

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

FORT MYERS DIVISION

Case No.:2-26-cv-133

MIAKEL GUERRA MORALES,

Plaintiff/ Petitioner,

v.

KELIE WALKER, *et al.*,

Defendants/Respondents.

**PLAINTIFF/PETITIONER'S EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Plaintiff/Petitioner, **MIAKEL GUERRA MORALES** (Mr. Guerra Morales), moves this Honorable Court, pursuant to Federal Rule of Civil Procedure 65 and Local Rule 6.01, for issuance of a Temporary Restraining Order ("TRO") and a Preliminary Injunction against Defendants/Respondents from removing Mr. Guerra Morales from the Middle District of Florida. Plaintiff further requests that this Honorable Court set a hearing within 15 days to determine whether this TRO should be converted into a Preliminary Injunction, in support thereof, Mr. Guerra Morales states as follows:

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133
Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Page 2

1. Mr. Guerra Morales incorporates by reference the *Writ of Habeas under 28 U.S.C. §2241 and Request for Emergency Injunctive Relief* filed on his behalf on January 26, 2026. (DE:1). Through the *Writ*, Mr. Guerra Morales seeks release from his unlawful detention. This motion seeks to have this Honorable Court enter a TRO preventing the Respondents from removing or transferring Mr. Guerra Morales outside of the Court's jurisdiction pending the disposition of Mr. Guerra Morales's *Writ*.

2. Mr. Guerra Morales was unlawfully arrested on December 30, 2025 at the Sarasota-Bradenton International Airport. Mr. Guerra Morales and his spouse were traveling in order to visit family for the holidays. When he disembarked the aircraft he was greeted by officers of the Immigration & Customs Enforcement (ICE). Mr. Guerra Morales was awarded protection under the Convention Against Torture (CAT) on March 1, 2023. He was immediately released from custody upon the issuance of the Immigration Court's order deferring his removal to Cuba and protection under CAT. He was placed on an order of supervision (OSUP) and he has been reporting as directed without incident. Mr.

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133

Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction

Page 3

Guerra Morales was immediately taken into custody without any notice of reason for revocation of his OSUP.

3. Mr. Guerra Morales was taken to an ICE office after his apprehension at the Sarasota-Bradenton Airport, then to the Pinellas County Jail, then back to an ICE office, and then on December 31, 2025, Mr. Guerra Morales arrived to the Alligator Alcatraz facility in Ochopee, Florida where he remains as of the filing of this emergency motion. Alligator Alcatraz is a state-run facility, however, ICE controls who is admitted, detained, and released.

4. Mr. Guerra Morales seeks emergency relief in the form of an order from this Court preventing the Defendants from removing him from the Middle District of Florida and/or the State of Florida until such time as this Court resolves his pending Writ of *Habeas*.

5. Without issuance of a temporary restraining order Mr. Guerra Morales faces imminent removal from the jurisdiction which will have the effect of rendering his *writ of habeas* moot and thereby denying him the opportunity to seek judicial review.

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133
Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Page 4

Legal Memorandum

6. Mr. Guerra Morales has a pending *Writ of Habeas* before this Court. This request for issuance of a Temporary Restraining Order relates to said writ. See *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1134 (11th Cir. 2005). In order to obtain a TRO a party must demonstrate that (1) there is a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury would outweigh the harm the relief would inflict on the nonmoving party; and (4) that the relief would serve the public interest. See *Chavez v. Fla. SPWarden*, 742 F.3d 1267, 1271 (11th Cir. 2014). The burden is on the petitioner to establish all four elements. See *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016).

7. Mr. Guerra Morales has a constitutional and statutory right to counsel of his choice. See 8 U.S.C. §1362; *Baires v. INS*, 856 F.2d 89, 91 n. 2 (9th Cir. 1988) (“We have consistently emphasized the critical role of counsel in deportation proceedings [and] have characterized the alien’s right to counsel of choice as ‘fundamental’ and have warned INS not to

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133

Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction

Page 5

treat it casually.”). Transferring Mr. Guerra Morales outside of this jurisdiction would infringe upon his constitutional rights to effective assistance of counsel and due process of law.

8. Mr. Guerra Morales has challenged his detention based on violation of his Due Process rights under the Fifth Amendment and his Sixth Amendment Right to Counsel. Mr. Guerra Morales further challenges his unlawful detention based on *Zadvydas v. Davis*, 533 U.S. 678 (2001) and 8 U.S.C. §1231(a)(6). The Supreme Court in *Zadvydas* ruled that the statute authorized the detention of noncitizens with an order of deportation for a “period reasonably necessary” to bring about the noncitizen’s removal from the United States. Further, the Court determined that six months of post-removal detention was “presumptively reasonable” . *Id* at 701. Quoting, 8 U.S.C. §1231(a)(6), the Court further explained that the statute’s justification for the continuation of detention of the noncitizen applied *only if* the Government is seeking to “ensure the appearance of the alien’s future

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133

Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction

Page 6

immigration proceedings” and in order to [p]revent danger to the community.” *Id* at 690.

9. Mr. Guerra Morales has been on supervision three years. During this time period he has never been arrested let alone, engaged in any acts of violence. He has dutifully reported as required to ICE. He has been in a committed relationship for over 15 years to his common law wife Maria Reyes, a United States citizen. Prior to his arrest by ICE he was living with his wife and her son Nazareo de Jesus Reyes, a veteran of the United States Air Force. His mother and brother, both of whom are US citizens reside in Cape Coral, Florida. Prior to his detention he was gainfully employed with the expressed approval and authorization of the Bureau of Immigration and Citizenship Services (BCIS). He is neither a risk of flight nor is he a danger to the community.

10. Mr. Guerra Morales's release from custody three years ago was based on the determination by ICE that there was no “significant likelihood of removal in the reasonably foreseeable future” (SLRRFF). In re-arresting Mr. Guerra Morales, ICE has denied him due process of law

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133

Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction

Page 7

and has failed to follow their own regulations, see 8 C.F. R. §§241.4(b)(4) and 241.13.

Mr. Guerra Morales Meets the Standards for the Grant of a TRO

11. To obtain a temporary restraining order, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparably harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest..” See *Chavez v. Fla. SPWarden, supra*.

12. Mr. Guerra Morales is likely to prevail on the merits. ICE has deprived him of his liberty. ICE has separated him from his family and his community. ICE has deprived him of meaningful access to counsel. His continued detention is causing Mr. Guerra Morales both physical and psychological harm.

(a) Mr. Guerra Morales is unlawfully detained by U.S. Immigration and Customs’s Enforcement (ICE) in violation of the Fifth Amendment and governing immigration statutes. The period ICE had for detaining Mr. Guerra Morales for a “reasonably necessary” period of time has already

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133
Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Page 8

taken place. The Honorable Judge Polster Chappell in recently granting a writ of habeas which raised issues similar to Mr. Guerra Morales, determined that once a period of detention under *Zadvydas* has taken place, a re-detention of the noncitizen is improper. Specifically, the Court found that a re-detention of a noncitizen would “effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months. As the Eleventh Circuit recognized, ‘[t]he Supreme Court’s stated rationale for establishing a presumptively reasonable ‘6-month period’ for detention pending removal supports our conclusion that this period commences at the beginning of the removal period.’” *Krechmar v. Parra, et al., Case No.: 2:25-cv-01095-SPC-DNF (M.D. Fla. Dec. 15, 2025)* (See Opinion at DE:13 at pg. 6-7).

ICE has failed to make individualized findings that Mr. Guerra Morales poses a danger or flight risk. Detention is no longer reasonably related to its civil, non-punitive purpose.

(b) ICE has violated its own regulations. The period of removal for Mr. Guerra Morales has past. ICE improperly revoked Mr. Guerra

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133
Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Page 9

Morales's OSUP. See 8 C.F.R. §§241.4(b)(4) and 241.13 applies. ICE has violated this provision by having properly placed Mr. Guerra Morales under an OSUP, after a determination had been made that there was "good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country in the foreseeable future."

(c) ICE has violated its own regulations governing Orders of Supervision. Before revoking his OSUP, ICE must notify Mr. Guerra Morales of its intent to revoke, provide Mr. Guerra Morales with a factual basis establishing that there exists a renewed "significant likelihood of removal to the country to which he was ordered removed, or to a third country". Finally, Mr. Guerra Morales must be provided with an opportunity to respond most especially given the fact that he was awarded deferral of removal under CAT. ICE has provided none of these safeguards, rather, they have arbitrary and cruelly arrested him. Mr. Guerra Morales reported as directed was arrested without warning while complying with supervision requirements. ICE has not identified any

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133
Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Page 10

changed country conditions. Mr. Guerra Morales *cannot* be deported to Cuba.

13. Without a TRO, Mr. Guerra Morales faces imminent removal from the jurisdiction, which would effectively render his *writ* moot. Should Mr. Guerra Morales be removed from this jurisdiction he will not be able to vindicate his Due Process rights. See *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)(deprivation of a constitutional right “constitutes irreparable injury sufficient to justify injunctive relief”).

14. Should the Court not grant this Mr. Guerra Morales will be deprived of his fundamental right to challenge his illegal confinement and the deprivation of his freedom that has resulted from this. Each day of confinement, is a day that is lost forever to Mr. Guerra Morales. Moreover, Mr. Guerra Morales will suffer the psychological trauma that has resulted from the unexpected separation from his family.

15. The balancing of equities overwhelmingly favors Mr. Guerra Morales. He has lived peacefully in the United States since his release from custody, ICE has never asserted any violations of the conditions of

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133

Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction

Page 11

his supervision, indeed he has been compliant. Mr. Guerra Morales absolutely and unequivocally poses no risk of flight nor any danger to the community. By contrast, the Respondents suffer no cognizable hard from maintaining the status quo while this Court adjudicates the pending *writ of habeas*. ICE has already determined that Mr. Guerra Morales cannot be removed.

16. Granting this TRO serves the public interest by ensuring that federal agencies comply with constitutional limits, statutory mandates, and their own regulations. The public has a strong interest in preventing arbitrary detention, safeguarding access to the courts, and ensuring that immigration enforcement operates within the rule of law and thereby operates humanely. See *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979).

Based on the foregoing, Mr. Guerra Morales respectfully requests this Honorable Court to enter an order granting this Motion for Temporary Injunction preventing the Defendants from removing him from this jurisdiction until such time as his *writ of habeas* is resolved by this Court.

Miakel Guerra Morales v. Kelei Walker, et al., Case Number: 2-26-cv-133
Plaintiff/Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Page 12

I HEREBY Certify that a copy of the foregoing was furnished by US Certified MAIL to 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 Shelby.Hill@usdoj.gov on this 23rd Day of January,, 2026.

Respectfully submitted,

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