UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

CRUZ I. RODRIGUEZ-HERNANDEZ,
A[redacted]

Petitioner,

v.

JASON STREEVAL, WARDEN,
STEWART DETENTION CENTER;
KRISTI NOEM, DHS SECRETARY

Respondent.

Case No. 4:26-cv-00101-CDL-AGH

MOTION FOR TEMPORARY RESTRAINING ORDER AND IMMEDIATE RELEASE FROM DETENTION

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND IMMEDIATE RELEASE PENDING HABEAS

Petitioner Cruz Ivan Rodriguez Hernandez, by and through undersigned counsel, moves for an emergency Temporary Restraining Order ("TRO") under Fed. R. Civ. P. 65(b), 28 U.S.C. § 2241, and 28 U.S.C. § 1651(a), ordering Petitioner's immediate release from ICE custody pending adjudication of his habeas petition. In the alternative, Petitioner requests an order requiring the Government to provide a prompt bond hearing under 8 U.S.C. § 1226(a). Because Petitioner is presently suffering an ongoing, unlawful deprivation of liberty imposed without process and without statutory authority, immediate interim relief is necessary.

FACTUAL BACKGROUND

Petitioner hereby incorporates by reference all factual allegations set forth in his verified Petition for Writ of Habeas Corpus, filed with this Court pursuant to 28 U.S.C. § 2242, as if fully set forth herein. *See* Petition for Writ of Habeas Corpus, ECF No. 1.

Petitioner is a native and citizen of El Salvador. He entered the United States on or about March 8, 2022 after presenting for inspection through the CBP One process. DHS issued an NTA, placed him into removal proceedings, and exercised discretion to parole him into the United States under 8 U.S.C. § 1182(d)(5)(A).

For nearly three years, Petitioner lived openly in Georgia with his wife and his two U.S. citizen children (ages 13 and 17). He worked lawfully pursuant to employment authorization valid through April 22, 2030, complied with ISAP reporting requirements, filed an asylum application that remains pending, and maintained a clean criminal record.

On December 11, 2025, Petitioner appeared for a routine, scheduled ICE check-in. Without prior notice, without explanation, and without any hearing or individualized determination, ICE detained him and transported him to the Stewart Detention Center, where he remains. His next immigration court hearing is scheduled for June 12, 2026.

II. LEGAL STANDARD

A TRO may be granted when the movant shows (1) a likelihood of success on the merits; (2) irreparable harm absent relief; (3) that the balance of equities tips in her favor; and (4) that the injunction serves the public interest. *Winter v. Natural Res. Def. Council*, Inc., 555 U.S. 7, 20 (2008). Federal courts may issue interim relief under 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651(a) to preserve jurisdiction and prevent irreparable injury.

III. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

1. *Due Process*

The Fifth Amendment prohibits deprivation of liberty without due process of law. Once the Government grants conditional liberty and permits a person to live in the community, revocation of that liberty implicates due process and requires, at minimum, notice and an opportunity to be heard before a neutral decisionmaker. *See Morrissey v. Brewer*, 408 U.S. 471 (1972); *Young v. Harper*, 520 U.S. 143 (1997); *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner lived in the community for nearly three years under parole and ISAP supervision, built stable family and community ties, worked lawfully, and complied with all conditions. ICE nevertheless re-detained him at a routine check-in without notice, without identifying any basis for revocation, without any hearing, and without any individualized finding that he posed a danger or flight risk. Under Mathews, the private interest—freedom from physical restraint—is paramount; the risk of error from summary re-detention is extreme; and the Government's administrative interests do not justify stripping liberty without even minimal safeguards. Petitioner is therefore likely to succeed on his claim that his detention is unconstitutional.

2. Lack of statutory authority / wrong detention framework.

Respondents also cannot justify Petitioner's continued custody under 8 U.S.C. § 1225. Petitioner was affirmatively paroled into the United States under 8 U.S.C. § 1182(d)(5)(A), lived in the interior for nearly three years, and was arrested at a routine check-in—far removed from inspection-stage detention governed by § 1225. At most, any detention authority arises under 8 U.S.C. § 1226(a), which authorizes discretionary detention and contemplates an individualized custody determination and bond process. Because Petitioner is being held without lawful authority and without the process required by the Constitution and the INA, he is likely to succeed on the merits

B. Irreparable Harm

Petitioner is presently enduring an ongoing constitutional injury that constitutes irreparable harm as a matter of law. The continued deprivation of physical liberty—particularly where imposed without notice, without a hearing, and without lawful statutory authority—is not speculative or abstract. It is immediate, concrete, and incapable of being remedied after the fact.

Courts have consistently recognized that loss of liberty for even a short period of time constitutes irreparable harm, especially where detention is unlawful. Every additional day Petitioner remains confined compounds the injury. Time spent in

custody cannot be returned, and no subsequent ruling can restore the days, weeks, or months of freedom wrongfully taken from him.

The harm here is especially acute because Petitioner was not newly detained at the border or following a criminal conviction. He was abruptly re-incarcerated after nearly three years of compliant, stable community release, during which the Government itself determined that he posed no danger to the community and no risk of flight. ICE revoked that liberty summarily, at a routine check-in, without warning and without process, transforming a lawful reporting obligation into a trap for incarceration. That type of sudden liberty deprivation magnifies the constitutional injury and underscores why immediate judicial intervention is required.

Petitioner's detention also inflicts severe and continuing harm on his family, including his two U.S. citizen children. He was residing with his wife and children, working lawfully, and serving as a financial and emotional anchor for his household. His continued detention disrupts family unity, destabilizes his children's lives, and inflicts emotional and economic harm that cannot be undone by a later favorable ruling. Courts have long recognized that family separation and the forced absence of a parent constitute irreparable harm.

Moreover, the injury is ongoing every hour that Petitioner remains detained. This is not a past harm—it is a continuing constitutional violation. Habeas relief is meant to be swift and effective, and Congress has directed courts to act "forthwith"

precisely because unlawful detention demands immediate attention. Allowing Petitioner to remain incarcerated while this case proceeds would render any eventual relief hollow.

By contrast, the Government faces no cognizable harm from Petitioner's temporary release. Petitioner has already demonstrated—over the course of nearly three years—that he complies with supervision, appears when instructed, works lawfully, and poses no risk to the community. Any legitimate governmental interests can be fully protected through reasonable conditions of release, as they were before his sudden arrest.

In short, the balance is stark: without a TRO, Petitioner continues to suffer an unlawful loss of liberty and profound family harm; with a TRO, the Government loses nothing of substance while this Court considers the merits. Equity and constitutional principles demand immediate relief.

C. Balance of Equities Strongly Favors Petitioner

The balance of equities overwhelmingly favors Petitioner. On one side of the scale is continued, unlawful incarceration—a daily deprivation of liberty imposed without notice, without a hearing, and without lawful statutory authority. On the other side is, at most, a temporary administrative inconvenience to the Government. Equity does not permit such an imbalance.

Petitioner has already demonstrated, over nearly three years of community release, that he poses no danger to public safety and no risk of flight. The Government itself reached that conclusion when it paroled Petitioner into the United States, authorized him to work lawfully through April 22, 2030, and supervised him through ISAP without incident. Petitioner complied with all reporting requirements and appeared as instructed—including for the very check-in at which he was detained. Those facts eliminate any equitable justification for continued detention.

By contrast, the harm to Petitioner from denying relief is severe and compounding. Each additional day of confinement deepens the constitutional injury, disrupts family stability, and erodes the very liberty interest at the heart of this case. Equity does not favor preserving the status quo where the status quo is itself unlawful detention.

Nor does the Government face any meaningful prejudice from Petitioner's temporary release. The relief requested is narrow and reversible. If Respondents ultimately prevail on the merits, Petitioner can be re-detained at that time through lawful procedures. What cannot be reversed is the time Petitioner spends incarcerated now without due process.

Critically, the Government seeks to benefit from its own lack of process—detaining first and justifying later. Equity does not reward constitutional shortcuts or post hoc rationalizations. Where the Government extinguishes liberty without the

procedures the Constitution demands, the equities favor restoring that liberty while the legality of detention is adjudicated.

In sum, denying relief perpetuates an ongoing constitutional violation and imposes profound harm on Petitioner and his family, while granting relief merely restores the conditions under which Petitioner lawfully lived for years. The balance of equities therefore weighs decisively and unmistakably in Petitioner's favor.

D. Public Interest

The public interest is served when the Government acts within the bounds of the Constitution and the authority Congress has granted. It is never in the public interest to permit continued detention that is unlawful, unsupported by statute, and imposed without due process.

Granting temporary relief here promotes respect for the rule of law. Habeas corpus exists precisely to ensure that executive detention does not proceed unchecked and that courts can promptly halt unconstitutional restraints on liberty. Congress underscored that interest by requiring courts to act "forthwith" when unlawful custody is alleged. Allowing Petitioner to remain incarcerated while this Court considers his habeas petition would undermine that core function.

The public also has a strong interest in fair, consistent, and predictable enforcement of the immigration laws. When individuals who have lived peacefully in the community for years—working lawfully, supporting their families, and

complying with supervision—can be abruptly re-detained without notice or process, public confidence in the system erodes. Interim relief here reinforces that detention decisions must be grounded in law, individualized assessment, and constitutional safeguards.

Public safety concerns do not weigh against relief. Petitioner has no criminal history, complied with all supervision requirements, and appeared as directed for every check-in. His temporary release under reasonable conditions poses no risk to the community and preserves the Government's ability to pursue removal proceedings in an orderly, lawful manner.

Finally, the public interest favors avoiding unnecessary incarceration where less restrictive alternatives have already proven effective. Detaining a compliant, long-released parolee without lawful authority wastes limited detention resources and diverts them from cases where detention is actually warranted.

In short, granting a TRO in this case vindicates constitutional principles, promotes lawful and orderly immigration enforcement, preserves judicial oversight, and serves the broader public interest in justice and accountability.

IV. CONCLUSION

Petitioner is presently incarcerated under a detention scheme that is constitutionally defective and statutorily unauthorized. After nearly three years of lawful, compliant release in the community, the Government extinguished

Petitioner's liberty without notice, without a hearing, and without any individualized determination of danger or flight risk. That deprivation is ongoing and irreparable.

Habeas corpus exists to stop precisely this kind of unlawful executive detention. Every additional day Petitioner remains confined compounds the constitutional injury and undermines the Court's ability to provide meaningful relief. Equity, due process, and the structure of the Immigration and Nationality Act all compel immediate judicial intervention.

Because Petitioner has demonstrated a substantial likelihood of success on the merits, irreparable harm, that the balance of equities tips decisively in his favor, and that relief serves the public interest, the Court should grant emergency relief and restore Petitioner to the lawful liberty he enjoyed before his sudden and unlawful re-detention.

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

1) Grant this Emergency Motion for Temporary Restraining Order and order Petitioner's immediate release from ICE custody pending adjudication of the Petition for Writ of Habeas Corpus;

2) Order that Petitioner not be transferred outside the Middle District of Georgia while this habeas action is pending;

3) Direct Respondents to maintain Petitioner in non-detained status subject to reasonable conditions of supervision, if any, that the Court deems appropriate;

4) In the alternative, if the Court declines to order immediate release, order Respondents to provide a prompt and constitutionally adequate bond hearing under 8 U.S.C. § 1226(a) before an impartial immigration judge;

5) If a bond hearing is ordered, require Respondents to file **a** written status report with this Court within a time set by the Court stating whether bond was granted or denied, the bond amount and conditions if granted, and summarizing the reasons stated on the record for the custody determination; and

6) Grant such other and further relief as the Court deems just and proper.

DATED this 26th day of January, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2026, I electronically filed the foregoing Emergency Motion for Temporary Restraining Order with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to all counsel of record.

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