

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Case No.: 2:26-cv-00793-SPC-NPM**

MISAEL YOVANNI GARCIA AVALOS,
Petitioner,

V.

WARDEN, Florida Soft South Side Detention Center,
Garret J. Ripa, ICE ERO MIAMI FIELD OFFICE,
Kristy Noem, SECRETARY,
U.S. DEPARTMENT OF HOMELAND SECURITY,
Pam Bondi, ATTORNEY GENERAL
OF THE UNITED STATES,
Respondents.

**EMERGENCY MOTION TO STAY REMOVAL OF PETITIONER
AND TO ORDER RESPONDENTS TO NOT TRANSFER PETITIONER**

Petitioner Misael Yovanni Garcia Avalos, by and through undersigned counsel, respectfully moves this Court for an order directing the stay of his removal from the United States and to not transfer Petitioner outside of the jurisdiction of the Court pending adjudication of his Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. §2241. In support of this motion, Petitioner states as follows:

I. INTRODUCTION

Petitioner is currently detained by U.S. Immigration and Customs Enforcement ("ICE") despite the fact that an Immigration Judge granted him withholding of removal on December 15, 2023 after determining that Petitioner would more likely than not face persecution or torture if returned to Mexico.

Petitioner has no criminal history, complied fully with all ICE reporting requirements, and voluntarily appeared for a routine ICE supervision appointment on March 9, 2026 at the ICE

Enforcement and Removal Operations office in Miramar, Florida, where he was unexpectedly detained.

Petitioner's continued detention serves no legitimate immigration purpose and violates the constitutional limitations recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Because Petitioner poses no danger to the community, no risk of flight, and cannot lawfully be removed to Mexico, this Court should order his release pending resolution of his habeas petition.

II. THIS COURT HAS AUTHORITY TO ISSUE A STAY AND ANTI-TRANSFER ORDER

Federal courts possess authority to issue orders preserving their jurisdiction and preventing irreparable harm in habeas proceedings.

This authority arises from 28 U.S.C. §2241 (habeas jurisdiction); 28 U.S.C. §1651 (All Writs Act), and Federal Rule of Civil Procedure 65

Under the All Writs Act, federal courts may issue orders necessary to preserve their jurisdiction. See *Pennsylvania Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 40 (1985). Courts routinely exercise this authority in immigration habeas cases to prevent detainee transfers that would frustrate the court's jurisdiction. See *Ex parte Endo*, 323 U.S. 283 (1944). Once a habeas petition is filed, the court's jurisdiction attaches, and the government may not defeat that jurisdiction through transfer of the detainee. See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

III. STANDARD FOR STAY OF REMOVAL

Courts evaluating motions for stay of removal consider the factors articulated by the Supreme Court in *Nken v. Holder*, 556 U.S. 418 (2009):

1. Whether the applicant has made a strong showing of likelihood of success on the merits;
2. Whether the applicant will suffer irreparable injury absent a stay;
3. Whether issuance of a stay will substantially injure the opposing party; and
4. Where the public interest lies.

These factors weigh strongly in favor of granting a stay in this case.

IV. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS HABEAS PETITION

Petitioner's habeas petition challenges his continued detention as unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Petitioner was granted withholding of removal, which prohibits removal to Mexico because he would likely face persecution or torture if returned there. See 8 U.S.C. §1231(b)(3). Because removal to Mexico is legally barred, the government cannot execute the removal order to that country.

Unless the government demonstrates that removal to another country is reasonably foreseeable, continued detention violates the limitations established in *Zadvydas* and *Clark v. Martinez*, 543 U.S. 371 (2005). Even if the respondents demonstrate that removal to another country is reasonable foreseeable, Petitioner retains the right to challenge removal to any proposed third country through available administrative and judicial procedures. Detaining

Petitioner while he exercises these rights would effectively punish him for pursuing lawful legal remedies and would create the indefinite detention problem the Supreme Court sought to prevent in *Zadvydas*.

Petitioner also has **no criminal history** and has complied with all ICE supervision requirements prior to his detention.

These facts strongly support the merits of the habeas petition.

V. PETITIONER WILL SUFFER IRREPARABLE HARM WITHOUT A STAY

Absent a stay of removal, Petitioner faces the possibility of removal from the United States before this Court has the opportunity to adjudicate the legality of his detention. Such removal would effectively moot the habeas petition and deprive Petitioner of meaningful judicial review. Additionally, removal may expose Petitioner to persecution or torture, the very harm the Immigration Judge sought to prevent when granting withholding of removal. Courts consistently recognize that the risk of removal before judicial review constitutes irreparable harm.

VI. TRANSFER OUTSIDE THE COURT'S JURISDICTION WOULD INTERFERE WITH HABEAS REVIEW

Petitioner is currently detained within the jurisdiction of this Court. If Respondents transfer Petitioner to a detention facility outside the Southern District of Florida, such transfer could interfere with this Court's jurisdiction over the habeas petition. Courts have repeatedly recognized that detainee transfers during habeas proceedings may frustrate judicial review. *See Ex parte Endo*, 323 U.S. 283 (1944). An order preventing transfer is therefore necessary to preserve the Court's ability to adjudicate Petitioner's claims.

VII. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR RELIEF

The government will suffer no prejudice from maintaining the *status quo* while the Court considers the merits of Petitioner's habeas petition. By contrast, Petitioner faces the risk of removal or transfer that could deprive him of meaningful access to judicial review. The public interest favors ensuring that government detention complies with constitutional and statutory requirements.

VIII. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue an immediate stay of removal prohibiting Respondents from removing Petitioner from the United States while this habeas action is pending;
2. Order Respondents not to transfer Petitioner outside the jurisdiction of the United States District Court for the Southern District of Florida without prior authorization from this Court;
3. Expedite consideration of this motion; and
4. Grant such other and further relief as the Court deems just and proper

Respectfully submitted,

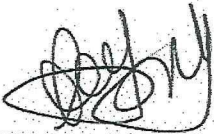


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of March, 2026, a true and correct copy of the foregoing Emergency Motion for Stay of Removal and for Order Prohibiting Transfer Outside the Court's Jurisdiction was served upon the following:

U.S. Attorney's Office
2110 First Street
Suite 3-137
Ft. Myers, FL 33901



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