UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

Edwin Hernandez-Campos, *Petitioner*, v. Kristi Noem, *Secretary of Homeland Security*, et al. *Respondents.*	Civil Action No. 1:25-cv-1020

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Edwin Hernandez-Campos, by counsel, pursuant to Fed. R. Civ. P. 65(b)(1), hereby requests that this Court issue an emergency *ex parte* temporary restraining order, restraining Defendants from removing him from the United States. In support of this motion, Petitioner respectfully represents as follows:

Factual Background

As set forth in the Petition for Writ of Habeas Corpus, Petitioner won an order from an immigration judge granting him a form of relief called withholding of removal under the Convention Against Torture, which prohibits Respondents from removing him to El Salvador. *See* Dkt. No. 1-1. This order has never been reopened or set aside, *see* Dkt. No. 1-2, and therefore remains in effect. There is, accordingly, no legal basis to remove Petitioner to El Salvador.

But Respondents now intend to remove Petitioner to El Salvador imminently, notwithstanding the lack of any legal basis. *See* Ex. A hereto.

What's worse, they've done this before, in this very District, earlier this month. *See Abrego Garcia v. Noem*, Civ. No. 8:25-cv-951-PX, Dkt. Nos. 1, 10 (D. Md., filed March 24, 2025).

Once Respondents send him to El Salvador, they intend for that country's government to place him in the CECOT prison, a notorious torture chamber. As Judge Boasberg wrote earlier this week in *JGG v. Trump*, declining to vacate a Temporary Restraining Order on behalf of a group of Venezuelan nationals removed to El Salvador and placed in the CECOT prison:

> In Salvadoran prisons, deportees are reportedly "highly likely to face immediate and intentional life-threatening harm at the hands of state actors." ECF No. 44-4 (Sarah Bishop Decl.), ¶ 63.
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> The country's government has boasted that inmates in CECOT "never leave"; indeed, one expert declarant alleges that she does not know of any CECOT inmate who has been released. See ECF No. 44-3 (Juanita Goebertus Decl.), ¶ 3; see also Bishop Decl., ¶ 23 ("[W]e will throw them in prison and they will never get out.") (quoting Nayib Bukele (@nayibbukele), X (May 16, 2023, 7:02 p.m.), https://x.com/nayibbukele/status/1658608915683201030?s=20). Once inmates enter the prisons, moreover, their families are often left in the dark. See Bishop Decl., ¶ 25 ("In a sample of 131 cases, [it was] found that 115 family members of detainees have not received any information about the whereabouts or wellbeing of their detained family members since the day of their capture.").
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> Plaintiffs offer declarations that inmates are rarely allowed to leave their cells, have no regular access to drinking water or adequate food, sleep standing up because of overcrowding, and are held in cells where they do not see sunlight for days. See Goebertus Decl., ¶¶ 3, 11; Bishop Decl., ¶ 31.
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> At CECOT specifically, one declarant states that "if the prison were to reach full supposed capacity ..., each prisoner would have less than two feet of space in shared cells ... [which] is less than half the space required for transporting midsized cattle under EU law." Bishop Decl., ¶ 30. Given poor sanitary conditions, Goebertus points out, "tuberculosis, fungal infections, scabies, severe malnutrition[,] and chronic digestive issues [a]re common." Goebertus Decl., ¶ 12.
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> Beyond poor living conditions, Salvadoran inmates are, according to evidence presented, often disciplined through beatings and humiliation. One inmate claimed that "police beat prison newcomers with batons .... [W]hen he denied being a gang member, they sent him to a dark basement cell with 320 detainees, where prison guards and other detainees beat him every day. On one occasion, one guard beat him so severely that [he] broke a rib." Id., ¶ 8. Three prior deportees from the United States reported being kicked in the face, neck, abdomen, and testicles, with one requiring "an operation for a ruptured pancreas and spleen." Id., ¶ 17. One inmate reported being forced to "kneel on the ground naked looking downwards for four

> hours in front of the prison's gate." Id., ¶ 10. That same prisoner also said that he was made to sit in a barrel of ice water as guards questioned him and then forced his head under water so he could not breathe. Id.
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> One scholar avers that, since March 2022, an estimated 375 detainees have died in Salvadoran prisons. See Bishop Decl., ¶¶ 15, 43. Although the Salvadoran government maintains that all deaths have been natural, others respond that 75% of them "were violent, probably violent, or with suspicions of criminality on account of a common pattern of hematomas caused by beatings, sharp object wounds, and signs of strangulation on the cadavers examined." Id., ¶¶ 44–45. When an inmate is killed, there are also reports that guards "bring the body back into the cells and leave it there until the body start[s] stinking." Id., ¶ 39.

J.G.G. v. Trump, No. CV 25-766 (JEB), 2025 WL 890401, at *16 (D.D.C. Mar. 24, 2025).[1]

Respondents have celebrated the fact that El Salvador is incarcerating U.S. deportees in the CECOT prison. *See* Ex. D hereto (tweet by Salvadoran president Nayib Bukele noting that "23 MS-13 members wanted by Salvadoran justice" were transferred to CECOT, along with 238 Venezuelan nationals, and stating that "[t]he United States will pay a very low fee for them[.]"; Ex. E hereto (tweet by U.S. Secretary of State Marco Rubio thanking President Bukele for his assistance). Earlier this week, Respondent Noem visited CECOT. Mary Beth Sheridan and Maria Sacchetti, "Noem visits El Salvador prison where deportees are in 'legal limbo,'" *The Washington Post* (March 26, 2025), *available at* https://www.washingtonpost.com/world/2025/03/26/el-salvador-noem-cecot-venezuelans/ (noting that the U.S. government has paid six million dollars to El Salvador to hold 238 Venezuelan nationals, along with 23 Salvadoran nationals accused of being MS-13 members, in CECOT). Respondent Noem was granted a special tour inside the CECOT prison, separated from the prisoners by mere metal bars, and issued a warning to El Salvadoran nationals that if she deported them to El Salvador they would end up in CECOT. *See*

[1] The two declarations cited by Judge Boasberg are attached hereto as Exs. B and C, and their contents are incorporated herein by reference.

"Photos Show Kristi Noem's Visit Through Notorious El Salvador Prison," *Newsweek* (March 26, 2025), Ex. F hereto.

Certification of Notice to Respondents

Undersigned counsel hereby certifies that he advised counsel for Respondents of the filing of this habeas petition immediately after it was filed, on March 27, 2025, and received no substantive response. *See* Ex. G hereto. Prior to filing this TRO motion, undersigned counsel emailed a copy to counsel for Respondents. *Id.*

Legal Standard

A preliminary injunction is an "extraordinary remedy" and "shall be granted only if the moving party clearly establishes entitlement to the relief sought." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (citations omitted). The Fourth Circuit differentiates between a prohibitory injunction which seeks to maintain the status quo, and a mandatory injunction which seeks to alter the status quo, *see League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 235 (4th Cir. 2014); the latter is disfavored, whereas this motion seeks the former.

A court may issue a preliminary injunction upon notice to the adverse party. Fed. R. Civ. P. 65(a). It is well settled law that "[a] preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). A movant seeking a preliminary injunction must establish each of the four *Winter* elements: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Id.* at 20. Demonstrating a likelihood of success does not require a plaintiff to "establish a certainty of success"; instead, the plaintiff "must make a clear showing that he is likely to succeed at trial." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017).

Pursuant to Fed. R. Civ. P. 65(b)(1), a TRO may be issued without notice if the facts in an affidavit show immediate irreparable injury will result to the movant, and counsel certifies any efforts made to give notice to the adverse party and the reasons why it should not be required.

Argument

I. Petitioner is likely to succeed on the merits of this case.

Petitioner is likely to succeed on the merits of this case, since the government imminently intends to remove him to a country to which the law clearly and indisputably prohibits them from doing so, without observing proper legal procedures that have not occurred or even commenced.

The Convention Against Torture ("CAT") prohibits the government from removing a noncitizen to a country where he is more likely than not to face torture. 8 C.F.R. § 1208.16(c). This protection is usually referred to as "CAT withholding of removal." For an immigration judge (serving as the designee of Respondent Bondi) to grant CAT withholding of removal to a noncitizen, the noncitizen must prove that he is more likely than not to suffer torture. "The burden of proof is on the applicant for withholding of removal under [the CAT] to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). Petitioner won such an order as to El Salvador, *see* Dkt. No. 1-1. This order has never been reopened or set aside, *see* Dkt. No. 1-2, and therefore remains in effect.

If a noncitizen is granted withholding of removal, "DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie.

However, withholding of removal is a country-specific form of relief. Should the government wish to remove an individual with a grant of withholding of removal to some *other* country, it must first provide that individual with notice and an opportunity to apply for

withholding of removal as to *that* country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting removal to third country only where individuals received "ample notice and an opportunity to be heard").[2]

Federal regulations provide a procedure by which a grant of CAT withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge, and then DHS will bear the burden of proof, by a preponderance of the evidence, that grounds for termination exist. 8 C.F.R. § 1208.24(f). After a grant of withholding of removal is terminated, there would be no impediment to removal. But these proceedings have not occurred, or even commenced.

Finally, the Alien Enemies Act, 50 U.S.C. § 21 *et seq.*, does not apply to this case: as a national of El Salvador, Plaintiff is simply not subject to the proclamation against the Venezuelan gang Tren de Aragua, *see* Proclamation, "Invocation of the Alien Enemies Act Regarding the

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[2] Indeed, the Solicitor General's office acknowledged this legal principle earlier this week in oral argument before the Supreme Court:

> JUSTICE KAGAN: So let me --let me make sure I understand that. You think you have the --the --the legal right -- . . . --to --to send the non-citizen to some other country, where he doesn't have a CAT --CAT claim, but, in fact, the U.S. government does not exercise that right?
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> MR. McDOWELL: Under Title 8 we --we do not do that as a matter of practice. We do think we have the legal authority to do that, with the following caveat: We would have to give the person notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third country. If they raise that reasonable fear, the withholding-only proceedings would simply continue. They would just focus on the new country, rather than the original one.
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> JUSTICE KAGAN: But you don't have the legal power to remove the person to the country for which there is a pending CAT claim?
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> MR. McDOWELL: That's exactly right. The regulate --the regulations prohibit that.

Oral Argument Tr., *Riley v. Bondi*, No. 23-1270 (S. Ct., March 24, 2025), 32-33, *available at* https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1270_c0n2.pdf.

Invasion of The United States by Tren De Aragua" (March 15, 2025), *available at* https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/, at § 1 ("I proclaim that all ***Venezuelan citizens*** 14 years of age or older who are members of [Tren de Aragua], are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies.") (Emphasis added.)

II. Plaintiff is likely to suffer irreparable harm in the absence of preliminary relief.

Although "the burden of removal alone cannot constitute the requisite irreparable injury," *Nken v. Holder*, 556 U.S. 418, 435 (2009), this case presents far more immediate injury than the garden-variety removal case in which "[a]liens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal," *id.*

Petitioner would suffer irreparable harm if he were deported to El Salvador to be detained in the CECOT torture prison. As Judge Boasberg recently held in *JGG*, "the risk of torture, beatings, and even death clearly and unequivocally supports a finding of irreparable harm." 2025 WL 890401, at *16, citing *United States v. Iowa*, 126 F.4th 1334, 1352 (8th Cir. 2025) (torture); *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (physical abuse).

For these reasons, Plaintiff has made an adequate showing of irreparable harm to justify preliminary injunctive relief under the second *Winter* factor.

III. The balance of equities tips in Plaintiff's favor, and an injunction is in the public interest.

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party. *Nken*, 556 U.S. at 435.

Here, the balance of equities and the public interest tilt sharply in favor of the issuance of a TRO. Again, Judge Boasberg: "There is, moreover, a strong public interest in preventing the mistaken deportation of people based on categories they have no right to challenge. *See* [*Nken*, 556 U.S. at 436] ("Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm."). The public also has a significant stake in the Government's compliance with the law. *See, e.g.*, *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.")" *JGG*, 2025 WL 890401, at *17.

IV. No jurisdictional bar applies in this case.

Several jurisdictional bars often apply in cases challenging removal under Title 8 of U.S. Code, but none applies in this case. As 8 U.S.C. § 1252(f)(2) provides, "[n]otwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law." But the "clear and convincing evidence" standard is easily met here, for the reasons set forth above.

Nor does 8 U.S.C. § 1252(g) apply here, since the facts described herein do not represent the Attorney General's "decision or action" to "execute removal orders" against Petitioner: there is no valid removal order as to El Salvador that can be executed; and if he is removed to El

Salvador, it certainly will not be done "under this chapter" (Chapter 12 of Title 8, U.S. Code) as that chapter prohibits such removal.

The discretionary bars at 8 U.S.C. § 1252(a)(2)(B) do not apply, as CAT withholding of removal is mandatory and admits of no discretion; the criminal-alien bar, 8 U.S.C. § 1252(a)(2)(C) does not apply where Plaintiff has no criminal conviction. Finally, the zipper clause, 8 U.S.C. § 1252(b)(9), does not apply, because, again, Respondents are not intending to remove Petitoner "under this subchapter." Accordingly, no provision of law strips this Court of jurisdiction to hear and decide this action.

Conclusion

WHEREFORE, Petitioner, by counsel, respectfully requests that this Court temporarily enjoin Respondents from removing him from the United States, and from this judicial district.

Petitioner is indigent and lacks financial means to pay a TRO bond; in addition, the government is not financially harmed by the issuance of a TRO.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: March 27, 2025

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