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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Wuanerge ALBERTO-ALVARENGA,
[redacted]
Petitioner,

v.

RICHARD A. AUMILLE, in his official capacity as Warden of Seneca County Jail;
MERRICK GARLAND, Attorney General of the United States;
ALEJANDRO MAYORKAS, Secretary of the Department of Homeland Security;
TROY MILLER, Acting Commissioner, U.S. Customs and Border Protection;
SEAN G. SMITH, Ohio Field Office Director, U.S. Immigration and Customs Enforcement,
Respondents.

Civil Action No.: 3:25-cv-02644-JRK

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER ENJOINING REMOVAL

Petitioner, by and through undersigned counsel, respectfully moves this Court for an Emergency Temporary Restraining Order ("TRO") enjoining Respondents from removing Petitioner from the United States or transferring him outside this Court's jurisdiction while his Petition For Writ Of Habeas Corpus remains pending.

I. INTRODUCTION

Petitioner is a 26-year-old Honduran national currently detained at Seneca County Jail in Tiffin, Ohio. On January 2, 2026, an Immigration Judge issued a Summary Order of Deportation without holding the scheduled individual hearing set for January 8, 2026, and without affording Petitioner the opportunity to present testimony, evidence, or legal argument.

At the time the summary removal order was entered, Petitioner's habeas corpus petition was—and remains—pending before this Court, and Respondents have failed to comply with this Court's order directing them to file a response. Removal under these circumstances would unlawfully divest this Court of jurisdiction, violate Petitioner's Fifth Amendment right to due process, and expose him to irreparable harm, including a substantial risk of death upon return to Honduras.

This Court has both the authority and obligation to preserve its jurisdiction and prevent irreparable harm while judicial review is ongoing. *See* INS v. St. Cyr, 533 U.S. 289, 300–01 (2001); United States v. New York Tel. Co., 434 U.S. 159, 174 (1977).

II. FACTUAL BACKGROUND

1. Petitioner fled Honduras in 2016 after being violently attacked and threatened with death by armed gang members following his refusal to join them.

2. He filed an affirmative asylum application in April 2017, which has never been adjudicated on the merits.

3. Removal proceedings were terminated under Niz-Chavez v. Garland on July 12, 2021, and reaffirmed on August 12, 2021.

4. USCIS approved Petitioner's Employment Authorization Document valid through December 3, 2029, confirming the continued pendency of his asylum application.

5. Petitioner was detained by ICE on October 4, 2025, following domestic-violence allegations that have since been recanted by sworn affidavit.

6. Petitioner filed a petition for writ of habeas corpus on December 5, 2025 in this Court pursuant to 28 U.S.C. § 2241.

7. On December 11, 2025, this Court ordered Respondents to file a response within 30 days. No response has been filed to date.

8. Despite the pending habeas action, EOIR entered a summary deportation order on January 2, 2026, without an evidentiary hearing.

III. LEGAL STANDARD

A temporary restraining order is appropriate where the movant demonstrates:

1. A likelihood of success on the merits;
2. Irreparable harm absent injunctive relief;
3. That the balance of equities favors relief; and
4. That an injunction is in the public interest.

See Winter v. Nat. Res. Def. Council, 555 U.S. 7, 20 (2008); Obama for America v. Husted, 697 F.3d 423, 428 (6th Cir. 2012).

IV. ARGUMENT

A. Removal Would Unlawfully Divest This Court of Habeas Jurisdiction

District courts retain jurisdiction over habeas petitions challenging immigration detention and removal. *See* INS v. St. Cyr, 533 U.S. at 300–01; Roman v. Ashcroft, 340 F.3d 314, 319 (6th Cir. 2003).

Removal of Petitioner while this habeas action is pending would moot the case and unlawfully interfere with this Court's jurisdiction. Courts are expressly authorized under the All Writs Act, 28 U.S.C. § 1651(a), to issue injunctive relief necessary to preserve their jurisdiction. *See* United States v. New York Tel. Co., 434 U.S. at 174;

Scripps-Howard Radio, Inc. v. FCC, 316 U.S. 4, 9–10 (1942).

B. Petitioner Faces Irreparable Harm Absent Immediate Relief

The Supreme Court has recognized that removal constitutes irreparable harm. *See* Nken v. Holder, 556 U.S. 418, 435 (2009). This is especially true where, as here, the petitioner has demonstrated past persecution and faces credible threats to life or safety upon return. *See* Leiva-Perez v. Holder, 640 F.3d 962, 969–70 (9th Cir. 2011).

Once removed, Petitioner cannot be restored to the status quo, and this Court would be deprived of the ability to provide meaningful relief.

C. Petitioner Is Likely to Succeed on the Merits

Petitioner is likely to succeed because:

1. The summary deportation order was entered without an individual hearing, in violation of INA § 240(b)(4) and 8 C.F.R. §§ 1240.10–1240.11;

2. The order violated Fifth Amendment due process, which guarantees a meaningful opportunity to be heard; and

3. The order was entered while federal habeas proceedings were pending, contrary to settled principles preserving judicial review.

Structural due process violations of this nature independently justify injunctive relief. *See* St. Cyr, 533 U.S. at 314.

D. The Balance of Equities and Public Interest Favor Injunctive Relief

The balance of equities strongly favors Petitioner, who faces permanent exile and potential death, while Respondents face no cognizable harm from a temporary stay.

The public interest is served by ensuring compliance with constitutional due process and preserving access to federal courts. *See* Obama for America, 697 F.3d at 437.

V. RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Issue an Emergency Temporary Restraining Order enjoining Respondents from removing Petitioner from the United States;

2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court absent prior authorization;

3. Enforce this Court's habeas jurisdiction under the All Writs Act;

4. Waive any bond requirement under Rule 65(c), *see* Moltan Co. v. Eagle-Picher Indus., Inc., 55 F.3d 1171, 1176 (6th Cir. 1995); and

5. Grant such other and further relief as the Court deems just and proper.

Dated: January 5, 2026

Respectfully submitted,

/S/ Roman V. Gambourg

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