UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JOSE GUERRA-CASTRO	)	
Petitioner,	)	
v.	)	**Civil Action No.** 1:25-cv-22487-DPG
GARRETT, *et al.*	)	
Respondents.	)	

PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Jose Guerra-Castro ("Petitioner"), by and through undersigned counsel, respectfully moves this Court pursuant to Rule 65 of the Federal Rules of Civil Procedure for a Temporary Restraining Order enjoining Respondents from removing him from the United States, including to Mexico or any other third country, during the pendency of these habeas proceedings.

INTRODUCTION

Petitioner is a native and citizen of Cuba who has lived in the United States for over two decades. Since 2014, he has been subject to a final order of removal. In 2020, ICE placed him on an Order of Supervision ("OSUP"), which he complied with faithfully.

On May 29, 2025, ICE revoked Petitioner's OSUP and re-detained him. In sworn declarations filed with this Court, Deportation Officers testified that the revocation was "to effectuate removal to Cuba," asserting that "Cuba does not require a travel document," that Petitioner had been "nominated for removal to Cuba," and that there was "a significant likelihood of removal in the reasonably foreseeable future." (Doc. 17, Exh. A ¶¶ 21–26).

That premise has collapsed. Cuba has not accepted Petitioner, just as it has not accepted other Cuban nationals. Respondents have now shifted their theory, filing a "Notice of Removal to a Third Country" (Doc. 34, Exh. D), claiming Petitioner will be removed to Mexico. There is no evidence Mexico has agreed to accept him, nor has an Immigration Judge designated Mexico as his removal country under 8 U.S.C. § 1231(b)(2).

This case mirrors *Del Nodal v. Barry*, No. 5:25-cv-00606-FB (W.D. Tex. June 26, 2025), where the court granted a TRO enjoining ICE from removing a Cuban national to Mexico absent proof of acceptance, holding that such an abrupt pivot was unlawful.

Immediate injunctive relief is necessary to preserve this Court's jurisdiction, protect Petitioner's due process rights, and prevent irreparable harm.

LEGAL STANDARD

A TRO may issue where the movant demonstrates: (1) likelihood of success on the merits, (2) irreparable harm absent relief, (3) that the balance of equities favors relief, and (4) that the injunction serves the public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

Courts have long emphasized their authority to prevent removal or transfer that would frustrate judicial review. See *Ex parte Endo*, 323 U.S. 283, 307 (1944) (courts may enjoin transfer of a habeas petitioner to preserve jurisdiction); *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) (broad equitable power absent express congressional prohibition). In the immigration context, removal itself is irreparable injury because it permanently moots judicial review. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011).

LEGAL ARGUMENT

I. Petitioner is Likely to Succeed on the Merits: ICE's re-detention violates § 1231 and due process principles

Petitioner's detention is in clear violation of 8 U.S.C. § 1231 and the implementing regulations. The record demonstrates that ICE re-detained him on May 29, 2025, without notice, hearing, or proof that removal was reasonably foreseeable, and has since attempted to pivot from Cuba to Mexico without lawful basis. This Court has jurisdiction to review these statutory and constitutional violations under 28 U.S.C. § 2241.

In *Ortega v. Kaiser*, No. 2:25-cv-00076 (W.D. Wash. Mar. 5, 2025), the court found that ICE's sudden re-detention of an individual on OSUP without notice or a hearing violated the Due Process Clause and exceeded the detention authority in § 1231(a)(6) where removal was not reasonably foreseeable. Similarly, in *Galindo Arzate v. Andrews*, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025), the court held that conditional liberty under supervised release requires procedural protections before re-detention and granted a TRO to prevent removal where ICE failed to identify new facts justifying custody.

The same is true here. Petitioner was fully compliant with his OSUP. He was seized not because he violated supervision, but because Respondents claimed—wrongly—that removal to Cuba was imminent.

A. Petitioner did not violate OSUP

Respondents' detention of Petitioner directly contravenes the statutory and regulatory framework governing post-order custody. Section 1231(a)(1)(A) defines the "removal period" as 90 days from the date the removal order becomes administratively final. During that period, the government "shall" detain the individual. § 1231(a)(2). After that period, if removal has not occurred, the individual "shall" be released under supervision. § 1231(a)(3).

Congress directed the Attorney General to issue regulations implementing supervised release. These regulations require compliance with conditions such as periodic reporting, medical

examination, provision of information, and obeying reasonable restrictions. 8 C.F.R. § 241.5. Where no danger or flight risk exists, ICE "shall" release under supervision. 8 C.F.R. § 241.13(b), (g)(1).

The regulations also permit re-detention only if (a) the individual violates OSUP conditions, or (b) ICE determines there is a significant likelihood of removal in the reasonably foreseeable future, after an interview and documented findings. 8 C.F.R. §§ 241.4, 241.13(i).

Here, Petitioner did not violate his OSUP. He was not provided any documentation of review, nor given the informal interview required under § 241.13(i). The sworn declarations confirm revocation was premised solely on Cuba's supposed acceptance. (Doc. 17, Exh. A ¶¶ 21–26). That premise has since collapsed.

By ignoring the statutory framework and their own regulations, Respondents have acted unlawfully. See *Bunthoeun Kong v. United States*, 62 F.4th 608, 619 (1st Cir. 2023) (invalidating detention that exceeded regulatory authority); *Ceesay v. Kurzdorfer*, 2025 U.S. Dist. LEXIS 84258, at *12–15 (W.D.N.Y. May 2, 2025) (granting habeas where ICE re-detained a supervisee without process); *Bonitto v. Bureau of Immigration & Customs Enf't*, 547 F. Supp. 2d 747, 757–58 (S.D. Tex. 2008) (requiring adherence to § 241.4 review procedures).

B. Respondents have not demonstrated any country ready to receive Petitioner

Over 11 years after the removal order became final, and more than 27 years after he entered the United States, Respondents have produced no proof that Cuba—or now Mexico—will accept Petitioner. The Notice of Removal to a Third Country (Doc. 34, Exh. D) is not proof of acceptance, and there is no record of an Immigration Judge designation as required by § 1231(b)(2)(E).

Courts have granted relief under precisely these circumstances. In *Ambila v. Joyce*, No. 2:25-cv-00267-NT, 2025 WL 1504832, at *4 (D. Me. May 27, 2025), the court enjoined ICE where

no country had accepted the petitioner despite the government's assertions. The same failure of proof dooms Respondents' position here.

C. This Court has jurisdiction to review unlawful detention

Habeas jurisdiction exists under 28 U.S.C. § 2241. Petitioner challenges not the underlying removal order, but his present-day unlawful detention. Courts have repeatedly held that § 1252(g) does not divest jurisdiction over detention claims. *Zadvydas v. Davis*, 533 U.S. 678, 688–89 (2001) (habeas remains available for unlawful post-order detention); *Reno v. AADC*, 525 U.S. 471, 482 (1999) (§ 1252(g) limited to three discrete actions, not detention review); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (same).

The Eleventh Circuit agrees. *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–69 (11th Cir. 2006) (habeas jurisdiction over claims of unlawful detention survives jurisdiction-stripping provisions). Other circuits concur. See *Bunthoeun Kong*, 62 F.4th at 614 (3d Cir. 2023) (detention claims collateral to removal order are reviewable); *E.D.Q.C. v. Warden, Stewart Det. Ctr.*, 2025 U.S. Dist. LEXIS 104781, at *10 (M.D. Ga. June 3, 2025) (§ 1252(g) does not shield unlawful custody from review).

Because questions of detention are distinct from the execution of removal orders, this Court has jurisdiction to adjudicate Petitioner's habeas claim.

D. Summary of likelihood of prevailing on the merits.

Petitioner never violated his OSUP. Respondents have failed to document a lawful basis for re-detention, failed to show that any country is willing to accept him, and failed to follow the mandatory statutory and regulatory procedures. Only an Immigration Judge may designate a third country for removal under § 1231(b)(2)(E), and no such designation exists. Petitioner is therefore

likely to succeed on his claim that his detention is unlawful under § 1231 and the Due Process Clause.

II. Petitioner Faces Immediate and Irreparable Harm

Petitioner is currently detained at the Krome Service Processing Center in Miami, Florida. Krome is itself a staging ground for deportation flights, and ICE has the operational capacity to remove Petitioner directly from Miami within hours. This reality makes the threat of "potentially imminent" removal more acute, not less. Once removed, Petitioner's habeas petition would be rendered moot, extinguishing this Court's jurisdiction before meaningful judicial review could occur.

A. Removal moots habeas relief and irreversibly harms Petitioner

As the Supreme Court has made clear, removal itself constitutes irreparable injury because it cuts off judicial review and permanently alters the petitioner's circumstances. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Ninth Circuit has similarly held that "removal is a particularly severe form of irreparable injury." *Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011).

The same was recognized in *Ortega v. Kaiser*, No. 2:25-cv-00076 (W.D. Wash. Mar. 5, 2025), where the court enjoined removal of an OSUP-compliant individual, finding that loss of conditional liberty and sudden re-detention without process were irreparable harms. Likewise, in *Galindo Arzate v. Andrews*, 2025 WL 2230521, at *8 (E.D. Cal. Aug. 4, 2025), the court held that forcible removal after years of supervision was an irreparable deprivation of liberty and family unity.

Here, forcible deportation from Miami would permanently sever Petitioner from his U.S.-citizen family and community after decades of residence under government supervision. Such

separation, combined with the mooting of judicial review, constitutes irreparable harm in its clearest form.

B. Removal directly from Krome obstructs access to counsel

Even short of removal, ICE's preparations for deportation at Krome already impair Petitioner's ability to access counsel and prepare his habeas case. Courts have long recognized that meaningful attorney access is constitutionally protected, and restrictions that prevent confidential communication constitute irreparable injury. See *Toussaint v. McCarthy*, 801 F.2d 1080, 1110 (9th Cir. 1986).

Petitioner's counsel, family, and evidence are all located in Miami. Immediate removal from Krome would obstruct communication and frustrate this Court's ability to resolve the habeas petition on the merits.

C. The harm is imminent, not speculative

ICE has already filed a Notice of Removal to Mexico (Doc. 34, Exh. D). Without an injunction, nothing prevents Respondents from placing Petitioner on the next available flight from Miami to Mexico. This is not a remote or hypothetical injury. It is imminent, severe, and irreparable. As the Supreme Court explained, irreparable harm exists when "the injury is certain and great and of such imminence that there is a clear and present need for equitable relief." *Winter v. NRDC*, 555 U.S. 7, 22 (2008).

III. The Balance of Equities Favors Petitioner

As in *Ortega v. Kaiser* and *Galindo Arzate v. Andrews*, where compliant OSUP petitioners faced unlawful re-detention, the equities strongly favor Petitioner. In both cases, the courts found that the government tolerated the petitioner's presence for years without incident, and that the sudden shift to re-detention served no lawful purpose while imposing severe, personal harms.

The same is true here. The government suffers no prejudice from returning Petitioner to supervised release — the very status it maintained for years. By contrast, the harm to Petitioner from continued detention and imminent removal is severe, personal, and irreversible. Petitioner has lived in the United States for 27 years. He complied faithfully with his OSUP after ICE imposed it in 2020. ICE had every opportunity to remove him in 1998, when the removal order became final, or in 2020, when it re-engaged with him, but instead elected supervision.

Petitioner is the primary financial support for his family, including his U.S.-citizen wife. The information attached to the habeas petition confirms his strong community and family ties. Detaining him at taxpayer expense, to the detriment of his family, accomplishes nothing. Courts in *Ortega* and *Galindo Arzate* recognized that this precise balance of equities weighs decisively in favor of release and against detention.

IV. The Public Interest Supports Injunctive Relief

It is in the public interest to ensure that the government complies with the Constitution, statutory limits, and its own regulations. Courts have recognized that preserving judicial review in the face of imminent removal serves not only the litigants but also the integrity of the judicial process. *Galindo Arzate v. Andrews*, 2025 WL 2230521, at *8 (E.D. Cal. Aug. 4, 2025) (holding that public interest is served by preventing removal until the court can adjudicate the lawfulness of detention).

Respondents suffer no prejudice from continued supervision of Petitioner. If they truly believe removal may occur in the future, they have ample tools to ensure compliance, including electronic monitoring, curfew, and frequent reporting. See 8 C.F.R. §§ 241.5, 241.13(b). Intensive supervision would ensure Petitioner's availability while respecting the statutory mandate that non-removable individuals "shall" be released under appropriate conditions.

By contrast, detention imposes heavy burdens. Petitioner has lived in the United States for over two decades, complied faithfully with his OSUP until it was unlawfully revoked, and has strong family and community ties in Miami. His wife is a U.S. citizen, and he has steady employment to support his household. Detention prevents him from supporting his family, imposes unnecessary costs on taxpayers, and obstructs his access to counsel. Courts have consistently held that such equities favor release. *See Ortega v. Kaiser*, slip op. at 10 (W.D. Wash. Mar. 5, 2025) (public interest supports release under supervision rather than continued detention where removal was not imminent).

In short, while Respondents can secure Petitioner's compliance through noncustodial means, continued detention is unnecessary, unlawful, and inequitable. The balance of harms and the public interest strongly weigh in favor of granting temporary injunctive relief to prevent removal and to restore Petitioner to supervised release under reasonable conditions.

RELIEF REQUESTED

Petitioner respectfully requests that this Court:

1. Order Petitioner's immediate release from custody and back on to supervision;

2. Enjoin Respondents from removing him to Mexico or any third country during the pendency of this habeas action;

3. Order Respondents to maintain Petitioner within this Court's jurisdiction; and

4. Grant such other relief as the Court deems just and proper.

(Signature on subsequent page)

Respectfully submitted on this day 29th of August, 2025.

/s/ Jose W. Alvarez
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(Certifications on subsequent pages)

CERTIFICATION PURSUANT TO FED. R. CIV. P. 65(b)(1)(B)

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, undersigned counsel certifies that on August 29, 2025, at approximately 9:30 p.m., counsel notified Assistant United States Attorney Natalie Diaz via email of Petitioner's intent to file this Emergency Motion for Temporary Restraining Order. Undersigned received an automated out-of-office reply. Given the imminent risk of removal, Petitioner is not waiting for the Government's position before seeking relief.

The urgency is underscored by prior cases where ICE mooted judicial review through expedited removal. In *Zapeta v. Guthrie*, No. 2:25-cv-697-JLB-KCD, 2025 WL 2432501 (M.D. Fla. Aug. 22, 2025), ICE detained a long-compliant OSUP supervisee, then transferred him to Alexandria staging and removed him abroad before the district court could rule. The court dismissed the case as moot because removal had already occurred.

Other courts have recognized this precise risk and granted *ex parte* TROs to preserve jurisdiction. In *Del Nodal v. Barry*, No. 5:25-cv-00606-FB (W.D. Tex. June 26, 2025), the court granted a TRO preventing ICE from removing a Cuban national to Mexico *ex parte*, holding that immediate relief was necessary because notice could have allowed ICE to frustrate the court's jurisdiction.

That outcome—where ICE moots judicial review by outpacing the Court—is exactly what Rule 65 is designed to prevent. As the Supreme Court has cautioned, courts retain "broad equitable power" to ensure meaningful review absent "the clearest command to the contrary from Congress." *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979); see also *Ex parte Endo*, 323 U.S. 283, 307 (1944).

/s/ Jose W. Alvarez
Jose W. Alvarez
Counsel for Petitioner

Date: August 29, 2025

CERTIFICATION PURSUANT TO S.D. FLA. L.R. 7.1(a)(3)

Undersigned counsel hereby certifies that, on August 29, 2025, counsel contacted Assistant United States Attorney Natalie Diaz via email to confer regarding Petitioner's Emergency Motion for Temporary Restraining Order. Counsel advised Ms. Diaz of Petitioner's intent to file the Motion and requested Respondents' position, as well as clarification regarding whether any transfer or removal of Petitioner was scheduled or contemplated.

As of the time of filing, Respondents' counsel has not provided a definitive response regarding their position on this Motion. Accordingly, Petitioner certifies that this Motion is filed in compliance with Local Rule 7.1(a)(3).

/s/ Jose W. Alvarez
Jose W. Alvarez
Counsel for Petitioner

Date: August 29, 2025