

Gina Herrera
Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
415-283-9923

DETAINED

Robert G. Cummings
Lead Attorney
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
650-363-7280

Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

DANIEL JAMES CUMMINS,

Petitioner,

vs.

MOISES BECERRA, Field Office Director,
ICE/San Francisco;
MINGA WOFFORD Warden, Mesa Verde ICE
Processing Center;
KRISTI NOEM, Secretary of Homeland
Security;
PAMELA BONDI, Attorney General of the
United States

Respondents.

Case No. 1:25-cv-01853-DC-AC

**EMERGENCY MOTION TO ENFORCE
AND MODIFY TEMPORARY
RESTRAINING ORDER FOR
IMMEDIATE RELEASE UNDER FED. R.
CIV. P. 65(b)**

DATE:

TIME:

COURT: Hon. Dena Coggins

**EMERGENCY MOTION TO ENFORCE AND MODIFY TEMPORARY
RESTRAINING ORDER FOR IMMEDIATE RELEASE UNDER FED. R. CIV. P. 65(b)**

TO THE HONORABLE DENA M. COGGINS, UNITED STATES DISTRICT JUDGE:

Petitioner **Daniel James Cummins**, by and through undersigned counsel, respectfully
moves this Court to **enforce and modify its previously issued Order** to order Petitioner's
immediate release from ICE custody, on the grounds that the Executive Office for Immigration
Review (EOIR) has acted in **bad faith** and is now actively **undermining this Court's Order** and
Petitioner's **constitutional rights** to a fair bond hearing.

Petitioner's physical and mental condition continue to deteriorate in detention. ICE has
failed to provide constitutionally adequate medical care for his rare and life-threatening lung
**EMERGENCY MOTION TO ENFORCE AND MODIFY TEMPORARY RESTRAINING
ORDER FOR IMMEDIATE RELEASE UNDER FED. R. CIV. P. 65(b)**

disease (Chronic Pulmonary Aspergillosis caused by Valley Fever), and he was **physically assaulted** in custody in December. The IJ who will preside over Petitioner's scheduled **January 2, 2026**, bond hearing **refused to continue his Individual Hearing** despite compelling reasons, including this Court's TRO and pending habeas, ongoing communication difficulties due to illness, and the current federal ongoing litigation.

This motion respectfully requests that this Court:

1. **Modify the TRO** to order Petitioner's immediate release from custody under its equitable powers and the All Writs Act;

2. Alternatively, **enjoin EOIR from conducting any Individual or bond hearing** before another IJ can be assigned, or until due process is guaranteed.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

- Petitioner is a long-term resident of the United States, admitted under the **Visa Waiver Program (VWP)** in 2018.

- He has a **pending asylum claim** and is **engaged to a U.S. citizen**.

- Petitioner suffers from **Chronic Pulmonary Aspergillosis**, a **life-threatening fungal lung disease** that requires specialized care unavailable outside the U.S.

- On **December 11, 2025**, Petitioner filed a **Petition for Writ of Habeas Corpus** and a **Motion for Emergency TRO**.

- On **December 22, 2025**, this Court **GRANTED the TRO in part** and **ordered ICE to schedule a bond hearing no later than January 6, 2026**.

- Petitioner filed a **Motion to Shorten Time** to ensure meaningful access to a bond hearing, bond hearing was scheduled for January 2, 2026, at 10:00 am.

- Despite this, EOIR **denied Petitioner's Motion to Continue his Individual Hearing**, which is now set for **January 13, 2026**, less than two weeks away and without sufficient time for preparation or medical stabilization.

II. LEGAL STANDARD

Under **Federal Rule of Civil Procedure 65(b)** and the **All Writs Act**, 28 U.S.C. § 1651, district courts may issue emergency injunctive relief to enforce or protect their jurisdiction and prevent irreparable harm. Courts may also **modify existing TROs to "prevent manifest injustice."** (*See A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002)).

Further, courts retain **equitable power to release detainees** where continued detention violates the Constitution or prior court orders. (*See Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. 2020); *Jones v. Wolf*, 467 F. Supp. 3d 74 (W.D.N.Y. 2020)).

III. GROUNDS FOR IMMEDIATE RELEASE

A. EOIR's Refusal to Continue the Individual Hearing Reflects Judicial Bias and Undermines This Court's Order

Despite the clear directives of this Court's TRO and the existence of a pending habeas petition, the **Immigration Judge assigned to Petitioner's case Judge Katie Mullins denied a Motion to Continue** the Individual Hearing, **without acknowledging:**

- The Court's TRO and pending federal litigation;
- The medical crisis and recent assault suffered by Petitioner;
- Communication difficulties in preparing the defense;
- The critical need for federal-court-ordered bond proceedings first.

This reflects a **blatant disregard for this Court's equitable authority**, and suggests **prejudgment** of the bond hearing also assigned to Judge Mullins thereby tainting the proceedings.

B. Petitioner Has Already Suffered Irreparable Harm, and More Is Imminent

Petitioner has been in ICE custody since **March 2025**. While detained:

- He has been **denied specialist care** for his rare lung disease;
- He was **assaulted** in custody, with **no access to therapy or trauma counseling**;
- He has **lost over 20 pounds** and experiences **chronic coughing, chest pain**, and breathing difficulty;
- His condition is worsening, and **ICE lacks adequate resources** to treat him.

The Ninth Circuit has repeatedly held that continued detention in the face of severe medical harm constitutes **irreparable injury warranting immediate release**.

See:

- **Fraihat v. ICE**, 16 F.4th 613 (9th Cir. 2021)
- **Sanchez v. McAleenan**, 2020 WL 2744586 (C.D. Cal. Apr. 30, 2020)
- **Ortuño v. Jennings**, 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020)

These cases support the urgent relief sought here.

C. This Court Has Inherent Power to Protect Its Orders and Ensure Due Process

The **All Writs Act** empowers this Court to **enforce its TRO** and **prevent obstruction** by subordinate administrative courts. See:

- **FTC v. Dean Foods Co.**, 384 U.S. 597, 603 (1966)
- **United States v. New York Tel. Co.**, 434 U.S. 159, 172 (1977)

Moreover, **Zadvydas v. Davis**, 533 U.S. 678 (2001), held that **prolonged immigration detention without meaningful opportunity for release** is constitutionally infirm.

Here, the **combination of ICE's medical neglect, the biased denial of a routine continuance, and subversion of this Court's TRO** all converge to **warrant immediate judicial intervention**.

IV. REQUESTED RELIEF

Petitioner respectfully requests that this Court:

1. **Immediately Order the Release** of Daniel James Cummins from ICE custody under the authority of its TRO and equitable powers;
2. Alternatively, **enjoin the January 2, 2026, bond hearing and January 13, 2026, Individual Hearing**, and require that another IJ be assigned who can conduct a constitutionally compliant review;
3. Award **any other just and proper relief**,

Dated: **December 30, 2025**

Respectfully submitted,

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

LAW OFFICES OF ROBERT G. CUMMINGS
The Fitzpatrick Building
2000 Broadway Street
Redwood City, CA 94063

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1 A true and correct copy of the filed Motion to Continue Individual hearing

- 5 -

**EMERGENCY MOTION TO ENFORCE AND MODIFY TEMPORARY RESTRAINING
ORDER FOR IMMEDIATE RELEASE UNDER FED. R. CIV. P. 65(b)**

Gina Herrera

Appearing pursuant to 8 C.F.R. 1292.1(a)(2)

DETAINED

Law Offices of Robert G. Cummings

2000 Broadway Street

Redwood City, CA 94063

415-283-9923

Robert G. Cummings

Lead Attorney

Law Offices of Robert G. Cummings

2000 Broadway Street

Redwood City, CA 94063

650-363-7280

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ADELANTO, CA

In the Matter of:

File No.:



DANIEL JAMES CUMMINS,

In Removal Proceedings.

Judge: Hon. Mullins, Katie G.

Next Hearing Date: January 13, 2026, at 1:00 pm

MOTION TO CONTINUE INDIVIDUAL HEARING

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ADELANTO, CA

In the Matter of:)

File No.: 

DANIEL JAMES CUMMINS)

In Removal Proceedings.)
_____)

MOTION TO CONTINUE INDIVIDUAL HEARING

I. INTRODUCTION

NOW COMES the Respondent, Daniel James Cummins, by and through undersigned counsel, and respectfully moves this Honorable Court to continue the currently scheduled Individual Hearing set for **January 13, 2026**, for good cause pursuant to **8 C.F.R. § 1003.29** and relevant case law.

The Respondent seeks a brief continuance in light of significant new developments, including:

(1) Respondent's ongoing severe medical issues that impair his ability to meaningfully participate in his defense; (2) the recent federal district court order requiring a constitutionally compliant bond hearing no later than January 6, 2026; and (3) the pending habeas corpus and emergency Temporary Restraining Order (TRO) proceedings in U.S. District Court related to his prolonged detention, due process violations, and serious health deterioration. Case 1:25-cv-01853-DC-AC (HC) Cummins v. Becerra et al .

II. FACTUAL BACKGROUND

1. Respondent is a long-term resident of the United States and is currently detained by Immigration and Customs Enforcement (ICE) following the dismissal of criminal charges. He suffers from a rare and severe lung condition known as **chronic pulmonary aspergillosis**, caused by **Valley Fever**, a California-specific bacterial infection. He has been in ICE custody since mid-2025, during which his medical condition has significantly worsened.
2. On **December 23, 2025**, the U.S. District Court for the Eastern District of California issued an **Order Granting in Part Respondent's Emergency Motion for Temporary Restraining Order**, finding that Respondent must be afforded a constitutionally

compliant **bond hearing within 14 days**, i.e., no later than **January 6, 2026**. (See *Order Granting in Part TRO*, Case No. 1:25-cv-01853-DC-AC (HC) Cummins v. Becerra et al.

3. A follow-up **Emergency Motion to Shorten Time** was filed on **December 27, 2025**, seeking expedited scheduling due to Respondent's worsening condition and ICE's ongoing medical neglect. The Court ordered the government to respond to this motion by **December 30, 2025, at 5:00 PM**.
4. Additionally, Respondent has recently suffered **physical assault** while in ICE custody and is exploring eligibility for **U visa protections**. His communications with counsel have been substantially impaired by illness, and he requires additional time to finalize his evidentiary submissions for the Individual Hearing, including supporting declarations, expert medical evidence, and corroborating documents from federal proceedings.
5. These factors have made it extremely difficult for Respondent to assist in the preparation of his Individual Hearing. Counsel has not had sufficient time or access to fully prepare for the January 13, 2026, merits hearing under these emergent and medically urgent conditions.

III. LEGAL STANDARD

Under **8 C.F.R. § 1003.29**, “[t]he Immigration Judge may grant a motion for continuance for good cause shown.” The Board of Immigration Appeals (BIA) has held that Immigration Judges have broad discretion to grant continuances where warranted by the circumstances. See *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009); *Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009).

In *L-A-B-R-*, the Attorney General emphasized that IJs should consider the totality of circumstances, including the respondent's diligence, procedural posture, and any pending collateral proceedings. Similarly, *Rajah* affirms that pending federal court actions are valid grounds for continuance when they directly affect removability or relief eligibility.

IV. MEMORANDUM OF POINTS AND AUTHORITIES

Respondent's request satisfies the standard for “good cause” for the following reasons:

1. **Constitutionally Ordered Bond Hearing:** The federal district court has ordered the government to provide a constitutionally compliant bond hearing by **January 6, 2026**, placing Respondent's detention status in flux. A decision on release is imminent, and Respondent's ability to appear, participate, and assist counsel could change significantly.



2. **Pending Federal Habeas Proceedings:** Respondent has a habeas corpus petition pending before the U.S. District Court, which includes serious constitutional claims of medical neglect and unlawful detention. The outcome of these proceedings may also impact his removability or eligibility for asylum and withholding of removal.
3. **Medical Incapacity:** Respondent suffers from a rare and life-threatening lung disease, requiring specialized treatment not available in detention. His condition affects his cognitive clarity, energy, and ability to assist counsel. He is currently undergoing evaluation for a **U visa** based on a recent **assault in ICE custody**.
4. **Due Process and Fairness:** Forcing Respondent to proceed with an Individual Hearing under these circumstances would violate his due process rights under the Fifth Amendment. See *Matter of Y-S-L-C-*, 26 I&N Dec. 688 (BIA 2015); *Singh v. INS*, 213 F.3d 1050, 1053 (9th Cir. 2000) (a full and fair hearing is a due process requirement).
5. **No Prejudice to Government:** This request does not unduly prejudice the government. Rather, it ensures that the hearing is meaningful, orderly, and that Respondent can fully participate and present evidence in support of his claims.

II. GOOD CAUSE EXISTS FOR CONTINUANCE PURSUANT TO 8 C.F.R. § 1003.29 AND § 1240.6

8. Here, all relevant factors support a continuance:
 - A favorable outcome at the federal bond hearing (due no later than **January 6, 2026**) could result in **Respondent's release**, significantly enhancing his ability to participate in and assist with his defense;
 - Respondent has been **physically assaulted** while in ICE custody and is suffering from a **rare, life-threatening lung disease**—chronic pulmonary aspergillosis—making **medical treatment, case preparation, and testimony under current conditions unfair and potentially harmful**;
 - Counsel is also Respondent's EOIR attorney of record and **cannot logistically prepare for an individual hearing while also litigating in federal court**;
 - The requested delay is **modest (30–45 days)** and essential to preserve the **integrity of the proceedings**, especially considering that **ICE has continued to detain Respondent without adequate medical care and in violation of his due process rights**.

14. Federal courts have recognized that immigration courts should avoid requiring respondents to proceed with merits hearings when **serious constitutional issues or parallel proceedings are pending**. See *Singh v. Gonzales*, 491 F.3d 1019, 1024 (9th Cir. 2007) (recognizing that due process includes right to reasonable opportunity to present evidence); *Tegucigalpa v. Sessions*, 861 F.3d 111 (2d Cir. 2017).
15. Continuing the hearing will **not prejudice the Government**, and in fact aligns with the Eastern District’s judicial guidance in *Vuong v. Becerra*, No. 1:24-cv-00710 (E.D. Cal. 2024), where continued ICE custody without medical evaluation or procedural opportunity prompted judicial intervention.

III. DUE PROCESS AND EQUITABLE CONSIDERATIONS COMPEL A CONTINUANCE

16. Respondent has the **constitutional right to full and fair removal proceedings**. See *Morales-Izquierdo v. DHS*, 600 F.3d 1076 (9th Cir. 2010).
17. That right is infringed when Respondent is unable to consult meaningfully with counsel, provide testimony, or access necessary medical records due to detention, illness, or abuse.
18. Respondent’s **preparation has been materially hindered by:**
- Lack of access to medical records from prior hospitalizations;
 - Inadequate and worsening medical care in detention;
 - Recent physical assault, causing trauma and instability;
 - Uncertainty due to concurrent federal court proceedings and hearing deadlines;
 - Limited access to counsel, documents, and witnesses while detained.
19. The **BIA has affirmed** continuances even where delays may prolong proceedings when necessary to “preserve the fairness and completeness of the hearing.” *Matter of Ponce De Leon-Ruiz*, 21 I&N Dec. 154 (BIA 1996).

IV. CONCLUSION AND REQUESTED RELIEF

For the foregoing reasons, Respondent respectfully requests that this Court:

1. **Continue the Individual Merits Hearing currently set for January 13, 2026;**
2. **Set a new date no earlier than February 20, 2026**, or after resolution of the federal court bond proceedings and Respondent’s medical stabilization;

3. Alternatively, vacate the hearing and set a **status conference** within 30 days to assess next steps based on federal developments.

Respectfully submitted,

Respectfully submitted,

Date: December 30, 2025

/S/Robert G. Cummings
Robert G. Cummings
Attorney for Respondent



File No.: A 
NAME: DANIEL JAMES CUMMINS

PROOF OF SERVICE

On the following date: December 30, 2025, I sent a copy of Respondent's **MOTION TO CONTINUE INDIVIDUAL HEARING** by:

By electronic service through the EOIR Courts and Appeals System (ECAS), as both parties are participating in ECAS. ECAS will automatically send service notifications to both parties that a new document has been filed. Therefore, no separate service was completed

/S/GinaHerrera
Signature

12/30/2025
Date

Gina Herrera
The Law Offices of Robert G. Cummings

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW
ADELANTO, CA

In the Matter of:

NAME: DANIEL JAMES CUMMINS

File No. 

[PROPOSED] ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's DANIEL JAMES CUMMINS it is HEREBY ORDERED
that the motion be

☐ GRANTED ☐ DENIED.

because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other: _____.

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Immigration Judge

Date

Certificate of Service

This document was served by: ☐ Mail ☐ Personal Service
To: ☐ Noncitizen ☐ Noncitizen c/o Custodial Officer ☐ Noncitizen's Attorney ☐ DHS
Date: _____ By: Court Staff _____

LAW OFFICES OF ROBERT G. CUMMINGS
The Fitzpatrick Building
2000 Broadway Street
Redwood City, CA 94063

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2 A true and correct copy of Judge Mulli's Order

- 6 -

**EMERGENCY MOTION TO ENFORCE AND MODIFY TEMPORARY RESTRAINING
ORDER FOR IMMEDIATE RELEASE UNDER FED. R. CIV. P. 65(b)**



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADELANTO IMMIGRATION COURT**

Respondent Name:

CUMMINS, DANIEL J.

To:

Cummings, Robert Gary
2000 Broadway St
Redwood City , CA 94063

A-Number:



Riders:

In Asylum Only Case Proceedings

Initiated by the Department of Homeland Security

Date:

12/30/2025

ORDER OF THE IMMIGRATION JUDGE

☒ Respondent ☐ Department of Homeland Security has filed a motion for a continuance of the hearing scheduled for 01/13/2026

Upon reading and considering the motion, and any opposition from the non-moving party, the motion is:

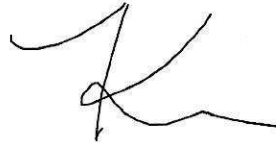
☐ granted because good cause has been established for the requested continuance. 8 C.F.R. § 1003.29.

☒ denied because good cause has not been established for the requested continuance. 8 C.F.R. § 1003.29.

☐ Further explanation:

☐ The hearing is rescheduled until

☐ The immigration court will serve Respondent with notice of the next hearing date.

A handwritten signature in black ink, appearing to be 'K' with a flourish.

Immigration Judge: MULLINS, KATIE 12/30/2025

Certificate of Service

This document was served:

Via: ☐ M] Mail | ☐ P] Personal Service | ☐ E] Electronic Service | ☐ U] Address Unavailable

To: ☐] Alien | ☐] Alien c/o custodial officer | ☐ E] Alien atty/rep. | ☐ E] DHS

Respondent Name : CUMMINS, DANIEL J. | A-Number



Riders:

Date: 12/30/2025 By: CHAMBERS, KARINA, Court Staff