

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

FRANK MARRERO RIVERA,

Petitioner,

v.

Kristi NOEM, Secretary, et. al.;

Respondents.

Case No. 3:26-cv-00180-DCG



**MOTION FOR EMERGENCY
TEMPORARY RESTRAINING
ORDER**

Petitioner, FRANK MARRERO RIVERA, by and through his undersigned counsel, respectfully moves this Court for an Emergency Temporary Restraining Order prohibiting Respondents from transferring, removing, or deporting Petitioner from the jurisdiction of this Court while his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 is pending, and states as follows:

I. INTRODUCTION

1. This case presents an urgent need for judicial intervention to protect the Court's jurisdiction and to prevent irreparable harm to Petitioner.

2. Petitioner's counsel just recently lost contact with the Petitioner, and now fears he may be in the process of being staged for removal or being removed from the United States.

3. While detained at the Florida facility commonly referred to as Alligator Alcatraz, Petitioner was physically assaulted and beaten by ICE officers and/or ICE-contracted personnel.

4. Petitioner was coerced and forced to sign a deportation order to Mexico at that Florida facility, without meaningful access to counsel and while under extreme physical and psychological distress.

5. Shortly thereafter, Petitioner was transferred to El Paso, Texas.

6. Petitioner did not knowingly or voluntarily consent to removal.

7. Petitioner now faces imminent deportation to Mexico, which would expose him to further danger and permanently deprive him of access to judicial review of his pending habeas corpus petition.

8. Without immediate injunctive relief, Respondents will effectively moot this case by removing Petitioner before this Court can adjudicate the legality of his detention and the unconstitutional conduct he has endured.

II. STATEMENT OF FACTS

9. Petitioner is a Cuban national currently detained by ICE.

10. While in ICE custody at the Florida facility known as Alligator Alcatraz, Petitioner was physically assaulted and beaten by ICE officers and/or ICE-contracted personnel, resulting in significant physical injuries and emotional trauma.

11. While still suffering from the effects of this assault, Petitioner was forced and coerced to sign a deportation order directing his removal to Mexico at the Florida facility.

12. Petitioner did not knowingly or voluntarily consent to the removal and executed the document under duress, without meaningful access to counsel.

13. After the coerced signing of the deportation order, Petitioner may be in danger of removal from the United States.

14. Petitioner reasonably fears further abuse, retaliation, or mistreatment if transferred to another ICE facility or deported.

15. Removal or transfer would expose Petitioner to further physical danger, sever access to counsel, moot the pending habeas petition, and strip this Court of jurisdiction before adjudication.

III. LEGAL STANDARD

16. A Temporary Restraining Order is appropriate where the movant demonstrates a substantial likelihood of success on the merits, a substantial threat of irreparable injury if relief is denied, that the balance of equities favors relief, and that the injunction serves the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The All Writs Act, 28 U.S.C. § 1651, authorizes this Court to issue relief to preserve its jurisdiction and prevent mooted claims. See *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997); *Chirinos v. INS*, 490 F.2d 1081, 1083 (5th Cir. 1974).

17. Removal of a detainee pending habeas review constitutes irreparable harm because the Court may lose jurisdiction and the petitioner may be placed beyond the reach of the judicial process. See *Gonzalez v. Reno*, 212 F.3d 1338, 1343 (5th Cir. 2000); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).

IV. ARGUMENT

18. Petitioner is likely to succeed on the merits of his habeas petition. Civil immigration detainees may not be subjected to punishment, excessive force, or coercion. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Physical assault by ICE officers and the coercion of Petitioner to sign a deportation order at the Florida facility constitute violations of the Due Process Clause. See *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893); *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Courts have recognized that abusive

conditions in immigration custody justify injunctive relief. See *Rosales v. Mayorkas*, 2022 WL 4227029, at *4 (W.D. Tex. 2022); *Lora v. Shanahan*, 804 F.3d 601, 613 (2d Cir. 2015).

19. Parties seeking preliminary injunctive relief must also show they are “*likely* to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

20. Petitioner faces immediate and irreparable harm because he remains at risk of further physical abuse, denial of medical care, and coerced removal that would moot his habeas petition. Removal outside this Court’s jurisdiction would render his habeas claims effectively unreviewable. The balance of equities strongly favors Petitioner because preserving the status quo imposes minimal burden on Respondents while preventing substantial constitutional harm. The public interest is served by ensuring protection of detainees from abuse, preserving access to courts, and enforcing compliance with constitutional protections. See *Flores v. Reno*, 507 U.S. 292, 305–06 (1993).

21. The final two factors for a injunctive relief—the balance of hardships and public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009); Insert citation to circuit court decision. Here, Petitioner faces weighty hardships, namely the deprivation of his constitutional rights, deprivation of his liberty, denial of medical care, separation from his family and removal to Mexico.

22. Respondents, by contrast, face no administrative costs associated with release or only minimally administrative costs associated with providing procedural due

process if the court grants the injunction. “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with such a conflict between financial concerns and preventable human suffering.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

23. Moreover, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration laws applied correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the public interest in Government observance of the Constitution and laws”).

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a Temporary Restraining Order prohibiting Respondents from transferring, removing, or deporting Petitioner from the jurisdiction of this Court while the habeas petition is pending. And if the Respondents have removed the Petitioner, that he be returned to the United States. Petitioner also requests that the Court order Respondents to maintain him within the Western District of Texas, until further order of the Court and that the Court grant any other relief it deems just and proper.

DATED this 1st of February 2026.

/s/ Yaritssa Plasencia
Yaritssa Plasencia
Florida Bar #1021659
100 Frandorson Cir
Apollo Beach, FL 33572
(407) 929-9292 T
(407) 789-3540 F
yaritssaplasenciaesq@gmail.com

Pro Hac Vice Attorney for Petitioner

/s/Bonnie Smerdon
Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway
Cudjoe Key, FL 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com

Local Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that on February 1, 2026, I filed the foregoing MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER and PROPOSED ORDER using the Court's CM/ECF system, which will serve all counsel of record who are registered CM/ECF users. In addition, counsel will also email copies of this motion and proposed order to counsels of record's email accounts.

/s/Bonnie Smerdon
Bonnie Smerdon
22966 Overseas Highway
Cudjoe Key, FL 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com

Local Counsel for Petitioner