

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

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**JUANIER DIAZ HERNANDEZ,**  
Petitioner,

v.

Case No. 3:26-cv-1016-WWB-LLL

**SECRETARY MARKWAYNE MULLIN, et al.,**  
Respondents.

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**PETITIONER'S EMERGENCY REPLY TO RESPONDENTS' RESPONSE TO HABEAS  
PETITION  
AND RENEWED MOTION FOR TEMPORARY RESTRAINING ORDER**

*Reply filed pursuant to this Court's May 6, 2026 Order (Doc. 5)*

**REMOVAL CHARTER FLIGHT TO CUBA SCHEDULED JUNE 25, 2026 — 17 DAYS**

**PRELIMINARY STATEMENT**

This filing serves two purposes. First, it constitutes Petitioner's timely Reply to Respondents' June 4, 2026 Response to Habeas Petition (Doc. 8), filed pursuant to this Court's May 6, 2026 Order (Doc. 5), which granted Petitioner 30 days from Respondents' response to file a reply. Second, it simultaneously constitutes a Renewed Motion for Temporary Restraining Order seeking a stay of removal, filed on an emergency basis because Respondents' own response has revealed that a charter removal flight to Cuba is scheduled for June 25, 2026 — seventeen days from the date of this filing. The July 4, 2026 reply deadline cannot be awaited. If this Court does not act before June 25, Petitioner will be permanently removed to Cuba and this proceeding will be rendered moot.

**CONTROLLING AND PERSUASIVE AUTHORITY ISSUED SINCE THE PETITION  
WAS FILED**

Two decisions issued since the filing of this petition directly control or strongly support the relief requested.

First, on May 6, 2026 — the same day as this Court's Order denying the original TRO (Doc. 5) — the Eleventh Circuit issued *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026) (Exhibit A), holding that aliens present in the interior of the United States are governed by 8 U.S.C. § 1226(a) and entitled to individualized bond hearings. This decision is binding on this Court.

Second, on May 12, 2026, United States District Judge Jordan E. Pratt — sitting in this Division of this District — applied *Hernandez Alvarez* to grant habeas relief to an alien in materially identical circumstances. *Carruyo-Serrudo v. Blanche*, Case No. 3:26-cv-559-JEP-SJH (M.D. Fla. May 12, 2026) (Exhibit B). Judge Pratt vacated his own prior denial and ordered the government to either provide a bond hearing within two days or release the petitioner. Critically, Judge Pratt expressly addressed the arriving alien/expired parole issue this Court confronts here, holding:

*“Although the [Hernandez Alvarez] opinion did not specifically address the circumstance of an individual, like Petitioner, who had been initially paroled into the country and whose parole has since expired, the reasoning of the opinion is equally applicable to Petitioner. Petitioner was detained within the interior of the United States — not at the border — and she was not ‘seeking lawful entry after inspection and authorization by an immigration officer.’”*

*Carruyo-Serrudo* at 3. Petitioner Juanier Diaz Hernandez was also detained in the interior of Florida — not at the border — and was not seeking lawful entry when detained following a traffic stop in St. Johns County in February 2026, three and a half years after his parole entry. Judge Pratt’s reasoning applies with equal force here.

### **THE GOVERNMENT OMITTED A MATERIAL FACT FROM ITS RESPONSE**

Respondents’ June 4 Response states there is “no impediment to execution of his removal order.” Doc. 8 at 2. In support, Respondents attached the EOIR Automated Case Information for the removal docket showing “No appeal was received.” What Respondents did not disclose is that a **separate ECAS docket** reflects a BIA Appeal of the IJ’s denied Motion to Reopen filed April 7, 2026, currently Case Pending with no briefing schedule and no decision. A true and correct screenshot is attached as **Exhibit D**. The Board retains authority under 8 C.F.R. § 1003.6 to stay removal pending that appeal regardless of whether an automatic stay applies. The government’s representation that no impediment exists is an incomplete characterization of the legal landscape.

### **ARGUMENT**

#### **I. THE GOVERNMENT’S § 1231 ARGUMENT FAILS BECAUSE THE REMOVAL ORDER’S FINALITY IS CONTESTED.**

The government’s response rests entirely on the premise that Petitioner is subject to a final, executable removal order governed by § 1231. But Petitioner’s pending BIA Appeal of the denied Motion to Reopen — if granted — would vacate that order. The Board retains live jurisdiction to do so. The government cannot simultaneously argue finality while a BIA appeal directly challenging the validity of that order is pending. Furthermore, § 1231 and *Zadvydas* address challenges to the duration of detention after a concededly valid order. They do not immunize a constitutionally defective removal order from habeas review. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

#### **II. ZADVYDAS PREMATURITY DOES NOT BAR REVIEW OF A CONSTITUTIONALLY DEFECTIVE ORDER.**

The government’s prematurity argument under *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), applies only to claims that detention is unlawful because removal is not reasonably foreseeable. Petitioner’s primary claim is that the removal order itself is constitutionally void — a challenge for which *Zadvydas* prematurity is legally irrelevant. *St. Cyr*, 533 U.S. at 301–02.

### **III. THE DUE PROCESS VIOLATION IS INDEPENDENTLY COGNIZABLE UNDER § 2241.**

The February 20, 2026 removal order is constitutionally void on three independent grounds. **First**, Petitioner was actively defrauded of \$14,000 by persons posing as immigration attorneys, constituting a fundamental breakdown of the proceedings cognizable on habeas under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). **Second**, Immigration Judge Espinal was informed on the record that Petitioner had been defrauded and appeared without counsel involuntarily, yet proceeded to enter a removal order without adjourning — denying Petitioner a meaningful opportunity to be heard in violation of *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). **Third**, the removal order states Petitioner “made no application(s) for relief” — because a defrauded, unrepresented alien did not know to present his pending Cuban Adjustment Act I-485 application, receipt number [REDACTED] — an application the prior IJ had been informed of and had directed Petitioner to report upon approval.

### **IV. HERNANDEZ ALVAREZ AND CARRUYO-SERRUDO ESTABLISH LIKELIHOOD OF SUCCESS.**

Binding Eleventh Circuit precedent in *Hernandez Alvarez* (Exhibit A) holds that § 1225(b)(2)(A) does not govern interior detainees. Judge Pratt’s May 12 order in *Carruyo-Serrudo* (Exhibit B) — issued in this Division — applies that holding to an expired parolee detained in the interior and grants habeas relief, ordering a bond hearing within two days. Petitioner’s facts are indistinguishable. He was paroled in, lived in Florida for three and a half years, was stopped in St. Johns County, and was not seeking admission at the moment of detention. Likelihood of success is established by the holdings of the Eleventh Circuit and a judge in this very courthouse.

### **V. THIS COURT MUST ACT BEFORE JUNE 25 — NOMINAL JURISDICTION IS NOT MEANINGFUL RELIEF.**

This Court’s May 6 Order noted it retains jurisdiction even if Petitioner is transferred, citing *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). *Padilla* addresses transfer between domestic facilities, not removal from the United States. If Petitioner boards the June 25 charter flight to Cuba, this Court retains nominal jurisdiction over a proceeding in which it can no longer grant meaningful relief. Cuba does not permit return of removed nationals. Petitioner’s CAA application will be permanently destroyed. The sole relief requested is a stay of removal — status quo preservation while this Court adjudicates the habeas. *Nken v. Holder*, 556 U.S. 418, 428–29 (2009). All four *Nken* factors favor a stay. Likelihood of success: established by binding Eleventh Circuit precedent and a judge in this courthouse. Irreparable harm: permanent removal to Cuba and destruction of a meritorious USCIS application. Balance of harms: entirely asymmetric. Public interest: faithful application of binding precedent and honoring the Cuban Adjustment Act’s congressional purpose.

### **VI. THE GOVERNMENT’S SLRRFF SHOWING DOES NOT OVERCOME A CONSTITUTIONAL DEFECT.**

The Declaration of Deportation Officer Angel Diaz (Exhibit C) establishes Cuba has agreed to repatriation and a charter flight is scheduled June 25. SLRRFF is relevant only to whether *Zadvyd* extended detention is permissible once the six-month presumptive period has run. It has no bearing on whether a removal order entered in violation of the Fifth Amendment may be executed.

### **CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court: (1) accept this filing as his timely Reply to Respondents' Response to Habeas Petition pursuant to Doc. 5; (2) grant a temporary restraining order staying Petitioner's removal from the United States pending final resolution of this habeas proceeding and the pending BIA Appeal of IJ MTR; (3) require Respondents to provide 72 hours' written notice to counsel before any attempted removal; (4) order Respondents to file any opposition to this renewed motion no later than June 12, 2026; and (5) rule on this motion on the papers prior to June 25, 2026, without awaiting a hearing, given the exigency created by the scheduled charter removal flight.

Respectfully submitted this 8th day of June 2026.

**Leon Law, PLLC**

/s/ Jose Antonio Leon

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of June 2026, a true and correct copy of the foregoing was filed via CM/ECF, which will serve all counsel of record including Amanda Saylor, AUSA, at Amanda.Saylor@usdoj.gov.

/s/ Jose Antonio Leon

**Jose Antonio Leon, Esq.**

### **AI CERTIFICATION**

Pursuant to the Standing Order of the Honorable Wendy W. Berger dated April 2, 2026, the undersigned certifies that generative artificial intelligence was used in the drafting of this filing. All language drafted with AI assistance was personally reviewed by the undersigned for accuracy. All legal citations reference actual, existing authority and accurately reflect the contents of such authority.

/s/ Jose Antonio Leon

**Jose Antonio Leon, Esq.**

