



# PAGAN LOPEZ LAW

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## Via Electronic Filing

November 25, 2025

Martin Luther King Building & US Courthouse  
50 Walnut Street, Room 4015  
Newark, NJ 07101

Re: **Uriel Garcia-Alvarado v. Warden, et. Al.**

Case No.: 2:25-cv-16109

Dear Hon. Susan D. Wigenton,

Petitioner respectfully submits this letter motion pursuant to Local Civil Rules 7.1 and 65.1. These rules govern motion practice and applications for emergency or injunctive relief in this District, and they provide the procedural framework for the relief sought here. Petitioner brings this application in full compliance with those rules, including the requirements for supporting documentation, the form of submissions, and the nature of relief requested. The purpose of this motion is to advise the Court of critical developments that occurred immediately after the filing of the habeas petition and to request emergency relief necessary to protect this Court’s jurisdiction, enforce its prior directives, and prevent irreparable harm.

In the Third Circuit, courts routinely rely on Local Civil Rule 7.1 to govern all aspects of motion practice, including form, service, and timing requirements. See *Matsushita Elec. Indus. Co. v. Samsung Elecs. Co.*, No. 05-849, 2006 U.S. Dist. LEXIS 51396, at 2–3 (*D.N.J. July 27, 2006*); *Marasek v. United States Bank Cust for Pro Capital I, LLC*, No. 14-7820, 2015 U.S. Dist. LEXIS 59174, at 5 (*D.N.J. May 6, 2015*). Local Civil Rule 65.1 likewise governs applications seeking emergency equitable relief and confirms this Court’s authority to grant such relief where the record establishes immediate and irreparable harm. See *Floyd v. United States*, No. 15-2702, 2015 U.S. Dist. LEXIS 114277, at 4–5 (*D.N.J. Aug. 27, 2015*); *Farrell-Scott v. Supreme Court*, No. 22-1734, 2022 U.S. Dist. LEXIS 130859, at 6–7 (*D.N.J. July 25, 2022*). Petitioner respectfully submits this letter motion pursuant to Local Civil Rules 7.1 and 65.1 to advise the Court of significant developments that occurred immediately after the filing of the habeas petition and to request emergency relief necessary to protect this Court’s jurisdiction, enforce its prior directives, and prevent irreparable harm.

## **PROCEDURAL POSTURE AND THE COURT’S PRIOR ORDER**

On September 29, 2025, Petitioner filed an emergency habeas petition under 28 U.S.C. § 2241 together with a request for a temporary restraining order, an order to show cause, and a no-transfer directive. On October 1, 2025, the Court issued an Order (ECF No. 4) prohibiting Petitioner’s transfer or removal from New York, New Jersey, or Pennsylvania and granting counsel’s pro hac vice admission.

## **TRANSFER BEFORE ISSUANCE OF THE ORDER AND BEFORE SERVICE**

Before service could be completed and before the Court issued its October 1 Order, ICE transferred Petitioner from Hudson County Correctional Center to Adams County Correctional Center in Natchez, Mississippi, on or about September 30, 2025. Counsel learned of this solely through the ICE Detainee Locator and unsuccessful attempts to contact Petitioner. The transfer prevented service at the original facility and removed Petitioner from this District after the habeas petition had already been filed. Jurisdiction had attached, and the transfer did not alter that legal reality.

### **THE COURT'S JURISDICTION REMAINS SECURE AND CANNOT BE DEFEATED BY TRANSFER**

Federal courts have long held that habeas jurisdiction is determined at the moment of filing. See *Rumsfeld v. Padilla*, 542 U.S. 426, 441–47 (2004). The Supreme Court explained that subsequent transfers do not divest jurisdiction because jurisdiction is anchored in the petitioner's location at filing. Courts in this District consistently apply this rule. See, e.g., *Anariba v. Dir.*, Hudson Cnty. Corr. Ctr., 17 F.4th 434, 445–46 (3d Cir. 2021); *Barone v. Brown*, 126 F. Supp. 2d 805, 808–09 (D.N.J. 2001); *Washington v. Ricci*, 631 F. Supp. 2d 511, 516–17 (D.N.J. 2008). The same principle was recognized even earlier. See *Application of Stecker*, 271 F. Supp. 406, 407–09 (D.N.J. 1966). Most recently, the District reaffirmed these foundations in *Mahmoud Khalil v. Joyce*, 777 F. Supp. 3d 369, 371–75 (D.N.J. 2025). These cases collectively demonstrate that ICE's transfer of Petitioner did not and could not divest this Court of jurisdiction.

A federal court may also enforce its orders and protect the efficacy of its habeas review even after a transfer has occurred. See 28 U.S.C. § 2243; *Ex parte Endo*, 323 U.S. 283, 307–08 (1944). This includes ordering a petitioner returned to the jurisdiction to ensure meaningful review.

### **IMMEDIATE CUSTODIAN AND AGENCY AUTHORITY TO EFFECTUATE RETURN**

Although Petitioner is now held outside New Jersey, DHS and ICE remain the true custodial authorities. A habeas court may direct the agency with actual power over the detainee to produce him within the jurisdiction, particularly where a transfer threatens to frustrate judicial review. See *Padilla*, 542 U.S. at 435–36, 447 n.16; *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 495–500 (1973). The Third Circuit has affirmed this practical approach. See *Anariba*, 17 F.4th at 446–47. This Court thus possesses clear authority to order Petitioner's return.

### **DEVELOPMENTS IN RESPONDENTS' ANSWER SUPPORT THE NEED FOR IMMEDIATE RELIEF**

Respondents' Answer confirms facts that heighten the urgency for corrective action and show that ICE's conduct has interfered with this Court's ability to adjudicate the habeas petition.

First, Respondents concede that the NTA was not issued until October 12, 2025, nearly three weeks after ICE re-detained Petitioner on September 23, 2025. Their theory that the NTA constitutes written termination of parole under 8 C.F.R. § 212.5(e)(2) cannot justify detention that began before the NTA existed. Regulatory compliance must precede or accompany a deprivation of liberty.

Second, Respondents do not address the *Accardi* doctrine. Agencies must follow their own regulations, and courts must enforce this requirement even if the government avoids it in briefing. Respondents rely only on an automatic expiration theory under § 212.5(e)(1), ignoring that subsection (e)(2) imposes affirmative procedural requirements.

Third, Respondents admit Petitioner was physically in New Jersey custody at the time of filing, confirming that this Court's jurisdiction is secure under Padilla and Anariba.

Fourth, Respondents offer no explanation for transferring Petitioner the day after he filed his habeas petition and before service could be completed. The timing supports the inference that the transfer was executed without reasoned decision making.

## LEGAL ANALYSIS AND LIMITS ON DHS AUTHORITY

Multiple bodies of law confirm that ICE's transfer of Petitioner was unlawful.

1. **Arbitrary and Capricious Transfers Under the APA** Agency actions must not be arbitrary or capricious. See 5 U.S.C. § 706(2)(A). This standard applies to DHS's detention and transfer decisions. As the First Circuit explained, an agency must provide a reasoned explanation for its decision and may not rely on improper considerations. *Doe v. Noem*, 152 F.4th 272, 281 (1st Cir. 2025). ICE's transfer of Petitioner, executed without explanation and at a moment when judicial review was imminent, fits squarely within the category of arbitrary action prohibited by the APA.
2. **Implicit Limits on DHS's Authority to Alter Custody Without Changed Circumstances** Courts recognize that DHS cannot reverse prior custody determinations, such as parole or bond, without showing materially changed circumstances. The Northern District of California held that rearrest and transfer absent such justification violates due process. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176–77 (N.D. Cal. 2017). The court observed that absent compelling justification, a repeated seizure based on the same circumstances is unreasonable. *Id.* at 1187. Although *Saravia* addressed minors, its reasoning is grounded in due process principles that apply here.
3. **Matter of Li Does Not Permit Arbitrary Action** *Matter of Li* recognizes DHS's discretionary authority, but does not endorse arbitrary or retaliatory decisions. The decision does not displace the APA, due process principles, or *Accardi* obligations. *Saravia* reinforces that DHS must act consistently and fairly, and cannot reverse custody status without justification. 280 F. Supp. 3d at 1178–79.
4. **Treatise Guidance Confirming DHS's Limits** The leading immigration treatise explains that once proceedings commence, DHS may not unilaterally cancel charging documents and must proceed through formal mechanisms. Immigration Law and Procedure §§ 239.2(a)–(c). Although addressing NTAs, this principle reflects a broader prohibition on DHS manipulating posture or jurisdiction. ICE's transfer of Petitioner to Mississippi after filing constitutes the type of unilateral action courts reject.
5. **Due Process Principles Protecting Access to the Court** The liberty interest protected by the Due Process Clause prohibits government actions that obstruct access to the courts or impede habeas review. *Saravia*, 280 F. Supp. 3d at 1184. Strategic transfers that frustrate litigation offend these principles. *Ex parte Endo* confirms that habeas relief must remain effective and cannot be nullified by such maneuvers. 323 U.S. at 306–07.
6. **The Transfer Violated Every Applicable Standard** The transfer occurred after the habeas filing, before the Court could act, without explanation, and placed Petitioner in a remote facility far from counsel and the Court. Respondents now rely on the transfer to limit this Court's reach. This is precisely the type of conduct condemned by *Padilla*, *Saravia*, *Doe v. Noem*, the APA, and the habeas jurisprudence of this District.

## **REQUESTED RELIEF**

Petitioner respectfully requests that the Court enter an Order:

A. Reaffirming that the Court's October 1, 2025 no-transfer Order remains in full force.

B. Directing Respondents to return Petitioner to custody within the District of New Jersey, specifically Hudson County Correctional Center (or another New Jersey facility designated by the Court), by a date certain.

C. Directing Respondents to file, within 48 hours, a declaration identifying: (i) the date, time, and authority for the transfer; and (ii) the officials who transferred the Petitioner.

Respectfully Submitted,

/s/ Roberto L. Pagan

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