

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

FORT MYERS DIVISION

Case No.: 2:25-cv-697

MANUEL YAX ZAPETA,

Petitioner,

v.

KEVIN GUTHRIE, in his official capacity as
Executive Director of the Florida Division of
Emergency Management,

ZOELLE RIVERA, in his official capacity over the
Enforcement and Removal Office, Miramar, Florida;

TODD LYONS, in his official capacity as Acting
Director, Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as
U.S. Secretary of Homeland Security;

SIRCE OWEN, in her official capacity as Acting
Director of EOIR;

GARRETT RIPA, in his official capacity as Field
Office Director, Miami Field Office;

Respondents.

**PETITIONER'S RENEWED EMERGENCY REQUEST
FOR TEMPORARY RESTRAINING ORDER**

Petitioner Manuel Zapeta, by and through undersigned counsel, respectfully moves this Court pursuant to Fed. R. Civ. P. 65 for a Temporary Restraining Order ("TRO") enjoining Respondents from removing him from the United States and ordering his immediate return to the Southern District of Florida, where jurisdiction over his habeas petition is currently vested.

INTRODUCTION

On information and evidence below, and right as Petitioner's Amended Petition for Writ of Habeas Corpus was filed, Respondents have transferred Mr. Zapeta from the Dade-Collier Training and Transition Airport detention facility, (colloquially known as "Alligator Alcatraz") in Ochopee, Florida, to the Alexandria Staging Facility in Louisiana — a known pre-deportation staging site — in preparation for imminent removal.

Mr. Zapeta's habeas petition is pending before this Court, challenging ICE's unlawful re-detention nearly three decades after a final removal order, following years of full compliance under an Order of Supervision ("OSUP"). This Court's jurisdiction has already attached, and removal at this stage would moot the petition and deprive the Court of the ability to provide effective relief.

Federal courts confronted with materially similar facts in *Ortega v. Kaiser*, No. 2:25-cv-00076 (W.D. Wash. Mar. 5, 2025), and *Galindo Arzate v. Andrews*, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025), have granted TROs preventing removal and ordering release where ICE re-detained compliant noncitizens without due process. The same relief is warranted here — and time is of the essence.

PROCEDURAL BACKGROUND

The Petitioner, is in federal custody and is currently detained at the Alexandra Staging Facility in Alexandria, Louisiana where he was improperly relocated to on August 7, 2025, following detention at Dade-Collier Training and Transition Airport detention facility, (colloquially known as "Alligator Alcatraz") in Ochopee, Florida, where he had been held in custody since July 23, 2025.

On August 6, 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 August 5, 2025, this Honorable Court issued an Order to Show Cause. Respondents' answer to the petition is due on August 15, 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.

UNDISPUTED FACTS

The Petitioner is a native and citizen of Guatemala who entered the United States in 1995. He has remained in this country since then. Prior to his detention, he resided in Ft. Pierce, Florida, with his U.S. Citizen wife. After a contentious battle for asylum he was ordered removed by an immigration judge on April 18, 1996. The basis for removal solely based on unlawful presence and entry into the United States. He has never been detained, arrested, or committed a crime. He has worked lawfully in the United States with a work permit Respondents issued to him, and he reports routinely on supervision to the Miramar ICE-ERO Office. He was arrested on July 23, 2025, at that same Miramar ICE-ERO Office, where he was lawfully appearing per his supervision requirements.

Currently, Mr. Zapeta is actively pursuing adjustment to lawful status, beginning with I-130 Petition for Alien Relative that his wife filed for him, which is presently pending before USCIS..

On August 7, 2025, Petitioner's wife undersigned counsel the following email.

77629583680_50CD5208-CB41-4385-AD9E-DFC77A6B427F-preview.pvt



Ada Watler <adawatler@yahoo.com>

To: Jose W Alvarez



Thu 8/7/2025 8:55 PM

Good evening just wanted to let you know the they transported Manuel to Louisiana. He told them what you told me to tell them but they said that it didn't matter and he had to go. Now that's he is in Louisiana at the Air Force Base detention center for ice, what can we do to get him back to Florida? His detainee number is [REDACTED] Can you find out to be sure that he's there?

Ada Watler

On Aug 7, 2025, at 7:39 PM, Jose W Alvarez <JoseW@marykramerlaw.com> wrote:

This transfer occurred without Petitioner being given any documents to sign by Respondents. Agents of Respondent are aware that Petitioner was represented by undersigned counsel, and made no efforts to inform counsel of his transfer. Undersigned Counsel had just early today been confirmed for a virtual visitation visit with agents of Respondents.

Virtual Attorney Meeting Request



TNT - Legal <legal@privacy6.com>

To: Bianca Malatesta

Cc: Jose W Alvarez; Denisse Penaherreradenisse@gmail.com



Thu 8/7/2025 7:06 PM

Some content in this message has been blocked because the sender isn't in your Safe senders list.

Trust sender

Show blocked content

Good afternoon,

The Zoom Visit has been scheduled for the Detainee Manuel Yax Zapeta [REDACTED] Please see all the details below:

Date: Aug 11, 2025, 11:30 AM Eastern Time (US and Canada)

Meeting ID: 875 7246 6357

Passcode: 840771

Zoom Link: <https://us06web.zoom.us/j/87572466357?pwd=ATNexorHq7PUFjIRaAsPOGxaug5oM.1>



Join our Cloud HD Video Meeting

Zoom is the leader in modern enterprise cloud communications.

us06web.zoom.us

Respectfully,

Southern Detention Coordination Team

...

Undersigned counsel has not received any such paperwork in any medium. Counsel was able to confirm using the ICE Locator System that he is indeed at the Alexandra Staging Facility in Louisiana.

Search Results: 1

MANUEL F YAX ZAPETA

Country of Birth : Guatemala

A-Number: 

Status : In ICE Custody

State: LA

Current Detention Facility: ALEXANDRA STAGING FACILITY

** Click on the Detention Facility name to obtain facility contact information*

The officer never told Petitioner that Guatemala or another country had responded to their request for deportation. No further details were provided. As such, Mr. Zapeta has been in custody since July 23, 2025, based on Respondents posturing that his deportation was imminent or significantly likely to Guatemala or another country, but remains unsubstantiated.

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 tips in the movant's favor, and (4) That an injunction serves the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). When removal is imminent, courts may issue TROs to preserve their jurisdiction and prevent irreparable harm. *Ortega*, slip op. at 8–9; *Galindo Arzate*, 2025 WL 2230521, at *8. He is currently held at the Alexandria Staging Facility in Louisiana, a known last-stop staging site for deportation flights. Removal from this location could occur within hours, extinguishing this Court's jurisdiction. As in *Ortega* and *Galindo Arzate*, where compliant OSUP petitioners faced

unlawful re-detention, the equities strongly favored the noncitizen because the government tolerated their presence for years without incident. Further, detention at Alexandria severely limits meaningful access to counsel, itself a recognized form of irreparable harm.

ARGUMENT

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

In *Ortega*, 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 8 U.S.C. § 1231(a)(6) where removal was not reasonably foreseeable.

In *Galindo Arzate*, 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.

i. Petitioner did not violate OSUP.

Respondents violated the law in detaining Petitioner.¹ 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.*

¹ 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

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 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 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 Guatemala, 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 27 years after the removal period expired, Respondents have made no showing that removal to a third country is imminent, or "reasonably foreseeable." 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).

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.

B. Petitioner Faces Immediate and Irreparable Harm

He is currently held at the Alexandria Staging Facility in Louisiana, a known last-stop staging site for deportation flights. Removal from this location could occur within hours, extinguishing this Court's jurisdiction. Further, detention at Alexandria severely limits meaningful access to counsel, itself a recognized form of irreparable harm.

The harm here is both certain and imminent. Mr. Zapeta is currently held at the Alexandria Staging Facility, the final transfer point before deportation flights depart the United States. Once removed, this Court will be unable to grant effective habeas relief, rendering the case moot. Loss of liberty and forcible removal from the country after decades of lawful presence under government supervision are quintessential irreparable injuries. See *Ortega*, slip op. at 9; *Galindo Arzate*, 2025 WL 2230521, at *8.

C. The Balance of Equities Favors Petitioner

As in *Ortega* and *Galindo Arzate*, where compliant OSUP petitioners faced unlawful re-detention, the equities strongly favored the noncitizen because the government tolerated their presence for years without incident.

The government suffers no prejudice from returning Mr. Zapeta to supervised release — the same status it maintained for years — while the harm to him from continued detention and potential removal is severe, personal, and irreversible. This precise balance favored TROs in both *Ortega* and *Galindo Arzate*. Petitioner was the primary financial breadwinner for his family. Information attached to the petition establishes his strong ties. Detaining him at taxpayer expense, to the detriment of his family, accomplishes nothing. He was allowed to remain in the United

States for 27 years. ICE had opportunity in 1998, after his final order, and again in 2020, but instead put him on OSUP.

D. The Public Interest Supports the TRO

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. See *Galindo Arzate*, 2025 WL 2230521, at *8. 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 Alexandra-- and to work to support his family.

If Respondents truly believe that removal 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 and community. Petitioner has strong family ties, a good job, and United States Citizen wife. Equities and the public interest weigh in favor of release with conditions.

E. Petitioner also 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 "detention far outside the statutory removal period contemplated by Congress" habeas petition. Petitioner cites *Zadvydas* for its analysis of the post-removal order detention statute at 8 U.S.C. § 1231. Under that statute, Respondents shall remove an alien in 90 days immediately after an order. 8 U.S.C. § 1231(a)(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 put on OSUP. The post-removal order period long expired. Clearly, Respondents could not practically or legally execute removal. Now, the statute and regulations (discussed below) control. The Court should reject any categorization of the petition as a detention far outside the statutory removal period contemplated by Congress 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.

F. Petitioner seeks his transfer back to South Florida.

Petitioner asks this Court to order him transferred back to Dade-Collier Training and Transition Airport detention facility or even to Krome Detention Center in Miami Florida, where it was believed he would be transferred. Just yesterday, Counsel requested his release from detention and an order to show cause for release. One day later, he was transferred to Louisiana. Again, undersigned counsel was never notified.

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 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.

RELIEF REQUESTED

Petitioner respectfully requests that this Court:

1. Issue a Temporary Restraining Order enjoining Respondents from removing Mr. Zapeta from the United States during the pendency of his habeas petition;

2. Order Respondents to return Mr. Zapeta to the Southern District of Florida immediately;
3. Set an expedited hearing on a preliminary injunction; and
4. Grant any further relief this Court deems just and proper.

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.

Respectfully submitted on this day 8th of August, 2025.

Manuel Yax Zapeta

By his attorney,

/s/ Jose W. Alvarez

Jose W. Alvarez

FL Bar No. 1054382

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(Certification of Notice on subsequent page)

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

I, Jose W. Alvarez, counsel for Petitioner, certify that on August 8, 2025, at 3:00 p.m. EDT, I conferred by telephone with Kevin R. Huguelet, Assistant United States Attorney for the Middle District of Florida, regarding Petitioner's Emergency Motion for Temporary Restraining Order. During that conversation, I informed the AUSA of Petitioner's intent to refile the motion immediately following the call. The AUSA stated Respondents are in opposition to the Temporary Restraining Order. This certification is made in compliance with Rule 65(b)(1)(B).

/s/ Jose W. Alvarez

Jose W. Alvarez

Counsel for Petitioner

Date: August 8, 2025