

Gina Herrera

Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

DANIEL JAMES CUMMINS,

Petitioner,

vs.

MOISES BECERRA, Field Office Director,
ICE/San Francisco;

RON MURRAY, Warden, Mesa Verde ICE
Processing Center;

KRISTI NOEM, Secretary of Homeland
Security;

ERIC GRANT, Attorney General of the United
States,

Respondents.

Case No.

**EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

**AND ORDER FOR IMMEDIATE
RELEASE UNDER FRCP 65(b)**

**EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
ORDER FOR IMMEDIATE RELEASE UNDER FRCP 65(b)**

TO THE HONORABLE COURT:

Pursuant to **Federal Rule of Civil Procedure 65(b)** and the **All Writs Act, 28 U.S.C. § 1651**,
Petitioner **Daniel James Cummins**, by and through undersigned counsel, respectfully applies for
an **Emergency Temporary Restraining Order (TRO)** and **Order for Immediate Release**
from immigration detention at Otay Mesa Detention Center, where he is currently in the custody
of U.S. Immigration and Customs Enforcement ("ICE").

I. GROUNDS FOR EMERGENCY RELIEF

1. Mr. Cummins is a 35-year-old citizen of Ireland who entered the United States under the **Visa Waiver Program** in 2018 and has since lived continuously in California.
2. He is **not subject to removal under § 217 summary procedures**, as ICE initially claimed, due to:
 - An erroneous I-213 that has not been amended;
 - His prolonged lawful presence and deep community ties;
 - The pending **I-589 asylum application** filed based on his **life-threatening medical condition** and **changed country conditions**.
3. Mr. Cummins suffers from **chronic pulmonary aspergillosis**, a progressive and debilitating lung disease caused by **Valley Fever**, an infection unique to certain regions of California. This condition:
 - Requires **specialist care only available in the U.S.**, including long-term antifungal treatment and monitoring;
 - Is **incurable** and could be **fatal** if he is removed to Ireland, where such treatment is unavailable.
4. He was recently **physically assaulted in ICE custody**, further compromising his health and safety. A **pending parole request filed November 19, 2025**, support the urgency of his release.
5. ICE has **refused to act** on his parole request, in violation of due process and governing policy.
6. The **continued detention of Mr. Cummins under these circumstances constitutes a grave violation of his constitutional rights** under the **Fifth Amendment Due Process Clause** and **violates 8 U.S.C. § 1231(a)(6)**, as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001).
7. Courts have consistently granted TROs and release for medically vulnerable detainees where ICE failed to consider humanitarian relief or where conditions amounted to deliberate indifference. See:
 - *Ortuño v. Jennings*, 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020);
 - *Basank v. Decker*, 449 F. Supp. 3d 205 (S.D.N.Y. 2020);
 - *Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. 2020).

II. REQUESTED RELIEF

Petitioner respectfully requests that this Court:

- Issue a **Temporary Restraining Order** enjoining ICE from transferring or removing Mr. Cummins and ordering his **immediate release** from immigration detention;
- Order that Mr. Cummins be released to the care of his fiancée, a U.S. citizen, with appropriate conditions as determined by the Court;
- Set a hearing date on a **preliminary injunction**;
- Grant such other and further relief as the Court deems just and proper.

III. MEMORANDUM AND SUPPORTING DOCUMENTS

This Application is based on:

- The **Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief**;
- The accompanying **Memorandum of Points and Authorities**;
- The **Declarations of Daniel Cummins, Gina Herrera, Robert G. Cummings**;
- The **November 19, 2025, parole request** and subsequent ICE inaction.

Respectfully submitted,

Date: December 15, 2025

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner

Gina Herrera
Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)
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MEMORANDUM OF POINTS AND AUTHORITIES

**IN SUPPORT OF EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND IMMEDIATE RELEASE UNDER FRCP 65(b)**

I. INTRODUCTION

This memorandum supports Petitioner Daniel James Cummins's emergency application for a Temporary Restraining Order ("TRO") and immediate release from ICE custody. Mr. Cummins is a long-term resident of the United States with a pending asylum application and a documented, life-threatening medical condition—chronic pulmonary aspergillosis caused by exposure to Valley Fever. His detention at the Mesa Verde ICE Processing Center has resulted in severe and

ongoing deterioration of his health and safety, including his recent physical assault by another detainee, lack of access to essential medical care, and prolonged exposure to an unsafe environment. Emergency judicial intervention is required to prevent further irreparable harm.

II. FACTUAL BACKGROUND

- **Medical Condition:** Mr. Cummins suffers from chronic pulmonary aspergillosis, a rare lung condition that is exacerbated by detention. He contracted the illness from *Coccidioides* (Valley Fever) in California's Central Valley, which has led to permanent lung scarring and reliance on specialist treatment, including high-dose antifungal medication and potential surgical management.
- **Ongoing Treatment in the U.S.:** Multiple medical professionals (including Dr. Brian Fagan and UCSF's Dr. Barish) have confirmed that no comparable care exists in Ireland, Mr. Cummins's country of citizenship. He faces a substantial risk of death if returned or if held without treatment.
- **Pending Asylum Case:** Mr. Cummins has a pending I-589 asylum application with USCIS based on medical and humanitarian grounds (changed circumstances). He is statutorily eligible for release and is not a flight risk.
- **Lengthy Detention and Physical Assault:** Despite serving 10 months in criminal custody for now-dismissed charges and being detained by ICE since his release, Mr. Cummins has not been afforded appropriate custody review. He was also recently attacked by a fellow detainee at Mesa Verde, worsening his trauma and further compromising his safety.
- **Parole Request Ignored:** A humanitarian parole request submitted on November 19, 2025, remains unanswered. ICE's prolonged failure to respond is a violation of due process and constitutes deliberate indifference to a serious medical need.

III. LEGAL STANDARD

Federal courts have the inherent authority to grant temporary injunctive relief under FRCP 65(b) where immediate and irreparable injury will result before the adverse party can be heard. A petitioner must show:

1. A likelihood of success on the merits;
2. A likelihood of irreparable harm in the absence of preliminary relief;
3. The balance of equities tips in the petitioner's favor; and

4. An injunction is in the public interest.

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

Courts also recognize that detention may become unlawful when it results in “conditions of confinement that amount to punishment” for civil detainees. See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Jones v. Blanas*, 393 F.3d 918, 931–32 (9th Cir. 2004).

IV. ARGUMENT

A. Mr. Cummins Is Likely to Succeed on the Merits

Mr. Cummins’s detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), which prohibits indefinite civil detention without a removal likelihood. Further, *Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) supports habeas relief where conditions of confinement threaten health and violate due process.

He has a viable claim for asylum and has filed a timely application based on changed circumstances under 8 C.F.R. § 1208.4(a)(4). His condition, and lack of adequate medical infrastructure in Ireland, amount to a clear probability of persecution or torture under *Matter of Y-C-*, 23 I&N Dec. 286 (BIA 2002).

B. He Will Suffer Irreparable Harm Without Court Intervention

Mr. Cummins is already suffering from chronic, life-threatening symptoms that cannot be managed at Mesa Verde. Continued detention risks permanent organ damage or death. The Ninth Circuit has repeatedly recognized that “prolonged detention without adequate medical care constitutes irreparable injury.”

Fraihat v. ICE, 16-cv-00616-JGB, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020).

Roman v. Wolf, 977 F.3d 935, 943 (9th Cir. 2020).

C. The Balance of Equities Strongly Favors Release

Mr. Cummins is a nonviolent detainee with no criminal record or pending charges. He has significant ties to the U.S., including his fiancée, who resides in California and have provided sworn declarations of support. His release poses no risk to the public or to flight.

D. The Public Interest Supports Granting Relief

It is in the public interest to ensure the government does not violate constitutional and statutory protections, especially where medical neglect may lead to death.

Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017).

V. CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that this Court grant:

- An immediate Temporary Restraining Order under FRCP 65(b);
- An Order for Release from ICE custody pending adjudication of his asylum and parole proceedings; and
- Any further relief the Court deems just and proper.

Respectfully submitted,

Date: December 15, 2025

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner

DECLARATION OF ROBERT G. CUMMINS

I, Robert G. Cummins, hereby declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of California and the supervising attorney for Gina Herrera, law clerk at the Law Offices of Robert G. Cummins.
2. I have reviewed the entire case of Mr. Daniel James Cummins, including the criminal docket, immigration history, medical records, parole requests, and habeas materials.
3. I am informed and believe, Mr. Cummins was detained by ICE following the dismissal of all charges stemming from an arrest where the alleged victim failed to identify him as the aggressor in a lineup.
4. I am informed and believe, despite offers for misdemeanor deals, Mr. Cummins remained detained for nearly 10 months asserting his innocence.
5. I am informed and believe, His criminal case was ultimately dismissed due to insufficient evidence and constitutional due process concerns.
6. I am informed and believe, since being taken into ICE custody, Mr. Cummins has experienced a severe decline in health due to his chronic lung condition, and he was physically assaulted while in detention.
7. I am informed and believe, ICE has failed to provide adequate medical treatment or security, and Mr. Cummins now suffers from chronic pulmonary aspergillosis, a rare complication of Valley Fever.
8. I am informed and believe, medical specialists at UCSF have submitted letters urging his immediate release due to life-threatening risk.
9. I am informed and believe, the government has failed to act on a properly filed humanitarian parole request dated November 19, 2025.
10. I am informed and believe, Mr. Cummins is at extreme risk of further deterioration or death if not released immediately.

I declare, under penalty of perjury under the laws of the United States and the State of California, that the foregoing statements are true and correct, except for the statements based on information and belief, as to those statements, I believe them to be true.

Executed in Fremont, California, this 15th day of December, 2025.

/s/ Robert G. Cummins
Attorney at Law

DECLARATION OF GINA HERRERA

I, Gina Herrera, declare as follows:

1. I am a law student and legal intern at the Law Offices of Robert G. Cummins, and I have been working closely on the case of Mr. Daniel Cummins.
2. I drafted the parole request on Mr. Cummins' behalf and filed it with ICE on November 19, 2025. As of December 15, 2025, ICE has not responded.
3. I am informed and believe, Mr. Cummins was taken into ICE custody immediately following dismissal of all criminal charges. He was held for 10 months before the criminal matter was dismissed in its entirety.
4. I am informed and believe, the facts of the case demonstrate that Mr. Cummins was wrongfully accused. The alleged victim failed to identify him in a live lineup, and the prosecution declined to proceed.
5. I am informed and believe, Mr. Cummins has a rare and chronic lung condition requiring complex antifungal treatment and pulmonary care not available in detention.
6. I am informed and believe, his condition has worsened in ICE custody, where he has been subjected to neglect and physical violence.
7. I am informed and believe, Mr. Cummins has a pending I-589 application for asylum and is eligible for other forms of immigration relief.
8. Mr. Cummins has extensive ties in the U.S., including his fiancée (a U.S. citizen), extended family, and medical providers.
9. I have reviewed his case in comparison with similar habeas corpus and TRO precedent, including *Vuong v. Garland*, *Zadvydas v. Davis*, and *Orantes-Hernandez v. Meese*, all of which support his immediate release.

I declare, under penalty of perjury under the laws of the United States and the State of California, that the foregoing statements are true and correct, except for the statements based on information and belief, as to those statements, I believe them to be true.

Executed in San Francisco, California, this 15th day of December, 2025.

/s/ Gina Herrera
Law Clerk

DECLARATION OF DANIEL JAMES CUMMINS

I, Daniel James Cummins, declare as follows:

1. I am a 35-year-old native of Ireland who has lived in the United States since 2018. I am currently detained at Mesa Verde ICE Processing Center.
2. I came to the U.S. under the Visa Waiver Program. I remained due to my engagement to a U.S. citizen and later developed a life-threatening lung condition.
3. I was arrested and jailed for nearly 10 months based on a false accusation. I refused to accept any plea deal because I was innocent.
4. The alleged victim could not identify me in a live lineup. Ultimately, all charges were dismissed.
5. While in ICE custody, I have suffered medical neglect and was physically assaulted by another detainee.
6. I suffer from chronic pulmonary aspergillosis as a complication of Valley Fever, a disease I contracted while living in California.
7. Multiple doctors, including my treating physician Dr. Brian Fagan and UCSF's Dr. Barish, have warned that I may die without release and appropriate treatment.
8. I have a pending asylum application, strong family ties in the U.S., and a fiancée who supports me unconditionally.
9. I am not a danger to the community nor a flight risk. I respectfully request immediate release so I may receive treatment and continue pursuing relief.

Executed this 15th day of December 2025, in Bakersfield, California.

/s/ Daniel James Cummins