



permission” approach to removal is precisely the sort of conduct courts have rejected when defendants attempt to evade judicial review by manufacturing mootness. See, e.g., *Church of Scientology v. United States*, 506 U.S. 9, 13 (1992); *Knox v. SEIU*, 567 U.S. 298, 307 (2012). This Court has the authority—and indeed the obligation—to remedy Respondents’ conduct. Federal courts retain equitable power to issue injunctions absent the “clearest command to the contrary from Congress.” *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979). And when government actors attempt to defeat jurisdiction by racing ahead of the judiciary, the appropriate response is to restore the status quo ante, including by ordering the return of an unlawfully removed individual. See, e.g., *Arce v. United States*, 899 F.3d 796, 799 (9th Cir. 2018); *Orabi v. Att’y Gen.*, 738 F.3d 535, 543–44 (3d Cir. 2014). The controversy remains live, the Court retains jurisdiction, and effective relief is available. The Court should reject Respondents’ invitation to undermine habeas corpus by executive fiat and instead grant Petitioner’s emergency motion.

## LEGAL ARGUMENT

### **I. Respondents Mischaracterize Petitioner’s Status “Before Detention.”**

Respondents contend that because Petitioner was placed on an Order of Supervision (“OSUP”) rather than immediately detained, his subsequent habeas challenge to re-detention and removal is somehow weaker. That is incorrect both factually and legally.

Primarily, placement on OSUP is not a sign of government indulgence; it is an express recognition that the noncitizen remains in DHS custody under the color of law. See *United States v. Rios*, 851 F.3d 815, 819 (8th Cir. 2017) (“An alien on supervised release remains in custody for purposes of habeas jurisdiction.”); *Sango v. Reno*, 53 F. Supp. 2d 122, 125 (D.D.C. 1999) (same). DHS does not simply “decide” to place an individual on OSUP for no reason—much less 22 years after a final removal order. Federal regulations authorize supervised release only after an

individualized custody review, which requires consideration of public safety, flight risk, and humanitarian factors. *See* 8 C.F.R. §§ 241.4, 241.5. That review concluded in 2020 that Petitioner could remain in the community, where he lived lawfully under supervision, reporting regularly to ICE for years without incident.

Secondly, Respondents argue that ICE acted within its delegated authority when it revoked Petitioner's supervised release under 8 C.F.R. § 241.4(l)(2). Doc. 28 at 7–8. But that regulation does not grant carte blanche to detain on a whim. It prescribes a structured review process: ICE must consider public safety, risk of flight, compliance with conditions of supervision, and humanitarian factors before revocation. *See* 8 C.F.R. §§ 241.4(l)(2), 241.4(f), 241.5(c). The notion that ICE can unilaterally discard four years of compliance and stability without explanation is squarely at odds with the regulation's text and purpose.

Moreover, the equities created by DHS's own decision to place Petitioner on OSUP in 2020 cannot simply be brushed aside. As courts have recognized, agency actions that create settled reliance interests—especially those involving family unity and lawful presence under supervision—require reasoned explanation if later undone. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913–15 (2020) (agency must account for “serious reliance interests” when changing course). Here, Petitioner complied with OSUP conditions for years, reported faithfully, and lived openly in his community. To revoke his status without notice or individualized reasoning is not only arbitrary; it is an abdication of the regulatory safeguards Congress and DHS themselves put in place.

## **II. Respondents' Invocation of 8 C.F.R. § 241.4(l)(2) Fails to Demonstrate a Lawful or Reasoned Basis for Revocation of OSUP**

Respondents point to a declaration from Deportation Officer Addiel Castillo to justify revoking Petitioner's OSUP under 8 C.F.R. § 241.4(l)(2). *See* Castillo Decl. ¶¶ 11–12, Doc. 28-2.

However, the declaration supplies no analysis and no factors—just the conclusory statement that, “in the discretionary opinion of the revoking official,” revocation was “appropriate to enforce a removal order.” *Id.* ¶ 11. The regulation does not permit revocation on a whim. It prescribes a structured review regime requiring individualized consideration of danger, flight risk, compliance history, and humanitarian factors (including medical, family, and community circumstances) before revocation. *See* 8 C.F.R. §§ 241.4(f) (factors), 241.4(l)(2) (revocation), 241.5(c) (conditions and compliance). When DHS changes course after placing someone on OSUP, basic administrative law demands a reasoned explanation that accounts for reliance interests created by the government’s own prior decision. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913–15 (2020) (agency must consider serious reliance interests when reversing policy); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

Here, the government’s own evidence shows the opposite of reasoned decision-making. Castillo admits Petitioner had no violations of OSUP conditions and says only that “an official with delegated authority” decided to revoke because removal was to be enforced. Doc. 28-2 ¶ 11. That is not an application of factors; it is a result-driven *ipse dixit*. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 690–96 (2001) (post-order detention must be tethered to legitimate purposes and subject to meaningful review). Notwithstanding, Respondents cannot even confirm service—asserting only that, “to the best of my knowledge,” Petitioner “would have been served with a document like this.” Doc. 28-2 ¶ 12 (emphasis added). The regulations require actual notice: “Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole.” 8 C.F.R. § 241.4(l)(1); *see also id.* § 241.4(h)–(i) (notice/records). The government’s speculation about what

“would have” happened cannot substitute for proof that the required notice was given for a process as monolithic as deprivation of liberty and physical removal.

The government’s “fast and loose” process also ignores the equities and reliance interests created when DHS placed Petitioner on OSUP in 2020 after an individualized review. For years, Petitioner complied fully, reported routinely, and lived under government supervision—a classic reliance scenario that agencies must confront before reversing course. *See Regents*, 140 S. Ct. at 1913–15 (agencies must “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns”). Nothing in Doc. 28-2 identifies a changed circumstance, a new danger, or any noncompliance that could justify abruptly yanking supervision and racing to effect removal while this Court was actively considering emergency relief.

Finally, Respondents’ own submission shows how procedurally slapdash this was: they cannot verify service of the Notice of Revocation of Release; they provide no date-stamped notice with reasons; and they supply no contemporaneous analysis applying § 241.4’s factors to Petitioner. Doc. 28-2 ¶¶ 11–12. Courts do not defer to conclusory say-so when liberty is at stake—particularly where DHS’s prior decision created significant reliance and the agency’s reversal frustrated judicial review. *See Fox*, 556 U.S. at 515; *Encino*, 579 U.S. at 221–22; *cf. Church of Scientology v. United States*, 506 U.S. 9, 13 (1992) (case not moot where court can still grant meaningful relief).

### **III. Respondents’ Covert Conduct Frustrated Judicial Review and Undermines Habeas Protections**

The chronology of this case underscores that Respondents sprinted to effectuate removal in order to cut off judicial review. Petitioner filed his habeas petition on August 6, 2025, the very day undersigned counsel was retained. Doc. 1. The following evening, as more details and

information came to light, Petitioner filed an Amended Petition on August 7, 2025, at 9:25 p.m. Doc. 4. That same evening, at 10:36 p.m., Petitioner filed a motion for a TRO to prevent removal and ensure this Court could review his claims. Doc. 5. To comply with Rule 65 obligations, the TRO was refiled the next day, August 8, 2025. Doc. 12. Yet, by midday on August 12, 2025—less than five full days after the initial TRO and before this Honorable Court could issue a meritorious order—ICE had already placed Petitioner on a plane and removed him.

That sequence reflects a deliberate strategy: move with extreme speed before the Court could rule. Respondents' conduct amounted to a calculated circumvention of habeas protections, effectively preempting judicial review through unilateral executive action. By the time the Court could meaningfully act, Respondents had manufactured “mootness” by their own removal decision. Such maneuvering frustrates the core purpose of habeas corpus—to provide a judicial check on executive detention and removal.

Respondents go further and argue that relief is impossible because Petitioner is now “in a foreign jurisdiction,” suggesting his return would amount to a kidnapping. Doc. 28 at 13. That framing is unserious. Petitioner's return would occur lawfully, through a facially authorized process: parole under 8 U.S.C. § 1182(d)(5)(A). DHS itself operates a well-established return policy for exactly this scenario. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (government assured the Court that removal causes no irreparable harm because ICE maintains a return policy); Letter from Solicitor General to the Supreme Court (Apr. 12, 2012) (detailing ICE's return procedures); U.S. Immigration & Customs Enf't, Policy No. 11061.1, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens* (Feb. 24, 2012), [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/11061.1\\_current\\_policy\\_facilitating\\_return.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf).

That policy provides a straightforward mechanism: Petitioner would present himself at an airport abroad, ICE would issue him appropriate travel documents, and DHS would parole him back into the United States. Far from being extraordinary, this return process is routine; ICE itself has invoked it to persuade courts that removal does not cause irreparable harm. *See Nken*, 556 U.S. at 435.

The reality is plain: meaningful relief remains available, and Respondents' removal tactics were designed to preempt judicial scrutiny. To allow mootness in such circumstances would incentivize ICE to whisk away every habeas petitioner before a court could act, rendering the writ of habeas corpus a hollow formality.

#### **IV. Jurisdiction Exists and Due Process Requires Judicial Review**

##### *A. Respondents' Jurisdiction Argument Under § 1252(g) Remains Misplaced*

Respondents once more urge that 8 U.S.C. § 1252(g) strips this Court of jurisdiction, and yet remain in error. The provision is “narrowly drawn” to apply only to challenges arising directly from the Attorney General’s decision to “commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Courts—including the Eleventh Circuit—have consistently rejected attempts to expand § 1252(g) beyond those limited contexts. *See, e.g., Kurapati v. U.S. Bureau of Citizenship & Immigr. Servs.*, 775 F.3d 1255, 1261–62 (11th Cir. 2014) (holding § 1252(g) “applies only to the three discrete actions” specified in the statute); *Grigorian v. Att’y Gen.*, 955 F.3d 1353, 1359 (11th Cir. 2020) (same).

Petitioner has never challenged the validity of his final removal order or DHS’s general authority to execute it. His claims are collateral: Respondents re-detained him decades after the removal period expired, without providing the mandatory individualized review and notice

required by 8 C.F.R. §§ 241.4 and 241.13, and in violation of the Fifth Amendment's Due Process Clause. Such claims fall squarely outside § 1252(g)'s narrow jurisdictional bar and squarely within habeas review. *See Ortega v. Kaiser*, No. 1:24-cv-3024, 2024 WL 6583607, at \*3 (D. Colo. Nov. 5, 2024) (*finding jurisdiction over procedural challenge to detention*); *Galindo Arzate v. Andrews*, No. 2:25-cv-00352, 2025 WL 2230521, at \*4–5 (E.D. Cal. May 2, 2025) (same).

Respondents' own admissions confirm this posture. They conceded they had "scarce information on hand specific to Zapeta" and "no documentation other than what Zapeta provided with his Amended Petition." Doc. 13 at 1. Later, they acknowledged that Petitioner's A-file "is located at the National Records Center ('NRC') and therefore "currently, there is not access to those documents," and further conceded that no temporary A-file ("T-file") was ever created. Doc. 28 at 2. ICE procedures expressly permit creation of a T-file when an A-file is unavailable, yet Respondents failed to take even that minimal step. The contradiction is striking: DHS was able to transfer Petitioner through three detention facilities and remove him in a matter of days, yet pleads helplessness when it comes to compiling the file necessary to document what process—if any—was provided. That juxtaposition underscores why this case is not barred by § 1252(g), and why judicial oversight is indispensable.

#### *B. Due Process Requires Meaningful Review*

Even apart from jurisdiction, the Constitution guarantees that liberty may not be taken without due process of law. U.S. Const. amend. V. Revocation of supervised release and re-detention decades after the statutory removal period ended implicates fundamental liberty interests. The regulations implementing the INA codify these protections by requiring individualized review, notice, and an opportunity to respond before revocation. *See* 8 C.F.R. §§ 241.4(f), (h)–(j), (l).

Respondents' own filings show those safeguards were not observed. Their declarant concedes Petitioner had no OSUP violations, yet asserts revocation was justified merely because enforcement was deemed "appropriate." Doc. 28-2 ¶ 11. Even more troubling, Respondents cannot confirm Petitioner was ever served with revocation notice—stating only that "to the best of my knowledge" he "would have been served." *Id.* ¶ 12. The regulations demand *actual*, documented notice, not speculation after the fact. *See* 8 C.F.R. § 241.4(l)(1).

This is precisely the type of situation where due process requires judicial review: the agency acted in haste, stripped a supervised individual of liberty without a reasoned explanation, and left no record to review. Habeas corpus exists to check exactly that kind of arbitrary executive action. *See Zadvydas v. Davis*, 533 U.S. 678, 690–96 (2001). And considered alongside Respondents' admissions that neither an A-file nor even a T-file was available during these rushed decisions, the deprivation of process is undeniable. ICE could marshal the logistics to detain, transfer, and deport Petitioner within days—but could not satisfy its own regulatory obligations to document the decision or provide the notice that due process demands.

Far from being jurisdictionally barred, this Court's oversight is both apt and critical.

#### **V. A Return Remedy Remains Readily Available**

Respondents contend that Petitioner's return is beyond this Court's authority. That is incorrect. Federal courts have long exercised equitable power to restore the *status quo ante* when unlawful removal frustrates judicial review. *See Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) (courts retain broad equitable authority absent "the clearest command to the contrary from Congress"). Ordering return simply restores what the government's premature removal took away: the ability of the judiciary to rule meaningfully on the lawfulness of detention and removal.

Far from unprecedented, courts across the country have ordered return in numerous contexts. *See, e.g., Arce v. United States*, 899 F.3d 796, 800–01 (9th Cir. 2018) (ordering return of removed habeas petitioner); *Nunez-Vasquez v. Barr*, 965 F.3d 272, 286 (4th Cir. 2020) (same); *Samirah v. Holder*, 627 F.3d 652, 663 (7th Cir. 2010) (same); *Orabi v. Att’y Gen.*, 738 F.3d 535, 543 (3d Cir. 2014) (same); *Khouzam v. Att’y Gen.*, 549 F.3d 235, 244–45 (3d Cir. 2008) (ordering government to facilitate return of noncitizen after unlawful removal). Counsel for Respondents notably distinguished each of the cases the undersigned referenced, but unfortunately could not see the forest for the trees. Collectively, these cases reinforce a consistent principle: There are a plethora of grounds and scenarios in which return to the United States for an alien can and may occur. They are neither far sweeping, nor extraordinary.

Nor is Respondents’ reliance on *Romero v. DHS*, 20 F.4th 1374 (11th Cir. 2021), persuasive. There, the Eleventh Circuit declined to order return because there was no evidence that DHS acted to frustrate judicial review. *Id.* at 1381–82. This case is the opposite: Respondents deliberately raced to remove Petitioner while his motion for a TRO was actively pending, precisely to extinguish judicial oversight. That distinction makes *Romero* inapposite and underscores why equitable return is appropriate here.

Finally, Respondents’ suggestion that return would be impossible—or tantamount to kidnapping—is meritless. DHS itself maintains a formal return policy and routinely facilitates return under its parole authority. *See* ICE Policy No. 11061.1, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens* (Feb. 24, 2012), [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/11061.1\\_current\\_policy\\_facilitating\\_return.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf). The government has repeatedly assured the Supreme Court that return is both feasible and routine. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (noting Solicitor General’s representations

that removed individuals can be returned if necessary). The relief sought here is therefore neither extraordinary nor impracticable; it is the logical, lawful mechanism for ensuring that Respondents cannot extinguish habeas rights through speed and secrecy.

## **VI. Additional Considerations Uncontested by Respondents**

### *A. Due Process and Access to Counsel*

Respondents never grappled with the evidence that DHS deliberately transferred Petitioner at the very moments when counsel attempted to meet with him. These late-night and mid-litigation transfers deprived Petitioner of the ability to consult with his attorney while emergency relief was pending. Courts have repeatedly held that meaningful access to counsel is a core due process right in immigration detention. See *Bi v. McAleenan*, 435 F. Supp. 3d 9, 16 (E.D.N.Y. 2020) (holding that restrictions that “frustrate effective consultation with counsel” violate due process). Respondents’ silence on this point confirms the violation stands un rebutted.

### *B. Public Interest and Balance of Equities*

Respondents likewise failed to contest that the equities in this case weigh overwhelmingly in Petitioner’s favor. Under *Nken v. Holder*, 556 U.S. 418, 435 (2009), when the Government is the opposing party, the balance of harms and public interest “merge.” Here, Petitioner faces separation from his family, deprivation of constitutional rights, and renewed exposure to persecution in Guatemala, while Respondents face no cognizable harm in facilitating return through mechanisms DHS already uses. Courts consistently hold that the government “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

*C. Systemic Consequences of Respondents' Theory*

Finally, Respondents do not confront the systemic implications of their position. If accepted, the government's theory would mean habeas corpus review in the OSUP context is illusory: DHS could re-detain or detain at will and then moot judicial review simply by executing removal before the Court rules. Such a doctrine would strip the judiciary of its constitutional role as a check on executive detention and erode habeas rights for thousands of individuals living under supervision orders. The Supreme Court has repeatedly warned against constructions that allow the Executive to manipulate or extinguish judicial review. See, e.g., *Boumediene v. Bush*, 553 U.S. 723, 765–66 (2008). The Court should reject Respondents' invitation to render habeas a hollow formality.

**CONCLUSION**

With respect, Petitioner eschews Respondents' proffered bone, "[I]t's a bitter-pill-to-swallow. "Yes, it is an uncontroverted fact (and bitter shame) that Respondents are making every effort to destroy an American family by kidnapping and discarding a good man, beloved spouse, father, and loyal servant to his church and employer. But more relevant here, the bitter pill is that Respondents are expending so much time and government resources to justify their illegal usurpation of this Constitutional Court's authority to adjudicate whether due process and law were violated in this painfully avoidable situation. This needs to end here, in perhaps the smallest of cases-- Petitioner is a humble man-- but the last shall go first: in the interests of justice, Petitioner's motion must be granted.

*(Signature on Subsequent Page)*

Respectfully submitted on this day 16<sup>th</sup> of August, 2025.

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