

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NELSON PIRES DOS SANTOS
(A-NUMBER )

Petitioner,

v.

WARDEN OF FLORIDA SOFT SIDE
SOUTH (ALLIGATOR ALCATRAZ);
KRISTI NOEM, as United States Secretary
of Homeland Security; GARRETT J. RIPA,
as Field Office Director, U.S. Immigration
and Customs Enforcement; and PAM
BONDI, as United States Attorney General.

Respondents.

Case No.:

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
PROHIBITING TRANSFER OR REMOVAL

Petitioner, NELSON PIRES DOS SANTOS (“**Dos Santos**”), by and through undersigned counsel, respectfully moves this Court for entry of a Temporary Restraining Order (“TRO”) pursuant to Federal Rule of Civil Procedure 65, prohibiting Respondents from transferring Petitioner outside the Middle District of Florida or removing him from the United States pending further order of the Court. In support of the emergency motion, Petitioner states as follows:

I. INTRODUCTION

Dos Santos has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his detention by U.S. Immigration and Customs Enforcement (“ICE”). He is presently detained at the Florida Soft Side South ICE

detention center (“**Alligator Alcatraz**”) in Collier County, Florida, within the jurisdiction of this Court.

Based on counsel’s experience and recent transfer practices involving similarly situated detainees, there is a substantial and imminent risk that ICE will transfer Dos Santos outside this District—after receiving notice of the pending habeas action. Such a transfer would materially impair this Court’s jurisdiction, frustrate meaningful judicial review, interfere with Dos Santos’ access to counsel, and substantially prejudice his ability to obtain bond relief.

Accordingly, narrowly tailored temporary relief is necessary to preserve the status quo pending adjudication of the Court’s habeas jurisdiction.

II. LEGAL STANDARD

A temporary restraining order may issue where the movant demonstrates: (1) a substantial likelihood of success on the merits; (2) irreparable injury absent injunctive relief; (3) that the threatened injury outweighs any harm to the opposing party; and (4) that the entry of relief would serve the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008); *Schindler v. Schiavo*, 403 F.3d 1223 (11th Cir. 2005).

This Court is vested with authority under 28 U.S.C. §§ 2241 and 2243 to adjudicate Petitioner’s habeas claims and to ensure meaningful review of his detention. In addition, federal courts possess inherent authority to preserve their jurisdiction, including by enjoining the transfer of a habeas petitioner where such transfer would frustrate the Court’s ability to grant effective relief.

III. ARGUMENT

A. Dos Santos has a substantial likelihood of success on the merits.

Dos Santos is a long-term resident arrested inside the United States. He is not an “arriving alien,” nor was he encountered at a port of entry or near the border. Dos Santos is one of innumerable noncitizens with no criminal background who has been arrested and detained by the Government for being in the United States without admission. Because ICE has classified Dos Santos as an “applicant for admission,” Respondents contend that Dos Santos is subject to mandatory detention under § 1225(b)(2). Despite a longstanding practice of treating aliens already present in the country as detained under § 1226 and subject to bond hearings, Respondents’ recent shift toward mass mandatory detention was triggered by (1) a July 8, 2025 agency memorandum that directed officers to treat all individuals present without admission or parole as subject to § 1225(b)(2), regardless of length of residence; and then bolstered by (2) the Board of Immigration Appeals’ precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 221 (B.I.A. 2025) (“*Hurtado*”). These directives represent a significant departure from longstanding practice treating interior arrests as governed by § 1226(a). The *Hurtado* decision has been the underpinning for the Government’s argument, time and again, that noncitizens like Petitioner are subject to mandatory detention.

On February 18, 2026, the district court of the Central District of California vacated *Hurtado* under the Administrative Procedure Act. *Maldonado Bautista v.*

Santacruz, No. 5:25-cv-01873-SSS-BFM, Dkt. 116 (C.D. Cal. Feb. 18, 2026). Although the vacatur is currently stayed pending appeal,¹ the underlying reasoning of *Hurtado* has been called into serious question, and numerous courts—particularly within this district—have rejected its interpretation.

Even prior to the vacatur of *Hurtado*, however, the overwhelming weight of authority which issued from the Middle District of Florida on this very issue supports Petitioner’s contention that his detention is governed by § 1226(a), rather than § 1225.² In *Maldonado Bautista*, the Central District of California first certified a nationwide class of noncitizens detained under INA § 236(a) and entered a final judgment declaring that class members are indeed entitled to individualized bond hearings. *Id.*, No. 5:25-cv-01873-SSS-BFM at Dkt. 82, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25,

¹ On March 6, 2026, the Ninth Circuit entered an order which temporarily stayed the ruling vacating *Hurtado* pending a ruling on the Government’s emergency motion for a stay pending appeal. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal.), *aff’d* in relevant part and on appeal sub nom. *Bautista v. U.S. Dep’t of Homeland Security*, No. 25-7958 (9th Cir. Mar. 6, 2026) (Dkt. 5.1).

² See, e.g., *Rodriguez v. Quinones, et al.*, No. 6:26-cv-187-PGB-DCI, Dkt. 17 (M.D. Fla. Feb. 5, 2026); *Diego Trujillo Claros v. Quinones, et al.*, 2026 WL 251807 (M.D. Fla. Jan. 30, 2026); *Gimenez Rivero v. Mina*, No. 6:26-cv-66, 2026 WL 199319 (M.D. Fla. Jan. 26, 2026); *Izaguirre v. Mordant*, 2026 WL 194214 (M.D. Fla. Jan. 26, 2026); *Vasquez-Vail v. Field Office Director (Miami Field Office)*, 2026 WL 174061 (M.D. Fla. Jan. 22, 2026); *Jacobo v. Ripa*, 2026 WL 145460 (M.D. Fla. Jan. 20, 2026); *Gutierrez v. Miami Field Office Director, et al.*, 2026 WL 100724 (M.D. Fla. Jan. 14, 2026); *Ortiz v. Mordant*, 2026 WL 44815 (M.D. Fla. Jan. 7, 2026); *Tomas v. Warden of Florida Soft Side South*, 2026 WL 35283 (M.D. Fla. Jan. 6, 2026); *Vasquez Carcamo v. Noem*, No. 2:25-cv-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025) (collecting cases); *Hinojosa Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (“Every court to address the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extended time is appropriately classified under § 1226(a) and not § 1225(b)(2).”).

2025), and Dkt. 94 (C.D. Cal. Dec. 18, 2025). Undisputedly, Petitioner is a member of the certified class. Accordingly, Petitioner's habeas petition presents statutory claims which, in view of the ample persuasive authority of this judicial district, coupled with the potential of a final declaratory judgment in favor of the Bond Eligible Class and the vacatur of the underpinning of all contrary authority (i.e., *Hurtado*), have a substantial likelihood of success on the merits. At minimum, Petitioner's claims are serious, non-frivolous, and warrant full judicial consideration, satisfying the likelihood-of-success requirement for interim relief.

B. Petitioner Will Suffer Irreparable Harm Absent a TRO

To establish irreparable harm, Petitioner must show that his injury is immediate and cannot be undone through monetary remedies. *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010). The Supreme Court has established a *per se* rule that constitutional deprivations constitute irreparable injury, "for even minimal periods of time." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Arcila Perez v. Noem*, No. 2:26-cv-001077-SPC-NPM, 2026 WL 206222 (M.D. Fla. Jan. 27, 2026) (applying *Elrod* to unlawful immigration detention); *see also, Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (when alleged deprivation of constitutional right is involved, no further showing of irreparable injury is necessary).

Here, absent a temporary restraining order, ICE may transfer Petitioner outside this District at any time. Such a transfer would cause irreparable harm by: (1) threatening this Court's habeas jurisdiction and risking mootness or jurisdictional manipulation; (2) severely impairing Petitioner's access to counsel, who is located in

Florida; and (3) materially diminishing Petitioner's ability to obtain bond relief, particularly if transferred to a jurisdiction where access to a § 1226(a) bond hearing is significantly more limited.

Courts have repeatedly recognized that the transfer of a habeas petitioner during the pendency of proceedings constitutes irreparable harm because it risks defeating jurisdiction and undermining the court's ability to grant effective relief. Once a petitioner is transferred, these harms cannot be undone.

C. The Balance of Equities and the Public Interest

Finally, Dos Santos must show that the threatened injury outweighs any harm the issuance of a TRO may cause respondents, and that the TRO is in the public interest. *Scott v. City of Daytona Beach Fla.*, 740 F. Supp. 3d 1205, 1218 (M.D. Fla. 2024). "These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Equity and public interest are served by preventing the continuing violation of immigration law. *Noto v. Noem*, 2026 WL 309238, at *10 (M.D. Fla. Feb. 5, 2026), citing *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). In view of the recent vacatur of *Hurtado*, Respondents no longer have a cognizable basis to assert that the detainer of Dos Santos is lawful. And, as Judge Dalton has written, "[f]orcing a detainee to wait for a hearing for days or weeks more in custody—under who knows what conditions—when he is not lawfully detained in the first place would gut the purpose of habeas review." *Gimenez Rivero v. Mina*, 2026 WL 199319, at *4 (M.D. Fla. Jan. 26, 2026) (internal citation omitted) (district court empowered to order release as the "only

appropriate remedy” for unlawful detention under § 1225(b)(2)). As noted in *Maldonado Bautista*, the implementation of the July 8, 2025 ICE memorandum has triggered repetitive and continuing violations of federal law, with nationwide consequences. The government “cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)

Here, the public interest is served by ensuring compliance with federal habeas jurisdiction, preventing strategic transfers that frustrate judicial review, and preserving the integrity of the courts’ ability to adjudicate challenges to executive detention. A temporary restraining order preserving the status quo is particularly appropriate where transfer would risk defeating habeas jurisdiction through strategic relocation of Dos Santos beyond this Court’s reach.

Dos Santos is the beneficiary of a pending I-130 Petition for Alien Relative, filed by his U.S. citizen spouse. This reflects long-standing family ties and a concrete effort to pursue lawful immigration status. Transfer or removal before adjudication of this habeas petition would irreparably disrupt that process and further frustrate meaningful judicial review. This TRO merely preserves the status quo pending resolution of the Petition for Writ of Habeas Corpus.

WHEREFORE, Petitioner, NELSON PIRES DOS SANTOS, respectfully requests that this Court enter a Temporary Restraining Order providing that:

A. Respondents and all persons acting in concert with them SHALL NOT TRANSFER Petitioner outside the Middle District of Florida;

B. Respondents and all persons acting in concert with them SHALL NOT REMOVE Petitioner from the United States, pending further order of this Court.

Petitioner further requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/Howard Jerome Levine

Howard J. Levine

Fla. Bar No. 0075670

Levine & Fellig, P.A.

927 Lincoln Road, Suite 200

Miami Beach, FL 33139

Tel: (786) 899-0002

Cell: (305) 322-5697

hlevine@levinefelliglaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been filed via the Court's CM/ECF System on March 21, 2026, which will contemporaneously electronically serve all counsel of record. To the extent Respondents have not yet appeared, a copy was also transmitted via email to the United States Attorney's Office for the Middle District of Florida at the following email addresses: USAFLM.Alcatraz@usdoj.gov; and USAFLM-Civil@usdoj.gov.

/s/ Howard J. Levine

Howard J. Levine