

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HIFIS EDGARDO CABALLERO-MURILLO,

Petitioner,

v.

Case No. 2:26-cv-00045

Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami, Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Matthew MORDANT, Warden of South Florida Detention Center,

Respondents.

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EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner, HIFIS EDGARDO CABALLERO-MURILLO, by and through undersigned counsel and pursuant to Federal Rule of Civil Procedure 65(a) and (b), M.D. Fla. L.R. 6.01, and M.D. Fla. L.R. 6.02(b), respectfully files this motion for expedited relief seeking entry

of a temporary restraining order (“TRO”) by January 9, 2026, during the pendency of this action seeking habeas relief to ensure Petitioner is released as removal is not reasonably foreseeable, as required under the Fifth Amendment of the United States Constitution.

INTRODUCTION

1. Petitioner HIFIS EDGARDO CABALLERO-MURILLO is in the physical custody of Respondents at the South Florida Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner HIFIS EDGARDO CABALLERO-MURILLO is a citizen of Honduras, who was granted an Order Withholding Removal on August 2, 2022, and who has been in immigration detention since December 29, 2025. Petitioner is a noncitizen previously released from immigration custody under an Order of Supervision (“OSUP”) pursuant to 8 C.F.R. § 241.5.

3. Detention authority following a final order of removal is governed by 8 U.S.C. § 1231 and implementing regulations at 8 C.F.R. §§ 241.4 and 241.13.

4. When removal is not reasonably foreseeable, continued detention is constitutionally limited. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

5. DHS regulations impose mandatory procedural safeguards before revoking an Order of Supervision, including notice, opportunity to respond, and review by authorized officials.

6. Government agencies are constitutionally required to follow their own regulations. *Morton v. Ruiz*, 415 U.S. 199 (1974). 26. ICE, like any agency, “has the duty to follow its own federal regulations.” *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003) (quoting *Nelson v. I.N.S.*, 232 F.3d 258, 262 (1st Cir. 2000)). To be sure, not every procedural misstep raises a constitutional issue. See *Matias v. Sessions*, 871 F.3d 65, 72 (1st Cir. 2017) (involving an inaccurate translation). However, where an immigration “regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute,” like the opportunity to be heard, “and [ICE] fails to adhere to it, the challenged [action] is invalid” *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993); see also *Ying Fong v. Ashcroft*, 317 F.Supp.2d 398, 403–04 (S.D.N.Y. 2004) (granting

alien's habeas petition where she was deported fewer than 72 hours after her arrest and regulation mandated 72-hour rule).

FACTS

7. Petitioner has been granted an Order Withholding Removal. Because Petitioner's removal was withheld on August 2, 2022, ICE released him under an Order of Supervision pursuant to 8 C.F.R. § 241.4.

8. Petitioner complied with all conditions of supervision, including reporting, residence requirements, and any additional conditions imposed by ICE.

9. On or about December 29, 2025, ICE re-detained Petitioner while he was at Home Depot in Kissimee, Florida.

10. ICE did not provide Petitioner with notice of the reasons for revoking his supervision, did not conduct a prompt informal interview, and did not provide an opportunity to contest the alleged grounds for re-detention.

11. ICE has not identified any violation of supervision conditions, new removal prospects, or changed circumstances justifying re-detention under the governing regulations.

12. Petitioner has four children, two of whom are United States Citizens and two of whom are Lawful Permanent Residents.

13. Petitioner's Order Withholding Removal was entered August 2, 2022, and is still in effect.

14. Petitioner filed, through counsel, Christian G. Sotomayor, Esq., Application for Cancellation of Removal and Adjustment of Status on April 1, 2022.

15. On July 1, 2022, Petitioner filed Additional Proposed Exhibits in Support of I-589, Application for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture.

16. On July 5, 2022, Petitioner filed Additional Proposed Exhibits in Support of I-589, Application for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture.

17. Petitioner, born in Honduras, has been in the United States since the 1990s and has been suffering from sciatic pain and receiving treatment, including being treated one week prior to his detention.

18. On December 29, 2025, U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner at Home Depot in Kissimmee, Florida.

19. On January 9, 2026, Petitioner filed Petition for Writ of Habeas Corpus, challenging his illegal detention.

20. Since being detained, ICE/ERO personnel have visited Mr. Caballero-Murillo requested that he sign documents, without providing him or undersigned counsel copies of the documents, and without first notifying his attorney of record.

21. At this time, neither undersigned counsel or Petitioner have been informed of the nature, purpose, or legal consequence of the documents he was asked to execute.

22. Additionally, Petitioner witnessed the ICE/ERO personnel personal sign what appeared to be the signature portion of a page, intended for Petitioner and defectively executing an unknown document with an actual signature that is not his own, and without providing his attorney of record notice.

23. Furthermore, it should be noted that on November 25, 2025, a similarly situated detainee, Antonio Dejes Martinez Chavez, in consequence of undersigned counsel, on November 24, 2025, filing Petition for Writ of Habeas Corpus challenging Antonio Dejes Martinez Chavez's detention at the South Florida Detention Center, was transferred outside of the Middle District of Florida, without

notice to counsel, and prior to a final order being entered on his Petition for Writ of Habeas Corpus. *See Martinez Chavez v. Ripa et al*, Case No. 2:25-cv-1088.

24. Pursuant to M.D. Fla. L.R. 6.02(b), Petitioner has established by clear and convincing evidence an extraordinary circumstance not requiring notice.

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish that ... the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Court should grant a preliminary injunction if Petitioner establishes: (1) “a substantial likelihood of success on the merits,” (2) “that the preliminary injunction is necessary to prevent irreparable injury,” (3) “that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant[s],” and (4) “that the preliminary injunction would not be averse to the public interest.” *Chavez v. Fla. SP Warden*, 742 F.3d 1267, 1271 (11th Cir. 2014). The same test applies to a motion for a temporary restraining order. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005).

ARGUMENT

I. Petitioner's Removal is Not Reasonably Foreseeable.

Petitioner was released from immigration custody under an Order of Supervision (“OSUP”) pursuant to 8 C.F.R. Section 241.5, and complied with all requirements imposed in the OSUP, since on or about August 2, 2022. Petitioner complied with all conditions of supervision, including residence requirements, and any additional conditions imposed by ICE. Because Petitioner’s removal was withheld after an Immigration Judge entered an Order Withholding Removal, ICE released him under an Order of Supervision pursuant to 8 C.F.R. § 241.5.

On or about December 29, 2025, ICE re-detained Petitioner at Home Depot in Kissimmee, Florida.

After Mr. Caballero-Murillo’s re-detention, ICE/ERO personnel have attempted to contact Petitioner without providing his attorney of record notice. ICE/ERO have asked Petitioner since his re-detention on December 29, 2025, to sign and/or execute documents,

without informing undersigned counsel or Petitioner of the legal effect, purpose, or reason for requesting his signature. However, even more disturbing than these obvious due process violations, is the fact that Petitioner witnessed ICE/ERO personnel sign the signature line of a document in his presence, without providing Petitioner a copy of these documents, or his attorney of record.

The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. It is firmly established that these protections extend to noncitizens present in the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Wong Wing v. United States*, 163 U.S. 228, 238, 16 S.Ct. 977, 41 L.Ed. 140 (1896) (“It must be concluded that all persons within the territory of the United States are entitled to the protection guarantied by [the Fifth Amendment], and that even aliens shall not ... be deprived of life, liberty, or property without due process of law.”); *Trump v. J. G. G.*, — U.S. —, 145 S. Ct. 1003, 1006, 221 L.Ed.2d 529 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113

S.Ct. 1439, 123 L.Ed.2d 1 (1993)) (cleaned up) (“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”).

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491. Generally, the Due Process Clause “requires some kind of a hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest.”); *Hurd v. D.C., Gov’t*, 864 F.3d 671, 683 (D.C. Cir. 2017) (holding that re-detention after pre-parole conditional supervision requires a pre-deprivation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) (same, in probation

context); *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (same, in parole context).

Applying these principles, it is clear that Mr. Caballero-Murillo has a protected liberty interest in being free from official restraint. Respondent(s) are unlawfully re-detaining Petitioner under 8 U.S.C. § 1231, without following the regulations it implemented at 8 C.F.R. §§ 241.4 and 241.13. Respondent(s) failed to provide Petitioner with notice of the reasons for revoking his supervision, did not conduct a prompt informal interview, and did not provide an opportunity to contest the alleged grounds for re-detention. As a result, Petitioner's continued redetention is unconstitutional.

ICE, like any agency, "has the duty to follow its own federal regulations." *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003) (quoting *Nelson v. I.N.S.*, 232 F.3d 258, 262 (1st Cir. 2000)). To be sure, not every procedural misstep raises a constitutional issue. See *Matias v. Sessions*, 871 F.3d 65, 72 (1st Cir. 2017) (involving an inaccurate translation). However, where an immigration "regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute," like the opportunity to be heard, "and [ICE] fails to adhere to it, the challenged [action] is invalid"

Waldron v. I.N.S., 17 F.3d 511, 518 (2d Cir. 1993); *see also Ying Fong v. Ashcroft*, 317 F.Supp.2d 398, 403–04 (S.D.N.Y. 2004) (granting alien's habeas petition where she was deported fewer than 72 hours after her arrest and regulation mandated 72-hour rule).

Against this backdrop, this Court must address the question presented here which is to determine if Petitioner was afforded the necessary due process required to protect his fundamental right to be free from unnecessary government restraint.

A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. *See id.* (due process requires pre-deprivation hearing before revocation of preparole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

To determine whether a specific conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case before them

with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted).

In *Morrissey*, the Supreme Court explained that parole from a criminal conviction “enables [the parolee] to do a wide range of things open to persons” who have never been in custody or convicted of any crime, including to live at home, work, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. “Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens,” such as monitoring and seeking authorization to work and travel, his “condition is very different from that of confinement in a prison.” *Id.* “The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The revocation of parole undoubtedly “inflicts a grievous loss on the parolee.” *Id.* (quotations omitted). Therefore, a parolee possesses a protected interest in his “continued liberty.” *Id.* at 481–84.

In the instant case, Petitioner's parole from detention is similar. For nearly three years, it allowed him to establish ties in the

community while pursuing relief in his removal proceedings. He received employment authorization, was gainfully employed, and supported his family. These actions were made possible by Petitioner's freedom, which is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

Mr. Caballero-Murillo would be deprived of his due process protections under the Fifth Amendment if he were to continued to be detained and/or transferred outside of this Court's jurisdiction, as ICE/ERO's re-detention was invalid. Therefore, Mr. Caballero-Murillo has a due process right to his immediate release and/or have his Petition for Writ of Habeas Corpus decided prior to being transferred or removed out of this Court's jurisdiction.

Although the Government has a legitimate interest in the "prompt execution of removal orders," *Hernandez-Lara v. Lyons*, 10 F.4th 19, 32 (1st Cir. 2021), "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm," *Nken v. Holder*, 556 U.S. 418, 436 (2009).

Because Respondent's improperly re-detained Mr. Caballero-Murillo without providing him the due the process protections

afforded in 8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4 and 241.13, ICE/ERO's re-detention of Petitioner is invalid. Additionally, Respondent(s) have not identified any violation of supervision conditions, new removal prospects, or changed circumstances justifying re-detention under the governing regulations.

As such he is seeking this Court to enjoin the Respondent's from continuing to illegally detain him and/or from transferring him outside of this Court's jurisdiction until such time as either he is released from custody; and/or this Court enters a final order on his Petition for Writ of Habeas Corpus.

II. Respondent(s) Illegal Detention of Petitioner Causes Petitioner Irreparable Harm

"It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1205 (S.D. Fla. 2020). Without interim relief to maintain the status quo, Petitioner could be deported or removed from this Court's jurisdiction, effectively foreclosing any recourse. *See, e.g., Zapeta v. Exec. Dir. of the Fla. Div. of Emergency Mgmt.*, No. 2:25-CV-00697-JLB-KCD, 2025 WL 2432501, at *3 (M.D. Fla. Aug. 22, 2025) (denying habeas petition as moot where petitioner

had been deported because, “[a]s a general rule, a habeas petition presents a live case or controversy only when a petitioner is in custody”).

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has a fundamental interest in liberty and being free from official restraint. The government’s detention of Petitioner without following the due process protections contained in 8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4 and 241.13 violates her right to due process.

Leaving Petitioner in prolonged detention at a dangerous facility where he is unable to contact counsel to communicate medical issues and other urgent problems places them at serious risk of prolonged detention, injury, and death—all of which are irreparable. *Fla. Immigrant Coal. v. Uthmeier*, No. 25-21524-CV, 2025 WL 1423357, at *12 (S.D. Fla. Apr. 29, 2025) (finding the risk of unlawful “detention” supported irreparable harm).

III. The Balance of Equities and the Public Interest Weigh Heavily in Petitioner's Favor

Lastly, the balance of equities and public interest heavily favors Petitioner's request for injunctive relief. Petitioner is simply requesting what other courts across the nation have repeatedly granted, that this Court Order his immediate release as his re-detention is constitutionally invalid, and/or that he remain within its jurisdiction until his habeas petition is decided. Thus, the harm to the Government is minimal. And because Mr. Caballero-Murillo is being illegally re-detained pursuant to 8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4 and 241.13, neither equity nor the public's interest are furthered by holding him under an invalid agency decision. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) ("Of course there is a public interest in preventing aliens from being wrongfully removed[.]").

IV. The Court Should Not Require Petitioner to Provide Security Prior to the 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 damage sustained by any party found to have been wrongfully enjoined or restrained." Decisions

regarding the security required to be posted in connection with the issuance of preliminary relief “are entrusted to the discretion of the district court,” including the discretion to “elect to require no security at all.” *Transcon. Gas Pipe Line Co., LLC v. 6.04 Acres*, 910 F.3d 1130, 1171 (11th Cir. 2018) (quoting *Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 303 (5th Cir. 1978)). District courts exercise this discretion to require no security in cases brought by indigent, detained, and/or incarcerated people, those seeking to exercise their constitutional rights, and in cases that benefit the public interest. *See, e.g. Campos v. I.N.S.*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998); *Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326 (M.D. Fla. 2009); Wright & Miller, Fed. Practice & Proc. § 2954.

This court should do so here.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court temporarily enjoin the Respondent(s) from the following:

- a. continuing to detain Mr. Caballero-Murillo and deny his release on the basis that he is subject to mandatory detention pursuant to 8 U.S.C. § 1231;
- b. continuing to detain Mr. Caballero-Murillo under an invalid agency decision that failed to provide

- Petitioner with notice of the reasons for revoking his supervision, did not conduct a prompt informal interview, and did not provide an opportunity to contest the alleged grounds for re-detention;
- c. transferring or relocating Mr. Caballero-Murillo outside the jurisdiction of the Middle District of Florida pending a ruling on the habeas petition; and
 - d. Grant any other and further relief that this Court deems just and proper.

DATED this 9th day of January, 2026.

Respectfully submitted,

By: **/s/Joel Alexis Caminero** /

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on January 9, 2026.

/s/Joel Alexis Caminero /

Joel Alexis Caminero, Esq.
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