

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**MIAMI DIVISION**

**Case No.: 1:25-cv-23724**

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**REVEREND ARCHBISHOP THOMAS G. WENSKI,** )  
on behalf of Father Gustavo Andres Santos Higuera, )

**Petitioner,** )

**v.** )

**CARLOS MARTEL** in his official capacity as )  
Field Office Director of Miami CBP, )

**RODNEY SCOTT**, in his official capacity as )  
Commissioner of CBP, )

**TODD LYONS**, in his official capacity as Acting )  
Director, Immigration and Customs Enforcement; )

**KRISTI NOEM**, in her official capacity as )  
U.S. Secretary of Homeland Security; )

**Respondents.** )

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**AMENDED PETITION FOR WRIT OF HABEAS CORPUS 28 U.S.C. § 2241**

The Petitioner, **THE REVEREND ARCHBISHOP THOMAS G. WENSKI**, the Archbishop of the Catholic Archdiocese of Miami, on behalf of Father Gustavo Andres Santos Higuera (Father Higuera) hereby files this Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 respectfully adding known and appropriate parties, as well as removing incorrect parties to the matter.

## INTRODUCTION

Father Gustavo Andres Santos Higuera is in federal immigration custody by CBP and is believed to be currently detained at Miami International Airport detention facility in Miami, Florida without cause and is being denied access to counsel from communicating with him. He arrived in the United States on a valid R1, religious worker visa. His sudden and unjustified detention violates: (1) both procedural and substantive Due Process of the Fifth Amendment; (2) Due Process and Sixth Amendment Right to Counsel. As such, the Petitioner seeks his immediate release from unlawful detention.

Critically, Petitioner requests that this Honorable Court immediately enjoin Respondents from physically transferring Petitioner outside of Florida while this matter remains within this Court's jurisdiction.

## JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

## VENUE

4. Venue is proper because Petitioner is believed to be detained at Miami International Airport detention facility, which is located at 2100 NW 42nd Ave, Miami, FL 33142. A substantial part of the events or omissions giving rise to his claims occurred in this Honorable Court's District.

### **PARTIES**

5. The Petitioner, **Reverend Archbishop Thomas G. Wenski** brings this action on behalf of Father Gustavo Andres Santos Higuera, who is a native and citizen of Venezuela and last entered the United States on August 19, 2025, with a valid R1, religious worker visa.
6. Respondent, **Carlos Martel** is the Field Office Director of Miami CBP, which covers the jurisdiction of Miami International Airport Detention Facility.
7. Respondent, **Rodney Scott**, is the Commissioner of CBP.
8. Respondent, **Todd Lyons**, is the Acting Director for U.S. Immigration and Customs Enforcement.
9. Respondent, **Kristi Noem**, is the U.S. Secretary of Homeland Security.
10. All respondents are named and sued in their official capacities.

### **FACTS**

11. On information and belief, the Father Higuera was detained without cause or reason by ICE agents on August 19, 2025, while returning to Miami, Florida, where he is presently domiciled, from London, England.
12. .
13. He was detained while entering through the passport control area Petitioner was detained by customs and border patrol.
14. Father Higuera was only allowed one phone call, and informed Father Jose Luis Menedez of the Archdiocese of Miami at Corpus Christi Parish. Father Menendez then contacted the Archdiocese of Miami.

15. Father Higuera lives and works in Miami, Florida, as a full-time priest at St. John Neumann Catholic Church in Miami, Florida.

16. Father Higuera has a valid R1, religious worker visa, which he was issued by USCIS on June 1, 2023. The visa remains valid through November 13, 2025. See *R1 Visa Approval* attached hereto as Exhibit "A."

17. Father Higuera is currently in the custody of the Respondents and one of the Respondents is his immediate custodian and faces imminent removal.

18. In support of the above-mentioned facts see the following statements by the Executive Director and Chief Administrative Officer of Catholic Charities Legal Services. Attached hereto as Exhibits "B," and "C."

#### LEGAL ARGUMENT

The Supreme Court has long recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Immigration detention is permitted only when authorized by statute and consistent with due process. Here, Father Higuera is detained despite his possession of a valid, unexpired R-1 visa, and without any notice of charges, process, or statutory basis for his arrest. This renders his detention unlawful and arbitrary.

Moreover, courts have emphasized that habeas relief is available where detention occurs "in excess of statutory authority, or otherwise in violation of the Constitution." *Demore v. Kim*, 538 U.S. 510, 516–17 (2003). By denying Father Higuera access to counsel while preparing to remove him, Respondents compound the due process violation with a direct infringement of his

right to representation during a critical stage. Such actions undermine the adversarial process and deprive him of a meaningful opportunity to contest the deprivation of liberty.

Finally, immediate injunctive relief is warranted. Federal courts retain broad equitable power to “grant relief to preserve the status quo and prevent irreparable harm pending review.” *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979). Transfer or removal of Father Higuera outside of this District would irreparably frustrate this Court’s ability to adjudicate the merits of his petition. Therefore, habeas relief and a temporary restraining order are necessary to prevent unlawful removal and to safeguard Father Higuera’s constitutional rights.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

19. Petitioner respectfully alleges that Respondents have violated his Fifth Amendment right to due process by unlawfully placing him in immigration custody without following the procedures required by law and regulation.
20. Father Higuera entered the United States on a valid, unexpired R-1 religious worker visa. Despite his lawful status, he was detained without notice of charges, explanation of grounds, or any opportunity to contest his custody. Such arbitrary detention, without statutory authority or procedural safeguards, violates the fundamental requirements of due process. See *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (habeas relief available where detention exceeds statutory or constitutional authority).
21. Father Higuera’s detention is therefore unlawful. Respondents have acted in excess of their statutory and constitutional authority and deprived Father Higuera of liberty without due process of law.

#### **COUNT TWO**

**Violation of Sixth Amendment Right to Counsel**

22. On clear and reliable information and belief, Father Higuera is being denied access to his retained counsel while detained at Miami International Airport. The Supreme Court has emphasized that the right to counsel is fundamental to ensuring fairness and meaningful access to the courts. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).
23. Respondents' refusal to permit communication with counsel during this period of detention and imminent removal inflicts irreparable harm by obstructing Father Higuera's ability to defend against unlawful custody and possible deportation. Courts have consistently recognized that interference with the attorney-client relationship at critical stages of detention proceedings constitutes a violation of constitutional rights. See *Benjamin v. Fraser*, 264 F.3d 175, 186–87 (2d Cir. 2001) (unreasonable restrictions on attorney access violate due process).
24. By denying access to counsel, Respondents are unlawfully impairing Father Higuera's right to representation and effectively preventing him from vindicating his liberty interests before this Court.

**PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- a. Assume jurisdiction over this matter;
- b. Order, Father Higuera shall not be transferred to any detention, holding facility , or removed from the United States until further notice from this Honorable Court;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted today;
- d. Declare that Father Higuera's detention violates the Due Process Clause of the Fifth Amendment;

- e. Declare that Respondent's violated Father Higuera's right to counsel under the Sixth Amendment;
- f. Issue a Writ of Habeas Corpus ordering Respondents to release Father Higuera immediately;
- g. Award Father Higuera reasonable costs and attorney's fees in this action as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
- h. Grant any further relief this Court deems just and proper.

Respectfully submitted on this day 19 of August, 2025.

/s/ Jose W. Alvarez

**Jose W. Alvarez**

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