UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Case No. 5:25-cv-00606-FB

LIOARGE DEL NODAL

Petitioner,

v.

Barry, *et al.*

Respondents.

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTIVE RELIEF

Petitioner **Lioarge Del Nodal**, by and through undersigned counsels, moves the Court to issue a temporary restraining order and/or preliminary injunction, enjoining Respondents from (1) removing him from the United States during the pendency of these habeas corpus proceedings; (2) immediately releasing him from custody; or (3) returning him to South Florida. Petitioner makes this request based on the deportation officer's verbal statements that if his native country of Cuba does not accept him by June 27, 2025, he will be removed to Mexico. He is suffering irreparable harm being detained, away from his family, when he committed no violation of supervision, and Respondents have failed to demonstrate that Cuba or a third country prepared to accept him. As for urgency, the limited information available to counsels is explained further, below.

I. PROCEDURAL BACKGROUND

The Petitioner, LIOARGE DEL NODAL, is in federal custody and is currently detained at the Karnes Immigration Processing Center in Karnes, Texas where he was improperly relocated

to on or about May 25, 2025, following detention at the Krome Detention Center, Miami, Florida, where he had been held in custody since May 13, 2025.

On May 30, 2025, Petitioner filed a petition for writ of habeas corpus seeking his release from detention and/or transfer to a South Florida facility pending these proceedings.

On June 10, 2025, the Court issued a scheduling order. Respondents' answer to the petition is due on July 10, 2025. However, recent events cause Petitioner to seek emergency injunctive relief, including a temporary restraining order to enjoin his deportation during the course of these proceedings.

II. LEGAL ARGUMENT

A. Petitioner faces irreparable harm if Respondents are not enjoined from removing him while the Court considers this case.

The Petitioner is a native and citizen of Cuba who entered the United States on or about 1996 when he was 18 years old. He has remained in this country since then. Today he is 48 years of age. Prior to his detention, he resided in Miami, Florida, with his U.S. Citizen wife, whom he married on October 5, 2018, and U.S. Citizen minor children. Previously a lawful permanent resident (green card holder), he was ordered removed by an immigration judge on August 22, 2008. He was *pro se*. The basis for removal proceedings was an aggravated assault conviction 18 years ago, in 2006, in New Jersey. He served approximately one year and a half in prison. Since his release from Immigration and Customs Enforcement ("ICE") custody, he has never again been arrested. He works as a crane operator in construction, and again, has three U.S. citizen (minor) children, two adult children, and an American adult stepdaughter. He has worked lawfully in the United States with a work permit Respondents issued to him, and he reports routinely on supervision to a Miami ICE Office. He was arrested on May 13, 2025, at United States Citizenship and Immigration Services ("USCIS") offices, where he was attending an interview with his spouse

for a I-130 marriage petition. An unauthorized practitioner (notary) had filed this marriage petition for him.

Currently, Mr. Del Nodal is actively seeking post-conviction relief through a criminal defense practitioner in Elizabeth, New Jersey. Post-conviction relief, a vacatur or modification of the plea and sentence, would enable Mr. Del Nodal to seek reopening of his removal order.

On June 16, 2025, Petitioner called Attorney Jose Alvarez and stated that an officer presented him with papers to sign. Petitioner stated he wanted to speak with his attorney before signing. The officer said that he would send the papers to counsel for review. The officer did not leave a copy of the papers -- whatever they were -- with Petitioner. Petitioner did not have the opportunity to read them. The undersigned attorneys have not received any such paperwork in any medium. It is noted that Enforcement and Removal Operations ("ERO") a component of ICE maintains an electronic attorney registration system and counsel Mary Kramer is listed as attorney for Mr. Del Nodal: the system contains her notice of appearance with contact information. The system allows for "notifications" to counsel, and an email is automatically generated instructing attorneys to log in when there is a notification. Attorney Mary Kramer has received no notifications regarding Mr. Del Nodal. This information was also verbally confirmed to Mr. Del Nodal by the officer.

The officer further told Petitioner that Cuba had not responded to their request for deportation made on May 27, 2025. The policy that was explained to Mr. Nodal, was that ICE give a country 30 days to respond to a request. The officer concluded that if Cuba did not respond or accept him by the 27th of June, they plan to deport him to Mexico. No further details were provided. As such, Mr. Nodal has been in custody since May 13, 2025, based on Respondents posturing that his deportation was imminent or significantly likely to Cuba. This was not the case.

New verbal and speculative information now indicates that deportation to a third country could indeed be imminent, but remains unsubstantiated.

If the Court does not enjoin Respondents from removing Petitioner until this case can be fully heard, he may be removed anywhere, without meaningful notice. This could be Sudan or Libya, Africa. This might be a country in the Western Hemisphere. At this time, the Respondents are holding individuals in Djibouti, Africa, pending removal to Sudan or Libya. https://www.npr.org/2025/06/06/g-s1-71039/migrants-djibouti-ice-shipping-container. The deportation and detention of hundreds of non-American citizens to the CEPCOT prison in El Salvador, with bodies being spirited away before the courts could act, is also well documented. These unlucky people's habeas petitions were not filed in time to prevent deportation without due process. An emergency order enjoining removal is necessary because the destination may be a third country where there is no access to counsel or the immigration court (or this Court) whatsoever.

Deportation will result in permanent separation from his family, his work, and his community. Respondents' abrupt and cruel actions are particularly unjust following ICE's allowance that he marry, have children, be employed, and reside in peace for the last 18 years.

B. Petitioner does not make a "prolonged detention" claim but argues a due process violation of the statute and regulations.

Petitioner's claim relies in part on the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). However, this is not a "prolonged detention" habeas petition. Petitioner cites *Zadvydas* for its analysis of the post-removal order detention statute at 8 U.S.C. § 1231.[1] Under

[1] *Zadvydas v. Davis* also reaffirms the district courts' jurisdiction over habeas corpus immigration-detention cases. 533 U.S. 678, 688 (2001) (under 8 U.S.C. § 2241(c)(3), habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to the post-removal-period detention). The courts' continuing jurisdiction over habeas claims in the immigration detention setting is discussed in a separate section.

that statute, Respondents shall remove an alien in 90 days immediately after an order. 8 U.S.C. § 1231a)(1)(A). After a 90-day period, if the noncitizen (alien) does not leave or is not removed, he shall be subject to supervision, the details to be spelled out by regulation. 8 U.S.C. § 1231(a)(3). After a six-month period, detention is presumably unconstitutional unless removal is imminent, or the non-citizen is a significant danger to the community. More importantly here, the statute sets forth a timeframe of events and takes a calendrical approach, not a mathematical approach: First, the removal order; then, 90 days of detention; and then, six months maximum detention. This is the chronology. The focus is on events, not numbers.

What the law does not say is that Respondents may detain at any time they feel inclined, or that, while six months is the maximum, the months can occur in nonconsecutive increments--or once every few years for a period of time until mathematically the time periods are reached. Instead, 90 days immediately after the removal order (the "removal period") the question becomes: is removal imminent? Another synonym for imminent used by the law is "reasonably foreseeable future."

Here, Petitioner was released from Respondents' custody sixteen years ago. The post-removal order period long expired. Clearly, Respondents could not practically or legally execute removal to a third country. Now, the statute and regulations (discussed below) control. The Court should reject any categorization of the petition as a prolonged detention claim when it is not. Because of *Zadvydas*, Respondents promulgated regulations for revocation of OSUP. These regulations were not followed in arresting and detaining Petitioner, and one month later, are still being ignored.

C. Petitioner is likely to succeed on the merits: his detention is in violation of 8 U.S.C. 1231.

i. Petitioner did not violate OSUP.

Respondents violated the law in detaining Petitioner.[2] 8 U.S.C. § 1231(a)(1)(A) defines the "removal period" as within 90 days of the removal order. The period begins on the date of the order being administratively final. During this specific period, the government "shall" detain. 8 U.S.C. § 1231(a)(2). If the alien does not leave or is not removed "within" the 90-day period, the alien, pending removal, "shall" be subject to supervision. 8 U.S.C. § 1231(a)(3). Herein, Congress calls for regulations prescribed by the Attorney General. The regulations "shall" include provisions requiring the alien to: periodically appear, submit to medical examination, given information about his nationality, circumstances, habits and activities, and obey reasonable written restrictions. *Id.*

The regulations

Respondents' detention of Petitioner violates their own regulations. 8 C.F.R. §§ 241.4(a)(3) and (4). The government may also release an individual on an order of supervision where there is no danger to the public or risk of flight. 8 C.F.R. § 241.13(b). ICE has an acronym for these individuals that cannot be removed (often but not always from Cuba) which is "SLRRFF." The Respondents' regulations confirm what the statute says: the six-month period dates "from the beginning of the removal period." 8 C.F.R. § 241.13(b)(2)(iii). Where there is no SLRRFF the government "shall" promptly make arrangements for release of the alien. 8 C.F.R. § 241.13(g)(1).

An alien who violates the release conditions of OSUP may be returned to custody. 8 C.F.R. § 241.12(i)(1). Revocation may occur only if there is a violation or if the government determines

[2] Respondents also violate President Trump's Executive Order 14165, Securing Our Borders, which specifies aliens previously released for lack of SLRRFF may be detained if removal appears significantly likely in the reasonably foreseeable future. Promptly, ideally within two days, the arresting officer or another officer will conduct an interview of the alien and provide the alien an opportunity to ask questions and tell why he or she should be released. None of this has occurred in Petitioner's case. 90 FR 8467, 1/30/25

there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.2(i)(2). He is entitled to an interview. *Id.*

In Petitioner's case, he did not violate the order of supervision. 8 C.F.R. § 241.13(i)(1). he was not provided with any documentation to comply with 8 C.F.R. § 241.13(i). He has not received an informal interview. There is no evidence that ICE has applied to a third country, or that a third country has accepted Petitioner. Respondents' failure to abide by the statute and regulations means his arrest and custody is illegal and merits habeas relief. *See Bunthoeun Kong v. United States,* 62 F. 4th 608, 619 (1st Cir. 2023); *Sering Ceesay v. Kurzdorfer,* No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258 (W.D.N.Y. May 2, 2025); *Bonitto v. Bureau of Immigration & Customs Enf't.,* 547 F. Supp. 2d 747 (S.D. Tex. 2008).

ii. Respondents have not demonstrated that there is a country ready to receive Petitioner.

Over a decade after the removal period expired, Respondents have made no showing that removal to a third country is imminent, or "reasonably forseeable." Petitioner is therefore likely to prevail on his claim that detention is unlawful and a violation of the statute and regulations. *See Ambila v. Joyce*, 2:25-cv-00267-NT, 2025 U.S. Dist. LEXIS 99565, 2025 WL 1504832 (D. Maine May 27, 2025).

Cuba has not accepted Petitioner and there is no reason to believe Cuba will accept Petitioner imminently. That raises the question of a third country removal. Assuming Respondents have applied to a third country, Petitioner has a right to make a claim of persecution and/or torture in *that* country, before an immigration judge. 8 C.F.R. § 1240.10(f) (the immigration just shall identify for the record a country or countries in the alternative to which an alien's removal may be made). Once an immigration judge advises an alien of a third country of removal, the individual

is entitled to contest removal and seek relief therefrom. 8 U.S.C. § 1229a(4) (a non-citizen alien has the right to apply for relief from removal).

iii. The Court has jurisdiction to entertain this action.

Habeas corpus jurisdiction exists under 28 U.S.C. § 2241 and is addressed in the petition. The Court's jurisdiction is fundamental and viable, notwithstanding 8 U.S.C. § 1252(g), a section of the Immigration and Nationality Act ("INA") the Government routinely invokes in most immigration-related federal cases. The federal courts, including the Supreme Court and the Eleventh Circuit Court of Appeals, have made clear that the district courts' habeas jurisdiction over unlawful custody survives certain legislative changes to the immigration statutes.

Petitioner is not herein contesting the substance of his removal order, but his present-day unlawful arrest, detention, and transfer away from his family, his attorneys, and the authority of this Court.

Eight U.S.C. § 1252(g) states in pertinent part that no court shall have jurisdiction to hear a cause or claim by or on behalf of an alien arising from a decision or action by the Attorney General to: commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act. The law envisions review of immigration court cases and removal decisions by an immigration judge to be heard (following review by the Board of Immigration Appeals) through the Courts of Appeal. 8 U.S.C. § 1252(a)(5); § 1252(b)(9). However, these provisions do not deprive the district courts of habeas jurisdiction over statutory and constitutional claims addressing detention. *Zadvydas v. Davis,* 533 U.S. 678, 688 (2001) (under § 2241(c)(3) habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention); *Reno v. American-Arab Anti-Discrimination Committee,* 525 U.S. 471, 482 (1999) (The provision applies only to three discrete actions that the Attorney General may

take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders."); *Jennings v. Rodriguez,* 138 S. Ct. 830, 841 (2018) (reaffirming Court's decision in *Reno v. American-Arab ADC* that scope relates only to those three actions); *Madu v. United States AG*, 470 F.3d 1362, 1366 (11th Cir. 2006) (court retains habeas jurisdiction to adjudicate claim regarding existence of lawful removal order); *Bunthoeun Kong v. United States AG*, 62 F.4th 608,614 (3d Cir. 2023) (8 USC § 1252(b)(9)'s phrase is not 'infinitely elastic' and does not encompass claims collateral to the removal order, such as unlawful detention); *E.D.Q.C. v. Warden, Stewart Det. Ctr.*, No. 4:25-cv-50-CDL-AGH, 2025 U.S. Dist. LEXIS 104781 (M.D. Ga. June 3, 2025) (the court does not read § 1252(g) to shield unlawful actions from judicial review).

Because questions of detention are distinct from the substance of a removal order, this Court has jurisdiction to consider a post-removal order habeas petition. *Zadvydas v. Davis*, 533 U.S. at 689. The decision to detain is distinct from the decision to execute a removal order. *Madu v. United States AG*, 470 F.3d at 1368. The constitutionality of immigration detention in any given case falls squarely within the context of a habeas corpus claim. *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025).

iv. Summary of likelihood of prevailing on the merits.

Petitioner did not violate the OSUP. At no time have Respondents explained or documented what they intend to do with him. Only an immigration judge can order third country removal. A noncitizen must be notified and given the opportunity to express fear. For all these reasons, by regulation and statute, Petitioner is likely to prevail on the claim that detention is unlawful in violation of 8 U.S.C. § 1231(a) and 8 C.F.R. § 208.13. Petitioner is likely to prevail on the claim that this Court has jurisdiction over all issues raised, notwithstanding any potential objections from the government.

D. The balance of hardships weighs in favor of release with a bond and supervision.

Petitioner was the primary financial breadwinner for his family, including minor U.S. citizen children. Documentation attached to the petition establishes his strong ties. Detaining him at taxpayer expense, to the detriment of his family, accomplishes nothing. If the Respondents show a third country has accepted him, he will report for removal, just as he has reported to the non-detained ICE Office every year for 15 years.

E. It is in the public interest to enjoin Respondents from removing Petitioner and order his release.

An electronic bracelet and intensive supervision can ensure Petitioner's compliance with ICE officers. This will allow him access to his attorneys-- there is no confidential legal communication from Karnes-- and to work to support his family. Also, release will allow him to make appropriate arrangements for possible deportation and relocation of his family, or in the alternative, provisions for his family if they do not follow.

F. The balance of equities and the public interest weigh in favor of granting relief.

Petitioner asks the Court to order his immediate release from custody. If Respondents truly believe that removal to a third country may occur in the future, they have tools at their disposal to ensure Petitioner's compliance. These include electronic monitoring, curfew, and frequent reporting. On the other hand, detention is expensive and places a heavy burden on Petitioner's family. Petitioner has strong family ties, a good job, and is raising children. Equities and the public interest weigh in favor of release with conditions.

G. The Supreme Court's stay of the injunction issued in *D.V.D. v. United States Dep't of Homeland Sec.*, does not alter this Court's authority to grant relief to Petitioner.

On April 18, 2025, the district court in Massachusetts certified a class and issued an injunction requiring certain procedures be followed prior to removing a non-citizen to a third

country. These procedures would go above and beyond the criteria outlined in Petitioner's argument herein. *D.V.D. v. United States Dep't of Homeland Sec.*, Civil Action No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197 (D. Mass. Apr. 18, 2025). The court of appeals for the First Circuit did not disturb the District Court's injunction or class certification. On June 23, 2025, the Supreme Court stayed the injunction. The high Court's order states:

> The application for stay presented to Justice Jackson and by her referred to the Court is granted. The April 18, 2025, preliminary injunction of the United States District Court for the District of Massachusetts, case No. 25–cv–10676, is stayed pending the disposition of the appeal in the United States Court of Appeals for the First Circuit and disposition of a petition for a writ of certiorari, if such writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of the Court. Justice Sotomayor, with whom Justice Kagan and Justice Jackson join, dissenting.

D.H.S v. D.V.D, No. 24A1153, On application for stay (Supreme Court June 23, 2025).

The Supreme Court did not dissolve the class or in any way comment on the merits of the underlying due process concerns. Although the order is short, the likely interpretation is that the Court disapproves of nation-wide injunctions sweeping across the entire country, effecting the myriad of cases or potential cases pending. The Court has never said that non-citizens facing removal are not entitled to due process, but that individual habeas claims are a proper remedy as opposed to injunctions. *See Trump v. J.G.G.*, 145 S. Ct. 1003 (2025). (It is well established that Fifth Amendment entitles aliens to due process of law), *citing Reno v. Flores,* 507 U.S. 292, 306 (1993); *Mullate v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950) (detainees are entitled to notice and opportunity to be heard "appropriate to the nature of the case"). The Supreme Court in *Trump v. J.G.G.* encouraged proper notice to allow habeas petitions: "The notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Trump v. J.G.G.,* 145 S. Ct., at 1003.

Also, the Respondents in *D.V.D.* blared trumpets loudly blasting a few specific named class members as vicious criminals and based their argument on egregious, multiple crimes committed *after* release on supervision. [3] Our Petitioner Del Nodal does not fit the profile the Respondents are so concerned about: he never committed another crime again after his release in 2008. The stay of the injunction does not affect the Court's adjudication of this case, except that our Petitioner is no longer specifically protected under a class-wide injunction. His habeas must corpus will be decided based on the unique facts presented and applicable law.

H. Petitioner seeks his transfer back to South Florida.

In the alternative, Petitioner asks this Court to order him transferred back to the Krome Detention Center, Miami Florida, where he was held for ten days. At that time, Counsels requested his release from detention and a stay of removal and were advised it was "under consideration." Two days later, he was transferred to Texas. Counsel was notified the next day.

Respondents routinely hold out 8 U.S.C. § 1252(a)(2)(B) to support the proposition that the district courts do not have jurisdiction over place of detention. However, 8 U.S.C. § 1252(a)(2)(B) refers to discretionary decision-making in the adjudicative process, where the Attorney General (not ICE's) discretion is specified in the text of a statutory section. *See Spencer Enters. v. United States*, 345 F.3d 683, 696 (9th Cir. 2003); *Aguilar v. United States Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 20 (1st Cir. 2007) (discretion must be specified in the particular statutory section); *Zhao v. Gonzales*, 404 F.3d 295, n. 5 (5th Cir. 2005) (*Van Ding* misstates the statutory text, omitting the phrase "the authority for which is

[3] APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY
https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf

specified" before "under this subchapter.") While Respondents cite to a Tenth Circuit decision (*Van Dinh v. Reno*, 197 F.3d 427 (10th Cir. 1999)), the First, Fifth and Ninth Circuit Courts of Appeal disagree with the Tenth's insertion of a discretionary component to the transfer question.

As persuasive authority, in *Perez v. Noem*, No. 25-CV-4828 (DEH), 2025 U.S. Dist. LEXIS 113509 (S.D.N.Y. June 13, 2025), the court enjoined ICE from transferring habeas petitioner outside the district, to preserve counsels' access to petitioner and ensure his participation in the habeas action. *Also see*: *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025) (ordering ICE to transfer noncitizen back to Vermont from Louisiana).

The choice of place of detention is not discretionary, nor beyond this Court's authority in appropriate circumstances. Petitioner asks that his body be transferred back to South Florida: his community, close to his family, near his attorneys.

III. CONCLUSION

The record demonstrates Petitioner is likely to succeed on the merits of his claim that his arrest and detention are unlawful under 8 U.S.C. § 1231(a). The balance of overall equities and the public interest weigh in favor of granting habeas relief. Wherefore Petitioner seeks his immediate release from custody. Discretely, he moves that Respondents be ordered to transfer him back to his community in South Florida.

Signatures follow on next page.

Respectfully Submitted:

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Certificate of Service follows on next page.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2025, I electronically filed the foregoing Notice of Supplemental Authority with the Clerk of the Court using the CM/ECFsystem, which will send a notice of electronic filing to all counsel of record.

/s/ Mary Kramer/
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