

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

Jose Omar Duarte Escobar,

Petitioner-Plaintiff,

v.

Paul Perry, *in his official capacity* as
Warden of Caroline Detention Facility;

Russell Hott, *in his official capacity* as
Field Office Director of the Washington
Field Office of Enforcement and Removal
Operations, U.S. Immigrations and
Customs Enforcement; U.S. Department of
Homeland Security;

Todd M. Lyons, *in his official capacity* as
Acting Director, Immigration and Customs
Enforcement, U.S. Department of
Homeland Security;

Kristi Noem, *in her official capacity* as
Secretary, U.S. Department of Homeland
Security; and

Pamela Bondi, *in her official capacity* as
Attorney General of the United States;

Respondents-Defendants.

C/A No. 3:25-cv-00758-MHLVAED

**PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND
SUPPORTING MEMORANDUM OF LAW**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Petitioner moves this Court for a temporary restraining order ("TRO") preventing his imminent removal from the United States while his Petition for Writ of Habeas Corpus is pending. Specifically, Petitioner requests the Court to order Respondents-Defendants to cease any ongoing actions and refrain from taking any

additional actions toward effectuating Petitioner-Plaintiff's removal from the United States until the Court has adjudicated his petition and complaint.

Because Petitioner is likely to succeed in his petition and complaint, as well as to avoid the significant irreparable harm Petitioner would suffer if Respondents-Defendants proceed with its current removal plans—which, upon information and belief, is scheduled to occur imminently— Petitioner requests the Court to issue an order restraining the Respondents-Defendants from further action at the present time.

NOTICE TO RESPONDENTS-DEFENDANTS

Undersigned counsel provided written notice to the U.S. Attorney's Office for the Eastern District of Virginia by email on September 26, 2025, at 4:16 p.m., regarding Petitioner's intention of filing the instant Motion for Temporary Restraining Order. Undersigned counsel affirms she intends to send, via email, a copy of the instant Motion for a Temporary Restraining Order and its accompanying Memorandum of Law, and a proposed order for granting the TRO upon the filing of this motion.

FACTUAL BACKGROUND

Petitioner-Plaintiff is a citizen of Honduras who has resided in the U.S. for nearly twenty years. ECF 1. On information and belief, Immigration and Customs Enforcement ("ICE") officers apprehended him near his home in Washington, D.C., on September 9, 2025. *Id.*

Petitioner was previously in ICE custody at the Caroline Detention Facility in Bowling Green, Virginia. *Id.*

On September 17, 2025, Petitioner submitted a Petition for Writ of Habeas Corpus to this Court. *Id.*

Petitioner's counsel was told by ICE that, on September 26, 2025, Petitioner was

transferred to the Alexandria Staging Facility in Alexandria, Louisiana.

Upon information and belief, ICE officers told Petitioner he was going to be removed from the U.S. shortly.

Petitioner has never been ordered removed by an Immigration Judge and may not legally be removed at this time.

ARGUMENT

The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins governmental action, the party must demonstrate that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of the preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Petitioner would suffer irreparable harm upon removal. Petitioner has never been ordered removed by an Immigration Judge and may not legally be removed at this time. But for this Court’s granting of equitable relief, he will not be able to return to the U.S. to proceed with his immigration case and cannot be returned to the position he previously occupied. If he is removed from the U.S., he will lose the ability to present both his immigration case and his Petition for Writ of Habeas Corpus.

Petitioner is likely to succeed on the merits of his position. Petitioner contests his mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), as determined by the Board of Immigration Appeals’ (“the Board’s”) recent precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner instead alleges that he should be detained pursuant to 8 U.S.C. § 1226(a), which allows for release on bond.

Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Numerous federal courts have rejected the Board's interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See, e.g., Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing *Yajure Hurtado*).

Based on the numerous federal court decisions rejecting the Board's interpretation and the Board's departure from nearly thirty years of precedent and practice, there is a substantial likelihood Petitioner will succeed on his claim.

Finally, a TRO would not harm the Government or public interest. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The TRO would merely maintain the status quo. Additionally, the government's interest in the adjudication of Petitioner's petition and complaint is further supplemented by its general, demonstrated interest in ensuring due process of law and that removals from the United States are legally carried out. *See Rosario v. I.N.S.*, 962 F.2d 220, 221 (2d Cir. 1992) (noting the public has an interest in the court "ensur[ing] that whatever compassionate conditions are written into law are carefully adhered to[.]").

Petitioner requests this Court not to require Petitioner to provide security prior to issuance of a TRO. Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue

a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court with discretion as to the amount of security required, if any.” *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants).

CONCLUSION

Petitioner respectfully requests that the Court grant his motion for a temporary restraining order and maintain the status quo until this Court has an opportunity to assess his underlying petition and complaint.

Date: September 26, 2025

Respectfully Submitted,

/s/ Katherine Soltis
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CERTIFICATE OF SERVICE

I certify that on September 26, 2025, I filed the forgoing motion through the Court's CM/ECF system, which will transmit an email notification and electronic hyperlink to that filing to the Court. As the United States Attorney's Office for the Eastern District of Virginia has not made an appearance in the case a copy of the foregoing will be served on their office by email and certified mail.

Respectfully submitted,

/s/ Katherine Soltis
Katherine Soltis