UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FRANCISCO **PORTELA-MORA,**
Petitioner,

CASE NO. 2:26-cv-00013-JES-DNF

v.

KRISTI **NOEM**, Secretary, United States Department of Homeland Security; *et. al.*,

Respondents.
________________________________/

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

INTRODUCTION

NOW COMES the Petitioner FRANCISCO PORTELA-MORA, by and through his undersigned counsel, and respectfully moves this Court for an immediate Temporary Restraining Order ("TRO") pursuant to Federal Rule of Civil Procedure 65(b) and Local Rule 6.01, to restrain and remedy his ongoing unlawful detention by U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is a 51-year-old Cuban-born individual with a final order of removal who has lived in the United States for more than 30 years. After 14 years of compliance with an Order of Supervision due to the impracticability of removing him to Cuba, Petitioner was abruptly re-detained by ICE on December 29, 2025, without notice, cause, or any change in circumstances. Petitioner's sudden detention violates federal law (the Immigration and Nationality Act and governing regulations) and his Fifth Amendment due process rights, as detailed in his pending Petition for a Writ of Habeas Corpus. *See* Petition for Habeas Corpus, ECF No. 1. Petitioner satisfies all four requirements for emergency injunctive relief: (1) he is highly likely to succeed on the merits of his claims; (2) he is suffering irreparable harm in the absence of relief; (3) the balance of equities tips decidedly in his favor; and (4) a TRO serves the public interest.

On or about January 28, 2026, Respondent United States Immigration and Customs Enforcement (ICE) transferred the Petitioner from ICE's Florida Soft South Side a/k/a "Alligator Alcatraz," located at 54575 Tamiami Trail East, Ochopee, Collier County, Florida 34141 to ICE's Eloy Fed Ctr Facility (Core Civic) 1705 East Hanna Rd. Eloy, Az 85131. Upon information and belief, pending Petitioner's removal, "ICE is working towards executing removal to Mexico." *See* Respondents' Response to Habeas Petition, ECF No. 2. However, the government has produced no evidence that removal to Mexico is feasible or no indication on the record that Mexico is generally willing to accept Cuban nationals from the United States, or that U.S. officials have contacted Mexico about accepting Petitioner specifically.

This motion presents a true emergency. Unless the Court intervenes immediately, Petitioner will continue to suffer irreparable injury that cannot be remedied through monetary damages or later judicial review. Therefore, Petitioner moves this Court to issue a Temporary Restraining Order immediately, or in the alternative, rule on this motion within 24 hours, which is consistent with federal emergency practices where judges address TROs with the highest priority the same day or the next business day.

Petitioner seeks a TRO ordering his immediate release from ICE custody and enjoining Respondents from continuing to detain him in violation of law. In the alternative, Petitioner at least requests that the Court enjoin any attempt to remove him from the United States, or otherwise transfer him again during the pendency of this case, so the Court does not lose jurisdiction over this matter and prevent irreparable harm. This request comports with Rule 65(b)'s requirement that TRO matters be heard "at the earliest possible time," taking precedence over nearly all other matters.

FACTUAL BACKGROUND

Petitioner is a native of Cuba who has lived in the United States more than 30 years. He was paroled into the U.S. as a refugee on or about November 2, 1995. *See* Respondents' Response to Habeas Petition, ECF No. 2. (Ex. 1 at 2). Now 51 years old, Mr. Portella-Mora has deep and longstanding ties to this country. Prior to his recent detention, he resided in Florida with his United

States citizen spouse and their two U.S. citizen children and owned and operated a successful small family business employing American workers.

Between 1987 and 2010, Petitioner was convicted in Florida state court of crimes which made him amenable to removal proceedings, and on or about December 15, 2010, he was order deported from the United States. However, at that time (and up to the present day) the Cuban government has refused to issue travel documents or accept the repatriation of most Cuban nationals with final removal orders. Consequently, although Mr. Portella-Mora's removal order became final, the U.S. government could not carry out his removal to Cuba. Once it became clear that removal was not foreseeable, the government concluded it could not continue to detain him under law (consistent with the Supreme Court's mandate in *Zadvydas v. Davis*, 533 U.S. 678 (2001), as discussed below).

Release Under Order of Supervision

Petitioner was released from custody under an Order of Supervision, as authorized by 8 U.S.C. § 1231(a)(3) on or about 2011. Since then, for over a decade, Mr. Portella-Mora has fully complied with all conditions of his supervised release. ICE required him to report for periodic check-ins (initially more frequent, and later on an annual basis); Mr. Portella-Mora unfailingly appeared for every check-in appointment as directed. He abided by all other conditions of his Order of Supervision, such as notifying ICE of his address and maintaining valid employment authorization. He committed no new offenses and was never considered a flight risk or danger during the long period he lived at liberty. In fact, by issuing the Order of Supervision, ICE explicitly found that Mr. Portella-Mora posed no danger to the community and was likely to comply with the removal order (a prerequisite for supervised release, *see* 8 U.S.C. § 1231(a)(6)). Throughout this time, ICE did not obtain travel documents from Cuba for Mr. Portella-Mora, and there were no indications that Cuba's stance on repatriation had changed in a way that would make Mr. Portella-Mora's removal possible.

Sudden Re-Detention at Routine Check-In

Without any advance warning or change in circumstances, ICE abruptly took Mr. Portella-Mora back into custody on December 29, 2025. On that date, Mr. Portella-Mora appeared (as he had many times before) at the ICE Field Office for his scheduled annual check-in, expecting a brief interview and renewal of his supervision. Instead, ICE officers informed him that he was being detained. He was handcuffed and sent to the "Florida Soft Side South" detention site in Ochopee, Florida a/k/a "Alligator Alcatraz." Mr. Portella-Mora was not provided with any written notice or explanation for this drastic action. ICE did not claim that he had violated any condition of his Order of Supervision (indeed, he had not) or that he had engaged in any conduct warranting re-arrest. Nor did ICE inform him of any new developments regarding his removal

— e.g., ICE did not claim that Cuba had agreed to repatriate him or that travel papers had been secured (in fact, no travel document was obtained). ICE officers simply told Mr. Portella-Mora that he would "have to stay in custody" and offered no opportunity for him or his counsel to be heard or to object.

Since December 29, 2025, Mr. Portella-Mora has remained in ICE custody. He has now been jailed for approximately four weeks, separated from his family, and deprived of his liberty, even though nothing material has changed about his removal situation or his compliance. Cuba still has not agreed to accept him, and he remains in post-final-order detention with no end in sight, contrary to the statutory scheme and Supreme Court precedent that prohibit indefinite detention. ICE has never provided Mr. Portella-Mora any post-detention review or hearing. As of the filing of this motion, Mr. Portella-Mora still does not have any written notice of the grounds (if any) on which ICE based the revocation of his supervision.

In sum, the undisputed facts show: (a) Mr. Portella-Mora cannot be removed in the reasonably foreseeable future, as the sole designated country (Cuba) will not receive him; (b) he has demonstrated over decades that he is not a flight risk or danger; (c) he was nevertheless detained without any due process; and (d) ICE ignored its own prior determination that supervised release (not detention) was appropriate in his case, without citing any new facts.

LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER

It is well-established that a party seeking Temporary Restraining Order must show: (1) they have a substantial likelihood of success on the merits; (2) irreparable injury will occur unless a restraining order issues; (3) the equities balance in the movant's favor; and (4) if issued, the restraining order would not be adverse to the public interest. *See Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (*en banc*); *see also Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005); *Wood v. Netflix, Inc.*, 2024 WL 4854316 (M.D. Fla. Nov. 21, 2024); Local Rule 6.01(b).

Likelihood of success on the merits "is generally the most important of the four factors." *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1271 (11th Cir. 2020). When the government is the opposing party, the final two factors (equities and public interest) merge since the government's interest is aligned with the public interest. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

As demonstrated below, Mr. Portella-Mora easily meets all four criteria. Given the flagrant violation of his statutory and constitutional rights, and the ongoing harm he faces, a TRO is not only warranted but essential to prevent further injustice.

ARGUMENT

I. LIKELIHOOD OF SUCCESS ON THE MERITS

The Due Process Clause of the Fifth Amendment prohibits the government from depriving any "person" (including a noncitizen within the United States) of liberty without due process of law. U.S. Const. amend. V; *Zadvydas*, 533 U.S. at 690. This protection has both substantive and procedural components. Substantively, civil detention must bear a reasonable relation to a legitimate governmental objective, otherwise it constitutes impermissible punishment or arbitrary detention. In the immigration context, the Supreme Court recognizes only two valid purposes for civil detention of aliens: preventing danger to the community or preventing flight risk pending removal.

Petitioner has a final order of deportation dating back to 2010, but his current detention is unlawful under controlling statutes, regulations, and the Constitution. He is likely to prevail on multiple independent grounds, each of which would entitle him to habeas relief and immediate release. In brief summary: (1) ICE's continued detention of Petitioner violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas v. Davis*, because Petitioner's removal is not reasonably foreseeable; (2) the detention violates substantive due process because it serves no legitimate government purpose (Petitioner is neither dangerous nor a flight risk, and no new circumstances justify detention); (3) the detention violates procedural due process because ICE revoked Petitioner's supervised release without notice or opportunity to be heard, flouting fundamental fairness; and (4) ICE failed to follow its own governing regulations (8 C.F.R. §§ 241.4 and 241.13) when it re-detained Petitioner, rendering its action arbitrary, capricious, and unlawful (the so-called *Accardi* doctrine) *See Shaughnessy v. Accardi*, 349 U.S. 280 (1955).

In Petitioner's case, ICE blatantly violated its post-order detention regulations. ICE did not make the required determination under 8 C.F.R. § 241.13(i)(2) that Petitioner's removal had become significantly likely in the near future; did not provide written notification of the reasons for revoking Petitioner's release, nor conduct an interview, as mandated by 8 C.F.R. § 241.13(i)(3) and 8 C.F.R. § 241.4(l)(2); and disregarded the substantive criteria of 8 C.F.R. § 241.4. By ignoring these binding rules, ICE acted arbitrarily and deprived Petitioner of important procedural protections. "[A]n agency is bound by its own regulations." *Wagner v. United States,* 365 F.3d 1358, 1361 (Fed. Cir. 2004) (citing *Service v. Dulles,* 354 U.S. 363, 388, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957)). ICE, like any agency, 'has the duty to follow its own federal regulations.'" *Rombot v. Souza,* 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (quoting *Haoud v. Ashcroft,* 350 F.3d 201, 205 (1st Cir. 2003)).

Courts have routinely held that detention challenges are outside the scope of 8 U.S.C. § 1252(b)(9)'s channeling and 8 U.S.C. § 1252(g)'s narrow bar. *See Ceesay v. Kurzdofer,* 781 F.Supp.3d 137 (W.D.N.Y. 2025); Here, Petitioner seeks individual relief from unlawful detention, not a stay of removal or an injunction of a statute's operation at large. This Court thus has full authority to grant the requested TRO and habeas relief upon final adjudication.

Congress has authorized ICE to detain an alien under a final order of removal only for a limited period and under specific conditions. By statute, once an alien is ordered removed, the government generally has a 90-day "removal period" to execute the removal. 8 U.S.C. § 1231(a)(1)-(2). Beyond that period, ICE "shall" release the alien under supervision unless the alien falls into a narrow category for whom continued detention is specifically justified. Section 1231(a)(6) provides that certain aliens (including those, like Petitioner, ordered removed due to a criminal conviction) "may be detained beyond the removal period" if they are found to be "a risk to the community or unlikely to comply with the order of removal."

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court definitively construed § 1231(a)(6) to forbid indefinite or arbitrary detention of aliens with final removal orders. The Court held that § 1231(a)(6) "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal." Detention is only permissible while removal remains reasonably foreseeable; if removal is not reasonably foreseeable, continued detention is not authorized by the statute. The Court in *Zadvydas* created a 6-month presumptive limit; after six months of post-order detention, if the alien provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the government to rebut that showing. If the government cannot rebut it, the alien must be released.

Here, ICE long ago recognized that Petitioner's removal was not achievable in the foreseeable future. That is precisely why Petitioner was released on an Order of Supervision — becausehis removal to Cuba did not materialize and was not expected to occur. In the ensuing years, nothing changed on that front: the Cuban government still had not agreed to accept Petitioner or similarly situated deportees. At the time of Petitioner's re-arrest in December 2025, he had lived in the community for approximately 15 years post-order. The passage of such a lengthy period without removal itself is powerful evidence that removal is not reasonably foreseeable. Even a much shorter period (6 months to a year) was enough in *Zadvydas* and subsequent cases to require release absent a realistic prospect of removal.

Notably, ICE has never asserted that Petitioner's removal is imminent. It did not obtain any travel document for him prior to re-detaining him. To Petitioner's knowledge, no diplomatic breakthrough has occurred that would cause Cuba to accept him now where they refused for decades. In short, Petitioner's removal remains not reasonably foreseeable. Under *Zadvydas* and § 1231, ICE has no statutory authority to continue detaining Petitioner at this time.

Importantly, this case is not about ICE's authority to detain the Petitioner in the first place upon issuance of a final order of removal as in *Zavydas*. "This case is about ICE's authority to *re-detain* [Petitioner] after he was issued a final order of removal, detained, and subsequently released on an OSUP. The DHS regulation, 8 C.F.R. § 241.13(i), applies to non-citizens in Petitioner's situation." *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 149 (D. Mass. 2025).

Respondents do not allege that Mr. Portella-Mora has violated his OSUP conditions of release set over 14 years ago. They also do not allege that he is a flight risk. Instead, Respondents assert a change in circumstances such that there is now a significant likelihood that Mr. Portella-Mora will be removed to Cuba in the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2).[1]

[1] In its Response to Petitioner's Petition For Habeas Corpus, Respondents' state that pending Petitioner's removal "ICE is working towards executing removal to Mexico." *See ECF No.* 9, p. 3. However, Respondents provided no evidence in support of this statement. Petitioner is in the process of preparing his Reply to the Response and will file same on or before February 9, 2026, the date established by the Court in its January5, 2026 order. *See* ECF No. 3.

Furthermore, ICE's own regulations implementing *Zadvydas* underscore the unlawfulness of Petitioner's detention. Under 8 C.F.R. § 241.13, ICE must conduct special review procedures for aliens who have been detained beyond six months and claim inability to be removed. If ICE determines that removal is not significantly likely in the reasonably foreseeable future, the alien "shall promptly be released" under appropriate conditions. Even if the alien has already been released under supervision, the regulations strictly limit the ability to re-detain that person. Specifically, 8 C.F.R. § 241.13(i)(2) provides that an alien who was released because his removal was not foreseeable may be re-detained only if "the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." Additionally, 8 C.F.R. § 241.13(i)(3) requires that if ICE makes such a determination and re-detains the person, it must "promptly provide the alien with written notification" of the reasons for revocation and afford the alien an opportunity to respond at an interview.

ICE violated these regulatory mandates at every turn. No determination of a newly foreseeable removal was made in Petitioner's case; ICE did not point to any "significant likelihood of removal" during Petitioner's check-in or afterward. ICE also failed to provide written notice of any reasons for revoking Petitioner's supervision, and it did not conduct any post-arrest interview or hearing to allow Petitioner to contest the basis for his re-detention. These failures render Petitioner's detention illegal under the agency's own rules and underscore that the statutory criteria for continued detention were not met.

In sum, because Petitioner's removal is not reasonably foreseeable, his ongoing detention violates 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas*. Petitioner is therefore likely to succeed on this claim and secure release on that basis alone.

II. PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS REMOVED.

Under this prong, a party seeking a TRO and PI must show that "but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the position they previously occupied." *Brenntag Int'l Chems., Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999); *see also Salinger v. Colting*, 607 F.3d 68, 81-82 (2d Cir. 2010). In addition, the harm must be "neither remote nor speculative, but actual and imminent." *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005) (citation omitted).

First, Petitioner's allegations of constitutional violations permit a *per se* finding of irreparable harm. *See e.g., Conn. Dep't of Envtl. Prot. V. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) ("[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.") (internal citations and quotation marks omitted); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d

Cir. 1996) ("[An] *alleged* violation of a constitutional right . . . triggers a finding of irreparable harm.") (emphasis in original). In his petition and complaint, Petitioner raised specific allegations of violations of his Fifth Amendment right to due process, both substantive and procedural. *See* Petition for Writ of Habeas Corpus, ECF No. 1¶. These allegations center on Respondents-Defendants' failure to comply with 8 C.F.R. 241.13 and provide him with notice of the revocation of his Order of Supervision and an opportunity to be heard.

Second, Petitioner satisfies irreparable harm by demonstrating that but for this Court's granting of equitable relief, there is a substantial chance he cannot be returned to the position he previously occupied. Specifically, the ability to live with his family and work in the United States in compliance with the Order of Supervision.

Third, Petitioner is likely to win on the merits of his claim that the government's detention of him and their revocation of his order of supervision is unlawful. *See Rombot v. Souza,* 296 F.Supp.3d 383, 387–88 (D. Mass. 2017). Only individuals who are flight risks or dangers may be detained. *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001). Petitioner, by Respondents' own tacit admission by previously releasing him on an Order of Supervision for 30 years, is neither.

III. A TRO WILL NOT SEVERELY HARM THE GOVERNMENT OR PUBLIC INTEREST.

Petitioner merits a TRO because a TRO would not significantly impede the government or public interest. In inquiries concerning the government's efforts to remove a noncitizen, the government and public interest factors merge as the government is both the opposing litigant and public interest representative. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Here, temporarily restraining the Respondents from effectuating Petitioner's removal would not be detrimental to the government's interests because the requested relief is temporary, narrowly tailored, and will only last pending the instant motion. Rather, an order for the maintenance of the status quo may simply "enable [Petitioner] to fully brief the Petition without the time pressure of a looming removal date." *S.N.C. v. Sessions*, 325 F. Supp.3d 401, 412 (S.D.N.Y. 2018); *see also Torres-Jurado v. Biden*, 2023 WL 7130898 at *5 (Rejecting the government's argument that a stay of removal is not in the public interest and reasoning that "it is Defendants' own actions, in granting the ICE Stay, that have occasioned the delay here. The brief delay caused by a temporary stay here does not interfere with the public interest when Plaintiff has been allowed to live in the United States for eighteen years without Defendants executing the final removal order."). Additionally, the government's interest in the adjudication of Mr. Portella-Mora's petition is further supplemented by its general, demonstrated interest in ensuring removals from the United States are safely carried out. *See Rosario v. INS*, 962 F.2d 220, 221 (2d Cir. 1992) (noting the public has an interest in the court "ensur[ing] that whatever compassionate conditions are written into law are carefully adhered to[.]").

IV. 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. Cassiday*, 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 Honorable Court should do the same here.

LOCAL RULE 3.01(G) CERTIFICATE

Pursuant to Local Rule 3.01(g), undersigned counsel, Tulio G. Suarez, Esq., conferred with Kevin R. Huguelet, Esq., counsel for the Respondents via telephone on January 30, 2026, and Mr. Huguelet advised the undersigned that he was opposed to this motion.

WHEREFORE, Petitioner prays that this Court grant the requested Temporary Restraining Order preventing Respondents from removing him from the United States or otherwise transfer him again during the pendency of this case, while the Court considers his Petition for Habeas Corpus and/or any other relief which this Court deems just and proper under the circumstances.

Respectfully submitted,

DEVORE LAW GROUP, P.A.
Attorneys for Petitioner
4100 RCA Blvd.
Suite 110
Palm Beach Gardens, Florida 33410
Telephone: (561) 478-5353
Facsimile: (561) 478-2144

DEVORE LAW GROUP, P.A.
Attorneys for Petitioner
4100 RCA Blvd.
Suite 110
Palm Beach Gardens, Florida 33410
Telephone: (561) 478-5353
Facsimile: (561) 478-2144

By: s/ Jeffrey A. Devore
JEFFREY A. DEVORE, ESQ.
Florida Bar No. 0845493
jdevore@devorelawgroup.com

By: s/ Tulio G. Suarez
TULIO G. SUAREZ, ESQ.
Florida Bar No. 68853
tsuarez@devorelawgroup.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court and that to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served electronically through the Court's ECF system to all parties of record this 30th day of January, 2026.

DEVORE LAW GROUP, P.A.
Attorneys for Petitioner
4100 RCA Blvd.
Suite 110
Palm Beach Gardens, Florida 33410
Telephone: (561) 478-5353
Facsimile: (561) 478-2144

By: s/ Tulio G. Suarez
TULIO G. SUAREZ, ESQ.
Florida Bar No. 68853
tsuarez@devorelawgroup.com