

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Jose Enrique Ojeda Duarte,
Petitioner,

v.

Warden, in his/her official capacity, El Paso East
Montana Detention Center, *Et. Al.*,
Respondents.

Case No. 3:26-CV-00089-DCG

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

I. INTRODUCTION

1. Petitioner, Mr. Jose E. Ojeda Duarte, is citizen of Venezuela, seeks an emergency temporary restraining Order to enjoin Respondents from removing him from the United States during the pendency of his habeas process.
2. Petitioner Ojeda had and continues to seek asylum in the U.S. On or about March 20, 2206, Petitioner had his merits hearing before the Immigration Court, but the Immigration Judge ("IJ") unfortunately ordered Petitioner removed, without consideration of the substantive asylum claim, to a third country, Ecuador.
3. Petitioner Ojeda and his Immigration Counsel filed an appeal before the Board of Immigration Appeals, but, without notice to Mr. Ojeda or his Counsel, on April 8, 2026, he was transferred to Florence Processing Center in Florence, Arizona, outside this Court's jurisdiction. (See Exhibit A, Attorney Affirmation).
4. By this Emergency Motion for Temporary Restraining Order ("TRO"), Petitioner respectfully requests to enjoin the Respondents from removing Petitioner from the United States during the pendency of his habeas proceeding. Petitioner further asks that the Court order his return to this jurisdiction. Petitioner incorporates by reference the facts and

arguments set forth in his concurrently filed habeas petition, and in support of this motion states as follows:

II. FACTS OF THE CASE

5. Petitioner Ojeda Duarte served in the Venezuelan Air Force from and witnessed human rights violations by the Venezuela government. He retired from the Venezuelan military due to his moral objection but was seen as a “deserter” by the Venezuelan government and started to receive threats. As both he and his family faced ongoing threats and fear of being killed, Petitioner and his family left Venezuela sometime in June 2023.
6. On or about October 2020, a mobile application titled CBP One was made available for noncitizens to schedule an in-person appointment to a port of entry. With this appointment, non-citizens, like Petitioner, may present themselves, be paroled into the U.S. and be issued a Notice to Appear (“NTA”) in immigration court.
7. On July 29, 2024, Petitioner and his family applied for admission through CBPOne application and waited approximately six (6) months. On or about October 14, 2024, Petitioner and his family presented themselves on their appointment date, and the border officials paroled the family into the US and issued a NTA. Petitioner Ojeda was placed into full removal proceedings in accordance to INA 240.
8. Petitioner Ojeda has no criminal record and has never given any indication of flight risk or danger to the community. To the contrary, he took affirmative steps to formalize his presence and legal status: he and his family filed an Application for Asylum with the Immigration Court and obtained a valid Employment Authorization Document (“EAD”).
9. However, on September 15, 2025, on his way to work, Petitioner Ojeda was stopped by ICE, without cause or even an immigrant warrant for arrest, arrested and detained. Within five (5) days, Mr. Ojeda was transferred to El Paso, Texas, more than a thousand miles from his family and community.

10. On January 19, 2026, through Undersigned Counsel, Petitioner Ojeda filed a habeas petition based on his unlawful detention, which is currently pending before this Court. (See ECF #1).
11. During the pendency of his habeas claim, Mr. Ojeda pursued his asylum claim with his Immigration Counsel. On March 20, 2026, Petitioner Ojeda had his merits hearing to so he may present his asylum claim. However, rather than adjudicate the merits of Mr. Ojeda's colorable asylum claim, the Immigration Judge dismissed and ordered him removed based on the dubious third country agreement with Ecuador to accept noncitizens. (See Exhibit B, IJ Order).
12. Mr. Ojeda was ordered removed to Ecuador, a country in which he has no ties or connections. Petitioner Ojeda's Immigration Counsel filed his appeal. (See Exhibit C, Filed Appeal).
13. Mr. Ojeda remained in ICE detention at El Paso East Montana Detention Center under seriously inadequate conditions. Many detainees, including Mr. Ojeda, suffered serious health issues, and there was a major measles outbreak earlier this year. (ECF #5, Ex. 1)
14. Mr. Ojeda was then transferred to El Paso Processing Center towards the end of March 2026. However, late night April 8, 2026, without cause or notice, ICE transferred Mr. Ojeda, again, to Florence Processing Center. After being able to not locate Petitioner Ojeda through the ICE website, Undersigned Counsel learned that he was then transferred to Arizona. (See Exhibit D, ICE Detainee Locator).
15. There is a serious concern that Mr. Ojeda will be removed by Respondents, despite his pending habeas claim and a newly filed BIA appeal. Mr. Ojeda asks this Court to issue a TRO to enjoin any removal by Respondents.

III. LEGAL ARGUMENT

16. Petitioner seeks a temporary restraining order to enjoin his removal from the United States.

The Fifth Circuit considers motions for preliminary injunctions and temporary restraining orders based on the following factors: (1) the threat of irreparable harm to the petitioner, (2) the likelihood that the petitioner will succeed on the merits, (3) the state of balance between the harms of the parties; and (4) the public interest. *Rest. L. Ctr. V. U.S. Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023). The “first two factors of the traditional standard are the most critical.” *Nken v. Holder*, 556 U.S. 418, 434 (2009).

A. PETITIONER OJEDA WILL SUFFER IRREPARABLE HARM IF HE IS REMOVED TO ECUADOR, WHERE HAS NO CONNECTION OR TO VENEZUELA, WHICH HE CONTINUES TO FEAR.

17. To satisfy the first element of the injunction analysis, Petitioner must demonstrate that, if the Court denies the grant of an injunction, irreparable harm will result. Irreparable harm exists where “there is no adequate remedy at law.” *Louisiana v. Biden*, 55 F.4th 1017, 1033–34 (5th Cir. 2022). “The [Supreme] Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies.” *Weinberger v. Romero-Barceló*, 456 U.S. 305, 312, 102 S. Ct. 179 (1982) “[T]he concept of irreparable harm does not readily lend itself to definition.” *Judicial Watch, Inc. v. Dep't of Homeland Sec.*, 514 F. Supp. 2d 7, 10 (D.D.C. 2007).

18. Petitioner Ojeda has a pending habeas petition requesting his immediate release, or in the alternative, an individualized bond re-determination before a neutral arbitrator because he is being unlawfully detained, and now for almost seven (7) months. Petitioner Ojeda was arrested without cause or an arrest warrant and was not provided with an individualized determination that he is somehow a flight risk or a danger to the community. Petitioner Ojeda has complied with conditions of his initial release at the border, timely filed his asylum application, worked lawfully and supported his family.

19. Further, Petitioner Ojeda would be removed to a country to which he has no ties, Ecuador.

There is no guarantee that the Ecuadorian government will afford any asylum protection to Mr. Ojeda, and Mr. Ojeda can be subject to refoulment, being forced to go back to Venezuela, the country that he seeks asylum from and fears that he will suffer serious harm or death. Petitioner Ojeda requests to remain in the U.S., and such remedy is available through a grant of his TRO.

B. PETITIONER OJEDA HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS OF HIS HABEAS CLAIM.

20. The next critical element in the injunction analysis is whether the Petitioner have “shown a substantial likelihood of ultimately succeeding on the merits, potential procedural hurdles notwithstanding.” *Janvey v. Alguire*, 647 F.3d 585, 599 (5th Cir. 2011) (citation omitted). “Substantial” likelihood of success on the merits does not mean “certain.” *Byrne v. Roemer*, 847 F.2d 1130, 1133 (5th Cir. 1988) (explaining that “the movant need not always show a probability of success on the merits”) (quoting *Celestine v. Butler*, 823 F.2d 74, 77 (5th Cir. 1987); see also *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov’t*, 849 F.3d 615, 626 (5th Cir. 2017) (“Though there is no particular degree of likelihood of success that is required in every case, the party seeking a preliminary injunction must establish at least some likelihood of success on the merits before the court may proceed to assess the remaining requirements.”).

21. Some likelihood of success can be sufficient to support the issuance of a preliminary injunction. See *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980) (“Where the other factors are strong, a showing of some likelihood of success on the merits will justify temporary injunctive relief.”).

22. Here, Petitioner Ojeda asserts that his continued detention is a violation of his Fifth Amendment Right to both procedural and substantive Due Process as well as the regulatory schemes. Petitioner Ojeda was detained without an individualized finding that he was flight

risk or danger to the community. Petitioner Ojeda's detention, now at a hundred seventy-four (174) days, is a deprivation of the most fundamental right, liberty. Petitioner Ojeda's confinement has had a serious toll on physically and, psychologically as well as continues to devastate his family. Petitioner Ojeda pursues his appeal with the BIA, which shows that his administrative proceeding is still not final. (See Exhibit C, Filed Appeal). He should not now face possible removal prior to any adjudication of his meritorious claims.

C. A GREATER INJURY WILL RESULT IN DENYING THE TEMPORARY RESTRAINING ORDER, AND THE BALANCE OF HARDSHIPS FAVOR PETITIONER OJEDA.

23. The next requirements for issuance of a preliminary injunction—the balance of harms and whether the requested injunction will serve the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 1762, 173 L. Ed. 2d 550 (2009). In this assessment, the Court must weigh “the competing claims of injury and...consider the effect on each party of the granting or withholding of the requested relief,” while also considering the public consequences of granting injunctive relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. at 376. (2008).
24. In the instant matter, the balance of equities tips in the Petitioner Ojeda's favor because there is a great public interest to ensure that individuals are not wrongly removed. See *Nken*, 556 U.S. at 436. Here, since Petitioner Ojeda can show that there is a substantial question as to whether his removal would be wrongful, especially to a country that he is a stranger to and his wrongful detention, that balance of hardship and the public interest tips sharply in favor of an injunction preventing his removal.
25. The equities tip decisively in Petitioner Ojeda's favor. The government has no legitimate interest in the removal of a non-dangerous, compliant individual who continues to pursue his asylum claim through the appropriate channels. Conversely, the public interest is served

by upholding the rule of law and ensuring that the government adheres to the constitutional and statutory limits of its authority.

IV. PRAYER FOR RELIEF

WHEREFORE, Petitioner Jose E. Ojeda Duarte, respectfully requests that this Court grant the following relief:

- 1) Grant Petitioner's Emergency Motion for a Temporary Restraining Order;
- 2) Enjoin Respondents and their agents from removing Petitioner from the United States;
- 3) Order Petitioner's transfer back to the Court's jurisdiction;
- 4) Order Petitioner's immediate release from custody on such conditions as the Court deems appropriate;
- 5) In the alternative, order Respondents to provide Petitioner with an individualized bond hearing before a neutral adjudicator within seven (7) days, at which the government bears the burden of proving by clear and convincing evidence that Petitioner's continued detention is justified by either flight risk or danger to the community;
- 6) Grant such other and further relief as the Court deems just, proper, and equitable under the circumstances.

Dated this 9th of April, 2026

Respectfully submitted,

/s/Afshan J. Khan
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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2026, I electronically filed with the Clerk of the Court by using the CM/ECF system, which will serve notice of electronic filing to all attorneys of record.

Respectfully submitted,

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