

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

Case No.:

MIAKEL GUERRA MORALES,

Petitioner,

v.

KELEI WALKER, in her official capacity as Acting Field Office
Director, Miami Field Office;

KEVIN GUTHRIE, in his official capacity as Executive Director
of the Florida Field Management Division;

TODD LYONS, in his official capacity as Acting Director,
Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as Secretary of the
Department of Homeland Security;

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS AND
REQUEST FOR EMERGENCY INJUNCTIVE RELIEF¹**

INTRODUCTION

The Petitioner, **MIAKEL GUERRA MORALES** (Petitioner), alien number 
 is in federal immigration custody and is currently detained as the Florida Soft Side
South Detention facility referred to as “Alligator Alcatraz” in Ochopee, Florida. The

¹This Habeas Petition shall be accompanied by a forth-coming Motion for Emergency
Injunctive Relief.

conditions at Alligator Alcatraz are severe, among these conditions are no access to warm clothing, bathing is limited, limited access to medical attention, no access to writing materials, nor access to send out mail. Publicly available knowledge and current agency practice demonstrates that the Immigration and Customs Enforcement (ICE) will soon relocate Petitioner to another facility outside of the state of Florida. Multiple credible sources, including prior experience by Petitioner's counsel with other clients, show that Cuban nationals, like Petitioner, are being briefly held locally and then transferred outside of Florida to be "staged" for deportation. Petitioner however cannot be removed to Cuba because he was awarded protection from removal to Cuba under CAT.² No action to terminate said protection has been brought before the court. Further, no such action has commenced before a court that would allow Petitioner the occasion to exercise his constitutional right and context removal to a third country. Petitioner's present detention is devoid of proper notice and violates both procedural and due process. Petitioner is a 48 year old Cuban national who misguidedly, because of false propaganda being spread by Fidel Castro's Communist regime, ignorantly believed that he would be received with open arms in the United States so long as he was able to make it to US soil. He has been in a committed relationship with his US spouse for many years. His mother is a US citizen, as is his brother and countless other family members. The forthcoming relocation of the Petitioner to a

²The immigration Court granted CAT protection on May 16, 2022. The Department of Homeland Security took an appeal to the Board of Immigration Appeals (BIA). The BIA remanded the case to the Immigration Court on November 11, 2022. On March 1, 2023 the Immigration Court reaffirmed it's grant of CAT protection to the Petitioner.

facility outside of Florida will cause him irreparable harm and violate his Fifth Amendment Right to Due Process and Sixth Amendment Right to Counsel. The Petitioner seeks an emergency order to prevent the Respondents from moving him outside of the state of Florida. The Petitioner further asserts his continued detention is violative of the Fifth Amendment Due Process Clause to the U.S. Constitution and seeks his immediate release from custody.

JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. §1101 *et seq.*

2. This Court has subject matter jurisdiction under 28 U.S.C. §2241 (habeas corpus), 28 U.S.C. §1331 (federal question), and Article I, §9, cl. 2 of the United States Constitution (Suspension Clause).

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §2241 *et seq.*, Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, and the All Writs Act, 28 U.S.C. §1651.

VENUE

4. Venue is proper because Petitioner is currently detained in Alligator Alcatraz which is located at 54574 Tamiami Trail, Ochopee, Florida 33141. A substantial part of the events or omissions giving rise to this claims occurred in this Honorable Court's District.

PARTIES

5. The Petitioner, **MIAKEL GUERRA MORALES**, is a native and citizen of Cuba

who entered the United States on March 19, 2003 when he was 25 years of age. He has remained in the United States since that time.

6. Respondent, **Krisit Noem**, is the U.S. Secretary of Homeland Security.

7. Respondent, Todd Lyons, is the Acting Director for U.S. Immigration and Customs Enforcement.

8. Respondent, **Kelei Walker**, is the Acting Field Office Director of the Miami Office of the ICE-ERO Miramar Center.

9. **KEVIN GUTHRIE**, is Executive Director of the Florida Field Management Division.

10. All Respondents are named and sued in their official capacities.

11. Respondent is currently in the custody of the Respondents and one of the Respondents is his immediate custodian.

12. Upon information and belief, the Petitioner was detained without cause or reason by ICE agents on December 30, 2025 when he, along with his spouse, Maria Reyes, arrived to the Sarasota-Bradenton International Airport for the purpose of visiting family for the Christmas holiday.

13. Petitioner was held in an ICE office for hours as ICE agents debated amongst themselves what to do with him because they were uncertain as to whether or not Petitioner, who is a recipient of CAT protection, should be detained. Petitioner would be taken to an ICE office, held there for hours, then would be transferred to the Pinellas County Jail, and

then returned to an ICE office, until ultimately, the uncertain decision to detain him was made resulting in Petitioner's transport to Alligator Alcatraz.

14. This arrest transpired despite the fact that on May 16, 2022 before the Honorable Immigration Court, Petitioner was granted protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).³

15. An alien who is granted deferral of removal may be subject to immigration detention. However, the Department of Homeland Security (DHS) has taken the position that ICE policy favors the release of an alien who has been granted protection so long as the alien presents no exceptional concerns or poses a danger to the community, and absent any detention requirement. For this reason, Petitioner was immediately released from immigration custody on March 1, 2023 and placed on an order of supervision (OSUP).

16. Further, termination of deferral of removal has not yet occurred in any capacity. As such, Petitioner cannot be deported to Cuba.⁴

17. Cuban nationals are being preemptively detained and then expeditiously

³Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 184, S. Treaty Doc. No. 100-20, 1465, U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).

⁴In the case of individuals with deferral of removal, deferral can only be terminated by: (1) motion by USCIS followed by a hearing. 8 C.F.R. §208.17 (d); (2) at the request of the alien. 8 C.F.R. §208.17 (e); (3) and after consultation between the Secretary of State and the Attorney General. 8 C.F.R. §208.17 (f).

transferred to detention facilities such as Alligator Alcatraz, and then more remote facilities for eventual removal to third countries⁵. This is occurring without proper notice from any government agency that a third country has been designated—let alone that such a country has accepted the individual—and without affording the Cuban nationals the opportunity to contest their removal or seek relief before a court.

<https://www.nytimes.com/2025/05/26/world/africa/trump-deportations-south-sudan.html>;

<https://www.npr.org/2025/06/060g-sl-71039/migrants-djibouti-ice-shipping-container>;

<https://www.miamiherald.com/news/local/immigration/article303000904.html>;

<https://en.cibercuba.com/noticias/2025-03-17-ul-e129488-s27061-nid299069-crece-lista-cubanas-220adetenidas-ice-florida-donde>. The deportation and detention of hundreds of non-American citizens to third countries, with bodies being spirited away before the courts could act, is also well documented. An order enjoining transfer is necessary because the destination may be a third country where there is no access to counsel or the immigration court (or this Court) whatsoever. Moreover, there are Cuban nationals who are being deported to Mexico or other countries and those third countries are deporting those individuals to Cuba, with Cuba deciding who they will or will not take back⁶. This reality places the Petitioner in an

⁵Notably, reports indicate that ICE is seeking deportation of Cubans to Syria, Sudan and Rwanda.

⁶[https://english.elpais.com/international/2025-11-02/cubans-deported-by-trump-to-mexico-face-an-uncertain-fate-with-no-guarantees.html#:~:text=However%2C%20the%20island's%20government%20retains,\(formerly%20Swaziland\)%20remain%20incomprehensible](https://english.elpais.com/international/2025-11-02/cubans-deported-by-trump-to-mexico-face-an-uncertain-fate-with-no-guarantees.html#:~:text=However%2C%20the%20island's%20government%20retains,(formerly%20Swaziland)%20remain%20incomprehensible).

extremely dangerous position, under circumstances where an immigration Judge has afforded him protection under CAT.

18. The relocation of the Petitioner to a detention facility outside of Florida will cause devastating and irreparable harm by obstructing meaningful access to undersigned counsel who is local to South Florida, thereby interfering with his right to legal representation and violating his due process rights. For this reason, Petitioner seeks an order he be released, but as a secondary issue, while this issue is under consideration, Petitioner asks the Court to enjoin his transfer. Petitioner faces irreparable harm if he is transferred.

19. Further, and although not a named-class member, Petitioner is a member of the certified class of the Federal District Court's injunction in *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676 (D.Mass. May 18, 2025). Petitioner, like other members of the class, is a Cuban national with a final order of removal, currently detained, facing imminent removal to a third country not Cuba. Therefore, it would be usurpation of a fellow Honorable District Court's authority for DHS/ICE to transfer and deport Petitioner while litigation is pending.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

20. On information and belief, Petitioner is currently being detained by federal agents without cause and in violation of his constitutional rights to due process of law. *See Zadvydas*

v. Davis, 533 U.S. 678 (2001). Habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention. *Id* at pg. 688. In *Zadvydas*, the Supreme Court reviewed 8 U.S.C. §1231 (a), the post- order detention statute, and found six months or longer of ICE detention after a removal order was entered violates the Fifth Amendment Due Process Clause. Only if removal is imminent (or for safety concerns) may ICE continue to detain past the six-month period. 8 U.S.C. §1231 (a)(1)(A) defines the “removal period” as within 90 days of the removal order. The period begins on the date the order became administratively final. If the alien does not leave or is not removed “within” the 90-day period, the alien, pending removal, “shall” be subject to supervision. 8 U.S.C. §1231 (a)(3). In the case Petitioner, the 90-day period of removal has come and gone.

ICE Failed to Follow its Own Regulations under 8 C.F.R. §241.4 and §241.13

21. Respondents promulgated regulations following the *Zadvydas* decision. Their detention of Petition violates their own regulations. As a non-citizen with deferral under the CAT the question is whether there is a “significantly likelihood” of removal in the reasonable foreseeable future (SLRRFF). 8 C.F.R. §§ 241.4(a)(3) and (4). Where there is no SLRRFF the government “shall” promptly make arrangements for release of the alien. 8 C.F.R. §241.13 (g)(1). Three years after the removal period expired, Respondents have made no showing that removal to a third country is imminent; Petitioner is therefore likely to prevail on his claim that detention is unlawful and a violation of the statute and regulations. See

Ambila v. Joyce, 2:25-cv-00267-NT, 2025 U.S. Dist. LEXIS 99565, 2025 WL 1504832 (D. Maine May 27, 2025).

22. Petitioner's removal is not imminent. He was on an order of supervision and monitored. Reintroducing detention after passage of the statutory removal period⁷, when the text clearly calls for supervision⁸ is unconstitutional unless removal is imminent, notwithstanding the fact that Petitioner was granted relief under CAT, and deferral has not yet terminated. Federal courts have repeatedly rejected the government's unlawful practice of re-detaining individuals who received lawful protective status by an immigration judge and attempt to remove them to that very country they received protection from. In *Grigorian v. Bondi*, No. 25-cv-22914-RAR, 2025 WL 2604573 (S.D. Fla. Sept. 9, 2025), the petitioner received deferral of removal under CAT and remained on supervision for twelve years. When ICE re-detained him in 2025 despite the still-active deferral, the court concluded that ICE failed to comply with the procedures required by 8 C.F.R. § 241.4 following revocation of supervision and did not meaningfully account for the legal effect of the petitioner's CAT protection on the feasibility of removal. The court granted habeas relief, concluding that ICE's failure to provide the required interview and to follow its own post-order custody procedures rendered the detention unlawful and violated due process. In *Marques v. Ripa*, No. 25-CV-23256-RKA (S.D. Fla. July 25, 2025), the Petitioner—an asylee whose removal

⁷See U.S.C. §1231 (a)(1)(A)

⁸See U.S.C. §1231 (a) (3)

to Cuba was legally barred due to an Immigration Judge granting protection under CAT—was unlawfully arrested by ICE. Within 48 hours of filing a writ of habeas corpus this Court, Judge Altman issued an Order to Show Cause. Respondents never filed a response and released the petitioner four days later. *See* Petitioner’s Notice of Voluntary Dismissal with Prejudice, *Marquez v. Ripa*, No. 25-CV-23256-RKA (S.D. Fla. July 25, 2025).

23. Removal is not imminent because Petitioner is a protected class member under *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676 (D.Mass. May 18, 2025). On April 18, 2025, the Federal District Court for Massachusetts certified a class and entered a preliminary injunction that states: “Defendants are ENJOINED from deporting any alien with a final order of removal to any country not explicitly provided for on the alien’s order of removal without first providing to that alien due-process guarantees.. .”

24. Petitioner has been in the United States 2003. He has been on OSUP and has complied with all requirements, including reporting requirements to ERO. At this time, ICE is simply detaining Petitioner prematurely and without cause. Petitioner has received no documentation to indicate why his OSUP was revoked, nor has he received any documentation to indicate a third country has accepted him for removal. And assuming there is or would be one day, he is entitled to reopen his removal proceedings to contest said designation. *See* 8 C.F.R. §1240.10(f) (an immigration judge *shall* identify for the record a country, or countries in the alternative). Having no lawful means to remove Petitioner to Cuba—the sole country designated in his 2022 removal order—Respondents will seek to

remove him to Mexico or another “third country.” The statutory framework governing post-order custody is tethered to actual and demonstrable evidence of removal. ICE cannot justify revocation of OSUP based on subsequent conjecture or substitute process as a remedy for illegal arrest and detention.

25. Federal courts in the following cases have granted habeas and ordered release where the non-citizen was compliant with a long-standing order of supervision (OSUP), the regulatory criteria for revocation of OSUP was not present, and the procedural requirements of the regulations were not followed. In Petitioner’s case, he was not only unlawfully arrested without notice, but he has not once been timely served any requisite documents pertaining to post-order detention, and mandatory custody review. See *Krechmar v. Parra*, No. 2:25-cv-1095-SPC-DNF, *Gregorian v. Bondi*, *supra*. Also see *Hernandez Escalante v. Noem*, No. 0:25-cv-182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025), where ICE re-detained the petitioner after more than three years on OSUP. During habeas proceedings, the court granted habeas relief, concluding that detention could not continue where ICE failed to complete the required custody review procedures following revocation of supervision and where no evidence showed that removal had become realistically attainable.

In *Ping Heng Qui v. Carter*, No. CIV-25-3131-JWL, 2025 WL 2770502 (D. Kan. Sept. 26, 2025), the petitioner had remained on OSUP for over twenty-five years when ICE re-detained him without first completing the regulatory review process. The district court analyzed the interaction between 8 C.F.R. §§ 241.4 and 241.14 and explained that revocation

of OSUP must be supported by changed circumstances demonstrating that removal has become significantly likely. Because ICE could not make that showing and failed to comply with the required procedures, the court granted the habeas petition and ordered immediate release, rejecting the notion that post hoc or substitute process could cure the unlawful detention. See also *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 LX 440573 (W.D. Okla.Oct. 27, 2025).

26. Although presently detained at Alligator Alcatraz, Florida, strong and credible evidence demonstrates that he could be transferred at any moment, and without prior notice to Petitioner or counsel. This transfer would deprive Petitioner of a meaningful opportunity to challenge his detention or removal, and deny him effective assistance to the legal process at a critical moment.

27. At the time of filing, Petitioner is not in active removal proceedings before an immigration judge and is thus unable to request bond or seek release through ordinary procedural channels available to detainees. Only this Court can provide adequate relief.

COUNT TWO
Violation of Sixth Amendment Right to Counsel

28. On clear and reliable information and belief, the Petitioner may be moved to another facility without notice, in violation of his Sixth Amendment Right to Counsel.

29. Relocation would significantly disrupt ongoing legal representation by obstructing counsel's access to Petitioner, impairing access to in-person confidential communication,

frustrating the timely submission of filings, and preventing Petitioner from meaningfully participating in his defense and in the pursuit of immigration relief.

30. Further, Petitioner is a member of a certified class, that has been granted a preliminary injunction before another federal district court, and would face further irreparable harm.

31. Respondents' forthcoming actions will cause irreparable harm to Petitioner by effectively denying him access to his retained counsel during a critical period of detention and legal challenge, thereby interfering with his constitutional right to legal representation.

32. Petitioner asks the Court to order his immediate release from custody. If Respondents truly believe that removal to a third country may occur in the future, they have tools at their disposal to ensure Petitioner's compliance. These include electronic monitoring, curfew, and frequent reporting. On the other hand, detention is expansive and places a heavy burden on the families and detainees. Petitioner has strong family ties, and employment. He has absolutely been complaint with the terms of his supervision. Equities and the public interest weigh in favor of his release with conditions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- a. Assume jurisdiction over this matter;
- b. Order, on an emergency basis, that Petitioner shall not be transferred outside the Middle District of Florida until such further notice from this Honorable Court;

c. Issue an Order to Show Cause ordering the Respondents to show cause why this Petition should not be granted within three days;

d. Declare that the Petitioner's transfer violates the Sixth Amendment Right to Counsel;

f. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

g. Award Petitioner reasonable costs and attorney's fees in this action as provided by the Equal Access to Justice Act, 28 U.S.C. §2412, or other statute; and

h. Grant any further relief this Court deems just and proper.

Respectfully submitted on this 23rd day of January, 2026.

Miadel Guerra Morales⁹

By his Counsel,

/s/ Ana Maria Jhones

Florida Bar No.: 771170

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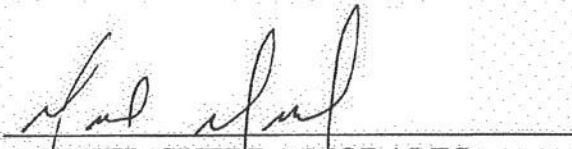
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⁹Attached hereto is Petitioner's Declaration.

DECLARATION OF MIAKEL GUERRA MORALES

My name is MIAKEL GUERRA MORALES, I declare under penalty of perjury under the laws of the United States, pursuant to 28 U.S.C. §1746 that the foregoing is true and correct. This Declaration is based on my personal knowledge of the facts as stated in the *Petition for Writ of Habeas Corpus 28 U.S.C. §2241 and Request for Emergency Injunctive Relief and Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction*. I have read both the *Petition for Writ of Habeas Corpus* and the *Motion for Temporary Restraining Order*, and the information in both, the Petition and the Motion are true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.



MIAKEL GUERRA MORALES
South Florida Detention Facility
54575 Tamiami Trail E
Ochopee, FL 34141

1/16/2025
DATE

CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on January 23, 2026, I served the foregoing document with the Clerk of the Court using CM/ECF, and entered the required information on the web-based system on the Court's website. I also certify that the foregoing document is being served this day via US Certified Mail to the United States Attorney's Office, Civil Division, Middle District of Florida, 2110 First Street, Suite 3-137, Ft. Myers, Florida 33901, and via EMAIL to Shelby Hill, Supervisor Legal Assistant, 400 N. Tampa Street, Suite 3200, Tampa, Florida 33602 and via Certified Mail to the following Respondents:

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