

v.

Kristi Noem
Secretary, U.S. Department of
Homeland Security et al.

Respondents.

Cause No. 4:25-cv-04175

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND REQUEST FOR ORDER TO SHOW CAUSE PURSUANT TO 28
U.S.C. § 2243

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner, by and through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order (TRO) pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and for an Order to Show Cause under 28 U.S.C. § 2243, and in support thereof states:

I. BACKGROUND

Petitioners were taken into immigration custody on or about June 24,

2025. On July 22, 2025, an Immigration Judge ordered Petitioner released on a bond of \$15,000, finding Petitioner was not a flight risk or danger to the community. (*Dkt. 1-1 Bond Order*) On July 22, 2025, after the hearing, DHS immediately filed a Notice of Intent to Appeal Custody Redetermination on EOIR Form 43. Filing of the notice created an automatic stay of the bond grant for 10 days. (*Dkt. 1-2 E-43*) Per statute DHS had 10 days to file their formal appeal with the Board of Immigration Appeal. No appeal was ever filed by DHS. (*Dkt. 1-3 Attorney EOIR Portal*) DHS's failure to file an appeal to the Immigration Judge's bond order to the Board of Immigration Appeals within the regulatory timeframe resulted in the order becoming final and enforceable. After the lapse of the 10-day period DHS must accept payment of the bond and release upon proper receipt of funds and obligor application. Petitioner's wife and attorney attempted to pay his bond numerous times through the online ICE bond portal however the portal would not accept the payment. This was despite the lawful bond order issued by an immigration judge. (*Dkt. 1.1 Bond Order and Dkt. 1-4 Payment Attempts*) Despite numerous attempts by Petitioner's family and counsel to post bond, ICE has refused to process the bond payment or effectuate release, claiming bureaucratic or non-legal obstacles.

II. 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). To obtain a TRO, an applicant must satisfy the following four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable injury; (3) the threatened injury outweighs any harm the order might cause to the defendant; and (4) the injunction will not disserve the public interest. *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439,442 (5th Cir. 2000). "[H]arm is irreparable where there is no adequate remedy at law, such monetary damages." *Janvey v. Alguire*, 647 F.3d 585,600 (5th Cir. 2011). In general, a TRO is not appealable. TROs are "usually effective for only very brief periods of time, far less than the time required for an appeal . . . and are then generally supplanted by appealable temporary or permanent injunctions." *Board of Governors of the Fed. Reserve Sys. v. DLG Fin. Corp.*, 29 F.3d 993, 1000 (5th Cir. 1994).

III. ARGUMENT

A. Likelihood of Success on the Merits

ICE has no lawful authority to detain Petitioner after the lapse of the stay period without a valid appeal. Continued custody violates federal regulation, the INA, and due process. A bond order was issued by an Immigration Judge and the Respondents have unlawfully refused to honor payment on the order. In a recent case the Southern District of Texas has

granted a TRO and a Habeas Petition for an identical case finding the Petitioner had satisfied all prongs of the TRO standard. *See Contreras Martinez v. Noem et al.*, No. H- 4:25-cv-03806 (S.D.Tex. Aug. 13, 2025)(Dkt. 11)

B. Irreparable Harm

Continued unlawful detention violates Petitioner's liberty interest and causes daily harm. Courts routinely find detention itself to constitute irreparable injury. Petitioner is the sole provider for his family of five, which includes a severely ill adult child. Additionally, if Petitioner is not released from custody his daughter will be forced to drop out of college. (*Dkt 1-5 Affidavits*)

C. Balance of Equities and Public Interest

The balance of equities favors the Plaintiff in granting a TRO as it would serve in public interest to uphold due process and prevent family separation.

**IV. REQUEST FOR ORDER TO SHOW CAUSE UNDER
28 U.S.C. § 2243**

Under 28 U.S.C. § 2243, the Court must grant the writ or issue an order to show cause "forthwith" unless it plainly appears the petitioner is not entitled to relief. "The person to whom the writ or order is directed shall make a return certifying the true cause of the detention...within three days unless for good

cause additional time, not exceeding twenty days, is allowed."

Accordingly, Petitioner respectfully requests the Court issue an Order to Show Cause requiring Respondents to appear and justify Petitioner's continued detention and failure to comply with the IJ's final bond order.

V. PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

- 1) Issue an Order enjoining Respondents from blocking payment on the ICE Bond Payment portal for the Petitioner and compelling Respondents to immediately accept payment and process the bond;
- 2) Issue an Order compelling Respondents to immediately release Petitioner upon payment of bond and submission of properly filed bond application.
- 3) Issue an Order to Show Cause directing Respondents to file a return within 3 days explaining the legal basis for continued detention;
- 4) Schedule an expedited hearing as soon as practicable;
- 5) Award such other and further relief as the Court deems just and proper.

VII. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests the Court to grant this Emergency Motion for a Temporary Restraining Order and schedule a show cause hearing as soon as possible.

/s/Javier Rivera

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CERTIFICATE OF SERVICE

I certify that on September 4, 2025, the foregoing document was filed with the Court through the Court CM/ECF system on all parties and counsel registered with the Court CM/ECF.

Dated this 4th day of September, 2025.

/s/ Javier Rivera
Javier Rivera