

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROLANDO MARTINEZ GARCIA,

Petitioner,

Case No. 2:26-cv-00010-JES-NPM

v.

KELIE WALKER, et al.,

Respondents.

_____ /

RESPONSE TO EMERGENCY MOTION FOR STAY OF REMOVAL

Rolando Martinez Garcia, subject to a final order of removal, asserts U.S. Immigration and Customs Enforcement revoked his order of supervision contrary to applicable regulations in violation of the Fifth Amendment. He further contends federal immigration authority does not permit his detention at Alligator Alcatraz, and the detention poses risks to his health. While the Court considers the petition, Martinez Garcia asks for a stay of removal under the All Writs Act. This Court lacks jurisdiction to stay Martinez Garcia's removal, and the motion is an effort to circumvent the established process for obtaining injunctive relief. The motion should therefore be denied.

FACTS AND PROCEDURAL HISTORY

Martinez Garcia is a 70-year-old citizen of Cuba. (Composite Exhibit, Ex. 1 at 1.) He entered the United States at Key West, Florida on or about May 6, 1980, through a place not designated as a port of entry by the Attorney General of the

United States or the Secretary of Homeland Security. *Id.* at 2. He was convicted of for lewd or lascivious assault on a child on September 21, 1995. *Id.* at 3, 5, 17. He has also been convicted of trafficking in cocaine. *Id.* at 5, 18.

On November 28, 2005, Martinez Garcia was ordered removed from the United States. *Id.* at 7. On October 31, 2025, he was detained following ICE's determination there is a significant likelihood of Martinez Garcia's removal in the reasonably foreseeable future. *Id.* at 10, 17.

On January 2, 2026, Martinez Garcia filed a petition for writ of habeas corpus. (Doc. 1.) The Court has ordered Respondents to file a response on or before January 26, 2026. (Doc. 4.) Martinez Garcia has filed an emergency motion to stay his removal. (Doc. 5.)

LEGAL STANDARD

Preliminary injunctive relief—whether through a temporary restraining order or a preliminary injunction—is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The standard for obtaining either form relief is the same. *See Parker v. State Bd. Of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001); *Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010). A movant seeking a traditional preliminary injunction or a temporary restraining order must show: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the

threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998) (citations omitted); *see also Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). Importantly, the party seeking injunctive relief bears the burden of persuasion as to each of the required elements. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000); *Bongiovanni v. Austin*, No. 3:22-cv-237-MMH-MCR, 2022 WL 1642158, at *5 (M.D. Fla. May 24, 2022).

Traditional injunctions are based upon a cause of action; injunctions sought pursuant to the All Writs Act, on the other hand, are predicated on “some other matter upon which a court has jurisdiction.” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004). Thus, unlike a traditional injunction, in the case of an All Writs injunction, there is no requirement to state a claim; rather a successful movant must point to a proceeding, judgment, or order, the integrity of which is threatened by an action or behavior. *Id.*

ARGUMENT

I. This Court is jurisdictionally barred from staying Martinez Garcia’s removal.

The Court is jurisdictionally barred from issuing a stay of Martinez Garcia’s removal pursuant to a lawful, valid removal order. Title 8 U.S.C. § 1252(g) strips the

Court of jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” *See also Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). Title 8 U.S.C. § 1252(g) provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

Here, Martinez Garcia is subject to a final order of removal. (Composite Exhibit, Ex. 1 at 2.) His motion candidly seeks to halt ICE’s lawful authority to execute that order. Because Martinez Garcia’s request falls squarely within 8 U.S.C. § 1252(g), his motion should be denied for lack of jurisdiction.

II. Relief under the All Writs Act is inappropriate.

Martinez Garcia has not demonstrated any entitlement to relief under All Writs Act. As the Supreme Court has explained,

The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling. Although that Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate.

Pennsylvania Bureau of Correction v. U.S. Marshals Serv., 474 U.S. 34, 43 (1985).

Martinez Garcia has not provided any persuasive basis for a remedy under the All Writs Act. His habeas petition is pending before the court. Briefing is expected to close on January 26, 2026. He has the ability to seek traditional injunctive relief while the habeas petition remains pending, yet rather than analyze the factors necessary to warrant injunctive relief, he has filed the present motion, arguing that it is “warranted here because it is necessary to ensure that the Court can retain jurisdiction over the plaintiff’s cause of action.” (Doc. 5 at 3.) Because 28 U.S.C. § 2241 and injunctive relief is the appropriate mode of seeking relief, Martinez Garcia’s motion should be rejected.

III. Transfer to another district would not destroy jurisdiction.

Once jurisdiction is properly acquired, a petitioner’s removal to another judicial district does not destroy a court’s jurisdiction. *Ex parte Endo*, 323 U.S. 283, 306 (1944); *Major v. Warden, FCC Coleman - Low*, No. 5:18-CV-269-OC-02PRL, 2019 WL 4194673, at *1 (M.D. Fla. Sept. 4, 2019). Indeed, “[j]urisdiction attaches upon the initial filing of the § 2241 petition and will not be destroyed by a petitioner’s subsequent Government effectuated transfer and accompanying change in physical custodian.” *Major*, 2019 WL 4194673 at *1. Here, Martinez Garcia filed his habeas petition in the Middle District of Florida while he was detained within the district. Jurisdiction was proper at the time of filing; therefore, even if Martinez Garcia were transferred out of the Middle District of Florida, there is no risk of destruction the Court’s jurisdiction.

CONCLUSION

The Court should deny Martinez Garcia's emergency motion for stay of removal.

DATED this 11th day of January, 2026.

Respectfully submitted,

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