

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

MIAMI DIVISION

Case No.: 1:25-cv-23724

REVEREND ARCHBISHOP THOMAS G. WENSKI,	)	
on behalf of Father Gustavo Andres Santos Higuera,	)	
	)	
Petitioner,	)	
v.	)	
	)	
CARLOS MARTEL, et al.,	)	
	)	
Respondents.	)	
	)	

**PETITIONER'S EMERGENCY REQUEST
FOR TEMPORARY RESTRAINING ORDER**

Petitioner, by and through undersigned counsel, respectfully moves this Court pursuant to Fed. R. Civ. P. 65 for a Temporary Restraining Order ("TRO") enjoining Respondents from removing Father Higuera from the United States and ordering his immediate release, and in support states the following:

INTRODUCTION

Father Gustavo Andres Santos Higuera, a Catholic priest and lawful R-1 religious worker visa holder, is currently detained at Miami International Airport detention facility. He was detained on August 19, 2025, upon arrival from London, England, despite his valid visa. Respondents are attempting to remove him summarily and without notice, thereby depriving him of due process and access to counsel.

Immediate injunctive relief is required to prevent Father Higuera's removal or transfer out of this Court's jurisdiction before judicial review can occur. Without Court intervention, Petitioner faces irreparable harm through unlawful deportation and denial of access to retained counsel.

LEGAL STANDARD

A TRO may issue where the movant demonstrates: (1) Likelihood of success on the merits, (2) Irreparable harm absent relief, (3) That the balance of equities tips in the movant's favor, and (4) That an injunction serves the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

ARGUMENT

A. Petitioner is likely to succeed on the merits

Petitioner has shown a strong likelihood of success because Father Higuera's detention lacks statutory and constitutional basis. Father Higuera holds a valid, unexpired R-1 religious worker visa issued by USCIS, which lawfully authorizes his entry into the United States. He was detained without notice of charges, initiation of removal proceedings, or any opportunity to contest the deprivation of liberty. Such arbitrary detention violates the Fifth Amendment's guarantee of due process. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (freedom from government custody is at the core of due process); *Demore v. Kim*, 538 U.S. 510, 517 (2003) (detention authority is strictly limited by statute). Additionally, Respondents' denial of attorney access further deprives Father Higuera of fundamental rights, rendering their conduct unlawful. See *Benjamin v. Fraser*, 264 F.3d 175, 186–87 (2d Cir. 2001).

B. Petitioner Faces Immediate and Irreparable Harm

The harm is immediate and irreparable. If Father Higuera is removed or transferred outside the jurisdiction of this Court, his habeas petition will be rendered moot, and he will be permanently deprived of the ability to seek judicial review of his unlawful detention. Courts consistently recognize deportation without judicial review as irreparable harm. See *Nken v. Holder*, 556 U.S. 418, 435 (2009). Denial of access to counsel during this critical period compounds the injury, as

it prevents Father Higuera from preparing or presenting any legal defense. No later relief could remedy the loss of constitutional rights or the forced separation from his parish and community.

C. The Balance of Equities Favors Petitioner

The balance of harms tips sharply in Father Higuera favor. The government suffers no cognizable harm from maintaining the status quo while this Court reviews the legality of detention. By contrast, Father Higuera faces the imminent and unlawful deprivation of his liberty, the denial of counsel, and the possibility of permanent removal from his parishioners in Miami. The equities strongly support injunctive relief.

D. The Public Interest Supports the TRO

The public interest overwhelmingly favors granting the requested TRO. It is always in the public interest to ensure that government action comports with the Constitution and federal law. See *Nken*, 556 U.S. at 436 (“[T]here is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.”). Here, the public interest lies in safeguarding the constitutional rights of a religious worker lawfully admitted to the United States, and in preserving judicial review of executive detention.

RELIEF REQUESTED

Petitioner respectfully requests that this Court:

1. Enjoin Respondents from removing or transferring Father Higuera from the Southern District of Florida during the pendency of this habeas proceeding;
2. Order Respondents to provide immediate access to counsel; and
3. Grant such further relief as the Court deems just and proper.

CONCLUSION

The record demonstrates Petitioner is likely to succeed on the merits of his claim that his arrest and detention are unlawful. The balance of overall equities and the public interest weigh in favor of granting habeas relief. Wherefore Petitioner seeks Father Higuera's immediate release from custody.

Respectfully submitted on this day 19th of August, 2025.

/s/ Jose W. Alvarez

Jose W. Alvarez

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(Certification of Notice on subsequent page)

CERTIFICATION PURSUANT TO FED. R. CIV. P. 65(b)(1)(B)

I, Jose W. Alvarez, hereby certifies that prior to filing this Motion, he attempted to provide notice to Respondents. Specifically, undersigned counsel contacted **Michelle Ressler, ICE Counsel and liaison between ICE and the United States Attorney's Office**, to inform her of the emergency nature of this matter and the relief sought. As such, the undersigned certifies the compliance notice pursuant to Fed. R. Civ. P. 65(b)(1)(B).

/s/ Jose W. Alvarez

Jose W. Alvarez
Counsel for Petitioner

Date: August 19, 2025

(Proposed order on subsequent page)

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PROPOSED ORDER GRANTING TEMPORARY RESTRAINING ORDER

This cause came before the Court on Petitioner's Emergency Motion for Temporary Restraining Order. Having reviewed the motion, the Petition, and being otherwise duly advised in the premises, it is hereby ORDERED AND ADJUDGED:

1. Respondents are immediately ENJOINED from removing or transferring Father Gustavo Andres Santos Higuera from the Southern District of Florida until further order of this Court;
2. Respondents shall provide Father Higuera immediate and meaningful access to his retained counsel;
3. This Order shall remain in effect until further ruling of this Court or expiration under Fed. R. Civ. P. 65(b).

DONE AND ORDERED in Miami, Florida, this ____ day of August, 2025.

UNITED STATES DISTRICT JUDGE