

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

ZU PING CHEN)

A# [REDACTED])

Petitioner,)

) Case No.: 3:25-cv-00970 BL-JTA

vs.)

MELLISSA B. HARPER, Field Office Director)
New Orleans Field Office, and)
TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and)
Customs Enforcement, and)
KRISTI NOEM, *Secretary of Homeland Security*,)
and PAMELA BONDI, *U.S. Attorney General*)

Respondents.)

**PETITIONER'S SECOND EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

I. INTRODUCTION

COMES NOW Petitioner, Zu Ping CHEN, by and through counsel, and pursuant to Federal Rule of Civil Procedure 65, hereby files Second Emergency Motion for a Temporary Restraining Order (“TRO”) and/or Preliminary Injunction. This renewed motion is based on **materially changed circumstances** since the Court’s January 21, 2026 Order (Doc. 26): on February 24, 2026, Immigration and Customs Enforcement (“ICE”) officers re-detained Mr. Chen in this District, and ICE officers expressly confirmed to undersigned counsel that Mr. Chen’s long-standing Order of Supervision (“OSUP”) had been revoked at his December 16, 2025 check-in and was being revoked again as the basis for his current custody, and that he would be transported from a holding facility in Montgomery, Alabama to an off-site location in Louisiana for a purported “review” of that revocation. Petitioner is currently detained in Pickens County, Alabama with imminent transfer to Louisiana.

Respondents' actions violate the Fifth Amendment's Due Process Clause, exceed the narrow post-order detention authority conferred by 8 U.S.C. § 1231(a)(6), disregard mandatory post-order custody regulations at 8 C.F.R. §§ 241.4 and 241.13 (including the "changed circumstances" and prompt-interview requirements), and contravene the Administrative Procedure Act and the Accardi doctrine.

Petitioner seeks narrowly tailored, as-applied habeas and equitable relief: immediate release from custody and restoration to the terms of his prior OSUP, together with a limited requirement that Respondents provide advance written notice to this Court and counsel before transferring him out of Alabama or effectuating his removal, so that the Court's jurisdiction and ability to render meaningful relief under 28 U.S.C. §§ 2241 and 2243 are not nullified by unilateral agency action and the last peaceable status quo ante of supervised release is preserved while the Court adjudicates his claims. Jurisdiction over this habeas action under 28 U.S.C. § 2241(a) attached when Mr. Chen properly filed in this Court while confined within the Middle District of Alabama and named the appropriate ICE custodian, and, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004), *Ex parte Endo*, 323 U.S. 283, 306–07 (1944), and circuit authority, it is not defeated by subsequent transfers or other jurisdictional gamesmanship. This emergency motion is necessary to remedy an ongoing unlawful deprivation of liberty, to restore the last peaceable status quo ante of supervised release that prevailed for more than two decades, and to preserve this Court's power to adjudicate the merits of Mr. Chen's constitutional, statutory, and regulatory claims notwithstanding his present detention and any attempted transfer.

Petitioner hereby incorporates all contents of the Amended Verified Petition for Writ of Habeas Corpus, ECF 28, into this motion. Petitioner hereby requests the Court to issue a Temporary Restraining Order and/or Preliminary Injunction, pursuant Fed. R. of Civ. P. 65, to

“prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits,” and “to insure that a remedy will be available.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). See also *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974)). This emergency TRO is required to “prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits,” and “to insure that a remedy will be available.” *U.S. v. State of Ala.*, 791 F.2d 1450, 1459 (11th Cir. 1986), citing *Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 302 (5th Cir. 1978). The Eleventh Circuit also recognizes the principle of restoring the status quo ante as a form of equitable relief. See *Lewis v. Federal Prison Industries, Inc.*, 953 F.2d 1277, 1286 (11th Cir. 1992) (an employer’s discriminatory acts disable an employee, he/she may seek equitable relief, including changes in working conditions, to restore the status quo ante).

II. STATEMENT OF EMERGENCY FACTS

On February 24, 2026, Respondents re-detained Petitioner Zu Ping Chen, who has complied with an Order of Supervision (“OSUP”) issued by ICE for more than two decades without incident. ICE agents took Petitioner into custody yesterday and further admitted that the OSUP had, in fact, been revoked at Petitioner’s December 16, 2025 check-in, a material fact this Court previously found had not been established in its January 21, 2026 Order denying preliminary injunctive relief.

Following this confirmation, ICE officers immediately took Petitioner into physical custody in this District. Counsel was informed that Petitioner would be transferred to a separate ICE facility in Montgomery, Alabama, used as a short-term staging and transfer location, where he would be provided a copy of the OSUP revocation—ICE Form 71-091—stating, via pre-printed

checkboxes, that “the purposes of release have been served,” that “it is appropriate to enforce the removal order,” and that “revocation is in the public interest and circumstances do not reasonably permit referral to the Executive Associate Director of ERO.” He is now in Pickens County, Alabama. Respondents further stated that any “review opportunity” concerning that revocation and his continued detention would be conducted off-site in Louisiana, hundreds of miles from Petitioner’s home, family, and retained counsel in Alabama. Conducting the only post-revocation “review” in a distant out-of-state facility, after a sudden re-detention in Alabama and without contemporaneous written reasons or a local informal interview, will deprive Petitioner of the prompt, meaningful opportunity to be heard contemplated by 8 C.F.R. §§ 241.4(l)(1) and 241.13(i)(3), and will substantially burden his access to counsel and to this Court.

These new facts go directly to the foundations of this Court’s January 21, 2026 Order (Doc. 26), which denied Petitioner’s first request for emergency relief on the express grounds that his OSUP had not actually been revoked and that any threatened detention was not imminent. While additional supervisory conditions, including an ankle monitor and Intensive Supervision Appearance Program (“ISAP”) enrollment, were imposed at the December 16, 2025 check-in, Petitioner was not physically detained at that time, and the Court therefore viewed his harm as speculative. By contrast, as of February 24, 2026, Respondents have now admitted that they revoked Petitioner’s OSUP and have actually taken him into custody, creating a present and ongoing deprivation of liberty without advance notice or any meaningful opportunity to be heard in this District. These events constitute material and adverse changed circumstances that fundamentally alter the equitable and constitutional analysis and trigger the specific post-revocation safeguards in 8 C.F.R. §§ 241.4(l)(1) and 241.13(i)(3), which ICE has not honored here.

Petitioner's re-detention is not based on any new conduct by him, any violation of his OSUP conditions, or any concrete change in circumstances making his removal significantly likely in the reasonably foreseeable future. ICE remains unable to obtain a travel document from the People's Republic of China, a diplomatic reality that has persisted for more than twenty-five years and that led the agency to place Petitioner on an OSUP in the first place. Respondents have identified no individualized "changed circumstances"—as that term is used in 8 C.F.R. §§ 241.4(l)(2) and 241.13(i), and in 8 U.S.C. § 1231(a)(6), which courts have distilled into the need for an individualized finding, based on changed circumstances, that removal has become significantly likely in the reasonably foreseeable future—that would justify revocation of release and renewed detention at this late date. Transferring Petitioner to Louisiana for a distant, off-site review proceeding would substantially impair his access to this Court and to his chosen counsel, deprive him of the prompt, local informal interview contemplated by 8 C.F.R. § 241.13(i)(3), and threatens to frustrate meaningful adjudication of his pending habeas petition absent immediate judicial intervention to restore the status quo ante and preserve the Court's jurisdiction.

III. PROCEDURAL HISTORY AND THE COURT'S PRIOR TRO DENIAL

Petitioner initiated this action on December 9, 2025, by filing a Verified Petition for Writ of Habeas Corpus and Complaint for Declarative and Injunctive Relief (Doc. 1), followed by an Emergency Motion for a Temporary Restraining Order on December 11, 2025 (Doc. 5). On January 21, 2026, this Court denied Petitioner's motion for preliminary injunctive relief (Doc. 26). In doing so, the Court found, *inter alia*, that (1) Petitioner had "not demonstrated that his OSUP has been revoked," but rather that its conditions were "merely amended," (2) any threatened irreparable harm from detention was not imminent because Petitioner had not actually been taken

into custody, (3) the broad request for an order requiring Respondents to “comply with the law” risked becoming an impermissible “follow-the-law injunction,” and (4) under 8 U.S.C. §§ 1252(a)(2)(B) and 1231(g), the Court lacked jurisdiction to enjoin ICE’s discretionary decisions regarding the location of detention or to bar transfer outside this District. The Court also interpreted the applicable regulations to require only post-revocation notice and an informal interview after return to custody, and not advance notice or a pre-revocation opportunity to be heard.

The new facts presented herein directly overcome the central premises of the Court’s prior ruling. First, the harm is no longer speculative: as of February 24, 2026, Petitioner has been taken into physical custody by Respondents in this District, constituting a concrete and ongoing deprivation of liberty. Second, the issue of revocation is no longer a matter of inference: ICE officers now explicitly confirmed to Petitioner’s counsel that ICE did, in fact, revoke Petitioner’s OSUP at the December 16, 2025 check-in and is relying on that revocation to justify his current detention. These admissions and the present custodial status are material changed circumstances not before the Court when it previously concluded that “the Petitioner has not demonstrated that his OSUP has been revoked” and that detention-related harm was not imminent. Now that both revocation and detention have undeniably occurred, this renewed motion presents a fully ripe record for the Court’s consideration of the constitutional, statutory, and regulatory violations alleged, including the proper interpretation of the post-order custody regulations and the scope of this Court’s habeas and equitable authority notwithstanding 8 U.S.C. §§ 1252 and 1231(g).

In addition, this Second Emergency Motion is narrowly tailored in light of the Court’s prior concerns. Petitioner does not seek a generalized decree commanding Respondents to “comply with the law” in all future cases, nor a categorical prohibition on transfer that would intrude on ICE’s statutory discretion under 8 U.S.C. § 1231(g). Instead, Petitioner requests only as-applied,

individual relief: (1) habeas-based restoration to the last uncontested status quo ante by ordering his immediate release from custody and reinstatement of the specific OSUP under which he peacefully lived and reported for more than two decades, and (2) a limited requirement that Respondents provide advance written notice to this Court and counsel before transferring him out of this District or effectuating his removal, so that the Court’s jurisdiction under 28 U.S.C. § 2241 is not rendered illusory by unilateral transfer or other jurisdictional gamesmanship. Courts have recognized that § 1231(g)(1) addresses “places of detention” but does not categorically bar judicial oversight of transfer practices that impair access to counsel or the courts, and at a minimum permits narrowly tailored relief such as advance-notice requirements in an individual habeas case. See, *Ozturk v. Hyde*, 136 F.4th 382, 395–96 (2d Cir. 2025). This individualized, status-quo-restoring relief—release and reinstatement of the prior OSUP plus a modest 72-hour notice requirement before any out-of-district transfer or removal in Mr. Chen’s case—is precisely the sort of remedy that federal courts routinely fashion in habeas and TRO practice under 28 U.S.C. § 2243 and the All Writs Act and does not constitute the type of broad “follow-the-law injunction” the Court previously declined to enter. See attached exhibits for courts ordering similar orders pursuant to All Writs Act.

IV. STATEMENT OF JURISDICTION, VENUE AND PROPER RESPONDENTS

This Court has subject matter jurisdiction over Petitioner’s habeas claims pursuant to 28 U.S.C. § 2241 and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, because he is “in custody in violation of the Constitution or laws or treaties of the United States.” Jurisdiction under § 2241 attached when Mr. Chen filed his habeas petition while confined within this District and naming his then-immediate ICE custodian, and that jurisdiction is not destroyed by ICE’s subsequent decision to move him to a different facility. In *Rumsfeld v. Padilla*, the Supreme Court explained

that when a habeas petitioner properly files naming his immediate custodian, the district court “retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner’s release,” even if the Government later transfers the petitioner out of the district. 542 U.S. 426, 441 (2004). Likewise, in *Ex parte Endo*, the Court held that the Government may not “impair or defeat” the objective of habeas relief “by removing the prisoner from the territorial jurisdiction of the District Court” after a petition has been properly filed. 323 U.S. 283, 307 (1944).

That principle is rooted in 28 U.S.C. § 2241(a), which authorizes federal courts to grant the writ “within their respective jurisdictions” and is satisfied when, at the time of filing, the petitioner is confined within the district and sues his immediate custodian. Courts of appeals have reiterated that, once jurisdiction attaches in this manner, a subsequent transfer does not divest the original court of habeas jurisdiction and the court may direct the writ to any respondent within its territorial reach who has legal authority to effectuate the petitioner’s release. See, e.g., *Ozturk v. Hyde*, 136 F.4th 382, 392, 395–96 (2d Cir. 2025). This settled rule prevents the Government from evading judicial oversight of detention by engaging in “jurisdictional gamesmanship” through serial transfers after a habeas petition has been properly filed.

The Court also has federal-question jurisdiction under 28 U.S.C. § 1331 over Petitioner’s constitutional and Administrative Procedure Act claims. Petitioner’s challenges to the legality of his post-order detention and to the process and authority by which ICE revoked his OSUP are collateral to the underlying final order of removal and do not seek review of that order itself. Consistent with *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018), and with district-court decisions in *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at 3–4 (W.D. Wash. Dec. 4, 2018), and *Alam v. Nielsen*, 312 F. Supp. 3d 574, 579–81 (S.D. Tex. 2018), the

jurisdiction-channeling provisions in 8 U.S.C. § 1252(a)(5), (b)(9), and (g) do not bar such collateral habeas challenges to detention and revocation procedures, which fall within the traditional ambit of § 2241. Nor does 8 U.S.C. § 1252(f)(1) preclude the individualized, as-applied habeas and injunctive relief sought here, because that provision limits only broad class-wide or programmatic injunctions that “enjoin or restrain the operation” of the immigration statutes, and expressly leaves room for courts to grant relief in individual cases.

The Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over Petitioner’s claims arising under the Administrative Procedure Act (“APA”) and the Fifth Amendment. Although 8 U.S.C. § 1252(a)(5) and (b)(9) channel judicial review of “final order[s] of removal” and all questions of law and fact “arising from any action taken or proceeding brought to remove an alien” to the courts of appeals on petition for review, those provisions do not strip district courts of jurisdiction over collateral habeas challenges to the legality of immigration detention or to the process by which an existing order of supervision is revoked. In *Jennings v. Rodriguez*, the Supreme Court confirmed that § 1252(b)(9) does not bar suits that “challeng[e] the very fact of detention,” as opposed to the removal order itself. 138 S. Ct. 830, 840–41 (2018). Numerous district courts have therefore held, in cases factually analogous to Mr. Chen’s, that habeas challenges to post-order detention and OSUP revocation fall outside § 1252(b)(9) and § 1252(g) and remain within the traditional jurisdiction of the district courts under § 2241. See, e.g., *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at 3–4 (W.D. Wash. Dec. 4, 2018); *Alam v. Nielsen*, 312 F. Supp. 3d 574, 579–81 (S.D. Tex. 2018); *Rivera v. Wilcox*, No. C19-385-RSM-BAT, 2019 WL 13209736, at 4–5 (W.D. Wash. Sept. 24, 2019). Those courts have correctly recognized that § 1252(g) is to be read “narrowly,” applying only to three discrete actions—“commence proceedings, adjudicate cases, or execute removal orders”—and does not

extend to collateral challenges to unlawful detention or to the manner in which ICE revokes an OSUP and returns a noncitizen to custody. See *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–85 (1999); *Ahmad*, 2018 WL 6928540, at 3–4; *Rivera*, 2019 WL 13209736, at 4–5. Likewise, in *You v. Nielsen*, the court held that a noncitizen with a final order of removal who had lived for years under supervised release could invoke § 2241 to challenge ICE’s process for cancelling that release and re-detaining him, because such a claim attacked detention authority and procedures, not the decision to execute the removal order. 321 F. Supp. 3d 451, 461–64 (S.D.N.Y. 2018).

Petitioner’s claims are thus collateral to the final removal order and instead challenge the legality of his current post-order detention and of the procedures and authority by which his long-standing supervised release was revoked and replaced with incarceration. They do not seek review or stay of the removal order itself, but rather assert constitutional and statutory limits on prolonged detention under 8 U.S.C. § 1231(a)(6) and on ICE’s authority to cancel an OSUP without following binding regulations. Courts addressing similar challenges have drawn this precise distinction, holding that while § 1252 channels review of removal orders to the courts of appeals, it does not bar habeas petitions that contest “the very fact of detention” or the agency’s compliance with post-order custody statutes and regulations. See *Jennings*, 138 S. Ct. at 840–41; *Ahmad*, 2018 WL 6928540, at 3–4; *Alam*, 312 F. Supp. 3d at 579–81; *You*, 321 F. Supp. 3d at 461–64. Constitutional claims and questions of law are, in any event, expressly preserved for judicial review notwithstanding the jurisdictional limitations codified in § 1252. 8 U.S.C. § 1252(a)(2)(D). To the extent Respondents invoke 8 U.S.C. § 1252(a)(2)(B)(ii) and § 1231(g)(1) to argue that transfer decisions are committed to unreviewable discretion, multiple courts of appeals have held that § 1231(g)(1) speaks only to the Government’s obligation to “arrange for appropriate places of

detention” and does not insulate transfers from as-applied constitutional or statutory review, particularly where such transfers impair access to counsel or the courts. See *Ozturk v. Hyde*, 136 F.4th 382, 395–96 (2d Cir. 2025). In light of the Court’s prior order, Petitioner does not presently seek a categorical bar on transfers, but only a modest 72-hour notice requirement tailored to preserve this Court’s habeas jurisdiction and his access to counsel in this individual case.

And because Petitioner seeks only as-applied, individual injunctive and habeas relief in his own case—not class-wide or programmatic relief—this motion is fully consistent with the limitations in 8 U.S.C. § 1252(f)(1), which the Supreme Court has construed to bar only broad systemic injunctions that “enjoin or restrain the operation of” the immigration statutes as to classes of persons and does not prevent a district court from granting individualized relief under 28 U.S.C. § 2243 and 5 U.S.C. § 706 to set aside or compel agency action in a single petitioner’s case.

Venue is proper in this District because Petitioner resides in Auburn, Alabama; his OSUP has been administered through ICE’s New Orleans Field Office with reporting in Montgomery, Alabama; and his initial and current ICE custody underlying this motion occurred within the Middle District of Alabama. The immediate ICE official with day-to-day control over Petitioner’s custody in this District is the proper respondent to the habeas claim under Padilla, and higher-level DHS and ICE officials are properly named in their official capacities for the non-habeas APA, All Writs Act, and declaratory claims to ensure that any as-applied relief this Court orders—including restoration of the prior OSUP and a narrow advance-notice requirement before transfer or removal—can be implemented by those with legal authority over OSUP revocation, detention, and transfer decisions. This respondent structure avoids any abstract “obey the law” decree, is consistent with 8 U.S.C. § 1252(f)(1)’s limitation to individual as-applied relief, and instead targets

concrete, enforceable remedies in this single habeas case directed to the specific officials responsible for Petitioner's unlawful detention and the revocation of his OSUP.

V. ORDERS TO PRESERVE JURISDICTION

There are many courts who have used similar orders to preserve their jurisdiction, where in similar habeas cases, have enjoined Respondents from removing a petitioner from the district or from the United States, or both. Enclosed as Exhibit 1 an Order issued in one of undersigned counsel's cases, *S.D.B.B. v. Johnson*, 1:25-cv-00882-TDS-LPA, (M.D. N.C., Oct. 1, 2025), ECF. Dkt. 7, stating:

"The All Writs Act permits 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). Further, the Supreme Court recognizes "a limited judicial power to preserve the court's jurisdiction or maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels." *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (citing cases). Other federal courts have recognized authority under the All Writs Act to stay removal. *See, e.g., Kuprashvili v. Flanagan*, 25 Civ. 5268 (PAE), 2025 WL 2382059, at *1 (S.D.N.Y. June 30, 2025) (collecting cases)."

In *Kuprashvili v. Flanagan*, 25 Civ. 5268 (PAE), 2025 WL 2382059, at *1 (S.D.N.Y. June 30, 2025), Exhibit 2, the court stated:

"To preserve the Court's jurisdiction pending a ruling on the petition, petitioner shall not be removed from the United States unless and until the Court orders otherwise. *See, e.g., Du v. United States Dep't of Homeland Sec.*, No. 25 Civ. 644 (OAW), 2025 WL 1317944, at *1 (D. Conn. Apr. 24, 2025) (enjoining defendants from "removing any Plaintiffs or putative class members from the District of Connecticut, and from deporting them from the United States" because "a federal court may temporarily enjoin immigration authorities from deporting individuals if it preserves the court's jurisdiction over a case or cases"); *Ozturk v. Hyde*, No. 25 Civ. 10695 (DJC), 2025 WL 1009445, at *11 (D. Mass. Apr. 4, 2025) ("To allow the Court's resolution of its jurisdiction to decide the Petition, Ozturk shall not be removed from the United States until further Order of this Court." (citation omitted)); *Leuthavone v. Salisbury*, No. 97 Civ. 556 (JJM), 2025 WL 1135588, at *2 (D.R.I. Apr. 17, 2025) (granting a stay of removal "to maintain the status quo and preserve the Court's ability to adjudicate the habeas petition"); *Mahmoud Khalil v. Joyce*, No. 25 Civ. 1935 (JMF), 2025 WL 750599, at *1 (S.D.N.Y. Mar. 10, 2025) ("To preserve the Court's jurisdiction pending a ruling on the petition, Petitioner shall not be removed from

the United States unless and until the Court orders otherwise.”); see also *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) (“Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act, 28 U.S.C. § 1651, authorizes a federal court to protect that jurisdiction.” (cleaned up)); *Garcia-Izquierdo v. Gartner*, No. 4 Civ. 7377, 2004 WL 2093515, at *2 (S.D.N.Y. Sept. 17, 2004) (under the All Writs Act, 28 U.S.C. § 1651, a district court “may order that a petitioner's deportation be stayed ... when a stay is necessary to preserve the Court's jurisdiction of the case”); cf. *Michael v. I.N.S.*, 48 F.3d 657, 661–62 (2d Cir. 1995) (the All Writs Act provides a federal court of appeals reviewing a final removal order with a basis to stay removal).” *Id.* at *1.

Due to the rapid removal of noncitizens during this administration, certain districts have issued standing orders to preserve the court’s jurisdiction in these situations. For example, the Standing Order for the District of Maryland, reads in part: “[T]his Order SUSPENDS the authority of Government/Respondents, including all those acting for them or on their behalf, **to remove Petitioner from the continental United States**, and SUSPENDS the effect of any change of the Petitioner’s legal status that may deprive this Court of subject-matter jurisdiction over the Petition”. See Exhibit 3, also available at the following URL: <https://www.mdd.uscourts.gov/sites/mdd/files/Second%20Amended%202025-01.pdf>

See also *Copa v. Noem*, No. 1:25-cv-04052-RMR, ECF No. 4 (Text Order) (D. Colo. Dec. 18, 2025) enjoining removal during the pendency of the case, a routine order issued by judges in that court in similar habeas cases.

See also TRO granted in *Fuenmayor Torres v. Quinones*, No: 6:26-cv-258-JSS-LHP, 2026 WL 262596 (M.D. Fl., Feb. 2, 2026) where the court ordered to immediately transfer Petitioner back to the Orange County Jail and, once he is there, temporarily enjoin them from transferring Petitioner from the Orange County Jail until further order of the court. *Id.*, *5. Exhibit 4.

See also *Frank V. v. Olson*, 2026 WL 36120, at *2 (D. Minn. Jan. 6, 2026) (temporarily enjoining respondents from transferring habeas petitioner out of the District of Minnesota while habeas petition was pending); see also *Nebraska v. Biden*, 52 F.4th 1044, 1047 (8th Cir. 2022)

(“[T]he equities strongly favor an injunction considering the irreversible impact [the challenged agency] action would have as compared to the lack of harm an injunction would presently impose.”).

Furthermore, deprivation of access to retained counsel is plainly harmful to a litigant since it handicaps his ability to effectively present his case to the Court.” *Escalante v. Bondi*, 2025 WL 2212104, at *2 (D. Minn. July 31, 2025), *report and recommendation adopted*, *O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 5, 2025). Such deprivation not only impairs the litigant’s ability to advocate for himself, but also hinders the court’s capacity to manage the case efficiently and reach a fair resolution. *See generally Doe v. McAleenan*, 415 F. Supp. 3d 971 (S.D. Cal. 2019) (recognizing that restrictions on a detainee’s access to counsel can constitute irreparable injury warranting emergency relief).

Statutory “jurisdiction-stripping” provisions do not eliminate this narrow, as-applied authority. Respondents sometimes invoke 8 U.S.C. § 1252(a)(2)(B)(ii) together with § 1231(g)(1), which requires the Attorney General to “arrange for appropriate places of detention,” to argue that transfer decisions are unreviewable discretionary acts. Courts that have squarely addressed this argument have rejected it. The Northern District of Georgia, in *Rojano Gonzalez*, held that § 1231(g) “fails to ‘specify’ that individualized transfer decisions are in the Attorney General’s discretion” and thus does not trigger § 1252(a)(2)(B)(ii)’s bar, which applies only where Congress itself “specifie[s]” that the decision is discretionary. The Fourth and Second Circuits have reached the same conclusion: in *Reyna v. Hott*, 921 F.4d 204 (4th Cir. 2019), the Fourth Circuit held that § 1231(g) “does not address transfers at all” and certainly does not “explicitly grant the Attorney General or the Secretary of Homeland Security discretion with respect to transfers,” so any transfer authority is at most implied, not “specified” and therefore not insulated from review under §

1252(a)(2)(B)(ii). The Second Circuit, in *Ozturk v. Hyde*, 136 F.4th 382 (2nd Cir. 2025) adopted *Reyna*'s reasoning, holding that even if transfer authority "might rightfully be located" in § 1231(g), it is implied rather than specified and thus does not fall within § 1252(a)(2)(B)(ii)'s jurisdictional bar.

In sum, consistent with *Lopez, Gonzalez, Molina Ochoa*, and the Maryland, Oregon, Colorado and Massachusetts orders, this Court may—indeed should—enter a limited, as-applied order enjoining Respondents from transferring Petitioner outside the Northern District of Alabama (or otherwise changing Petitioner's immediate custodian) without leave of Court while this case is pending. Such relief does not second-guess the merits of any discretionary placement decision; it simply preserves this Court's habeas jurisdiction and ensures that its eventual judgment is not rendered ineffectual by the unilateral relocation of the petitioner beyond this District.

VI. EVIDENCE AND EXHIBITS

In support of this motion, Petitioner will file the following exhibits:

- Exhibit A – Copy of Assumption of Custody page given to Petitioner upon redetention.
- **ECF 28-3: Declaration of Brian J. Bogdany.** This declaration attests to the facts surrounding Petitioner's February 24, 2026 check-in and detention at the Montgomery ICE field office, including the statements made by the ICE officer regarding prior and current revocation of Petitioner's OSUP, ICE's stated intent to transfer Petitioner first to a facility in Montgomery and then to Louisiana for a "review" proceeding, and the absence of any opportunity for Petitioner to contest the OSUP revocation.
- **ECF 28-1: ICE Form 71-091 "Notice of Revocation of Release" dated February 24, 2026.** This is the pre-printed revocation form, signed by Field Office Director Christopher

Bullock, checking the boxes that “the purposes of release have been served,” that “it is appropriate to enforce the removal order entered against you as ICE has the ability and means to effectuate your removal,” and that “revocation is in the public interest and circumstances do not reasonably permit referral to the Executive Associate Director of ERO,” without any individualized factual explanation.

VII. RELIEF SOUGHT – SPECIFIC INJUNCTIVE LANGUAGE AND REQUESTED ORDERS

WHEREFORE, for the reasons set forth herein and in the accompanying memorandum, Petitioner respectfully prays that the Court grant this Emergency Motion and issue an ex parte Temporary Restraining Order and/or a Preliminary Injunction providing the following as-applied, individual relief consistent. In light of the materially changed circumstances since this Court’s January 21, 2026 Order (Doc. 26), Petitioner has established that all four factors for emergency injunctive relief weigh decisively in his favor, and they fully support the as-applied, individualized habeas and equitable relief this Court may grant under 28 U.S.C. §§ 2241 and 2243 consistent with 8 U.S.C. § 1252(f)(1). Respondents’ recent revocation of his OSUP and his resulting re-detention have created an ongoing and irreparable constitutional and statutory injury that warrants immediate, individualized habeas and as-applied injunctive relief from this Court. Petitioner respectfully prays that the Court grant the specific injunctive relief detailed below:

1. **Grant an immediate, ex parte Temporary Restraining Order** ordering Respondents, their officers, agents, employees, and all persons acting in concert with them, to immediately release Petitioner from physical custody and return him to the terms and conditions of his Order of Supervision (“OSUP”) as it existed prior to his detention on February 24, 2026, thereby restoring the last uncontested status quo

ante of supervised release, pursuant to the Court's habeas authority under 28 U.S.C. § 2243, pending a hearing on this matter.

2. **In the alternative, and only if Respondents elect to continue detaining Petitioner rather than releasing him under his reinstated OSUP, order Respondents to hold Petitioner in ICE custody within the Middle District of Alabama for the duration of this habeas proceeding and to transfer him forthwith into a facility located within this District to the extent he is currently detained elsewhere, so that he can meaningfully confer with counsel and participate in these proceedings.** This detention-location requirement is without prejudice to Respondents' ability to seek modification for good cause shown by motion to this Court.
3. **Order Respondents, pursuant to 28 U.S.C. §§ 2243 and 1651, to provide at least seventy-two (72) hours' advance written notice to the Court and to Petitioner's counsel before (a) transferring Petitioner to any detention facility outside the State of Alabama or (b) effectuating his physical removal from the United States, so as to preserve this Court's jurisdiction under 28 U.S.C. § 2241 and its ability to provide meaningful relief in this individual habeas action.** This provision does not categorically prohibit transfers or removal, but merely requires advance notice in this individual case to preserve the Court's jurisdiction and Petitioner's access to counsel.
4. Order Respondents to produce to the Court and Petitioner's counsel, within one (1) business day, a copy of all communications, decisions, paperwork, documents relating to the decision to revoke Petitioner's OSUP.

5. Issue an Order to Show Cause, returnable within three (3) days, requiring Respondents to demonstrate why the writ of habeas corpus should not be granted and why a preliminary injunction should not issue.
6. Schedule an expedited evidentiary hearing on Petitioner's Motion for a Preliminary Injunction at the earliest practicable time.
7. Waive the security requirement of Federal Rule of Civil Procedure 65(c), as this public-interest action seeks to vindicate important constitutional and statutory rights, Petitioner is an indigent detained noncitizen with no ability to post a meaningful bond, and Respondents face no risk of monetary harm from compliance with the limited, as-applied relief requested.
8. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

This 25th day of February, 2026.

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on February 25, 2026, I electronically filed the foregoing Document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock
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