

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-CV-24078-MOORE/Elfenbein**

JOSE SERRANO,
Petitioner,

v.

JUAN LOPEZ-VEGA, In his official capacity
as Acting Director, Miami Field Office,
Enforcement and Removal Operations, U.S.
Immigration and Customs Enforcement, et al;
Respondents.

)
)
) **PETITION FOR A WRIT**
) **OF**
) **HABEAS CORPUS**
) **PURSUANT**
) **TO 28 U.S.C. § 2241**

PETITIONER'S SUPPLEMENTAL MEMORANDUM OF LAW ON
CONSTITUTIONAL GROUNDS

INTRODUCTION

Petitioner José Serrano respectfully submits this Supplemental Memorandum of Law to reinforce his Reply to Respondents' Opposition. This memorandum complements the Reply by grounding Petitioner's case firmly in constitutional law. At stake is not simply an immigration matter, but the continued vitality of the most fundamental guarantees of liberty in the United States.

Respondents argue that this Court lacks jurisdiction and that Petitioner's continued confinement is lawful. If accepted, their position would permit the Executive Branch to detain a lawful asylum seeker indefinitely, in response to foreign political pressure, without judicial oversight. Such an outcome would undermine centuries of constitutional tradition. The Framers of the Constitution deliberately enshrined the Suspension Clause, the Fifth Amendment's guarantee of due process, the separation of powers, and the principle of equal protection precisely to prevent unchecked executive detention.

Petitioner is a former Ecuadorian Minister of the Interior and President of the National Congress, recognized for his efforts against organized crime, including cooperation with the U.S. Drug Enforcement Administration. He lawfully entered the United States in 2021, timely filed an asylum application, and lived in Florida lawfully and without incident. (Exs. D–E). Nevertheless, on August 7, 2025—just six days after DHS executed a Memorandum of Understanding with Ecuador embedding an Ecuadorian liaison at

CBP's National Targeting Center (NTC)—Petitioner was arrested at his home and confined at the Krome Detention Center. (Exs. A–B). He is held in criminal housing, wearing an orange uniform, alongside convicted offenders, including traffickers he previously prosecuted. (Ex. H).

This Supplemental Memorandum addresses four constitutional infirmities: (1) the Suspension Clause, (2) Fifth Amendment Due Process, (3) Separation of Powers, and (4) Equal Protection. Together, these constitutional pillars compel this Court to exercise habeas jurisdiction under 28 U.S.C. § 2241 and to order relief.

I. THE SUSPENSION CLAUSE

The Suspension Clause provides: “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” U.S. CONST. art. I, § 9, cl. 2. Habeas corpus is “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969).

The origins of habeas corpus trace to Magna Carta (1215), which declared that no free man could be imprisoned without lawful judgment. The English Habeas Corpus Act of 1679 codified the right, establishing judicial review as a barrier to executive imprisonment. The Framers embedded this safeguard into Article I, § 9, limiting its suspension only to rebellion or invasion. Alexander Hamilton emphasized in Federalist No. 84 that habeas corpus was among the “greater securities of liberty” than any bill of rights could provide.

Boumediene v. Bush, 553 U.S. 723, 765–71 (2008) (Suspension Clause applies extraterritorially; political branches may not be “masters of the writ”); *Jennings v. Rodriguez*, 138 S. Ct. 830, 840 (2018) (constitutional challenges to detention remain reviewable).

Respondents’ reliance on INA § 236(e) to bar review would amount to a de facto suspension. If accepted, the Executive could indefinitely detain a lawful asylum applicant — here, at the behest of foreign political demands — with no judicial check. Such detention is precisely the kind of arbitrary confinement the Suspension Clause was designed to prevent. Petitioner’s arrest followed the DHS–Ecuador MOU of August 1, 2025 (Exs. A–B) and foreign accusations already rejected by Judge Ayala (Ex. C). If habeas is unavailable here, where liberty is deprived for political reasons, it is available nowhere.

Therefore, this Court should exercise habeas jurisdiction, as the Suspension Clause requires, and grant the writ to Petitioner Serrano.

II. THE FIFTH AMENDMENT – DUE PROCESS

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. This protection extends to “all persons” within the United States, including noncitizens. *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

Civil detention is constitutional only if it serves a legitimate regulatory purpose and is not punitive. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The Supreme Court in *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982), confirmed that civil detainees may not be subjected to conditions equivalent to punishment. Prolonged or indefinite civil detention raises grave due process concerns. *Zadvydas v. Davis*, 533 U.S. 678, 690–96 (2001).

Petitioner has committed no crime, has no criminal record, and entered the United States lawfully before filing his asylum application in a timely manner. (Exs. D–E). Yet he has been deprived of liberty and confined under punitive conditions indistinguishable from those imposed on convicted criminals. (Ex. H). This alone violates the Fifth Amendment: civil detention cannot be punitive, and the government may not imprison a non-criminal asylum applicant as though he were guilty of a criminal offense. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982). Detention of a lawful asylum applicant on foreign political accusations, absent any criminal charges in the United States, is not regulation—it is punishment without trial, which the Constitution forbids.

Petitioner has been diagnosed with diabetes mellitus, as documented in medical records on file with DHS/ICE — a condition consistently recognized by federal courts as a serious medical vulnerability in detention. Together, these medical vulnerabilities create an imminent and irreparable danger, as any untreated infection or complication could rapidly progress to sepsis, renal damage, or death.

ICE’s failure to provide adequate medical care constitutes deliberate indifference to a serious medical need, in violation of the Fifth Amendment’s Due Process Clause. See *Mandel v. Doe*, 888 F.2d 783 (11th Cir. 1989); *Farrow v. West*, 320 F.3d 1235 (11th Cir. 2003); *Goebert v. Lee County*, 510 F.3d 1312 (11th Cir. 2007). In *Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. 2020), and *Gayle v. Meade*, No. 20-21553, 2020 WL 3041326 (S.D. Fla. June 6, 2020), federal courts specifically recognized diabetes as a condition requiring release or immediate protective measures.

Here, Petitioner’s continued detention is itself the source of the constitutional violation. No lesser remedy is adequate: only release can eliminate the ongoing, irreparable threat to his health and life.

Beyond misclassification, Petitioner's detention is unconstitutional because it is unmoored from any legitimate regulatory purpose. The Fifth Amendment forbids the government from depriving liberty in a manner that is arbitrary or unrelated to valid objectives. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention that is punitive in nature or pursued for impermissible reasons—such as political retaliation based on foreign political pressure—falls outside the narrow bounds of constitutionally permissible civil detention.

The Constitution also demands that executive detention be subject to meaningful judicial review. *Boumediene v. Bush*, 553 U.S. 723, 765–66 (2008). Here, Petitioner's detention is not based on any individualized finding of danger or flight risk, but rather is the product of foreign political pressure — a purpose wholly outside the scope of constitutionally permissible civil detention. Such detention violates due process, because liberty is deprived without legitimate justification, and it violates separation of powers, because the Executive is exercising an unchecked imprisonment authority the Framers deliberately denied it. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952).

Thus, Petitioner's confinement is unconstitutional in two respects: (1) as a deprivation of liberty unmoored from legitimate regulatory purposes, in violation of the Fifth Amendment's guarantee of substantive due process; and (2) as executive detention undertaken without lawful judicial basis, in violation of the Suspension Clause and Article III. A detention pursued for foreign political ends is not merely irregular; it is unconstitutional.

Procedural due process also forbids indefinite detention without timely hearings. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), instructs courts to balance the individual interest, the risk of erroneous deprivation, and the government's interest. Here, Petitioner's liberty interest is paramount; the risk of error is extreme given reliance on foreign accusations rejected by Ecuadorian courts (Ex. C); and the government has minimal interest in detention, as Petitioner poses no risk or danger. Bond hearings have been postponed because Ecuador failed to file charges. (TRO ¶ 10). Such delay renders detention indefinite, violating due process.

International law provides persuasive confirmation. The United States is a party to the 1967 Refugee Protocol, which prohibits penalizing asylum seekers for seeking refuge, and to the International Covenant on Civil and Political Rights, which bars arbitrary detention. While not self-executing, these commitments reflect global norms consistent with constitutional principles. Petitioner's confinement violates both domestic constitutional law and international norms.

Therefore, Petitioner's confinement, punitive in character, fraught with grave medical risks, and influenced by foreign political considerations, fails constitutional scrutiny.

under the Fifth Amendment. No remedy short of immediate release can redress these ongoing violations.

III. SEPARATION OF POWERS & JUDICIAL REVIEW

The Constitution vests judicial power in the courts. U.S. CONST. art. III, § 1. Since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), it has been the judiciary's duty "to say what the law is." If Respondents' reading of INA § 236(e) were accepted, the Executive could imprison asylum seekers indefinitely, based on foreign political pressure, without judicial oversight. This would nullify the separation of powers.

The Supreme Court has rejected similar attempts at jurisdiction-stripping. *Boumediene*, 553 U.S. at 765–66, held that Congress cannot eliminate habeas review without providing an adequate substitute. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Court rebuked executive overreach even during wartime. Respondents' attempt to shield detention from review is likewise unconstitutional.

Applied here, Ecuador pressured DHS through an August 1 MOU... Yet Respondents insist this Court lacks power to intervene. Allowing detention decisions to be shaped by foreign governments would impermissibly transfer the judicial function away from the courts. The separation of powers forbids such abdication. *Boumediene* and *Youngstown* make clear that the judiciary must act as a check. Therefore, adopting Respondents' position would impermissibly transfer the judicial function to the Executive—and even to foreign actors. The separation of powers forbids such abdication, and this Court must exercise its constitutional role to prevent it.

IV. EQUAL PROTECTION & SELECTIVE ENFORCEMENT/RETALIATION

The Fifth Amendment's Due Process Clause incorporates equal protection principles. *Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954). The government may not enforce laws in a discriminatory manner. *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886). Selective enforcement amounting to discrimination violates equal protection where enforcement is based on impermissible considerations. *United States v. Armstrong*, 517 U.S. 456, 464–65 (1996).

A. Legal Standards

Selective prosecution is impermissible where enforcement rests on retaliation for the exercise of First Amendment rights or political viewpoint discrimination. *Wayte v. United States*, 470 U.S. 598, 608 (1985); *Hartman v. Moore*, 547 U.S. 250, 256 (2006); see also *Yick Wo*, 118 U.S. at 373–74 (holding that enforcement may not be discriminatory in application). These standards govern Petitioner's claim.

B. Application to Petitioner Serrano

Petitioner is a prominent political critic in Ecuador, with an audience exceeding one million followers. He has repeatedly denounced corruption and identified links between political elites and organized crime. Ecuador responded by bringing charges years after the alleged conduct; Judge María Daniela Ayala dismissed those accusations and was subsequently disciplined. (Ex. C). These events demonstrate a retaliatory pattern directed at Petitioner's political speech.

Respondents' conduct departs sharply from ordinary enforcement practices, and the record makes clear that the distinguishing factor is Petitioner's role as a dissident who publicly exposes government corruption. Enforcement undertaken in retaliation for political expression falls squarely within the prohibitions recognized in *Wayte v. United States*, 470 U.S. 598, 608 (1985); *Hartman v. Moore*, 547 U.S. 250, 256 (2006); and *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886). Following pressure from Ecuador under the August 1 Memorandum of Understanding with DHS (Exs. A–B), Petitioner was arrested at his home despite being a non-criminal asylum applicant with a pending case. To counsel's knowledge, no other asylum applicant in this posture has been arrested at home, confined in a criminal housing unit, and subjected to such treatment. This departure from ordinary immigration enforcement practices is further underscored by the fact that, under ICE's own detention classification guidelines, Petitioner should not have been placed in a criminal housing unit. The record, including Exhibits A–C, supports the conclusion that the factor distinguishing Petitioner's case is his role as a dissident who publicly challenges government corruption.

C. Retaliation for Protected Political Expression

The Supreme Court has emphasized that government action intended to deter or punish political expression violates the Constitution. *Wayte*, 470 U.S. at 608. These protections extend to all persons physically present in the United States, including noncitizens. *Bridges v. Wixon*, 326 U.S. 135, 161 (1945).

Petitioner's arrest and detention are not explained by ordinary enforcement criteria. Rather, they reflect the continuation of Ecuador's retaliatory measures, now executed in U.S. detention. By adopting Ecuador's accusations and placing Petitioner in conditions more restrictive than those applied to similarly situated asylum applicants, Respondents engaged in enforcement that was based on impermissible considerations tied to political expression.

This enforcement violates both the Equal Protection guarantee of the Fifth Amendment and the First Amendment's protection of political expression.

Therefore, because Respondents' enforcement is discriminatory and retaliatory, targeting Petitioner for his political expression, his detention violates the Equal Protection component of the Fifth Amendment and the First Amendment; the only constitutionally sufficient remedy is immediate release.

CONCLUSION

Respondents' actions strike at the heart of the Constitution. The record demonstrates that Petitioner's arrest and continued confinement are not the product of neutral enforcement of immigration law, but of political demands from a foreign government and executive overreach within the United States. Each constitutional guarantee invoked here, the Suspension Clause, Due Process, Separation of Powers, and Equal Protection—has been violated in ways that contravene the safeguards deliberately embedded in the Constitution to prevent arbitrary detention and to preserve the rule of law.

Habeas corpus cannot be suspended by executive fiat, and Respondents' reliance on § 236(e) would produce exactly that result. The Respondents' reliance on INA § 236(e) to strip judicial review from this case essentially renders the writ of habeas corpus meaningless, in violation of the Suspension Clause. Habeas corpus is a fundamental protection against arbitrary detention, and its suspension should only occur in extreme cases of rebellion or invasion—circumstances that are entirely absent here. If this Court were to accept the Respondents' argument, it would set a dangerous precedent allowing the executive branch to detain lawful asylum seekers indefinitely, based on foreign political pressures, without judicial oversight.

Civil detention may never be punitive. Yet Petitioner has been confined under criminal conditions, denied adequate medical care despite serious health vulnerabilities, and left to indefinite confinement on the basis of foreign accusations already rejected abroad. The indefinite and punitive nature of Petitioner's detention is unconstitutional. Petitioner has not been accused of any crime in the United States, nor has there been any individualized finding of flight risk or danger. Yet, he remains detained under conditions indistinguishable from those imposed on convicted criminals. This punitive detention, unmoored from any regulatory purpose, violates both substantive and procedural due process guarantees. Moreover, the fact that his detention is driven by political motives—rather than legitimate regulatory interests—only exacerbates its unconstitutional nature. The lack of timely hearings and the failure to provide an avenue for meaningful judicial review further violate Petitioner's rights under the Fifth Amendment.

By claiming that this Court lacks jurisdiction to review its actions, the Executive seeks to strip the Judiciary of its essential role in safeguarding liberty—an outcome directly contrary to *Boumediene* and *Youngstown*. The Respondents' reading of INA § 236(e) would empower the Executive Branch to act without judicial oversight in matters of

detention, thereby violating the fundamental principle of the separation of powers. This Court has a critical role in ensuring that the Executive does not overstep its constitutional bounds. By allowing the executive to detain individuals indefinitely based on foreign political pressure, Respondents' actions would circumvent judicial review and nullify the constitutional role of the courts in protecting individual liberties. This is precisely the kind of unchecked executive power that the Framers sought to prevent.

Petitioner has been subjected to discriminatory confinement motivated by retaliation, based solely on his political profile, while no other non-criminal asylum seeker with a pending case has been treated in this manner. Petitioner's treatment constitutes selective persecution based on political motivations, in violation of the Fifth Amendment's equal protection guarantee. As a vocal critic of the Ecuadorian government, Petitioner has been targeted with fabricated accusations that have been rejected by Ecuadorian courts. No other asylum seeker in a similar situation has been subjected to such politically motivated detention, highlighting the discriminatory nature of his treatment. This selective prosecution undermines the core principle that all individuals, regardless of their nationality or political opinions, are entitled to equal protection under the law.

These constitutional violations are concrete and ongoing. Every additional day Petitioner spends in criminal detention inflicts irreparable harm to his health, his liberty, and the integrity of constitutional governance. The United States cannot outsource its detention decisions to foreign governments, nor may the Executive deprive liberty in the absence of judicial review. The relief sought is narrow but urgent to recognize Petitioner's legal status as a lawful asylum applicant entitled to protection, not punishment.

Accordingly, Petitioner respectfully requests that this Court:

1. Order his immediate release under appropriate conditions, ensuring that his liberty is not further deprived without due process.
2. Set an expedited evidentiary hearing within seven days requiring Respondents to justify his detention and conditions of confinement; and
3. Prohibit Respondents from relying on uncharged foreign accusations as a basis for detention unless those accusations are brought in a U.S. court proceeding affording full due process protections.

Petitioner does not seek relocation to another ICE detention facility. Relocation would not remedy the constitutional violations at issue, which arise from the very fact of his punitive detention on political grounds and without lawful process. Only immediate release under appropriate conditions can cure these ongoing violations and prevent further irreparable harm.

For the foregoing reasons, and to prevent irreparable harm to Petitioner and to the

Constitution itself; the Court should grant the requested habeas relief and order Petitioner's immediate release, preserving the rule of law and safeguarding the constitutional rights of all individuals within the United States.

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