

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 MOTION TO ALTER OR AMEND JUDGMENT PURSUANT
TO FED. R. CIV. P. 59(E) AND RELIEF IN THE NATURE OF MANDAMUS**

Petitioner, **Manuel Yax Zapeta**, respectfully and timely moves this Court, pursuant to Federal Rule of Civil Procedure 59(e), to alter or amend its August 22, 2025 Order (Doc. 31) dismissing his Amended Petition for Writ of Habeas Corpus, Amended Motion for Temporary Restraining Order, and Emergency Motion for Return as moot. In the alternative, Petitioner seeks extraordinary relief in the nature of mandamus under 28 U.S.C. §§ 1361 and 1651 to preserve this Court's jurisdiction and to remedy Respondents' deliberate evasion of judicial review.

INTRODUCTION

In its August 22, 2025 Order (Doc. 31) this Honorable Court held that Petitioner's removal to Guatemala rendered this case moot because he was no longer in custody and the "capable of repetition, yet evading review" exception did not apply. The instant motion

urges the Court to consider that the order of dismissal relies on precedent incomparable to Petitioner's legal and factual situation.

What's more, the order overlooks other doctrines that act to preserve jurisdiction. The Eleventh Circuit recognizes three exceptions to mootness, one of which is capable of repetition yet evading review. The other two are where there are continuing collateral consequences to the violation of law, and where Petitioner took "all necessary steps" to preserve the status quo. *B & B Chemical v. United States EPA*, 806 F.2d 987, 990 (11th Cir. 1986); *Ethridge v. Hail*, 996 F.2d 1173, 1176 (11th Cir. 1993), citing *In re Kulp Foundry, Inc.*, 691 F.2d 1125 (3d Cir.1982).

Physical release from custody does not automatically render a habeas petition moot on account of continuing legal disability. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025). Here, Petitioner suffers collateral consequences, including the loss of statutory and regulatory pathways that can only be pursued from within the United States. See *Spencer v. Kemna*, 523 U.S. 1, 7–8 (1998). The government's calculated race to remove him while his TRO was pending exemplifies the very circumstances the "evading review" exception was designed to address and independently invokes this Court's equitable power to restore the status quo ante. See *Church of Scientology v. United States*, 506 U.S. at 13 (1992). Complementary to the exception for continuing collateral consequences is the exception where an appellate (i.e., our Petitioner) took all necessary steps to preserve the status quo during the course of emergency litigation.

Altering or amending the August 22 Order is necessary to correct legal error, prevent manifest injustice, and ensure that this Court retains the ability to provide meaningful relief. At minimum, mandamus is warranted to require Respondents to

facilitate Petitioner's return under DHS's established "Return Policy," thereby preventing the nullification of judicial review through unilateral executive action.

LEGAL STANDARD

A motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e) serves a limited but vital function: it allows a court to correct clear errors of law or fact, to account for newly discovered evidence, or to prevent manifest injustice. *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007); *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005). Such a motion is not a vehicle for relitigating old matters or raising arguments that could have been presented earlier, but it is appropriate where the court has overlooked or misapplied controlling precedent. *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994).

In addition, the Court retains inherent equitable power—codified in the All Writs Act, 28 U.S.C. § 1651—to issue orders necessary to protect its jurisdiction and to ensure meaningful judicial review. See *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) (courts retain equitable authority absent the clearest command to the contrary from Congress); *Peacock v. Thomas*, 516 U.S. 349, 356 (1996) (judicial power would be “entirely inadequate” if courts lacked the ability to enforce their judgments and preserve jurisdiction). Considering the transformative nature of this matter, relief in the nature of mandamus under 28 U.S.C. § 1361 is available where a petitioner demonstrates a clear right to the relief requested, a clear duty on the part of the government to act, and the absence of any other adequate remedy. *Cash v. Barnhart*, 327 F.3d 1252, 1258 (11th Cir. 2003).

Thus, reconsideration under Rule 59(e) is warranted where, as here, the Court's mootness analysis in its August 22 Order rests on application of precedent that does not apply (or does not completely address) the underlying basis for the petition, and disregards other important legal precedent. If left uncorrected, the Court's published order allows Respondents to evade judicial review through unilateral executive action. Mandamus requiring Petitioner's return to take up his habeas claims remains available a remedy to restore the status quo ante and ensure that habeas corpus review is not rendered meaningless.

LEGAL ARGUMENT

I. The law and facts presented in the underlying petition distinguish this case from other immigration cases wherein the mootness doctrine was applied.

Importantly, in its August 22 Order (Doc. 31), the Court found Petitioner had standing. The Court did not make a ruling on 8 U.S.C. § 1252(g). However, this Honorable Court concluded that this case was moot because Petitioner had been removed from the United States and was no longer in custody, relying principally on *Soliman v. United States ex rel. INS*, 296 F.3d 1237 (11th Cir. 2002). Upon reexamination, the Court should consider other legal tenets. *Soliman* involved a habeas petition challenging conditions of confinement during prolonged detention, where the petitioner was removed before the district court could rule. Because the only relief requested was release from custody, to address prolonged detention and conditions of confinement, the Eleventh Circuit held that the case became moot once that individual was no longer in custody, and suffering adverse conditions. *Id.*, at 1243. Petitioner's case is different.

Primarily, there exists no challenge to conditions of confinement, nor has this matter ever been framed as one of prolonged detention.¹ Petitioner challenges the unlawful revocation of a longstanding order of supervision and his abrupt re-detention without notice, individualized review, or the procedural safeguards required by 8 C.F.R. §§ 241.4, 241.5 and 241.13. These regulations set forth the process that must be followed, and the opportunity for notice and response prior to revoking supervision. These claims are not resolved, nor is the due process violation undone, because Respondents succeeded in removing Petitioner before the Court could act. Where the government's actions frustrate judicial review, courts consistently hold that habeas relief remains available and meaningful. See *Church of Scientology*, 506 U.S. at 13 (case not moot where effective relief remains possible); *Arce v. United States*, 899 F.3d 796, 800–01 (9th Cir. 2018) (ordering return of unlawfully removed habeas petitioner); *Nunez-Vasquez v. Barr*, 965 F.3d 272, 286 (4th Cir. 2020) (same); *Orabi v. Att'y Gen.*, 738 F.3d 535, 543–44 (3d Cir. 2014) (same).

Secondly, and unlike in *Soliman* where the petitioner sought only to end detention, Mr. Zapeta's petition seeks restoration of the status quo ante so that the Court may adjudicate whether ICE lawfully revoked his supervised release after years of compliance. That relief remains entirely possible: courts across the country have ordered the government to facilitate the return of unlawfully removed individuals using established DHS procedures. See, e.g., *Samirah v. Holder*, 627 F.3d 652, 663 (7th Cir. 2010); *Khouzam v. Att'y Gen.*, 549 F.3d 235, 244–45 (3d Cir. 2008).

¹ *Zadvydas v. Davis*, 533 U.S. 678 (2001) discusses prolonged detention as six months of custody following a removal order without proper safeguards.

Crucially, habeas corpus is not merely a statutory remedy but a constitutional check within our system of separated powers. As the Supreme Court has explained, “[t]he Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.” *Boumediene v. Bush*, 553 U.S. 723, 739 (2008)². The writ “functions as an indispensable mechanism for monitoring the separation of powers,” ensuring that “the Judiciary has a time-tested device, the writ, to maintain the delicate balance of governance” between the branches. *Id.* at 765–66. See also *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (habeas is “constitutionally required” to preserve judicial review of executive detention).

By treating this case as indistinguishable from *Soliman*, the Court’s mootness analysis overlooks the broader constitutional dimension of habeas corpus. If executive officials can defeat review by accelerating removal before judicial intervention, then the Executive alone decides when and whether courts may exercise jurisdiction. That result upends the system of checks and balances and undermines habeas as a structural safeguard: “the writ must be effective, not subject to manipulation by those whose power it is designed to restrain.” *Boumediene*, 553 U.S. at 745. Habeas exists precisely to prevent such unilateral executive action.

II. Collateral Consequences flowing from Respondent's actions mean this Habeas is not moot.

The Court’s August 22 Order (Doc. 31) applied to Petitioner’s detriment the “capable of repetition, yet evading review” exception on the ground that Petitioner’s circumstances were unlikely to recur as to the same parties. However, the order of dismissal does not consider two other exceptions to mootness. Although deporting someone--

anyone-- when a court is poised to render a decision is of course capable of repetition (that is, ICE can and will continue to outsmart courts and litigants by racing the body across the border), case law is that the parties must be the same. *Soliman v. United States*, 296 F.3d, at 1242-43.

However, precedent recognizes another well-established exception where “collateral legal consequences will flow from the challenged action.” *Spencer v. Kemna*, 523 U.S. 1, 8 ((1998)). The Supreme Court has repeatedly applied this exception, holding that a case is not moot where the challenged conduct produces “concrete and continuing injury” that survives the end of physical custody. *Spencer*, 523 U.S. at 7–8.; *Sibron v. New York*, 392 U.S. 40, 55–56 (1968); *Mattern v. Sec’y for the Dep’t of Corr.*, 494 F.3d 1282, 1286 (11th Cir.2007) (prisoner in § 2254 action continued to suffer collateral consequences of incorrect conviction following release from prison). The collateral consequence doctrine may insulate a claim from mootness following deportation of the claimant. *See, e.g., Hanif v. Stewart*, Civ 15-00145-WS-N, 2018 U.S. Dist. LEXIS 34523 (S.D. Ala Mar 1, 2018) (“the fact of deportation, alone, is not sufficient to render a claim automatically moot”), *citing Sibron v. New York*, 392 U.S. 40, 54-56 (1968).

Here, Petitioner suffers immediate and profound consequences. First, Petitioner's permanent residency status is now in jeopardy. Second, he now faces two bars to readmission. That is, deportation triggered a ten-year bar to admission after removal. 8 U.S.C. § 1182(a)(9)(A)(ii). A second ten-year bar applies to Petitioner due to prior unlawful presence. 8 U.S.C. § 1182(a)(9)(B)(i)(II). Courts have recognized the bars as collateral consequences justifying continued jurisdiction over habeas. *Hanif v. Stewart*,

2018 U.S. LEXIS 34523, at 16, citing *Leitao v. Reno*, 311 F.3d 453, 456 (1st Cir. 2002); *Smith v. Ashcroft*, 295 F.3d 425, 428 (4th Cir. 2002)

In addition, removal forecloses legal avenues to obtain permanent residency while preserving family unity. Prior to his arrest and detention, Petitioner could process for waivers of these bars within the United States. Specifically, Petitioner and his spouse Ada Walter Zapeta, retained an immigration attorney to file their marriage petition, as well as a waiver of the deportation order and an unlawful presence waiver. See *Statement of Ada Watlers* attached hereto as Exhibit “A.” By design, these series of forms allow an individual to work with Citizenship and Immigration Services and the State Department to obtain permanent residency through consular processing for an immigrant visa abroad. Intentionally, the executive branch created a process that allows non-citizens (including those with removal orders) to remain in the United States with their families during the time that paperwork is prepared and adjudicated. During the Obama Administration, the provisional unlawful waiver process was introduced; it was fine-tuned with the I-212 permission to apply after deportation. The State Department's National Visa Center acts as a clearinghouse for applications and documentation. The immigrant visa applicant receives an interview notice at the American embassy abroad when all the forms are completed and approved. See *Provisional Unlawful Presence Waivers* attached hereto as Exhibit “B.” This is the process Petitioner was actively pursuing.

When Petitioner, who had a work permit and reported regularly on supervision, was arrested, he was already in the pipeline with a pending I-130 marriage petition filed by his spouse, Ada, and stood ready to pursue lawful permanent residency through statutory and regulatory pathways that Congress and DHS have established. Part of and central to

that framework are the I-601A provisional waiver and the I-212 application for permission to reapply for admission. The I-601A program, created by DHS and implemented through USCIS in 2013, was specifically designed to mitigate the harshness of prolonged family separation by allowing certain noncitizens to apply for waivers from within the United States. 8 C.F.R. § 212.7(e); *also see* Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 Fed. Reg. 536 (Jan. 3, 2013). By forcibly removing Petitioner during the pendency of this litigation, ICE nullified those regulatory safeguards. One arm of the Executive created a lawful pathway to minimize family separation; another arm extinguished it through hasty deportation.

This intra-Executive contradiction is not a technicality. It undermines the very reliance interests the waiver program was designed to protect. Petitioner now faces years of separation from his U.S. citizen family, protracted consular delays, and the practical impossibility of reentering without advance waivers. These are not speculative burdens; they are the precise collateral consequences that the regulatory scheme sought to avoid.

Moreover, DHS itself created reliance interests when it placed Petitioner on an Order of Supervision in 2020 following an individualized custody review. For over four years, Petitioner complied with all conditions, reported faithfully, and built his life around the government's assurance that he would not be abruptly removed absent a material change. The Supreme Court has made clear that when an agency reverses course, it must account for "serious reliance interests" created by its prior actions. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913–15 (2020); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). ICE's unexplained revocation of supervision and

abrupt removal not only violated due process, but also imposed enduring collateral consequences on Petitioner and his U.S. citizen family.

In short, this case is not moot because Petitioner now suffers ongoing collateral injuries. The foreclosure of lawful immigration pathways, the forced separation from his family, and the disruption of government-created reliance interests are continuing harms that this Court has the power and duty to remedy. See *Spencer*, 523 U.S. at 8; *Sibron*, 392 U.S. at 55–56.

IV. Petitioner took "all necessary steps" to have his day in court.

To be viewed as complementary to the collateral consequences exception, the additional mootness exception recognized by the Eleventh Circuit applies “where an appellant has taken all steps necessary to perfect the appeal and to preserve the status quo before the dispute becomes moot.” *B&B Chem.*, 806 F.2d at 990. That principle flows directly from habeas corpus itself: Congress has commanded that habeas petitions “shall” be promptly heard and adjudicated. 28 U.S.C. § 2243. Where a petitioner acts diligently to secure judicial review, the government cannot deprive him of relief by racing to moot the controversy before the Court has acted. This is especially true where there are demonstrated collateral consequences.

Petitioner here did everything the law requires—and more. His attorneys filed a habeas petition the same day as retained. Petitioner amended promptly as additional facts emerged. He filed successive emergency motions for a temporary restraining order to ensure procedural compliance and to give the Court the clearest possible record. He notified Respondents and the Court that ICE intended to transfer and remove him imminently. At every step, Petitioner sought to preserve the Court’s jurisdiction and the

status quo pending judicial review. This Court is aware of the timeline of events leading up to Petitioner's removal. There were multiple phone calls to the Court, with the Assistant United States Attorney, including conversations with the magistrate and a judicial law clerk. By this time Petitioner disappeared into the system and no one even knew where he was. Still, Petitioner took "all necessary steps" to have his unlawful arrest and custody claims heard.

It was only through Respondents' deliberate acceleration of removal—shuttling Petitioner between facilities under cover of night and placing him on a removal flight before this Court had an opportunity to rule—that judicial review was frustrated. The government's conduct should not be rewarded by a mootness finding. To the contrary, under *B&B Chemical* and its progeny, the Court retains jurisdiction to adjudicate the merits and to restore the status quo ante.

This is not a theoretical concern. If the government may nullify habeas jurisdiction simply by moving faster than the Court, then habeas relief will be illusory. The exception for preserving the status quo exists to prevent exactly this result: ensuring that diligent litigants are not stripped of judicial review by executive gamesmanship. See *B&B Chem.*, 806 F.2d at 990. Petitioner's diligence here, combined with Respondents' tactical race to removal, places this case squarely within that exception.

IV. Mandamus Relief is Appropriate

Upon consideration, the Court should address Petitioner's return through mandamus. The All Writs Act empowers federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). In tandem, 28 U.S.C. § 1361 provides that "[t]he district

courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

Mandamus is an extraordinary remedy, but it is warranted where (1) the petitioner demonstrates a clear right to the relief requested, (2) the respondent has a clear, nondiscretionary duty to act, and (3) no other adequate remedy is available. *Cash v. Barnhart*, 327 F.3d 1252, 1258 (11th Cir. 2003). Those elements are satisfied here. Petitioner has a clear right to judicial review of his detention and removal; Respondents have a nondiscretionary duty not to frustrate that review by mooted proceedings through hasty deportation; and absent judicial intervention, no adequate remedy exists to restore the status quo ante. *See, e.g., Garcia v. Noem*, No. 25-1404, 2025 U.S. App. LEXIS 9237, p. 2 (4th Cir. Apr. 17, 2025) (the government cannot frustrate due process by claiming “in essence that because it has rid itself of custody that there is nothing that can be done.”)

Federal courts have repeatedly invoked the All Writs Act and mandamus authority in precisely these circumstances—ordering the government to return noncitizens who were unlawfully removed while their cases were pending. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Arce*, 899 F.3d at 800–01. (ordering return to restore habeas jurisdiction); *Nunez-Vasquez v. Barr*, 965 F.3d 272, 286 (4th Cir. 2020) (same); *Khouzam v. Att’y Gen.*, 549 F.3d 235, 244–45 (3d Cir. 2008) (government may be ordered to facilitate return when removal unlawfully frustrates judicial review); *Samirah v. Holder*, 627 F.3d 652, 663 (7th Cir. 2010) (same). The equitable principle underlying these decisions is straightforward: courts possess the power to ensure that their jurisdiction cannot be defeated by unilateral

executive action. *See Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) (courts retain broad equitable authority absent the clearest command to the contrary from Congress).

Notably, the Court's August 22 Order did not conclude that it lacked the authority to compel Petitioner's return. The Court's ruling rested solely on mootness grounds; it did not suggest that no legal mechanism exists to restore jurisdiction. To the contrary, DHS itself has recognized such a mechanism through its formal "Return Policy" (ICE Policy No. 11061.1), which provides for the return of individuals removed in violation of due process or while judicial review was pending. By establishing this policy, DHS has acknowledged both the availability and propriety of return in precisely these circumstances.

As such, even if this Court remains persuaded that the petition is technically moot, it retains ample authority under the All Writs Act and § 1361 to order Respondents to facilitate Petitioner's return. Without such relief, habeas corpus will remain vulnerable to manipulation, and this Court's jurisdiction will continue to be subject to nullification by executive fiat.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Court's August 22, 2025 Order (Doc. 31) should be altered or amended pursuant to Rule 59(e). The Court's mootness ruling misapplied precedent, disregarded collateral consequences, and failed to account for the constitutional role of habeas corpus as a safeguard against executive overreach. Unless corrected, that ruling permits the government to defeat judicial review through haste and secrecy, reducing habeas relief to a hollow formality.

This Honorable Court retains both the obligation and the authority to ensure that its jurisdiction cannot be nullified by unilateral executive action. Accordingly, Petitioner respectfully requests that the Court reconsider its dismissal order, reinstate these proceedings, and grant such further relief as justice requires. In the alternative, this Court should issue relief in the nature of mandamus under 28 U.S.C. §§ 1361 and 1651, directing Respondents to facilitate Petitioner's return under DHS's established "Return Policy" so that meaningful judicial review may proceed.

PRAYER FOR RELIEF

WHEREFORE, Petitioner **Manuel Yax Zapeta** respectfully requests that this Honorable Court:

1. Alter or amend its August 22, 2025 Order (Doc. 31) pursuant to Federal Rule of Civil Procedure 59(e);
2. Reinstate these proceedings and adjudicate the merits of Petitioner's Amended Petition for Writ of Habeas Corpus, Amended Motion for Temporary Restraining Order, and Emergency Motion for Return;
3. In the alternative, issue relief in the nature of mandamus under 28 U.S.C. §§ 1361 and 1651, directing Respondents to facilitate Petitioner's return to the United States under DHS's established "Return Policy"; and
4. Grant such other and further relief as this Court deems just and proper.

(Signature block on subsequent page)

Respectfully submitted on this day 17th of September, 2025.

/s/ Jose W. Alvarez

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Statement of Ada Watler Yax

My name is Ada Watler, United States citizen, residing at [REDACTED]
Florida 34982.

I am the spouse of Manuel Yax-Zapeta. We married on July 27, 2024, and prior to that, we had been living together since 2006.

In July of 2025 we contacted an attorney's office in Palm Beach County, Richard Huber, about Manuel's immigration situation. We eventually retained that firm to do a marriage petition and two waivers. the visa petition was filed in the first week of September, 2024.

Our goal was, upon approval of the paperwork, to obtain an immigrant visa for Manuel at the American Embassy in Guatemala. This process, as explained to us, would allow Manuel to seek waivers of his unlawful presence in the United States and the deportation order before leaving the United States for a visa appointment. In this way, Manuel could remain in the United States with me and our family. We would not be separated. Now, we are separated and the process for filing all waiver and visa paperwork in the United States before departing is lost.

I swear under penalty of perjury that this statement is true and correct.

Ada Watler

Ada Watler Yax

September 16, 2025

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