

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

ANDRES EDUARDO JEREZ SANCHEZ,

Petitioner,

v.

Pamela Bondi, Attorney General of the United
States,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

U.S. Department of Homeland Security,

Joel D. Garcia, in his official capacity as Field
Office Director, El Paso Field Office,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

U.S. Immigration and Customs Enforcement,
and

David Easterwood, Acting Director, St. Paul
Field Office Immigration and Customs
Enforcement,

Respondents.

Case No. 3:26-CV-00304-KC

**PETITIONER'S EMERGENCY MOTION
AND MEMORANDUM TO REOPEN
AND STAY REMOVAL**

I. INTRODUCTION

Petitioner submits this emergency motion to reopen and stay his imminent deportation. At the court-ordered bond hearing held on February 20, 2026, counsel for Petitioner learned concerning details regarding the immigration proceedings leading to an apparently final order of removal. Specifically, counsel learned that, at an immigration hearing held while Petitioner was detained and deprived of access to his habeas counsel, an immigration lawyer (1) conceded Petitioner's removability and (2) waived his appeal rights. Both of these contravened Petitioner's wishes, and both were done without Petitioner's knowledge or consent because (3) his attorney waived simultaneous translation of the substantive portions of the proceedings, meaning Petitioner had no idea what was said on his behalf.

Petitioner had a pending asylum case at the time of his detention. Respondents terminated his asylum proceedings. He had—and still has—a valid claim of derivative asylum under his mother's asylum proceedings. Respondents' detention of Petitioner hundreds of miles away from his home and his mother have prevented him from pursuing that derivative claim. And now he has a likely constitutional claim for ineffective assistance of counsel in his immigration proceeding. Petitioner has a new, competent, and attentive immigration attorney who is seeking to reopen his immigration proceedings in order to obtain access to the recording of the hearing at which his rights were given away. But EOIR's e-filing system was non-functional yesterday and her attempts to obtain the recording at immigration court after his bond hearing were not successful, and time is of the essence.

Petitioner therefore respectfully requests that this Court reopen this case to enjoin his removal until such time as he can reopen his removal proceedings, address the unilateral cancellation of his asylum claim, and present his ineffective assistance claims, which are

cognizable under the Fifth Amendment's due process clause. Anything less deprives him of his constitutional guarantee to meaningful due process before the immigration courts, including effective assistance of counsel when navigating that process.

II. ARGUMENT

A. Counsel has a good-faith basis to believe Petitioner received ineffective assistance of counsel at in his immigration proceedings.

Counsel learned, at the bond hearing ordered by this Court,¹ that Petitioner's prior immigration lawyer at an immigration hearing held after the government unilaterally cancelled his asylum application conceded Petitioner's removability and forfeited his appeal rights, all while preventing Petitioner from understanding what that lawyer was doing. Since then, counsel, together with Petitioner's new immigration counsel, has diligently sought to access the recording of those hearings to confirm the extent to which his due process rights were impinged by his counsel's actions. But the docket is closed, requiring Petitioner's new immigration counsel to file a motion to reopen; and counsel is unable to file a motion to reopen because EOIR's online filing apparatus was not working yesterday.

However, Petitioner's understanding of what happened is drawn from the record and from representations made by government lawyers at the bond hearing and provides a reliable basis to warrant further investigation. The BIA has set forth procedures for challenging the effectiveness of counsel, such as where counsel improperly waives appeal rights, but those procedures require time. Petitioner may not have time.

¹ The immigration court has yet to grant access to the underlying records that it claims permit Petitioner's removal and the government never filed those records in its response to the habeas petition before this Court. As a result, Counsel still has not seen any records establishing that Petitioner's appeal rights were waived and was verbally informed that the appeal right was waived by the government attorney and the immigration judge at the bond hearing last week.

Counsel learned, early yesterday morning and second-hand, that Petitioner was taken from Camp East Montana yesterday, but Respondents were not forthcoming about where Petitioner was or where he was going. When counsel phoned the Camp, officials stated they did not know where Petitioner was, and said counsel had to “ask ICE” (while confirming that they were, in fact, ICE). When a Senator’s office sought information on Petitioner’s behalf, Respondents initially misled a sitting member of Congress, claiming that Petitioner was still at Camp East Montana. Only after the Senator’s staff disclosed that they knew that representation was not correct did Respondents admit, at 12:20 PM MST, that Petitioner was “in the process of being transferred to Florence, Arizona, for staging in preparation for his upcoming removal to Venezuela.” That news prompted this motion. This morning, ICE updated its detainee locator which did not identify where Petitioner was held, but stated “Call ICE For Details.” When undersigned counsel called the number provided, he was transferred to an ICE call center and was told that the ICE call center did not have information about Petitioner’s location, but that counsel must continue to call the number provided until someone else answered the phone who did know his location. Counsel also emailed the ICE El Paso Sub-Office as suggested by the call center.

B. This Court should enter a temporary restraining order to ensure that Petitioner can exercise his due process rights before being remove from the country.

A temporary restraining order is warranted where four elements are satisfied:

- (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the temporary restraining order is denied; (3) that the threatened injury outweighs any damage that the temporary restraining order might cause the defendant; and (4) that the temporary restraining order will not disserve the public interest.

Jackson Women’s Health Org. v. Currier, 760 F.3d 448, 452 (5th Cir. 2014) (quoting *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998)). Here, these four factors warrant the entry of a temporary restraining order preserving the status quo.

1. Petitioner is likely to succeed on the merits of his ineffective assistance of counsel claim.

Courts widely agree “that ineffective assistance of counsel in a removal proceeding can violate a noncitizen’s due process rights,” providing a basis to reopen proceedings. *Romero v. Bondi*, 150 F.4th 332, 339 (4th Cir. 2025) (collecting cases). “Although [a noncitizen] has no Sixth Amendment right to effective counsel during removal proceedings, this court has repeatedly assumed without deciding that [a noncitizen]’s claim of ineffective assistance may implicate due process concerns under the Fifth Amendment.” *Rodriguez-Salazar v. Sessions*, 691 F. App’x 173, 174 (5th Cir. 2017) (quoting *Mai v. Gonzales*, 473 F.3d 162, 165 (5th Cir. 2006)); accord *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (holding that “[a]ny right a respondent in deportation proceedings may have to counsel is grounded in the fifth amendment guarantee of due process” (citations omitted)).² The BIA itself has acknowledged that ineffective assistance is a valid basis for reopening a deportation case. See *Matter of Assaad*, 23 I&N Dec. 553, 556 (BIA 2003). And while exhausting administrative remedies before a federal agency is ordinarily a requirement for a habeas proceeding, “this rule creates something of a catch-22 for Petitioners,” particularly where the petitioner’s right of appeal to the BIA is infected by his counsel’s ineffective assistance. *Bustos-Millan v. Garland*, 111 F.4th 841, 845 (7th Cir. 2024).

To establish that a removal proceeding was fundamentally unfair due to ineffective assistance of counsel, a noncitizen must demonstrate two elements under the Fifth Amendment’s Due Process clause: (1) deficient performance by counsel that falls below an objective standard for reasonableness, and (2) a reasonable probability of prejudice resulting from that representation,

² Although the Attorney General overruled *Matter of Lozada* in *Matter of Compean*, 24 I&N Dec. 710 (A.G. 2009), that decision was vacated less than six months later in *Matter of Compean*, 25 I&N Dec. 1 (A.G. 2009).

such that the noncitizen was prevented from reasonably presenting his case. *Diaz v. Sessions*, 894 F.3d 222, 228 (5th Cir. 2018) (citing *Stickland v. Washington*, 466 U.S. 668, 691 (1984)).

Petitioner has met both criteria here. First, his prior counsel waived the right to an interpreter in a hearing where a final order of removal could be issued.³ This prevented Petitioner from understanding what was unfolding in front of him. *See, e.g., Garcia v. Davis*, No. 16-cv-632, 2018 WL 5921018, at *15 (S.D. Tex. Nov. 9, 2018), *aff'd sub nom. Garcia v. Lumpkin*, 824 F. App'x 252 (5th Cir. 2020) (finding that counsel's decision "to deprive Petitioner of an interpreter without a valid waiver constitutes deficient performance"). Additionally, Petitioner has a derivative asylum claim pending that former counsel ignored and thereby effectively extinguished without Petitioner's consent. Those actions, taken in totality, fall well below the objective standard for reasonableness. And Petitioner's ability to present his ineffective assistance claims to the BIA was, itself, thwarted by counsel's ineffective assistance.

Second, Petitioner will likely be able to show that he was prejudiced by counsel's errors, i.e. "that there [was] a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Diaz*, 894 F.3d at 228 (quoting *Washington*, 466 U.S. at 669). Had Petitioner understood what was occurring—which he was unable to *because counsel waived a translator*—that his counsel was admitting Petitioner was removable and waived his appeal rights, he would have been able to contest counsel's decisions. Instead, Petitioner was subjected to a proceeding he did not understand with counsel that made decisions that were directly averse to Petitioner's interests. Although "[a] waiver of appeal rights is not ironclad: the validity

³ Petitioner had never previously met the immigration attorney and did not understand the proceedings. He had believed he had reserved his right to an appeal because he was told his appeal deadline was March 2. But based on the government's representation at the bond hearing and counsel's conversations with Petitioner, it appears that the attorney waived both the right to a translator and the right to appeal.

of a waiver of appeal may be challenged and the BIA is ‘not divested of jurisdiction where the waiver is not valid,’” *Hernandez-Ortez v. Holder*, 741 F.3d 644, 647 (5th Cir. 2014) (quoting *In re Patino*, 23 I&N Dec. 74, 76 (BIA 2001)), Petitioner needs time to reopen his BIA proceedings to present his ineffective assistance claims.

Because Petitioner has shown a likelihood of success on his ineffective assistance of counsel claim, the first element of the temporary restraining order standard is satisfied.

2. Petitioner stands to lose his ability to vindicate his Due Process rights if removed before he can bring forth his ineffective assistance claims.

Petitioner stands to suffer irreparable injury if the Court does not immediately enjoin deportation. If Petitioner is removed from the country, he can lose both the ability to vindicate his constitutional rights and his right to remain in the United States. *See United States v. Pedroza-Rocha*, 933 F.3d 490, 493–94 (5th Cir. 2019) (quoting *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 307 (2012)) (holding that a case becomes moot “when it is impossible for a court to grant any effectual relief whatever to the prevailing party”).

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Petitioner will lose both the meaningful time and meaningful manner contemplated in *Mathews* if he is removed from the country. Noncitizens are required to first exhaust their ineffective assistance of counsel claims before the Board of Immigration Appeals. *Goonswan v. Ashcroft*, 252 F.3d 383, 386 (5th Cir. 2001). If Petitioner is deported, the Board of Immigration Appeals loses jurisdiction, as stipulated by 8 C.F.R. § 1003.2(d). Petitioner could typically file an appeal within 30 days of the final removal order—but his previous counsel waived his appeal rights without Petitioner’s knowledge or consent, further endangering his ability to vindicate his Due Process rights. If removal proceedings

are permitted to go forward and Petitioner is deported to Venezuela, his ability to exercise his Fifth Amendment rights will be severely hampered.

Because Petitioner has shown irreparable harm if he is deported, the second element of the temporary restraining order standard is satisfied.

3. Petitioner's immigration and constitutional rights outweigh any minimum burden on the government from a pause in removal preparations.

The prejudice caused to Respondents by a minor pause in these proceedings, which have already been delayed because of logistical issues (such as the EOIR e-filing system being down and the immigration court's rejection of his counsel's application for counsel), pales in comparison to the irreparable harm that Petitioner faces if he is removed.

Proceeding with the removal of Petitioner from the United States, despite the probability that his removal order was obtained because he received ineffective assistance of counsel would be a gross violation of his Fifth Amendment Due Process and immigration rights. Petitioner has demonstrated that he likely received ineffective assistance of counsel when his attorney waived a translator, forfeited his appeal rights, and did not pursue his derivative asylum claim that is still pending. The grave consequences of removal would prevent Petitioner from reentering the country for years – separating him from his family and almost completely foreclosing the possibility of his pending asylum claims. The harm to Respondents is a minor delay in one of thousands of pending habeas cases across the country.

Because Petitioner has shown the irreparable harm that he faces if deported outweighs the minimal burden on Respondents, the third element of the temporary restraining order standard is satisfied.

4. Ensuring the due process rights of a person entitled to them does not disserve the public interest.

“Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.” *Nken v. Holder*, 556 U.S. 418, 436 (2009). Here, ICE has indicated, through communications to Petitioner’s Senator, that they intend to remove him to Venezuela, a country he and his mother fled in fear and a country in which his life may be in danger if he is returned. Accordingly, the final prong weighs in favor of granting a temporary restraining order.

III. REQUESTED RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court reopen this matter and temporarily enjoin Petitioner’s removal pending the reopening of his immigration proceedings to vindicate his appeal rights and address his ineffective assistance of counsel claims.

WHEREFORE, Petitioner respectfully requests that the Court:

1. Reopen this case;
2. Grant Petitioner’s request for a Temporary Restraining Order;
3. Order Respondents to halt Petitioner’s removal from the United States for 14 days to allow Petitioner time to seek relief from the immigration court and/or federal court through a subsequent habeas petition seeking relief;
4. Grant such other and further relief as the Court deems just and proper.

DATED: February 24, 2026

/s/Derek C. Waller

Gregory J. Myers (MN Bar # 0287398)

Brian D. Clark (MN Bar # 390069)

Derek Waller (MN Bar # 0401120)

LOCKRIDGE GRINDAL NAUEN PLLP

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

Telephone: (612) 339-6900

Facsimile: (612) 339-0981

gjmyers@locklaw.com

bdclark@locklaw.com

dcwaller@locklaw.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 24, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Derek C. Waller

Derek C. Waller

LOCKRIDGE GRINDAL NAUEN PLLP