

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

D.A.G.H.;)	
Petitioner,)	
)	CASE NO.:
vs.)	1:26-cv-01126-ELR
)	
LADEON FRANCIS, <i>ICE Atlanta</i>)	
<i>Field Office Director; and</i>)	
TODD LYONS, <i>in his official capacity as Acting</i>)	
<i>Director of Immigration and Customs</i>)	
<i>Enforcement; and</i>)	
KRISTI NOEM, <i>Secretary of Homeland Security</i>)	
And PAMELA BONDI, <i>U.S. Attorney General.</i>)	
)	
Respondent.)	
_____)	

PETITIONER'S SECOND EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Petitioner seeks an immediate order due to his detention yesterday at the ICE offices at 180 Ted Turner Dr. SW, Atlanta, GA, and imminent removal from the United States, and to preserve this Court's jurisdiction. This is an amended motion after the first one was denied without prejudice. The ICE inmate locator still does not show a location for him as of 10:28 p.m. this evening. Exhibit 1.¹

COMES NOW Petitioner, D.A.G.H., by and through counsel, and files this Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction. Petitioner requests that the Court issue a Temporary Restraining Order and/or Preliminary Injunction, including on an ex parte basis if necessary, pursuant to Fed. R. Civ. P. 65 in order to prevent irreparable injury, preserve the Court's ability to render a meaningful decision on the merits of his habeas petition, and ensure that an effective remedy remains available. This anti-transfer relief is also authorized by the All Writs Act, 28 U.S.C. § 1651(a), because transferring or removing Petitioner would frustrate and potentially defeat this Court's habeas jurisdiction and render any eventual judgment ineffectual.

Petitioner seeks immediate judicial intervention because ICE has detained him at the ICE offices at 180 Ted Turner Dr. SW, Atlanta, GA, a pre-removal staging site, placing him at imminent risk of removal from the United States. This

¹ Note, after filing his motion for leave to proceed under a pseudonym, ECF Dkt. 7, Petitioner's counsel received information that Respondents do not oppose it.

motion asks the Court to stay his removal to his native country or any third country, to prevent Respondents from further altering his custodial status or supervision conditions, and to restore him to the status quo ante—his long-standing release under an Order of Supervision (“OSUP”)—while the Court adjudicates his claims. Given the speed with which ICE can effectuate removal from the United States, Petitioner respectfully requests that the Court consider and, if appropriate, grant immediate ex parte relief staying his removal and transfers pending a prompt hearing with notice to Respondents.

Petitioner’s sudden re-detention after years of stable release under an Order of Supervision inflicts paradigmatic irreparable injury: each day of civil confinement is a noncompensable loss of liberty, separates him from his family, disrupts his employment and ability to support them, and exacerbates his physical and mental health needs. His detention has already severed him from long-established community ties and undermined the stability he relied on in building his life under government supervision.

Absent interim relief, ICE can transfer Petitioner from Atlanta to a staging facility and execute his removal on very short notice, either to his native country despite his current U-visa-based deferred-action grant, or to a third country without the notice, fear screening, and Immigration Judge review he contends are constitutionally required. Such a removal would permanently separate him from

his family, expose him to the very harms his protection-based claims are designed to prevent, and – critically – moot this habeas action and deprive the Court of any meaningful opportunity to adjudicate the legality of his detention, OSUP revocation, and proposed third-country removal procedures.

Petitioner D.A.G.H. is a noncitizen who has resided in the United States for many years and has established substantial family and community ties in this country. In 2018, an Immigration Judge ordered him, and he was detained for approximately nine months in connection with that order. After his release, Petitioner remained in the community and complied fully with all reporting obligations imposed by U.S. Immigration and Customs Enforcement (“ICE”). Over the years, he consistently appeared for scheduled check-ins and has no criminal record. His circumstances have materially changed since the 2018 removal order: he is the beneficiary of a pending U visa petition and has been granted deferred action based on that application, reflecting the government’s determination that he merits humanitarian protection and is not an enforcement priority.

At a recent scheduled reporting appointment at the ICE field office located at 180 Ted Turner Dr. SW in Atlanta, Petitioner presented documentation evidencing his bona fide U visa determination and deferred action. Although he was initially permitted to leave with instructions to return due to an alleged paperwork correction, ICE later directed him to come back to the office. When he

complied and returned as instructed, officers detained him without any intervening violation, changed circumstance, or lawful finding justifying custody. He was fingerprinted, no criminal history was identified, and yet ICE refused to release him.

Petitioner now remains detained at the Atlanta ICE field office solely as a result of this arbitrary enforcement action. Despite years of full compliance, the absence of any criminal conduct, and the government's own grant of deferred action tied to his pending U visa, ICE has placed him in post-order custody and subjected him to the threat of imminent removal. This detention exceeds the lawful bounds of post-order authority under 8 U.S.C. § 1231, disregards the legal significance of his bona fide U visa determination and deferred action, and violates the Due Process Clause of the Fifth Amendment. Petitioner faces ongoing deprivation of liberty, separation from his family, and irreparable harm absent immediate judicial intervention.

Jurisdiction under 28 U.S.C. § 2241(a) is fixed at the time of filing. He filed in the district of confinement and named his immediate custodian, Ladeon Francis, thereby satisfying the "within their respective jurisdictions" requirement and the immediate-custodian rule. Subsequent transfers cannot defeat this Court's authority or insulate his unlawful detention from review.

In addition to challenging the unlawful revocation of his OSUP and his resulting detention, Petitioner seeks to prevent Respondents from removing him either to his native country or to any third country without the basic due-process protections that attach to third-country removal in this posture. As set out more fully in his accompanying memorandum, Petitioner contends that if DHS designates any third country for his removal, due process requires, at a minimum: (1) written notice identifying the proposed country of removal and the factual basis for that designation; (2) a meaningful opportunity to present a fear-of-persecution or torture claim specific to that country; and (3) review by an Immigration Judge of any negative fear determination before DHS may effectuate removal. Furthermore, DHS may not effectuate removal during the period of his Deferred Action. Without a TRO, ICE could remove him from the United States – potentially to a country where he faces persecution, torture, or chain refoulement—before this Court can review the legality of those procedures.

Because no administrative remedy exists to force Respondents to release Petitioner and return him to the situation of the status quo ante, under his prior OSUP before it was unlawfully revoked, judicial intervention is necessary to prevent irreparable harm. If unrestrained, Respondents will insulate their unlawful actions from judicial review, leaving Petitioner confined indefinitely

without a lawful basis to revoke his OSUP and at risk of sudden removal, unable to work or care for his family, and without any adequate remedy at law.

ICE/DHS have already violated Petitioner's constitutional and regulatory rights by unilaterally cancelling and revoking his OSUP and re-detaining him. There is no remedy at law that can adequately compensate him for the consequences of this re-detention, including separation from his wife and children, deterioration of his physical and mental health, loss of employment eligibility, and interference with his ability to live a stable life in the community. Every day that Petitioner remains detained causes irreparable harm, deprives him of liberty in violation of the Constitution, and frustrates the statutory and regulatory framework that governs supervision and revocation of an OSUP.

Through this Motion, Petitioner seeks his immediate release and restoration to the status quo ante before his OSUP was unlawfully revoked, and a temporary bar on his removal to any third country absent the process described above, while this Court considers the merits of his habeas petition.

Immediate injunctive relief is essential because Petitioner has a substantial likelihood of success on the merits; he will suffer irreparable harm in the absence of relief; there is no adequate remedy at law; the balance of hardships favors him; and the requested injunctive relief will not harm the public interest. The facts and legal arguments supporting this motion are set forth in detail in Petitioner's

Memorandum of Authorities in Support of Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction filed contemporaneously herewith.

Grounds for Relief / Summary of Merits

Petitioner is likely to succeed on the following several independent reasons:

(1) Ultra Vires Agency Action.

ICE exceeded its limited post-order detention authority under 8 U.S.C. § 1231(a)(6) by revoking Petitioner's long-standing Order of Supervision and re-detaining him without any individualized finding that he is a danger to the community, unlikely to comply with his removal order, or otherwise falls within the narrow statutory categories permitting detention beyond the removal period.

Because "[r]egulations cannot circumvent the plain text of the statute[.]" courts question whether these regulations are ultra vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

(2) Due Process Violations.

The abrupt revocation of Petitioner's OSUP and his re-detention, without advance notice, an opportunity to be heard, or a neutral decisionmaker, violate

procedural due process, and his continued civil confinement despite years of compliance, a grant of U-visa-based deferred action, and no realistic prospect of removal violates substantive due process.

(3) INA and Regulatory Violations (8 C.F.R. §§ 241.4, 241.13).

The Immigration and Nationality Act and its implementing regulations establish mandatory procedures and standards for post-order custody, custody review, and revocation of supervised release. ICE failed to follow those requirements, including the notice, interview, custody-review, and “changed circumstances” findings required by 8 C.F.R. §§ 241.4 and 241.13.

(4) Administrative Procedure Act (APA) Violations.

ICE’s actions are arbitrary and capricious and “not in accordance with law” under 5 U.S.C. § 706(2)(A)–(C), because they disregard the statutory limits in § 1231(a)(6), violate binding regulations, ignore Petitioner’s long history of compliance and reliance interests, and fail to provide a reasoned explanation for departing from years of supervised release and from his existing grant of deferred action and employment authorization.

(5) Accardi and regulatory violations.

Under the Accardi doctrine, DHS and ICE must follow their own rules and may act only through properly authorized officials. ICE revoked Petitioner’s OSUP and re-detained him without complying with the delegation, notice,

interview, and custody-review requirements in its own regulations and policies, rendering the revocation and continued detention ultra vires and invalid.²

(6) Due process limits on third-country removal.

Separate and apart from his detention and OSUP claims, Petitioner is likely to succeed on his claim that DHS may not remove him to any third country without first providing basic third-country due-process protections, including written notice of the proposed country, a meaningful opportunity to present fear-of-persecution or torture claims specific to that country, and Immigration Judge review of any negative fear determination before removal may proceed.

D.A.G.H.'s posture is materially similar. He has a final removal order with U Visa Petition process; DHS has not identified any alternative country willing to accept him; and his transfer to an ICE's detention center facility indicates that ICE may seek to designate a third country at the last minute and remove him without the notice, fear-screening, and IJ review that due process requires. On this record, he is likely to succeed on his claim that any third-country removal without those

² ICE violated its own regulations and instructions by revoking Petitioner's OSUP without proper authority, without notice, and without affording Petitioner an opportunity to prepare for an orderly departure as required by Petitioner's release notification. Courts have repeatedly ordered the release of noncitizens where ICE failed to follow its own rules in revoking supervised release. *Sun v. Noem*, No. 3:25-cv-02433, 2025 WL 2800037, at *3 (S.D. Cal. Sept. 30, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144, 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Zhu v. Genalo*, No. 1:25-cv-06523, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *M.S.L. v. Bostock*, No. 6:25-cv-01204, 2025 WL 2430267 (D. Or. Aug. 21, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3-5 (E.D. Cal. July 16, 2025); *Liu v. Carter*, No. 25-3036, 2025 WL 1696526 (D. Kan. June 17, 2025); *Ceesay*, 781 F. Supp. 3d at 162; *Rombot*, 296 F. Supp. 3d at 389

protections would violate the Fifth Amendment.

WHEREFORE, for the reasons set forth in the accompanying brief, Petitioner respectfully prays that the Court grant his Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction through which he requests the Court issue the following orders:

1. Issue an immediate temporary restraining order, on an ex parte basis if necessary, enjoining Respondents from removing Petitioner from the district or the United States during the pendency of this action, or taking any action that would defeat or frustrate this Court's jurisdiction over the matter, including any attempt to remove Petitioner from the United States while his current grant of deferred action based on his pending U-visa petition remains in force;
2. Set this case for an emergency hearing on the instant Motion;
3. Release Petitioner temporarily under reasonable terms of supervision and Enjoin Respondents from detaining Petitioner during the pendency of this habeas action;
4. Restore and reinstate Petitioner's OSUP that was unlawfully and unilaterally revoked, under the same or substantially similar conditions that were in effect prior to February 26, 2026. This relief shall include an express prohibition on executing Petitioner's removal order while his

current grant of deferred action tied to his pending U-visa petition remains valid;

5. Enjoin Respondents, during the pendency of this action, from revoking or materially modifying Petitioner's reinstated Order of Supervision except in compliance with applicable statutes, regulations, and the Due Process Clause of the Fifth Amendment.
6. In the event Respondents seek to revoke or materially modify Petitioner's Order of Supervision while this action is pending, require them to provide Petitioner with written notice of the proposed action and the reasons for it, and a meaningful opportunity to respond, consistent with applicable statutes, regulations, and constitutional requirements; and
7. Grant any such further relief as the Court deems equitable and just.

Respectfully Submitted,

This 27th day of February, 2026.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Book Antiqua, 13-point font.

/s/ Karen Weinstock

Karen Weinstock

Attorney for Petitioner

Weinstock Immigration Lawyers, P.C.

1827 Independence Square

Atlanta, GA 30338

Phone: (770) 913-0800

Fax: (770) 913-0888

kweinstock@visa-pros.com

CERTIFICATE OF SERVICE

I certify that on February 27, 2026, I electronically filed the foregoing Document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

Karen Weinstock

Attorney for Petitioner

Weinstock Immigration Lawyers, P.C.

1827 Independence Square

Atlanta, GA 30338

Phone: (770) 913-0800

Fax: (770) 913-0888

kweinstock@visa-pros.com