

**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, *et al.*,

Respondents.

**PETITIONER'S EMERGENCY MOTION FOR ORDER DIRECTING RETURN
OF PETITIONER TO THE UNITED STATES**

Petitioner **MANUEL YAX ZAPETA**, by and through undersigned counsel, respectfully moves this Honorable Court pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651, for an Order directing Respondents to immediately facilitate his return to the United States.

INTRODUCTION

This relief is necessary to restore the *status quo ante* and preserve the Court's jurisdiction after Respondents surreptitiously deported Petitioner to Guatemala while his Emergency Temporary Restraining Order ("TRO") and Writ of Habeas Corpus were pending and under active consideration by this Court. The deportation occurred despite Respondents' actual knowledge of these proceedings, the pending TRO, and the Court's engagement on the matter, including a direct call from the Court's chambers to both parties on the day of removal through their own counsel.

The Court's authority to order Petitioner's return flows from its inherent equitable powers to preserve its jurisdiction, remedy violations of due process, and enforce its orders. *See Califano v. Yamasaki*, 442 U.S. 682, 705 (1979); *Peacock v. Thomas*, 516 U.S. 349, 356 (1996). Such return orders are well-established in both statutory and equitable contexts, particularly where, as here, the government acted in a manner that effectively deprived the Court of its ability to adjudicate pending relief.

PROCEDURAL BACKGROUND

On August 6, 2024, Petitioner filed an Amended Petition for Writ of Habeas Corpus, challenging his re-detention and seeking release from ICE custody. (Doc. 4). That same day, Petitioner filed an Emergency Motion for Temporary Restraining Order to enjoin his removal. (Doc. 5). On August 8, 2024, after learning that ICE was moving Petitioner between facilities and denying him access to counsel, Petitioner filed a Renewed TRO to prevent further irreparable harm. (Doc. 12). Respondents filed their opposition to the TRO on Friday, August 9, 2024. (Doc. 13). Petitioner filed his reply the next day, Saturday, August 10, 2024. (Doc. 15).

On August 12, 2024, the Court's chambers called both parties to advise that the Court intended to grant the TRO after learning that Petitioner's location was unknown and that he was in the process of being removed. By that time however, Petitioner—through the custody of Respondents—had been placed on a removal flight to Guatemala and/or removed that day.

At no time did Respondents provide advance notice of Petitioner's deportation to the attorneys or to the Court, despite the pendency of the TRO motion, the Court's active involvement, and multiple efforts to ascertain such critical information.

JURISDICTION AND RESTORATION OF *STATUS QUO ANTE*

This Court retains jurisdiction over this matter under 28 U.S.C. § 2241, Article III of the United States Constitution, and its inherent equitable powers, including authority under the All Writs Act, 28 U.S.C. § 1651(a). Absent the clearest command from Congress to the contrary, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction. *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979); *Peacock v. Thomas*, 516 U.S. 349, 356 (1996).

The Supreme Court has made clear that the authority conferred upon federal courts would be entirely inadequate to the purposes for which it was conferred if courts lacked the power to enforce their judgments and preserve their jurisdiction. *Peacock*, 516 U.S. at 356. The All Writs Act provides such authority, empowering courts to issue all writs necessary or appropriate in aid of their respective authority.

Ordering Petitioner's return is a classic exercise of this equitable authority to restore the status quo ante—placing the parties in the position they occupied prior to Respondents' unlawful and covert deportation. *See, e.g., Nken v. Holder*, 556 U.S. 418, 435 (2009) (recognizing that courts have the power to maintain the status quo while cases are pending to ensure meaningful judicial review).

Because Petitioner's amended habeas petition (Doc. 4) and TRO (Doc. 12) were pending at the time of his removal, and Respondents had custody of Petitioner at all material times, this Court has continuing jurisdiction to order his return. Such an order is necessary to prevent Respondents from evading judicial review through unilateral action.

LEGAL ARGUMENT

A. Due Process Violations

Respondents' removal of Petitioner without meaningful notice or an opportunity to confer with counsel violates fundamental due process rights guaranteed by the Fifth Amendment. As the Supreme Court recently stated, "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *A.A.R.P. v. Trump*, No. 24A1007, slip op. at 4 (U.S. May 16, 2025). Likewise, being told that a person is being deported as they are being placed on a bus carrying out deportation "does not pass muster." *Id.*

Here, Respondents not only failed to provide adequate notice to Petitioner, but they also denied him access to counsel while his habeas petition (Doc. 4) and TRO (Doc. 12) were pending. Despite multiple attempts by counsel to schedule virtual attorney visits, Petitioner was repeatedly moved between facilities, often without explanation, and at critical times during the litigation.

The government's conduct mirrors the concerns expressed in *Madrigal v. Holder*, 572 F.3d 239, 245 (6th Cir. 2009), where the court held that allowing the government to cut off a statutory right to appeal by removing an individual before a stay could be issued "strikes us as a perversion of the administrative process." Similarly, in *Boumediene v. Bush*, 553 U.S. 723, 765–66 (2008), the Supreme Court rejected arguments that would allow the government to manipulate the scope of habeas corpus jurisdiction. *Kucana v. Holder*, 558 U.S. 233, 237 (2010), likewise emphasized that statutes should not be read to give the Executive unilateral authority to remove cases from the Judiciary's domain.

In short, the timing and manner of Petitioner's removal—occurring while judicial relief was being actively considered—deprived him of a meaningful opportunity to be heard, in direct violation of due process principles.

B. Case Law Supporting Return Orders

This Court has authority to order Petitioner's return as part of its inherent equitable authority. *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction."); *Peacock v. Thomas*, 516 U.S. 349, 356 (1996) (holding that courts' authority would be "entirely inadequate to the purposes for which it was conferred by the Constitution" if they did not have the power to enforce their judgments).

Courts routinely order return, or the facilitation of return, of individuals wrongly removed. *See Arce v. United States*, 899 F.3d 796, 799 (9th Cir. 2018) (describing unlawful deportation in violation of judicial stay and later return pursuant to court order); *Nunez-Vasquez v. Barr*, 965 F.3d 272, 286 (4th Cir. 2020) ("[W]e are ordering Nunez-Vasquez's return because his presence is necessary to effectuate judicial relief" (internal quotations omitted)); *Orabi v. Att'y Gen.*, 738 F.3d 535, 543 (3d Cir. 2014) (granting petition for review and ordering return); cf. *Samirah v. Holder*, 627 F.3d 652, 665 (7th Cir. 2010) (ordering return to allow individual to pursue pending application to adjust status); *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *10 n.2 (10th Cir. Aug. 5, 2021).

In many other cases, where DHS initially refused to facilitate return, the agency did so after a complaint was filed in district court. *See, e.g., Fedoshchuk v. CBP*, No. 23-cv-089210-ODW-SK (C.D. Cal., filed Oct. 23, 2023); *Apostolov v. DHS*, No. 19-cv-01309 (C.D. Cal., filed July 2, 2019); *Balthazar v. Nielsen*, No. 18-cv-10590-RWZ (D. Mass., filed Mar. 27, 2018); *Nicio Lopez v. Sessions*, No. 18-cv-5397 (N.D. Cal., filed Aug. 31, 2018); *Previl v. DHS*, No. 1:13-cv-23230-MGC (S.D. Fla., filed Sept. 6, 2013); *Hairo*

Garcia v. DHS, No. 12-0354 (M.D. Tenn., filed Apr. 5, 2012); *Alcaraz v. Napolitano*, No. 11-3716 (N.D. Cal., filed July 29, 2011).

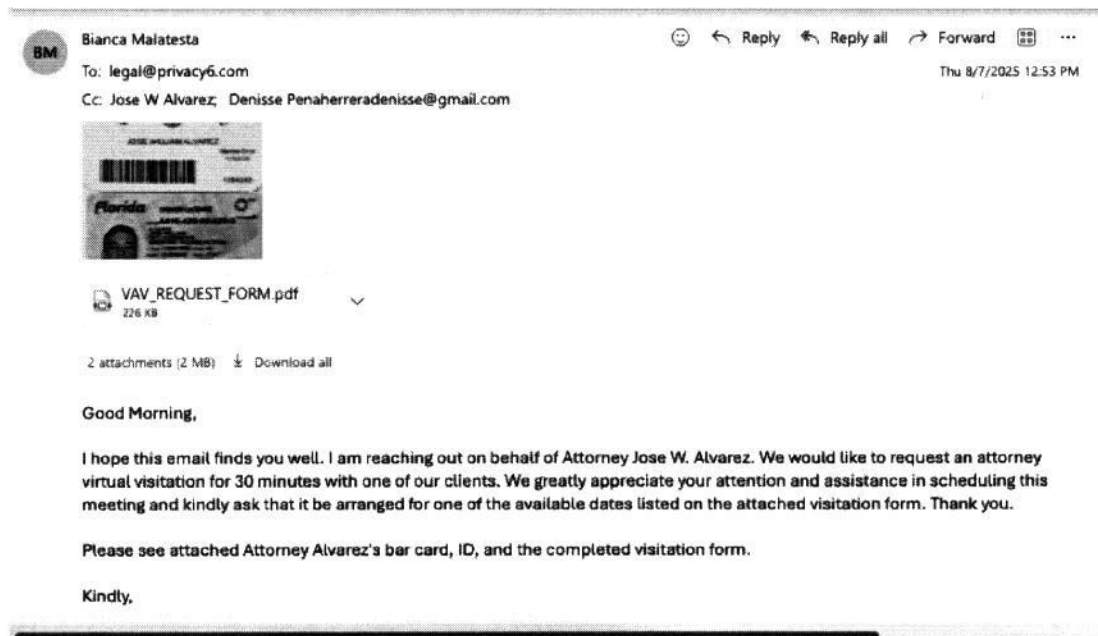
Returning persons unlawfully deported is also in keeping with Congressional instruction that DHS agencies “shall leverage all mechanisms provided by current law to facilitate the return to the United States of those whose removal was contrary to law, whose removal order has since been overturned or reopened by judicial order, where the return of an individual would correct an error or assist in an ongoing criminal or any other federal, state, tribal, or territorial investigation.” Joint Explanatory Statement accompanying Div. F, FY 2022 Consol. Appropriations Act, Pub. L. No. 117-103 (Mar. 15, 2022), available at 168 Cong. Rec. H2402 (Mar. 9, 2022).

Here, DHS deported Petitioner without informing him, denied him access to speak with his counsel, failed to provide notice to his counsel, and removed him during the pendency of this matter. The right to due process and to an opportunity to apply for the protection federal law provides has been strongly affirmed by the Supreme Court in similar contexts, even in recent days. *See A.A.R.P. v. Trump*, No. 24A1007, 2025 WL 1417281, at *2 (U.S. May 16, 2025) (explaining that due process requires adequate notice and time to assert a claim in the context of removal). Return is imminently reasonable—and necessary—in such a situation, as the Supreme Court recognized in *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025) (holding that district court “properly” required government to facilitate return where individual was deported in violation of withholding of removal protections); *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112 (4th Cir. Apr. 17, 2025) (denying government request for stay pending appeal and reaffirming government must actively seek return of erroneously deported noncitizen).

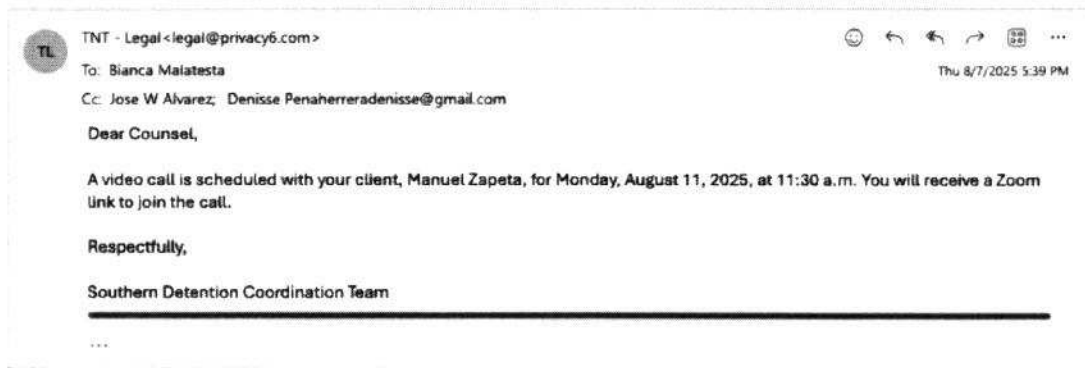
It is clear that federal courts across the country have exercised their equitable powers to order the return of noncitizens unlawfully removed while judicial proceedings were pending. This authority flows from the courts' inherent ability to enforce their judgments and prevent evasion of review. As such, these cases demonstrate that ordering return is neither extraordinary nor impractical; it is a necessary remedy to preserve judicial authority and protect fundamental rights.

C. Respondents' Conduct and Obstruction

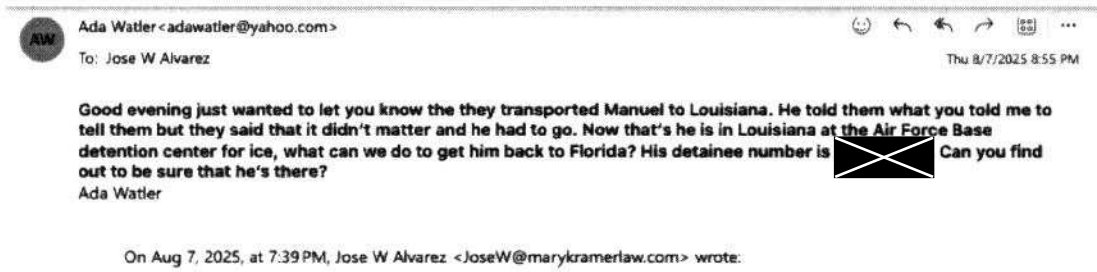
Respondents' actions in this case demonstrate a pattern of evasion, lack of transparency, and obstruction of Petitioner's access to counsel and the Court. Beginning on August 7, 2025, undersigned counsel scheduled a virtual attorney visit ("VAV") with Petitioner at the Dade-Collier Training and Transition Airport detention facility after filing a habeas (Doc. 1).



The meeting was confirmed that evening at 5:39 p.m., with the Zoom link provided at 7:06 p.m.

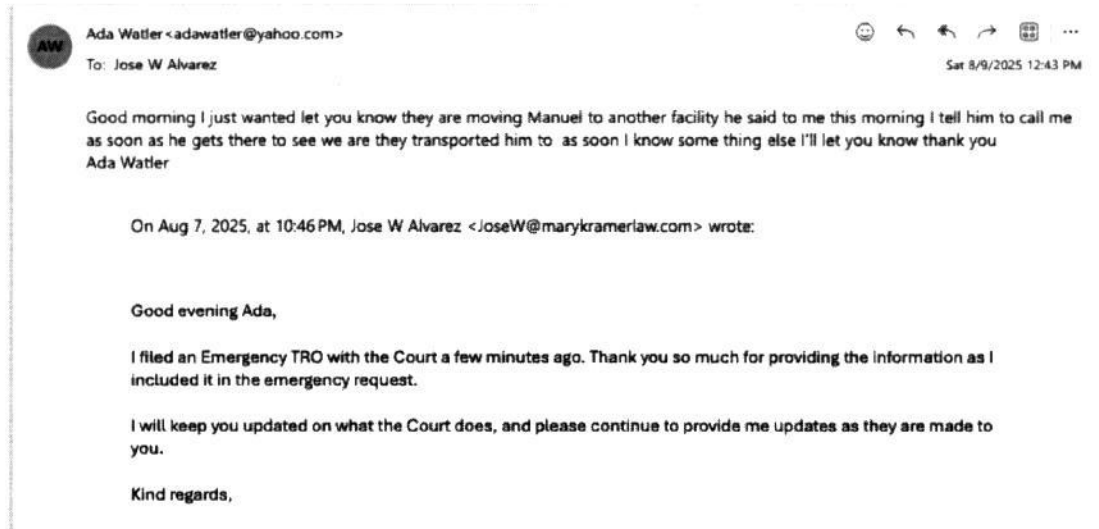


However, later that night, Petitioner's wife reported that he was being moved despite the pending habeas petition (Doc 4) and TRO (Doc 12). When Petitioner asked the agents about his pending case, they told him they "did not care" and that he "had to go."



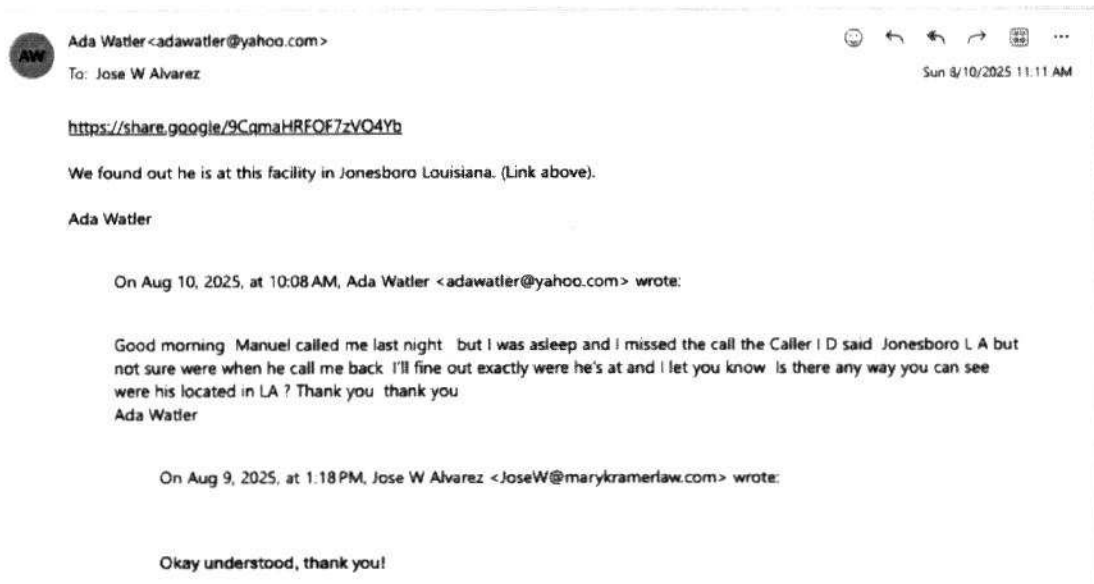
Counsel understood this to mean Alexandria Staging Facility in Alexandria, Louisiana.

At August 9, 2025, at 12:43 p.m. after the filing of Respondent's Answer (Doc. 13) in the evening of August 8, 2025, and Petitioner's Reply (Doc 15) on the morning of August 9, 2025, Petitioner's wife informed counsel that Petitioner was being transferred again.

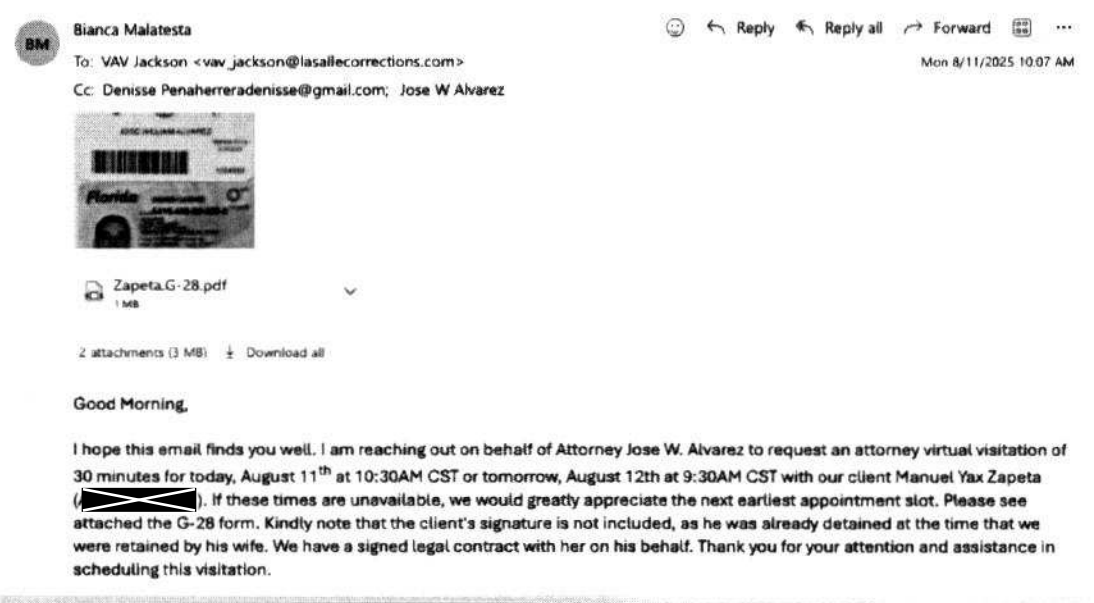


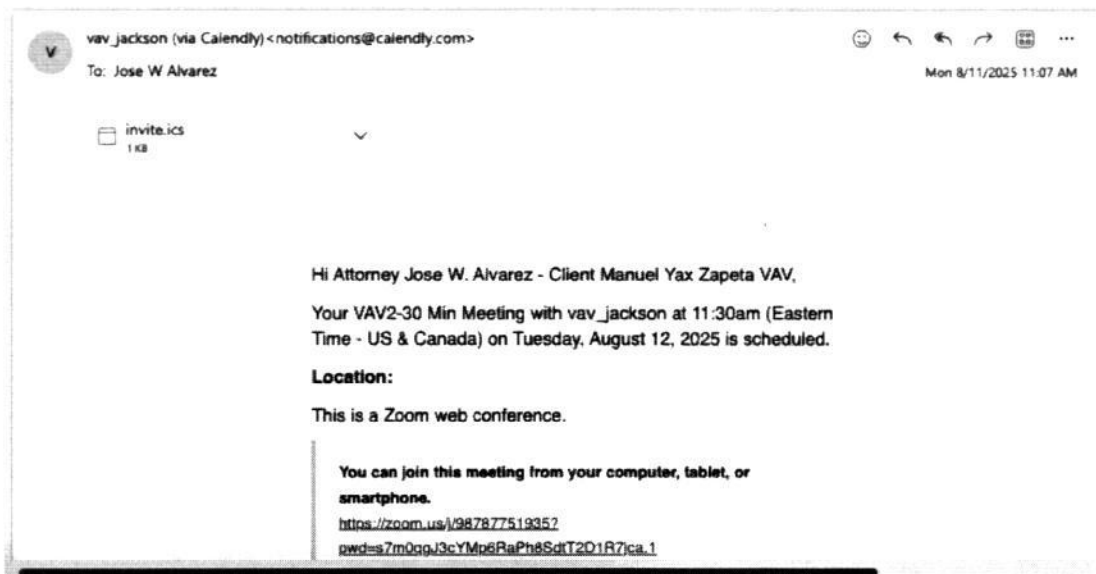
Counsel for Petitioner would never have been able to schedule a visit at this facility, even if it was not the weekend, due to the practically immediate movement of Petitioner by Respondents.

Unsure as to the time Petitioner was moved, Petitioner's wife once again told counsel on August 11, 2025, at 11:11 a.m., that he was at Jackson Parish Detention Center in Jonesboro, Louisiana.

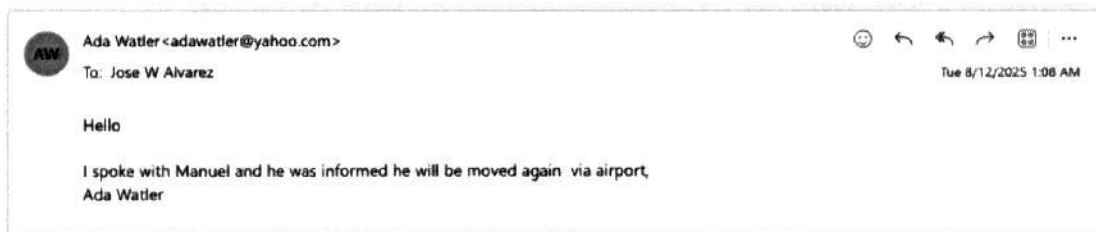


Counsel attempted to schedule a VAV with Jackson Parish on the morning of August 12, and the meeting was set for 11:30 a.m.

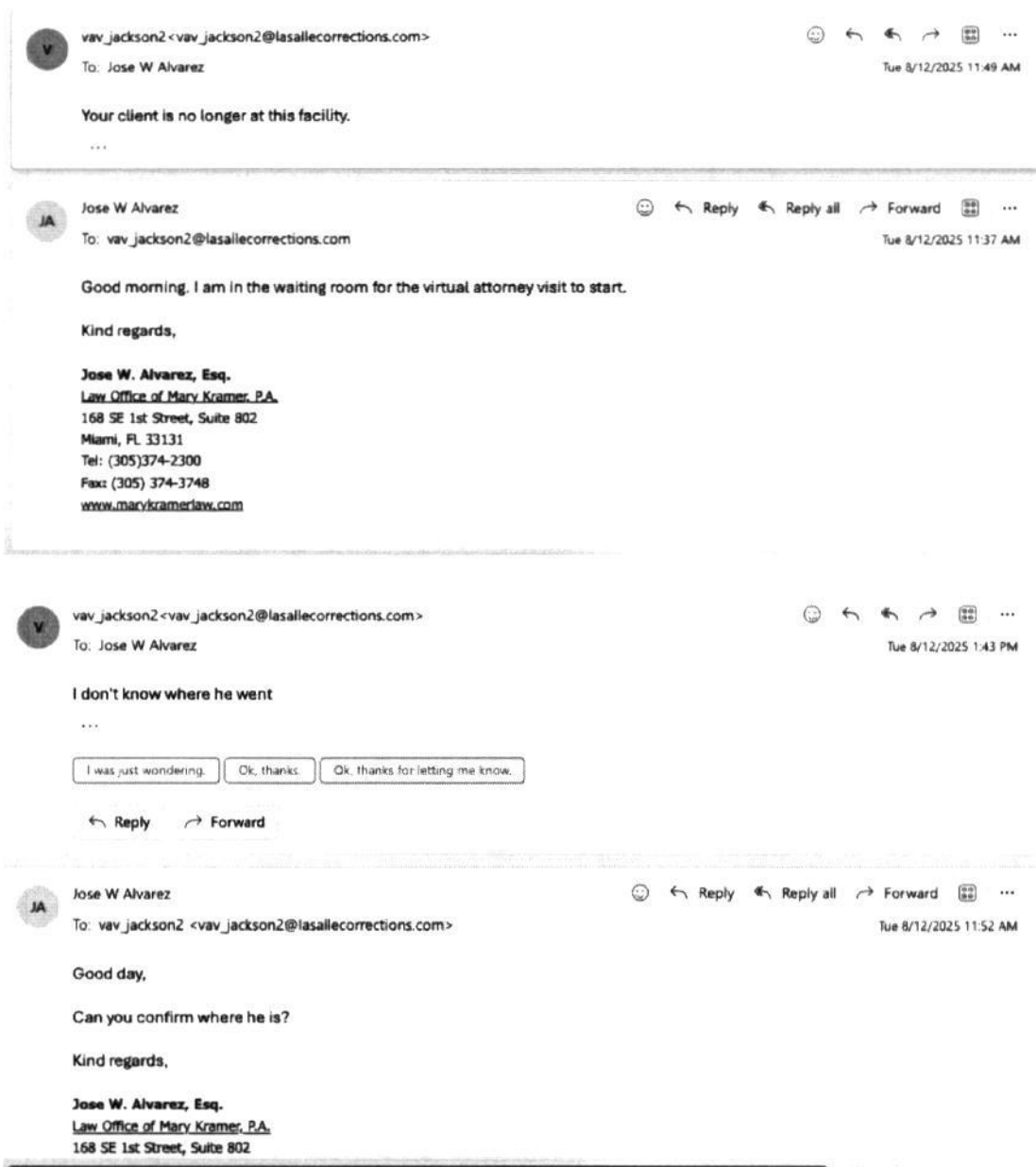




Just after midnight that day, at 1:08 a.m., Petitioner called his wife to say he was being moved again. He could not confirm whether this was a deportation or another transfer, because Respondents gave him no information.



Later that morning, while undersigned counsel waited for the scheduled VAV, Jackson Parish staff stated that Petitioner was no longer at the facility and claimed they “did not know” where he was.



Yesterday, on August 12, 2025, at approximately 1:30 p.m., after counsels for both parties communicated to the chambers the urgency of the matter believing deportation had occurred or was occurring, and counsel for Petitioner requested an immediate ruling on the TRO (Doc 12), chambers telephoned both parties stating that the TRO (Doc. 12) would be granted.

Petitioner's wife later reported that she received a call from Guatemala (country code +502) at 2:10 p.m. EST indicating Petitioner had arrived there a few minutes prior. It was later confirmed by Petitioner's wife that Petitioner been in Guatemala for approximately an hour from the time he was able to access a phone and call. Respondents were unable to provide concrete details regarding the flight, its departure, or arrival time, despite such information being easily verifiable through ICE flight logs.

From the moment Petitioner's amended habeas petition was filed on August 6, 2025, (Doc 1) to August 12, 2025, Petitioner's wife informed counsel of his movements before Respondents' own counsel was even aware of them—underscoring a breakdown in communication within the government and a lack of candor to the Court.¹ This timeline demonstrates not only a disregard for Petitioner's constitutional rights, but also a willful effort to circumvent this Court's jurisdiction.

D. Balance of Hardships and Public Interest

The balance of hardships and the public interest overwhelmingly favor ordering Petitioner's immediate return. When the Government is the opposing party, these two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Petitioner faces severe and irreparable harm: the deprivation of his statutory and constitutional rights, separation from his wife and community, and forcible return to Guatemala, where he previously fled due to threats and violence. This risk is not hypothetical²; Petitioner's fear of persecution in Guatemala has been central to his claims

¹ Undersigned counsel respectfully requests that this Honorable Court should take note and give the upmost weight to the fact that if not for Petitioner and his Petitioner's wife, counsel for Petitioner would have essentially no information, and would not have been able to hastily schedule these visits, and communicate with counsel for Respondents.

² It is understood that the BIA, as well as the immigration judge believed that his claims did not warrant a granting of asylum; this however does not mean that his claims were not true and meritorious.

for protection and remains before this Court. His deportation—effectuated while his emergency motion was pending—has placed him in precisely the danger he sought to avoid, and without the Court’s intervention to secure his return, those harms will continue unabated.

Respondents, by contrast, face minimal burden in facilitating Petitioner’s return. DHS has returned unlawfully deported individuals in numerous cases, often within days, and possesses the logistical capability to do so here. Normally, a re-entry document called a “parole” under 8 U.S.C. 1182(d)(5) is issued. As the Ninth Circuit has recognized, “the balance of hardships tip decidedly in plaintiffs’ favor” when “[f]aced with such a conflict between financial concerns and preventable human suffering.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Defendants “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013), rev’d sub nom. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) (reversing on statutory interpretation grounds without disturbing the Ninth Circuit’s balance-of-harms analysis) (overturning on statutory interpretation grounds without disturbing this principle regarding the balance of harms). The public interest is served by ensuring the faithful execution of the immigration laws and respect for the protections Congress has enacted, as well as treaty obligations. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration laws applied correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (highlighting “the public’s interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors”).

CONCLUSION

For the foregoing reasons, this Court has both the jurisdiction and the equitable authority to restore the *status quo ante* by ordering Petitioner's immediate return to the United States. Respondents' removal of Petitioner while this case was pending—without adequate notice, without access to counsel, and while the Court was actively considering emergency relief—undermines the integrity of these proceedings and deprives Petitioner of his constitutional rights. Justice and due process should not be unembellished and reduced to a mere mootness.

REQUEST FOR RELIEF

Petitioner respectfully requests that this Court issue an Order:

1. Directing Respondents to take all necessary steps to locate Petitioner and facilitate his immediate return to the United States;
2. Granting Petitioner's Temporary Restraining Order (Doc. 12);
3. Requiring Respondents to transport Petitioner to this District and release him under appropriate supervision pending resolution of his habeas petition (Doc. 4);
4. Prohibiting Respondents from removing Petitioner from the United States during the pendency of this action absent further order of the Court; and
5. Granting such other relief as the Court deems just and proper.

Respectfully submitted on this day 13th of August, 2025.

/s/ Jose W. Alvarez

Jose W. Alvarez

FL Bar No. 1054382

Mary E. Kramer

FL Bar No. 0831440

Law Office of Mary Kramer, P.A.

168 SE 1st Street, Suite 802

Miami, FL 33131

(305) 374-2300

josew@marykramerlaw.com;

mary@marykramerlaw.com