

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

MORENO-RUBIO, Erlin A.,

A 

Petitioner-Plaintiff,

v.

**Garrett Ripa, in his official capacity as
Field Office Director, Miami field Office,
U.S. Immigration and Customs
Enforcement; Warden, Florida Soft Side
South Detention Center; U.S.
Department of Homeland Security; and
U.S. Immigration and Customs
Enforcement,**

Respondents-Defendants.

Case No. 2:26-cv-655-SPC-NPM

**PETITIONER'S EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER
And INCORPORATED
MEMORANDUM OF LAW IN
SUPPORT OF PETITIONER'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION AND STAY OF
ADMINISTRATIVE ACTION**

Petitioner, Erlin A. Moreno-Rubio, respectfully moves on an emergency basis for a temporary restraining order (“TRO”) under Federal Rule of Civil Procedure 65(b) that bars Respondents from moving the Petitioner out of this district until this Court can rule on the **VERIFIED PEITITION FOR A WRIT OF HABEAS CORPUS** on the legality of detention. Petitioner seeks a TRO on an emergency basis because Petitioner

just called counsel and told counsel that he was placed on a plane today and threatened with being moved, then, Petitioner was pulled off the plane, and told he will be on the next flight out of Alligator Alcatraz.

Counsel has emailed the deportation officers that are in charge of these flights and has received an answer indicating that they will be sending the emails to the appropriate officers. **(Exhibit A, Email to Deportation Officers, Exhibit B, Emails from the Deportation officers acknowledging receipt)**

Before filing this motion, Counsel has been unable to confer with the opposing party in a good faith effort to resolve the motion because this motion is being filed at approximately 5 p.m.

BACKGROUND

1. This case challenges the unlawful detention of **Erlin A. MORENO-RUBIO**, (“Petitioner” or “[Mr. **Moreno Rubio**”)), who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at Florida Soft Side South, 54575 Tamiami Trail, E, Ochopee, FL 34141. Petitioner is neither a flight risk nor a danger to the community.

2. On **March 3, 2021**, Petitioner was granted withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act (“INA”), prohibiting his

removal back to Iran. *See 8 U.S.C. § 1231(b)(3)*. Concurrently, the immigration judge issued him an order of removal. A few days later, Immigration and Customs Enforcement (“ICE”) released Petitioner from immigration detention on an Order of Supervision (“OSUP”).

3. On or about **March 5, 2026**, ICE detained him without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

4. ICE has previously found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on **March 3, 2021**, under an order of granting withholding of removal.

5. Since then, Petitioner has fully abided by the order of withholding of removal’s terms, including attending regularly scheduled check-ins with ICE.

6. Petitioner is currently detained at **Florida Soft Side South Detention Center**.

7. Petitioner challenges his re-detention and indefinite detention as a violation of the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, and ICE’s own policies.

8. Petitioner has filed a Verified Petition for Writ of Habeas Corpus. **(Record:**

Verified Petition for Writ of habeas Corpus filed, Case 2:26-cv-00655, Filed 03/08/26)

9. Petitioner brings this action for injunctive, habeas, and declaratory relief ordering Respondents to release him.

10. Petitioner is “in custody” for the purpose of § 2241 because he is detained by Respondents at **Florida Soft Side South Detention Center**, an immigration detention facility, in Ochopee, Florida. Petitioner is under the direct control of Respondents and their agents.

ARGUMENT

A TRO is appropriate where a movant demonstrates: (1) likelihood of success on the merits; (2) likelihood of suffering irreparable harm absent an injunction; (3) that the balance of equities tips in the movant’s favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), *Swain v. Junior*, 961 F.3d 1276, 1284-85 (11th Cir. 2020). Those factors warrant a TRO here.

I. Petitioner Is Likely to Succeed on the Merits

Petitioner has filed a Verified Petition for Writ of Habeas Corpus. On **March 3, 2021**, Petitioner was granted withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act (“INA”), prohibiting his removal back to Honduras.

See 8 U.S.C. § 1231(b)(3). Concurrently, the immigration judge issued him an order of removal. A few days later, Immigration and Customs Enforcement (“ICE”) released Petitioner from immigration detention on an Order of Supervision (“OSUP”).

Since his release several years ago, Petitioner has applied for and received employment authorization from the Department of Homeland Security (“DHS”) based on his release on an OSUP. He has also complied with every request, demand, and requirement imposed by Respondents of which Petitioner is aware, including attending his scheduled annual ICE check-ins. On or about **March 5, 2026**, ICE detained him without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules. Petitioner has always fully abided by the order of withholding of removal’s terms, including attending regularly scheduled check-ins with ICE.

Respondents-Defendants’ actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

Any country that Petitioner would be sent to would be problematic for the Petitioner. Petitioner would have trouble living in the majority of the countries of the world due to his penchant for being persecuted for being gay. A noncitizen may not be removed to any country where it is more likely than not that they would be persecuted or tortured. Under the INA, the Attorney General or the DHS Secretary may not remove a [noncitizen] to a country” where “the [noncitizen]’s life or freedom would be threatened in that country because of the [noncitizen]’s race, religion, membership in a particular social group, or political opinion.” *8 U.S.C. § 1231(b)(3)(A)*. This form of protection is known as “withholding of removal.” *See 8.C.F.R. § 208.16(a)*. It is mandatory. When an Immigration Judge (“IJ”) grants withholding of removal to a noncitizen in removal proceedings, the IJ issues a removal order and simultaneously withholds that order with respect to the country or countries for which the noncitizen has demonstrated the requisite risk of persecution. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

Once withholding is granted, either party has the right to appeal that decision to the Board of Immigration Appeals (“BIA”) within 30 days. *See 8 C.F.R. § 1003.38(b)*. If both parties waive appeal or if neither party appeals within the 30-day period, the grant of withholding of removal and the accompanying removal order become

administratively final. *8 C.F.R. § 1241.1*. If the Respondent reserves appeal and the time allotted for an appeal expires, the order of the immigration judge becomes administratively final “upon the expiration of the time allotted for an appeal.” *8 C.F.R. § 1241.1(c)*. When a noncitizen has a final withholding grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution. *See 8 U.S.C. § 1231(b)(3)(A)*. While ICE is authorized to remove noncitizens granted withholding of removal to alternative countries, the INA specifies restrictive criteria for identifying appropriate countries. *See 8 U.S.C. § 1231(b)(2)(D)-(E)*.

If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings, including giving the noncitizen notice and an opportunity to express fear of deportation to that country, before ICE may effectuate the noncitizen’s removal. *See Jama v. ICE, 543 U.S. 335, 348 (2005)* (“If [noncitizens] would face persecution or other mistreatment in the country designated under *§ 1231(b)(2)*, they have a number of available remedies: asylum, *§ 1158(b)(1)*; withholding of removal, *§ 1231(b)(3)(A)*; [and] relief under an international agreement prohibiting torture, *see 8 C.F.R. §§ 208.16(c)(4), 208.17(a) (2004)[.]*”); *Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioners to a third

country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.”), rev’d on other grounds, *Guzman Chavez*, 141 S. Ct. 2271.

None of this was done in this case.

II. Likelihood of Suffering Irreparable Harm Absent an Injunction

If the Petitioner is moved to another jurisdiction, as has been planned by ICE, after the filing of the Verified petition for Writ of Habeas Corpus, there will be harm and fixing that harm will be difficult, given ICE’s excuses for moving the prisoners of Alligator Alcatraz.

III. That The Balance of Equities Tips in The Movant’s Favor

The balance of harms and public interest decisively favor injunctive relief. There is no equitable or public interest in detaining individuals without legal authority. And there is “no public interest in the perpetuation of unlawful [government] action.” *Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, No. 25-cv-1411, 2025 WL 1249608, at *62 (4th Cir. Apr. 30, 2025) (citations omitted). Conversely, both the equities and the public interest favor ensuring government agencies comply with court orders and respect fundamental liberty interests.

Because “habeas corpus is, at its core, an equitable remedy,” a district court has “substantial discretion to appropriately redress any violation of an order granting habeas corpus relief.” *Wolfe v. Clarke*, 718 F.3d 277, 285 (4th Cir. 2013) (*citing Schlup v. Delo*, 513 U.S. 298, 319 (1995)).

Here, that equitable authority supports entry of a temporary restraining order preventing Respondents from moving the Petitioner to another district.

IV. An Injunction Is in The Public Interest

It is in the public interest that ICE abide by the rules and that the rules favor ensuring government agencies comply with court orders and respect fundamental liberty interests.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court enter a temporary restraining order that bars Respondents from detaining Petitioner, until this Court can hold a hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

- a. Exercise jurisdiction over this matter;

- b. Enjoin **Petitioner's removal or transfer outside the jurisdiction** of this Court and the United States pending its adjudication of this petition;
- c. And Order such other relief as this Court may deem just and proper.

Respectfully submitted,

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/s/ Julio Gutierrez

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I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency motion for Temporary Injunction, and attached pages, was electronically sent to the office of Clerk, United States District Court, Southern District of Florida and the United States Attorney, Southern District of Florida, this 9th day of March, 2026.

/s/ Julio Gutierrez