UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISON

Case No.: 1:25-cv-22487-GAYLES

JOSE GUERRA-CASTRO,

Petitioner,

v.

CHARLES PARRA, Assistant Field Office Director; GARRETT RIPA, Field Office Director, Miami Field Office; TODD LYONS, Acting Director, Immigration and Customs Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security,

Respondents.

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PETITIONER'S MOTION IN *LIMINE* TO STRIKE (OR PRECLUDE RELIANCE ON) GOVERNMENT DECLARATIONS ABSENT LIVE TESTIMONY AT THE EVIDENTIARY HEARING

Petitioner Jose Guerra-Castro, through undersigned counsel, moves in *limine* to strike, or in the alternative to preclude Respondents from relying upon, the declarations of ICE officers Jesús R. González Alverio (Dkt. 17, Exh. A), Alana Caraballo (Dkt. 34, Exh. C), and SDDO Jahmal Ervin (Dkt. 39, Exh. A) at the October 3, 2025 evidentiary hearing unless the declarants appear for live testimony subject to cross-examination.

INTRODUCTION

This case has reached its present posture because ICE revoked Mr. Guerra-Castro's Order of Supervision in violation of the regulations governing supervised release, see 8 C.F.R. §§ 241.4(l), 241.13(i), on the representation that he would be deported to Cuba *imminently*. Based on this now false representation, this Court denied Petitioner's

preliminary injunction. Afterwards, Petitioner could not be deported to Cuba, which Petitioner indicated since the inception of this action. Nearly three months after, ICE pivoted to deportation to Mexico. Yet has filed no proof that Mexico has agreed to accept him. Now—while relying on affidavits from its officers again—Respondents oppose producing those very affiants for examination at the evidentiary hearing the Court has ordered. The Court ordered an evidentiary hearing and directed the parties to be prepared to address "whether Mexico or another third country has agreed to accept Petitioner." (Dkt. 42). That is a core, disputed question of fact. Respondents' position rests entirely on agency declarations that are inconsistent with one another and raise material credibility issues. An "evidentiary hearing" cannot be reduced to trial by affidavit. If Respondents intend to rely on these witnesses' statements, the witnesses must appear live for cross-examination. Otherwise, the declarations should be stricken or given no weight.

GOVERNING PRINCIPLES

Habeas requires the Court to hear and determine facts. Congress directs that the court "shall… hear and determine the facts" in habeas and "dispose of the matter as law and justice require." 28 U.S.C. § 2243.

Where facts are disputed, the petitioner is entitled to a real evidentiary hearing. The Supreme Court has long held that when material factual issues are raised in habeas, the court must hold a hearing at which evidence is taken and findings are made. *Walker v. Johnston*, 312 U.S. 275, 286 (1941); see also *Townsend v. Sain*, 372 U.S. 293, 312 (1963) (a "full evidentiary hearing" is required when substantial factual allegations are not conclusively resolved by the existing record).

Habeas review must be meaningful, not illusory. *Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (habeas is a "flexible remedy" that must afford meaningful opportunity to challenge detention).

Due process in proceedings threatening significant liberty interests includes the opportunity to confront adverse evidence. See *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970) (recognizing the need for cross-examination where important interests are at stake); cf. *Greene v. McElroy*, 360 U.S. 474, 496–97 (1959) (condemning deprivation of important interests based on secret or untested evidence).

Live testimony is the default for receiving evidence. Fed. R. Civ. P. 43(a) (testimony must be taken in open court absent good cause for contemporaneous transmission). An evidentiary hearing premised on untested affidavits does not satisfy Rule 43(a) or § 2243's command.

ARGUMENT

I. The Court Ordered a Fact Hearing; Affidavits Are No Substitute for Live, Cross-Examinable Testimony

Whether "Mexico or another third country has agreed to accept Petitioner" (Dkt. 42) cannot be determined reliably from paper submissions—especially where the government's own declarants have offered shifting and internally inconsistent accounts. The very purpose of an evidentiary hearing is to test credibility, resolve inconsistencies, and make factual findings based on sworn, cross-examinable testimony and accompanying records. *Walker*, 312 U.S. at 286; *Townsend*, 372 U.S. at 312.

II. Reliance on Un-Cross-Examined Agency Declarations Would Deny Meaningful Habeas Review and Basic Fairness

Detention and removal implicate profound liberty interests. Allowing the government to "litigate by affidavit"—while resisting production of the affiants—deprives Petitioner of the opportunity to confront adverse testimony and deprives the Court of the truth-testing function of cross-examination. That is exactly what *Boumediene* warns against: habeas may not be reduced to a hollow formality. 553 U.S. at 780; see also *Goldberg*, 397 U.S. at 270 (opportunity to confront adverse witnesses is a fundamental element of due process when important interests are at stake).

III. Remedy: Strike, or Preclude Reliance Unless the Declarants Appear Live

If Respondents elect not to produce Alverio, Caraballo, and Ervin for the October 3 hearing, this Court should strike their declarations, or at minimum preclude Respondents from relying on them at the hearing. Alternatively, and only if the Court believes additional time is necessary to secure their attendance, Petitioner requests a brief continuance limited to ensuring live testimony and production of underlying records responsive to the Court's question (proof of acceptance by Mexico or any third country).

RELIEF REQUESTED

Petitioner respectfully requests that the Court enter an order:

1. Striking the declarations of Jesús R. González Alverio (Dkt. 17, Exh. A), Alana Caraballo (Dkt. 34, Exh. C), and SDDO Jahmal Ervin (Dkt. 39, Exh. A) from evidence for the October 3, 2025 evidentiary hearing; or, in the alternative,
2. Precluding Respondents from relying on those declarations unless the declarants appear for live testimony subject to cross-examination at the hearing; and

3. Granting such other relief as the Court deems just and proper to ensure a meaningful evidentiary hearing consistent with 28 U.S.C. § 2243 and Rule 43(a).

Respectfully Submitted on this 1st Day of October, 2025,

/s/ Jose W. Alvarez
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