JUDGE KATHLEEN CARDONE

FILED
AUG 26 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

BRAYAN ARTURO MARTINEZ,
A# [redacted]
Petitioner, pro se,

v.

EP26CV2214

WARDEN / FACILITY ADMINISTRATOR,
ERO EL PASO CAMP EAST MONTANA;
FIELD OFFICE DIRECTOR,
ICE ENFORCEMENT AND REMOVAL OPERATIONS,
EL PASO FIELD OFFICE;
DIRECTOR,
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;
SECRETARY,
U.S. DEPARTMENT OF HOMELAND SECURITY; AND
ATTORNEY GENERAL OF THE UNITED STATES,
Respondents.

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND LIMITED STAY OF REMOVAL PENDING INITIAL REVIEW OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

I respectfully ask for a short emergency order preserving this Court's ability to decide my habeas petition. I ask the Court to prohibit Respondents from transferring me outside the Western District of Texas and, only to the extent the Court has jurisdiction, from physically removing me from the United States until Respondents disclose the legal basis for my custody and any order they claim authorizes removal, and until this Court determines the proper forum. I

do not ask this Court in this motion to decide my asylum claim or the ultimate validity of any removal order.

EMERGENCY FACTS

1. I am a Venezuelan national. I have lived in the United States since 2022, when immigration officials processed me, released me into the country, and placed me under supervision, including Alternatives to Detention.

2. I have maintained a home and employment in Florida. I have no criminal convictions, and I have not been told that I am detained because I present a danger to anyone.

3. I previously sought asylum. My earlier matter was closed. At the beginning of 2026, I submitted another asylum application, which I understand remains pending. I also previously received TPS-related employment authorization in category A12. I do not ask this Court to determine my present TPS eligibility on this emergency record.

4. On August 13, 2026, I was a passenger traveling through the El Paso area on my way to a construction project in Virginia. I was not driving. I was stopped and detained at an interior immigration checkpoint. I was not crossing the international border and was not arrested on a criminal warrant.

5. I am now confined at ERO El Paso Camp East Montana. I have asked to see an Immigration Judge. I have not received a hearing or a clear explanation of the proceeding or order under which the Government says it may remove me.

6. I have been told, or reasonably understood from what officers and detention personnel told me, that ICE intends to deport me without first taking me before an Immigration Judge. I have not been shown a final, executable removal order.

7. On August 25, 2026, EOIR's automated case system returned 'No case found for this A-Number' for A[redacted] I understand that the automated system is not conclusive. That uncertainty is exactly why I ask for an immediate, limited order requiring disclosure before an irreversible act occurs.

LEGAL STANDARD

A temporary restraining order is governed by Federal Rule of Civil Procedure 65. The Court considers (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury, (3) whether the threatened injury outweighs harm from the requested order, and (4) the public interest. See Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 572-73 (5th Cir. 1974). In the removal context, the stay factors are stated in Nken v. Holder, 556 U.S. 418, 426, 434 (2009).

ARGUMENT

1. There is at least a substantial question about the legal basis for my present custody and threatened removal. Habeas remains available to challenge unlawful physical custody. 28 U.S.C. § 2241(c)(3); Zadvydas v. Davis, 533 U.S. 678, 687–88 (2001). The Fifth Amendment protects "persons" inside the United States, including noncitizens. Id. at 693–94. I have been held without being shown whether DHS relies on 8 U.S.C. § 1225, § 1226, § 1231, expedited removal, reinstatement, or some other authority. Without the operative documents, I cannot meaningfully test the legality of my detention.

2. I recognize the jurisdictional limits imposed by 8 U.S.C. § 1252. If a final removal order exists, a petition for review ordinarily belongs in the court of appeals, must generally be filed within thirty days, and does not itself stay removal unless that court orders a stay. 8 U.S.C. § 1252(a)(5), (b)(1), (b)(2), (b)(3)(B). I am not asking this Court to evade those provisions or

decide the merits of an unidentified removal order. I ask for a brief preservation order so Respondents must produce the supposed order and this Court can determine whether my claim concerns detention, an expedited-removal inquiry allowed by § 1252(e), a final order reviewable only in the Fifth Circuit, or some other posture. If this Court concludes it lacks power to prevent removal, I ask it to rule immediately so I can seek relief in the proper court before removal moots practical access to review.

3. The threatened injury is irreparable. Removal to Venezuela before I receive the operative order, identify the correct tribunal, and present my protection claim would separate me from my home, work, records, and support in the United States. It could also expose me to the harm underlying my asylum request. No later award of money could repair that injury. See Nken, 556 U.S. at 435 (recognizing removal is a serious burden while explaining it is not categorically irreparable in every case).

4. The balance and public interest favor a very short, limited order. I do not request termination of immigration proceedings. I ask only that the status quo be preserved long enough to identify the Government's authority and allow judicial routing. The Government has no legitimate interest in executing an order it cannot identify, while the public has a strong interest in lawful agency action and orderly judicial review.

5. Transfer would also threaten effective habeas review. Because the immediate custodian and place of confinement matter in a § 2241 action, transfer outside this District before initial review could create avoidable jurisdictional disputes. A temporary no-transfer provision preserves the Court's existing jurisdiction without deciding removability.

6. I do not rely on the vacated panel opinion in Sosnava Rodriguez v. Ortega, Nos. 26-50183, 26-50219 & 26-50221 (5th Cir. July 2, 2026). Rehearing en banc was granted and that

panel opinion was vacated on July 10, 2026 under Fifth Circuit Rule 41.3. My motion instead rests on § 2241, the Due Process Clause, controlling Supreme Court authority, Rule 65, and the need to identify the operative custody and removal documents.

REQUESTED RELIEF

I respectfully request an immediate order: (a) prohibiting my transfer outside the Western District of Texas pending initial review; (b) to the extent jurisdiction exists, prohibiting physical removal for a short period sufficient for Respondents to answer; (c) requiring Respondents within 48 hours, or another time set by the Court, to identify my detention statute and file every operative removal document, including any Forms I-860, I-205, I-286, I-200, I-862, prior order, reinstatement order, and proof of service; (d) setting an expedited response and hearing; (e) waiving security under Rule 65(c) because I am detained and indigent; and (f) granting any narrower lawful relief needed to preserve jurisdiction. If ex parte relief is unavailable, I ask for the earliest possible hearing and an administrative preservation order until that hearing.

RULE 65(B)(1) CERTIFICATION

I am detained and proceeding without counsel. I cannot reliably give advance notice through ordinary means. I have attempted to obtain information from detention personnel and have not been shown the order or procedure ICE intends to use. The threatened removal may occur before counsel can appear or ordinary briefing can be completed. These facts are stated in my attached declaration. I ask the Clerk to serve the United States Attorney and Respondents immediately. I will also provide a copy to facility personnel and request delivery to ICE counsel. I understand that, if the Court requires additional efforts or a hearing rather than ex parte relief, I must comply promptly.

Respectfully submitted,

Brayan A. Martinez

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