

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

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**ANTONIO ELPIDIO GOMEZ-ALCINA,**

Petitioner,

**CASE No.: 2:25-cv-01164-KDC-DNF**

v.

**KRISTI NOEM**, Secretary of the Department of Homeland Security; **PAMELA BONDI**, Attorney General of The United States; **TODD M. LYONS**, Acting Director of U.S. Immigration and Customs Enforcement; **GARRET RIPA**, Miami Field Office Director, U.S. Immigration and Customs Enforcement; And **MATTHEW MORDANT**, Warden of Florida Soft Side South ("Alligator Alcatraz").

Respondents.

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**PETITIONER'S MOTION FOR TEMPORARY RESTRAINING  
ORDER AND SUPPORTING MEMORANDUM OF LAW**

**I. PRELIMINARY STATEMENT**

Petitioner, ANTONIO ELPIDIO GOMEZ-ALCINA, respectfully moves this Court for a temporary restraining order pending its adjudication of his Petition for Writ of Habeas Corpus. Petitioner seeks narrowly tailored emergency relief ordering Respondents, and all persons acting in concert with them, to cease any ongoing actions and to refrain from taking any additional actions to effectuate Petitioner's

removal from the United States or to transfer Petitioner outside the Middle District of Florida, Fort Myers Division, while his habeas petition remains pending before this Court.

Gomez-Alcina is a seventy-two-year-old native and citizen of Cuba who has resided in the United States for more than forty-five years, since his arrival in 1980 during the Mariel Boatlift. On or about August 9, 1988, the Oakdale Immigration Court, appears to have granted Gomez-Alcina protection from removal. However, the precise form of relief granted, whether withholding of removal under INA § 241(b)(3) or protection under the Convention Against Torture, cannot be confirmed at this time. Accordingly, Petitioner has submitted a FOIA request seeking the complete record of proceedings. Upon receipt of those records, Petitioner will supplement or amend this petition as necessary to accurately reflect the form of relief granted.

On October 20, 2015, Gomez-Alcina was released from ICE custody pursuant to an Order of Supervision (OSUP). Since that time, he has lived lawfully in the community under the terms of his OSUP and has remained in full compliance with all conditions of his supervision, including annual reporting to the ICE ERO office. Gomez-Alcina does not challenge the underlying order of removal or U.S. Immigration and Customs Enforcement's general statutory authority to execute that order. Rather, he challenges the processes ICE has employed, and continues to

employ, in effectuating his removal, including the improper revocation of his Order of Supervision in violation of 8 U.S.C. § 1231 and 8 C.F.R. § 241.4.

Because Gomez-Alcina is likely to succeed on the merits of his Petition for Writ of Habeas Corpus, and because he will suffer immediate and irreparable harm if Respondents are permitted to proceed with their current removal efforts, which, upon information and belief, are scheduled to occur imminently or are already underway, Petitioner respectfully requests that the Court issue a temporary restraining order enjoining Respondents from transferring Petitioner outside this Court's jurisdiction or removing him from the United States while this Court considers his habeas petition.

## **II. NOTICE TO RESPONDENTS**

Undersigned counsel affirms she intends to send, via email, a copy of the Petition for Writ of Habeas Corpus, Motion for a Temporary Restraining Order ("TRO"), this Memorandum of Law, a proposed order for granting the TRO upon the filing of this motion to the U.S. Attorney's Office in Tampa, Florida in accordance with Local Rule 6.01(c).

## **III. BASIS OF HABEAS PETITION**

On December 15, 2025, Gomez-Alcina filed a Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition") challenging his unlawful detention at "Alligator Alcatraz" arising from ICE's unlawful revocation of his

longstanding Order of Supervision (OSUP) and re-detention on December 5, 2025, when he appeared for his routine ICE check-in. ICE revoked Gomez-Alcina's OSUP without prior notice, without a meaningful opportunity to be heard, and without any individualized findings that he posed a danger to the community or a risk of flight, as required by statute and regulation. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4(l), 241.13(i). The Petition is incorporated herein by reference as if fully set forth herein.

Gomez-Alcina is a seventy-two-year-old native and citizen of Cuba, has resided in the United States for more than forty-five years, since his arrival in 1980 during the Mariel Boatlift.

Based on the information currently available to Petitioner, on or about August 9, 1988, the Oakdale Immigration Court, appears to have granted Gomez-Alcina protection from removal. However, the precise form of relief granted, whether withholding of removal under INA § 241(b)(3) or protection under the Convention Against Torture, cannot be confirmed at this time. Petitioner has submitted a FOIA request seeking the complete record of proceedings. Upon receipt of those records, Petitioner will supplement or amend this petition as necessary to accurately reflect the form of relief granted.

On January 13, 1999, Gomez-Alcina was convicted in Ohio of involuntary manslaughter, in violation of Ohio Rev. Code § under Ohio RC 2903.03, a felony of the first degree, and felonious assault, in violation of Ohio Rev. Code § 2903.11, a

felony of the second degree. He was committed to the custody of the Ohio Department of Rehabilitation and Corrections and sentenced to a term of ten years imprisonment for involuntary manslaughter and six years for imprisonment for felonious assault, to be served consecutively.

Following his release from state custody, Gomez-Alcina was released by ICE under an Order of Supervision (OSUP) issued on October 20, 2015. *See*, Habeas Petition, Exh. B. Since that time, he has lived lawfully in the community pursuant to OSUP and has remained in full compliance with all conditions of his supervision, including annual reporting to the ICE ERO office. *Id.*

Gomez-Alcina successfully completed all conditions of his Ohio sentence. In the twenty-six years since his conviction, and for more than ten years since his release from custody, he has had no further contact with law enforcement, demonstrating sustained rehabilitation and stability.

On April 14, 2025, Gomez-Alcina reported to the ISAP ("Intensive Supervision Appearance Program") Miami Office and was not detained. He was ordered to appear in person every eight weeks and was enrolled in weekly telephonic reporting via SmartLINK. *See*, Habeas Petition, Exh. C. As of that date, ICE did not indicate any intent to revoke his Order of Supervision or identify any departure plan determined, nor was any such plan communicated to Petitioner. *Id.* Gomez-Alcina complied with all new conditions imposed.

On December 5, 2025, Gomez-Alcina appeared for his routine ICE check-in. At that time, ICE abruptly and without prior notice revoked his long-standing Order of Supervision and took him into custody, despite more than ten years of full compliance, substantial family and community ties, advanced age, and serious chronic health conditions.

ICE has not alleged that Gomez-Alcina poses any danger to the community or risk of flight, nor has it demonstrated that his removal to Cuba, which has been impossible since 1988, is reasonably foreseeable. Moreover, is available information that the Oakdale Immigration Court may have granted Gomez-Alcina protection from removal in 1988, his removal to Cuba would be unlawful as a matter of law. Nor has ICE identified any third country willing to accept him or initiated the legally required process for third-country removal, including providing notice and an opportunity to seek protection with respect to any such country.

The revocation of Gomez-Alcina's Order of Supervision and his resulting re-detention are arbitrary, punitive, and unlawful under the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a)(6), and violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution. His continued and unnecessary detention, despite the absence of any likelihood of removal and notwithstanding his serious medical vulnerabilities, directly contravenes the constitutional and statutory principles articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny,

which prohibit indefinite detention absent a significant likelihood of removal in the reasonably foreseeable future.

#### **IV. JURISDICTION, VENUE, AND AUTHORITY**

This Court has jurisdiction over Gomez-Alcina's habeas petition under 28 U.S.C. §§ 2241 and 2243, because he is in immigration custody within this District and challenges that custody as unlawful under the U.S. Constitution and the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. § 1101 et seq.

This Court has subject matter jurisdiction over the petition for writ of habeas corpus under 28 U.S.C. § 2241 (habeas corpus authority); U.S. Const. art. 1, § 9, cl. 2. (Suspension Clause), 28 U.S.C. § 1331 (federal question); U.S. Const. amend. V (the Due Process Clause of the U.S. Constitution).

Venue is proper in the Middle District of Florida, Fort Myers Division, under 28 U.S.C. § 1391(e), because Gomez-Alcina is currently in the custody of ICE at the Florida Soft Side South ("Alligator Alcatraz") detention facility located in Ochopee, Florida, and his immediate custodian and relevant ICE officials are located within this Division.

**V. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER**

District courts have the authority to issue a temporary restraining order (TRO) and/or a preliminary injunction to preserve the status quo and avoid irreparable harm while a suit is pending. *See* Fed. R. Civ. P. 65; *see also, Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989); *Fernandez-Roque v. Smith*, 671 F.2d 426, 430 (11th Cir. 1983).

In order to obtain a temporary restraining order, the movant must establish: "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). Immediate injunctive relief is an "extraordinary and drastic remedy, and [the movant] bears the burden of persuasion to clearly establish all four of these prerequisites." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016). Additionally, a court may issue temporary injunctive relief without notice to the adverse party only if:

(A) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

## VI. LEGAL ARGUMENT

Petitioner satisfies all four requirements for the issuance of a temporary restraining order, and each factor weighs heavily in Petitioner's favor.

### 1. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

Petitioner has demonstrated a strong likelihood of success on the merits of his Petition for Writ of Habeas Corpus because Respondents' revocation of his long-standing Order of Supervision ("OSUP") and resulting detention violate the Fifth Amendment's substantive and procedural due process guarantees, exceed statutory authority under the Immigration and Nationality Act ("INA"), contravene binding regulations, and constitute unlawful final agency action under the Administrative Procedure Act ("APA").

#### A. ICE's Revocation of Petitioner's Order of Supervision Violates Substantive Due Process

Civil immigration detention is constitutionally permissible only when it bears a reasonable relationship to a legitimate governmental purpose, such as preventing flight or protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Detention that is arbitrary, excessive, or untethered to removal violates substantive due process. *Id.* at 689–90.

Here, Petitioner lived under an OSUP for approximately ten years, during which he fully complied with every condition imposed, had no further encounters with law enforcement, and maintained deep family and community ties in the United

States. ICE's sudden re-detention of a seventy-two-year-old man with serious chronic medical condition, without any change in circumstances and without any finding that he is a danger or flight risk, bears no reasonable relationship to any legitimate governmental objective.

Moreover, ICE has not alleged that Petitioner's removal is reasonably foreseeable. Nor has it identified a third country willing to accept him or initiated the legally required third-country removal procedures. Where removal is not reasonably foreseeable, continued detention is unauthorized and unconstitutional. *Zadvydas*, 533 U.S. at 699–700. Because Petitioner's detention serves no lawful purpose, he is likely to prevail on his substantive due process claim.

**B. ICE Revoked the Order of Supervision Without the Process Required by the Fifth Amendment**

The Due Process Clause requires notice and a meaningful opportunity to be heard before the government deprives an individual of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). That requirement applies with full force to the revocation of an Order of Supervision.

Here, ICE revoked Petitioner's OSUP abruptly and without prior notice, without stating any lawful basis for revocation, and without affording Petitioner any opportunity to respond. *See*, 8 C.F.R. §§ 241.4(l)(1); 241.13(i). This failure to provide even minimal procedural protections creates an intolerably high risk of erroneous deprivation of liberty, particularly where, as here, the governing

regulations sharply limit when revocation is permitted and who may authorize it. *Id.*; see also, *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2).

Because Respondents ignored these basic procedural safeguards, Petitioner is likely to succeed on his procedural due process claim.

C. **ICE Acted Contrary to the INA and Its Implementing Regulations**

Under 8 U.S.C. § 1231(a)(6), detention beyond the ninety-day removal period is permitted only if the noncitizen is found to be a danger to the community or unlikely to comply with a removal order. Even then, detention must cease once removal is no longer reasonably foreseeable. *Zadvydas*, 533 U.S. at 699–700.

Regulations further restrict revocation of an Order of Supervision, specifying both the limited grounds for revocation and the officials authorized to do so, as well as requiring notice and a prompt opportunity to respond. 8 C.F.R. § 241.4(l). Respondents failed to comply with these statutory and regulatory prerequisites.

ICE made no findings that Petitioner is a danger or flight risk, identified no violation of OSUP conditions, and failed to establish that removal is imminent or

even feasible. Petitioner has had an order of removal since August 9, 1988, and has been on an Order of Supervision since October 20, 2015, and ICE has not effectuated his removal. Because agencies may not detain individuals outside the bounds set by Congress, Respondents' actions are unlawful and likely to be set aside. *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018).

**D. The Revocation of the Order of Supervision Is Unlawful Final Agency Action Under the APA and *Accardi* Doctrine**

ICE's revocation of the Petitioner's OSUP constitutes final agency action. That action is reviewable and unlawful under the APA because it is contrary to law, arbitrary and capricious, and in excess of statutory authority. 5 U.S.C. § 706(2). Respondents also violated the *Accardi* doctrine by failing to follow their own binding regulations and internal procedures governing revocation of supervision and orderly departure. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Given these violations, Petitioner is likely to prevail on his APA and *Accardi* claims.

**2. PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS TRANSFERRED OR REMOVED**

Absent immediate injunctive relief, Petitioner will suffer profound and irreparable harm if he is removed from the United States or transferred outside this Court's jurisdiction while his habeas petition is pending. The loss of liberty, the risk to Petitioner's life and health, and the potential frustration of this Court's jurisdiction

constitute harms that cannot be remedied after the fact and therefore warrant emergency relief.

A. **Removal or Transfer Would Irreparably Deprive Petitioner of His Liberty and Meaningful Judicial Review**

"Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The unlawful deprivation of liberty, even for a brief period, constitutes irreparable harm as a matter of law.

If Respondents remove Petitioner or transfer him outside the Middle District of Florida while this habeas action is pending, Petitioner will lose meaningful access to this Court and risk mooted his claims altogether. Once Petitioner is either removed from the United States or transferred to a distant jurisdiction, the harm cannot be undone by a later favorable ruling. Reinstatement of physical liberty, access to counsel, restoration of jurisdiction are not speculative harms; they are concrete, immediate, and irreversible.

Removal from the United States would be an even more extreme harm. It would likely moot this habeas petition, deprive Petitioner of any meaningful opportunity for judicial review of his detention, and separate him from his family and community in the United States. No post hoc award or remedy can fully repair wrongful removal or the time he has spent in unlawful civil confinement.

Even if Petitioner ultimately prevails on the merits, the time he has already spent in detention and any additional time he remains detained while this case is pending represent an ongoing deprivation of liberty that cannot be compensated later. Loss of physical freedom, family unity, and access to judicial review are quintessential forms of irreparable injury.

B. **Transfer Outside the Court's Jurisdiction Would Frustrate This Court's Authority and the Purpose of Habeas Corpus**

Transferring Petitioner outside this Court's jurisdiction while his petition is pending would directly undermine that purpose by frustrating the Court's ability to adjudicate the legality of his detention and grant effective relief. Courts routinely enjoin transfers in habeas cases to preserve jurisdiction and prevent irreparable harm. Without a temporary restraining order, Respondents could defeat judicial review simply by moving Petitioner to another facility or district before the Court has an opportunity to rule.

C. **Petitioner's Serious Medical Conditions Make the Risk of Irreparable Harm Acute**

Petitioner is a seventy-two-year-old man with multiple serious and chronic medical conditions, including insulin-dependent Type 2 diabetes requiring injections three times daily and coronary artery disease. His detention has already resulted in hospitalization within days of re-detention, underscoring the immediate danger posed by continued custody.

Removal or transfer would disrupt continuity of medical care, exacerbate existing conditions, and expose Petitioner to a substantial risk of severe injury or death. Courts have consistently recognized that threats to life, health, and access to necessary medical treatment constitute irreparable harm.

No post hoc remedy could compensate for such harm.

3. **THE BALANCE OF EQUITIES STRONGLY FAVORS PRESERVING THE STATUS QUO**

The balance of equities weighs decisively in Petitioner's favor. Granting a temporary restraining order will merely preserve the status quo while this Court adjudicates the legality of Petitioner's detention, whereas denying relief would expose Petitioner to immediate and irreversible harm.

Petitioner faces the loss of his liberty, disruption of access to counsel, potential frustration of this Court's jurisdiction, and serious risks to his health and safety if he is removed or transferred outside this District. These harms are profound, personal, and irreparable. By contrast, Respondents will suffer no cognizable harm from a temporary restraint on removal or transfer. Respondents supervised Petitioner in the community for approximately ten years without incident, during which time Petitioner complied fully with every condition of supervision. Maintaining that status quo for the limited duration necessary for this Court to rule imposes, at most, a minimal administrative burden.

Moreover, any asserted governmental interest in immediate removal or transfer is speculative at best. Respondents have not demonstrated that Petitioner's removal is reasonably foreseeable, identified any country willing to accept him, or articulated any urgent enforcement necessity. Where the government has successfully supervised an individual for years, it cannot credibly claim hardship from a short, court-ordered pause designed to ensure compliance with the Constitution and governing statutes.

Equity also disfavors allowing the government to defeat judicial review through unilateral action. Permitting Respondents to remove or transfer Petitioner before the Court has an opportunity to rule would undermine the integrity of the judicial process and reward potentially unlawful conduct. Courts sitting in equity routinely enjoin such actions to ensure that legal claims are resolved on the merits rather than rendered moot.

Accordingly, because the harm to Petitioner absent relief vastly outweighs any inconvenience to Respondents, the balance of equities strongly supports issuance of a temporary restraining order.

**4. THE PUBLIC INTEREST FAVORS ISSUANCE OF A TEMPORARY RESTRAINING ORDER**

The public interest strongly favors issuance of a temporary restraining order. The public has a compelling interest in ensuring that the government acts in accordance with the Constitution, federal statutes, and its own binding regulations.

Where serious questions exist regarding the legality of an individual's detention, preserving the status quo while the Court adjudicates those claims serves the public interest.

The public also has a strong interest in maintaining the integrity of the judicial process. Allowing Respondents to remove or transfer Petitioner before this Court can rule on the merits of his habeas petition would risk mootng the case and depriving the Court of its ability to provide effective relief. Courts consistently recognize that safeguarding access to judicial review and preventing evasion of court oversight is a core public interest consideration in cases seeking emergency injunctive relief.

Additionally, the public interest is served by avoiding unnecessary and potentially unlawful detention, particularly of elderly individuals with serious medical conditions. Detaining Petitioner, who poses no danger to the community and no risk of flight, imposes significant human and financial costs without advancing any legitimate enforcement objective.

Finally, issuance of a temporary restraining order does not impair the government's ability to enforce the immigration laws. Rather, it ensures that enforcement occurs in a manner consistent with due process and statutory limits. The requested relief is narrowly tailored, temporary, and designed solely to preserve the Court's jurisdiction and prevent irreparable harm while this action is pending.

Under these circumstances, the public interest weighs decisively in favor of granting a temporary restraining order.

**VII. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER**

Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court with discretion as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

### **VIII. SCOPE OF REQUESTED RELIEF**

Petitioner seeks a narrowly tailored temporary restraining order that:

a. Prohibits Respondents and their officers, agents, employees, and all persons acting in concert with them, from transferring Petitioner out of the Middle District of Florida, Fort Myers Division, during the pendency of this action or until further order of the Court;

b. Prohibits Respondents from removing Petitioner from the United States while this action is pending or until further order of the Court; and

c. Requires Respondents to provide at least seventy-two (72) hours' advance written notice to Petitioner's counsel and the Court before taking any action inconsistent with such an order, including any planned transfer or removal.

### **IX. CONCLUSION**

For the foregoing reasons, Petitioner has satisfied each requirement for issuance of a temporary restraining order. He has demonstrated a strong likelihood of success on the merits of his habeas petition, that he will suffer immediate and irreparable harm absent injunctive relief, that the balance of equities weighs decisively in his favor, and that the public interest supports preserving the status quo while this Court adjudicates the legality of his detention.

Accordingly, Petitioner respectfully requests that the Court issue a temporary restraining order enjoining Respondents, and all persons acting in concert with them,

from removing Petitioner from the United States or transferring him outside the Middle District of Florida, Fort Myers Division, during the pendency of this action, and granting such other and further relief as the Court deems just and proper.

Dated: December 15, 2025

Respectfully submitted,

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