

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GABRIEL ANTONIO PEREZ
ROMERO,

Petitioner,

Case No. 2:26-cv-12-JES-NPM

v.

KELIE WALKER, et al.,

Respondents.

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RESPONSE TO EMERGENCY MOTION FOR STAY OF REMOVAL

Gabriel Antonio Perez Romero, subject to an 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, Perez Romero asks for expedited consideration of his petition and a stay of removal under the All Writs Act. This Court lacks jurisdiction to stay Perez Romero'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

Perez Romero is a 56-year-old citizen of Cuba who entered the United States on or about March 29, 1980. (Composite Exhibit. Ex. 1 at 7.) He was ordered

removed on August 18, 1998. *Id.* at 1. On November 28, 2025, Perez Romero's Order of Supervised Release was revoked, and he was taken into ICE custody. *Id.* at 5. U.S. Immigration and Customs Enforcement is pursuing removal to Mexico. *Id.* at 3.

On January 2, 2026, Perez Romero filed a petition for writ of habeas corpus. (Doc. 1.) On January 8, 2026, Perez Romero filed an emergency motion for expedited consideration, order to show cause, stay or removal. (Doc. 3.) On January 9, 2026, the Court ordered Respondents to file a response on or before January 29, 2026. (Doc. 4.) On January 9, 2026, the Court issued an endorsed order directing Respondents to respond to Perez Romero's emergency motion to stay before 9:00 a.m. on January 13, 2026.¹

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

¹ The Court's January 9, 2026, order was delivered to USAFLM-Alcatraz@usa.doj.gov at 9:41 a.m. on January 13, 2026. *See* Email Notification, Ex. 2. Due to the time of notification, the United States respectfully requests an extension of time to provide its response to the emergency motion. *See* Fed. R. Civ. P. 6(b)(1)(B).

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.*

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ARGUMENT

I. This Court is jurisdictionally barred from staying Perez Romero's removal.

The Court is jurisdictionally barred from issuing a stay of Perez Romero'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.* Indeed, yesterday U.S. District Judge Dudek reached the same conclusion in a nearly identical challenge. *See Lescaille v. Walker*, 2:26-cv-11-KCD-NPM, Doc. 10 (M.D. Fla.) (denying stay of removal due to lack of jurisdiction)

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

II. Perez Romero's motion for expedited consideration was before the Court when it issued its order for a response on or before January 29, 2026.

The Court should not order expedited consideration of Perez Romero's petition. Following filing of his petition for writ of habeas corpus, Perez Romero filed a January 8, 2026, an emergency motion for expedited consideration, order to show cause, stay or removal. (Doc. 3.) On January 9, 2026, the Court issued an order directing a response to the petition on or before January 29, 2026. *See* Doc. 5. Perez Romero's request for expedited consideration was before the Court when it issued its January 29, 2026, deadline. *See also* 28 U.S.C. § 2243 (permitting return deadline of not more than 20 days from date of upon good cause). The Court's previous ruling necessitates a finding of good cause for a response deadline of January 29, 2026, which now constitutes the law of the case.² Perez Romero makes no attempt to show the law of the case doctrine should not be followed here. His request for expedited consideration should therefore be denied.

III. Relief under the All Writs Act is inappropriate.

Perez Romero 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

² *See CDO Invs., LLC v. Knauf Gips KG*, 719 F. Supp. 3d 1245, 1253 (M.D. Fla. 2024) ("A decision of a legal issue or issues by an appellate court must be followed in all subsequent proceedings in the same case in the trial court or on a later appeal in the appellate court, unless (1) the evidence on a subsequent trial is substantially different, (2) controlling authority has since made a contrary decision of the law applicable to such issues, or (3) the decision was clearly erroneous and would work a manifest injustice.").

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).

Perez Romero 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 29, 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. 3 at 8.) Because 28 U.S.C. § 2241 and injunctive relief is the appropriate mode of seeking relief, Perez Romero’s motion should be rejected.

IV. 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, Perez Romero 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 Perez Romero were transferred out of the Middle District of Florida, there is no risk of destruction the Court's jurisdiction.

CONCLUSION

The Court should deny Perez Romero's an emergency motion for expedited consideration, order to show cause, stay or removal.

DATED this 13th day of January, 2026.

Respectfully submitted,

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