UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILTON MISAEL PEREZ Y PEREZ

Petitioner

v,

DONALD J TRUMP, *et al*

Respondents.

Case No. 25-Civ. 4828 (DEH)

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PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM OF LAW TO ORDER TO SHOW CAUSE

ARGUMENT

None of the government's arguments dissuade this Court from finding that:

1) Mr. Perez y Perez has established jurisdiction in New York.

2) that the government should not have removed him out of New York after this petition was filed.

3) that Mr. Perez's detention violated his due process rights under the U.S. Constitution, since he was arbitrarily and punitively detained after attending dozens of mandatory ICE check-in over six years and that

4) Mr. Perez should be immediately released into the custody of his wife and children until the decision is made by the Board of Immigration Appeals on his case.

THIS COURT SHOULD ORDER THE RETURN OF MR. PEREZ TO NEW YORK

This Court holds a strong prerogative to issue an injunction in this matter. This Court also has the power to retain jurisdiction in this case until the habeas corpus is decided. As the lawyers for Khalil Mahmoud, see Khalil v. Joyce, 25-cv-1935 (JMF) argued in his petition: "The All Writs Act ("AWA") provides federal courts with a powerful tool to preserve the integrity of their jurisdiction to adjudicate claims before them. See 28 U.S.C. § 1651(a) (authorizing federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); TBG v. Bendis, 36 F.3d 916, 925 (10th Cir. 1994). The Act encompasses a federal court's power to "maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels," F.T.C. v. Dean Foods Co., 384

U.S. 597, 604 (1966), and courts have found that the Act should be broadly construed to "achieve all rational ends of law," California v. M&P Investments, 46 F. App'x 876, 878 (9th Cir. 2002) (quoting Adams v. United States, 317 U.S. 269, 273 (1942))."

This Court should therefore order Mr. Perez's return to New York since respondent was present in New York when the petition for habeas corpus was filed and the government knew that but transported him out of state regardless. The government cannot therefore be said to have acted with requisite diligence, any more than it can now dispatch him to Seattle Washington, as it just cavalierly pledged to do in its papers yesterday.

By the government's own account, it discovered that petitioner had filed the writ of habeas corpus many hours before they chose to transport him out of state. And the government did this, knowing that petitioner requested that this Court order that the government keep him in New York, pending the resolution of his petition. The government proceeded to move him out of the jurisdiction to New Jersey. And now the government is claiming it has imminent plans to ship him to Seattle, WA. The government has been on notice of this petition, this entire time since transporting him, and rather than respectfully await this Court's decision, the government chooses to do with Mr. Perez' corpus what it wishes. That the Court establishes jurisdiction in New York is apparently of no import to the government. Per Mr. Perez, he was moved out of New York 2:00 AM on Monday, June 9 approximately 15 hours after this petition had been filed on Sunday, June 8th at 11 AM. Clearly the government wants to warehouse people wherever it wants, regardless of whether they have access to lawyers, interpreters, legal files, family members, witnesses, or support systems -or worse: nonpartisan legal jurisdictions like New York.

Courts likewise retain comparable, inherent equitable authority to enjoin transfers pending a habeas petition, see 28 U.S.C. § 2243 (habeas courts authorized to order relief "as law and justice require"), and courts regularly exercise that authority. See, e.g., Mem. Op. & Order, Perez Parra v. Catro, No. 24-cv-912 (D.N.M. Feb. 9, 2025) (granting TRO preventing transfer of detained immigrant to U.S. military base at Guantánamo Bay, Cuba) ("Considering the uncertainty surrounding jurisdiction, the Court determines it is necessary to enjoin the transfer of Petitioners to Guantanamo Bay. At this time, the Court cannot say that without this injunction it would not be jurisdictionally deprived to preside over the original writ of habeas corpus should petitioners be transferred. Thus, an injunction is necessary to achieve the ends of justice entrusted to this Court."); see also, e.g., Order, Westley v. Harper, No. 2:25-cv-00229 (E.D. La. Feb. 2, 2025), ECF No. 7; Santos Garcia v. Wolf, No. 1:20-cv-821 (LMB/JFA), 2020 WL 4668189 (E.D. Va. Aug. 11, 2020); Order, Campbell v. U.S. Immigr. & Customs Enf't, No. 1:20-cv-22999-MGC (S.D. Fl. July 26, 2020), ECF No. 13; Order, Sillah v. Barr, No. 19-cv-1747 (S.D.N.Y. Feb. 25, 2019), ECF No. 3; see also Zepeda Rivas v. Davis, 504 F. Supp. 3d 1060, 1077 (N.D. Cal. 2020); Dorce v. Wolf, No. 20-CV-11306, 2020 WL 7264869 (D. Mass. Dec. 10, 2020). (Cited by the lawyers representing Mahmoud Khalil in their brief, Khalil v. Joyce, 25-cv-1935 (JMF)

There are numerous other troubling issues with DHS' conduct in this case – as well as in the recent unprecedented mass arrests of hundreds of immigrants across the United States - for either attending their required court dates or check-ins with DHS. These DHS must-arrest policies lack both foresight and minimal compassion, contributing to an atmosphere of terror, confusion, and unpredictability in immigrant communities, and which ultimately undermine

legitimate enforcement objectives[1]. Families are routinely separated, individuals are detained without clear justification, and the integrity of the legal process is compromised by these arbitrary and reckless policies.

The novel treatment of immigrants who appear at their scheduled court appearances or otherwise are arrested at their Intensive Supervision Appearance Program (ISAP[2]) check-ins, violates constitutional due process and fundamental fairness.

Immigrants subject to the ISAP are placed in an untenable position: comply with court orders and ICE check-ins and be summarily arrested without notice or fail to appear and face severe

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[1] See **ICE Turns Required Check-Ins Into Arrest Dragnet in Lower Manhattan** https://www.thecity.nyc/2025/06/03/ice-arrest-dragnet-manhattan/#:~:text=Federal%20agents%20arrested%20numerous%20immigrants%20at%20required%20check-ins,people%20to%20show%20up%20for%20appointments%20this%20week.

IMMIGRANTS-AT-ICE-CHECK-INS-DETAINED-AND-HELD-IN-BASEMENT-OF-FEDERAL-BUILDING-IN-LOS-ANGELES/ https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/

[2] As of June 11, 2025, ChatGPT describes ISAP as: The Intensive Supervision Appearance Program (ISAP) is an alternative to detention (ATD) program administered by U.S. Immigration and Customs Enforcement (ICE) through private contractors—most notably BI Incorporated, a subsidiary of the GEO Group. ISAP is intended to monitor and ensure compliance by noncitizens with immigration proceedings while allowing them to live in the community rather than being held in immigration detention. The target population is noncitizens released from detention who are awaiting removal proceeding and it includes asylum seekers, families, individuals with prior deportation orders, and others deemed "low risk." ISAP supervision varies by individual risk profile and may include GPS ankle monitors, smartphone app check-ins with facial recognition or voice recognition, telephonic reporting, unannounced home visits, in-person office check-ins. Its goals are to ensure compliance with immigration court appearances, increase rates of appearance at hearings, and facilitate case resolution without the cost and resource burden of detention. ISAP has faced significant scrutiny from immigration advocates, legal organizations, and human rights groups. Advocates argue it subjects immigrants—many of whom have not committed crimes—to invasive monitoring and surveillance akin to criminal probation, The use of ankle monitors has been criticized for stigmatization, anxiety, and interference with daily life, including employment. Many participants report confusion about program rules, limited legal support, and abrupt arrests at check-ins—raising concerns about transparency and trust. Delegation of monitoring to private companies raises questions about oversight, profit motives, and abuse (cleaned up).

legal consequences for noncompliance (like in absentia removal orders for their "intentional" failure to appear). From a legal perspective, an *in-absentia* order can only be issued by a judge after a finding that the immigrant intentionally did not appear for her hearing. When immigrants are threatened with arrest if they do appear, how can immigration judges ever make *a finding of willful absence*? When they appear to their appointments, they are being arrested and often placed in expedited removal. The result is both illogical and merciless. From a due process perspective, it is also illegal; from a practical perspective, it is counterproductive at best, and destructive for the rule of law, at worst. *The Hobson's Choice* created by this policy undermines all procedural justice. Immigrants who make good-faith efforts to follow the law are shockingly penalized for their compliance and then banished from their families without notice.

This punitive approach targets those who are actively attempting to cooperate with immigration authorities, placing them under harsh and contradictory pressures. The ISAP program, which is ostensibly designed to ensure compliance, in practice often serves to entrap and punish. The policy consequences are dire. Immigrants may become increasingly reluctant to attend mandated appearances out of fear they will be detained and effectively disappeared.

In the present case, last Saturday, Mr. Perez y Perez after six years where he went in for dozens of check-ins, complied with a directive to appear at an ICE office, only to be jailed first, then shipped to New Jersey, on the way probably to Seattle, WA and then to Guatemala, if the government has its way, even while he has a pending motion with the BIA to vacate the removal order. His arrest has nothing to do with a legitimate governmental objective. It is meant to signal to him and others: "do not continue asserting your legal rights in the appellate process because if you do, we will yank you from the streets and banish you from your family".

We respectfully request that this Court order the immediate release of Mr. Perez. The government has not provided any valid justification for his continued detention. It is incomprehensible that DHS can claim ignorance that his criminal case was completely and unconditionally dismissed. *The false charge that he was accused of was completely dismissed.* Upon investigation that charge, incidentally, involved an argument with a mechanic who after overpricing Mr. Perez for repair on his vehicle, assaulted him and called the police in order to cover his tracks and dispatch with an irate customer. Attached, please find a copy of the certificate of disposition proving that the case was dismissed many months ago. DHS had sufficient information to locate his prior arrest, but allegedly lacked the resources to learn that the case had been completely dismissed? That DHS could not expend the minimal effort to place a phone call to confirm the disposition of a case it would include in an affidavit to this Court, is implausible. Instead, the deportation officer claims that he does not know the status, something that could be ascertained in three minutes by a lay person and in seconds by a federal law enforcement agent.

The government's claim that it somehow suffers an undue burden in keeping Mr. Perez near his home, wife and kids in New York because it must move another immigrant detainee from his current facility is equally absurd. Delaney Hall houses over one thousand immigration prisoners who constantly go in and out of that facility. To say that it must ship Mr. Perez, twenty-four hundred miles to Seattle, WA, because it is the only place that will take him is beyond incredible.

MR. PEREZ Y PEREZ WOULD BE IRREPARABLY HARMED IF HE WERE TRANSFERRED OUT OF THE JURISDICTION OF NEW YORK.

Mr. Perez has a family and children that he supports, including an 18-month-old baby. The irreparable harm that will occur to his family by having him not be able to support them and having the children stripped from the presence of the father at home - by any definition - constitutes irreparable harm. Irreparable harm also extends to children that will not have money to eat or the parental support of a father. During the last three days, his children are crying, not knowing where the father is and are suffering tremendously as, is his wife. She will soon become destitute without the ability of having her husband, who is the sole provider who can take care of this vulnerable at-risk family in expensive New York. (Clearly, Mr. Perez is not alleging prolonged detention - he's only been detained for five days to date). However, the government has promised to immediately ship him to the other side of the nation, thousands of miles away from his family, as a way port to immediate deportation. The government has promised that they will deport him to Guatemala, all without the concluding the appellate process. This absolutely constitutes irreparable harm to him and his family.

Regarding the likelihood of success on the merits, the BIA motion to reopen is very strong. As explained in the attached BIA motion, after his deportation hearing (where he did not have access to a lawyer and he represented himself in a foreign language), Mr. Perez had the tragedy of having his brother killed by the same criminal actors that were extorting him and threatening to kill him. So, you have a case where there was a demonstrated danger of past and future persecution on account of being a member of a particular social group -his well-known family- which is realized by the real life murder of his brother. So, the chances of success in that motion are high.

For all these reasons, and in the totality of the circumstances, we pray that this court grant the restraining order and restrict the government from removing him out of the New York

jurisdiction so that he can be near his family, his lawyers and stand a fighting chance of remaining in this country until the appellate process is concluded.

MR. PEREZ SHOULD BE RELEASED FROM JAIL IMMEDIATELY.

As explained elsewhere in this motion, Mr. Perez is a law-abiding father, a former elementary school teacher, a hard-working family man, who now works in the construction area in Queens. He does not have any criminal record anywhere in the world. Moreover, he's completely motivated to live a law-abiding life, as he is waiting for the critical results from the Board of Immigration Appeals on his case. He has absolutely no incentive to flee, as evidenced by his literally dozens of check-ins with ICE during the last six years. For all these reasons, he meets every standard to be released, and he never should have been taken into custody in the first place. The ISAP program is specifically designed for immigrants that are low risk of absconding: they are vigorously pre-screened for risk. The monitoring of low-risk immigrants is the *raison d'etre* of the ISAP program.

Mr. Perez was taken into custody in violation of his constitutional right to due process in a tsunami of aggressive and illegal enforcement action that continue unbridled and worsen each day. Mr. Perez comes to this Court, humbly and most respectfully, seeking justice: for him and possibly for the other silenced immigrants that are being subjected to unlawful and arbitrary detentions, that fly squarely in the face of a robust and longstanding constitutional legal tradition.

Respectfully submitted.

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