IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

HENRRY VILLATORO SANTOS

Petitioner,

v.

RUSSELL HOTT, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security,* and PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

Case No. 1:25-cv-735

MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION FOR INJUNCTIVE RELIEF
UNDER ALL WRITS ACT, 28 U.S.C. § 1651,
AND/OR FEDERAL RULE OF CIVIL PROCEDURE 65

Petitioner Henrry Villatoro Santos ("Mr. Villatoro" or "Petitioner") brings this motion pursuant to the All Writs Act, 28 U S.C. § 1651, urgently seeking an order enjoining 1) his removal from the United States pending resolution of his habeas petition and 2) his transfer outside of the jurisdiction of the U.S. District Court for the Eastern District of Virginia. The limited relief he seeks, which does not require consideration of the merits of his habeas petition challenging the legality of his detention, is necessary to preserve this Court's jurisdiction over the habeas petition. *See A A R.P et al. v Trump*, 24A1007 (S. Ct. Apr. 19, 2025) (enjoining

removal of putative class of non-citizens under All Writs Act); *Suri v. Trump*, 1:25-cv-480, Dkt. No. 7 (E.D. Va Mar. 20, 2025) (enjoining removal of non-citizen under All Writs Act).

Alternatively, Mr Villatoro seeks a Temporary Restraining Order (TRO) under Fed. R. Civ P. 65 providing the same injunctive relief. *See A.S.R. v. Trump*, 3:25-cv-113, Dkt. No. 8 (W.D. Pa. Apr. 15, 2025) (enjoining removal of putative class of non-citizens under All Writs Act and Fed. R Civ. P 65); *Hernandez-Campos v Noem*, 1:25-cv-1020, Dkt. No. 3 (D. Md. Mar 29, 2025) (enjoining removal of non-citizen under Fed. R. Civ. P. 65). As explained further below, Mr. Villatoro has demonstrated 1) a significant likelihood of success on his claim that his current detention is unlawful; 2) that, absent the requested relief, he will likely suffer irreparable harm in the form of removal to El Salvador, where he will be inevitably imprisoned, likely tortured, and possibly killed; and 3) that the balance of equities and public interest weigh in his favor.

The requested injunctive relief is imperative in light of the multiple recent examples of the U.S. Government summarily removing non-citizens from the United States and refusing to return them even when such removals are determined to be unlawful. *See, e.g., Abrego Garcia v Noem*, No. 8:25-cv-951 (D. Md. 2025); *J.G G. v Trump*, 1:25-cv-766 (D.D.C. 2025) Absent this Court's intervention, the Government is very likely to do the same to Mr. Villatoro, who the Governor of Virginia publicly stated will be "deported immediately" once his criminal charges are dismissed [1] Indeed, despite counsel's diligent efforts to discern what Immigration and Customs Enforcement (ICE) plans do when it takes custody of Mr. Villatoro, ICE has refused to

[1] *See* https://www.wvtf.org/news/2025-04-10/youngkin-backs-removal-of-alleged-ms-13-gang-leader-without-trial.

share any of the requested information. Thus, this Court must act immediately to ensure that the Government does not illegally remove Mr. Villatoro, before it is too late.

FACTUAL BACKGROUND

Mr. Villatoro adopts and incorporates by reference the Statement of Facts in his Petition for a Writ of Habeas Corpus, Dkt. No. 1, as well as stating the following facts relevant to this motion for injunctive relief.

1. Mr. Villatoro's Dismissed Criminal Case

On March 27, 2025, Mr. Villatoro was charged via criminal complaint with possession of a firearm by an undocumented immigrant, in violation of 18 U.S.C. § 922(g)(5)(A) Beginning on March 27, multiple top government officials have publicly accused Mr. Villatoro of being "one of the top [MS-13] leaders, heading up all MS-13 violent crimes on the East Coast," claims made by Attorney General Pamela Bondi in a high-profile press conference.[2]

On April 9, 2025, without any explanation, the Government filed a Motion to Dismiss the criminal case without prejudice, writing simply that "the government no longer wishes to pursue the instant prosecution at this time." *USA v. Villatoro Santos*, 1:25-mj-204, Dkt No. 14 (E.D. Va. Apr. 9, 2025). The Government indicated it intended to deport Mr. Villatoro Santos instead, but without clarifying whether that means placing him in removal proceedings as required by law, or summarily deporting him, as multiple officials have publicly threatened and as the government has done in other recent cases. Virginia Governor Glen Youngkin, who was closely involved in Mr. Villatoro's arrest, stated that "the charges . were dropped so that [Mr.

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[2] *See* https://cnycentral.com/news/nation-world/authorities-to-hold-news-conference-after-capture-of-top-ms-13-leader-in-woodbridge-virginia-24-year-old-from-el-salvador.

Villatoro] can be deported immediately and get out of this country and go back to prison in El Salvador."[3]

On that same day, Mr. Villatoro filed a Motion to Delay Entry of a Dismissal Order, requesting a 14-day delay in order to obtain immigration counsel and arguing that there is a substantial risk that entry of a dismissal order at this time would facilitate his unlawful removal from the United States to El Salvador without due process, in violation of his Fifth Amendment rights. *Villatoro Santos*, 1:25-mj-204, Dkt. No. 15.

The Government filed an opposition to the motion, requesting a "swift" dismissal of the case and indicating it had decided to forgo criminal prosecution in favor of removal. *Id.* Dkt. No. 17. The Government did not address the concerns raised about the risk of summary deportation without due process, nor did it indicate that it intends to follow the law in the removal of Mr Villatoro. He filed a reply brief in which he argued that the Court must require the Government to disclose the factual basis for its motion to dismiss in order to determine if the motion is made in good faith and if it is in the public interest, as required by Rule 48(a) of the Federal Rules of Criminal Procedure, including disclosing whether the Government intends to summarily deport Mr. Villatoro without due process, which would be against the public interest and an act of bad faith. *Id.* at Dkt. No 18.

On April 15, 2025, the Magistrate Judge heard oral arguments and granted the Government's motion to dismiss without prejudice, while staying entry of that Order until 10 am on Friday, April 18, 2025. *Id.* Dkt. 19-20. At the hearing, Magistrate Judge Fitzpatrick noted that

[3] *See* https://www.wvtf.org/news/2025-04-10/youngkin-backs-removal-of-alleged-ms-13-gang-leader-without-trial.

Mr. Villatoro is "concerned about larger issues, issues that occur with respect to deportation proceedings, I just don't think this is the right forum." *Id* Dkt. 23 at 13.

On April 16, undersigned counsel noticed an appeal of the Magistrate Judge's decision to a District Judge and moved to stay the Magistrate Judge's order pending appeal. On April 17, the Magistrate Judge stayed his order during the pendency of the appeal. On April 30, 2025, the District Judge denied the appeal. On information and belief, ICE took Mr. Villatoro Santos into its custody following the denial of the appeal.

2. The Government's Practice of Summarily and Illegally Removing Non-Citizens to El Salvador

Since the beginning of the Trump administration, ICE has carried out or attempted to carry out countless summary removals of non-citizens in flagrant contravention of U.S. immigration law. The most high-profile case is that of Kilmar Abrego Garcia, whom the Government wrongfully removed to El Salvador, despite a court order finding that he is likely to face persecution if returned there The Government later admitted through litigation that Mr. Abrego Garcia's removal was an "administrative error," but has nonetheless maintained that it has no obligation to return him to the United States, even after multiple rulings from the District Court, the Fourth Circuit, and the U.S. Supreme Court. *See, e.g., Abrego Garcia v Noem*, No. 25-1404 (4th Cir. Apr. 17, 2025)

In March, the Government similarly removed hundreds of non-citizens to El Salvador *during pending litigation* challenging the legality of their removal under the Alien Enemies Act *See J.G.G.*, 1:25-cv-766. The District Judge in that case is currently weighing whether to hold Government officials in contempt over their apparent violation of the court's TRO and refusal to share basic information about their compliance with the Court. *Id* Dkt. No. 80-81. Meanwhile, in parallel litigation in the U.S. District Court for the Northern of District of Texas, the Government

attempted to summarily remove putative class members to El Salvador despite being on clear notice that they were challenging their detention and removal under the Alien Enemies Act. *See A.A.R.P et al v Trump*, 1:25-cv-59, Dkt. No. 38 (N.D. Tx. April 18, 2025) (amended petition describing removal efforts); *J.G G.*, 1:25-cv-766, Dkt. No. 101 (amended complaint describing Government's removal efforts). This blatant attempt forced the U.S. Supreme Court to intervene in the early hours of Saturday morning, April 19, to temporarily enjoin the Government from removing the putative class members. *See A.A.R.P.*, 24A1007. These actions make clear that the Government will go to any lengths to circumvent judicial processes in the absence of an immediate, specific court order enjoining the Government from doing so.

3. Torture and Death at CECOT in El Salvador

Many Salvadorans and Venezuelans recently deported to El Salvador are currently jailed at the Centro de Confinamiento del Terrorismo (CECOT, or "Terrorism Confinement Center" in English) CECOT opened in January 2023. Ex. 10, Goebertus Declaration at ¶ 4. The Salvadoran government first announced its capacity as 20,000 but later doubled its reported capacity to 40,000. *Id*

The Salvadoran government has described people held in CECOT as "terrorists," and has said that they "will never leave." *Id.* ¶ 7. El Salvador's justice minister has said the only way out of CECOT is a coffin.[4] Human Rights Watch, an organization that investigates human rights abuses globally, is unaware of any detainees who have been released from CECOT. Ex. 10 at ¶ 7. People held in CECOT are denied communication with their lawyers and family members, and

[4] Cecilia Vega, *U.S sent 238 migrants to Salvadoran mega-prison, documents indicate most have no apparent criminal records*, CBS News (April 6, 2025), https://www.cbsnews.com/news/what-records-show-about-migrantssent-to-salvadoran-prison-60-minutes-transcript/

only appear before courts in online hearings, often in groups of several hundred detained persons at a time *Id* ¶ 5.

The Salvadoran government denies human rights groups access to CECOT and has generally only allowed journalists and social media influencers to visit under highly controlled circumstances *Id.* ¶ 7. In videos produced during such visits, Salvadoran authorities say that imprisoned people only leave the cell for 30 minutes a day, and that some are held in solitary confinement. *Id.* At CECOT, detained individuals share communal cells that can hold up to 100 people and contain no furniture other than rows of stacked metal bunks without mattresses or pillows. Across the facility, the lights are always on.[5]

Tortuous prison conditions for perceived gang members are common across El Salvador, and the conditions at CECOT are similar to the conditions at other Salvadoran prisons. *Id* ¶ 8. Such conditions include torture, ill-treatment, incommunicado detention, severe due process violations, and inhumane conditions, such as a lack of access to adequate healthcare and food. *Id*

Since the Salvadoran government instituted a state of emergency in March 2022, it has suspended constitutional due process rights. Ex. 10 at ¶ 9. Moreover, since March 2022, over 350 people have died in El Salvador's prisons, and over 85,000 people have been detained, including 3,300 children Id ¶¶ 9–10.

ARGUMENT

I. This Court should enjoin Mr. Villatoro's removal and transfer under the All Writs Act, 28 U.S.C. § 1651.

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[5] *See, e.g* , David Culver et al., *In notorious Salvadoran prison, US deportees live in identical cells to convicted gangsters*, CNN (April 8, 2025), https://www.cnn.com/2025/04/08/americas/el-salvador-cecot-prison-deportees; William Brangham et al., *The conditions inside the infamous El Salvador prison where deported migrants are held*, PBS (April 8, 2025), https //www.pbs org/newshour/show/the-conditions-inside-the-infamous-el-salvadorprisonwhere-deported-migrants-are-held.

The All Writs Act ("AWA") provides federal courts with the power to preserve their own jurisdiction to adjudicate claims before them. 28 U.S.C. § 1651(a) (authorizing federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). The Act encompasses a federal court's power to "maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels," *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966), *see also U.S. v. United Mine Workers of America*, 330 U.S. 258, 293 (1947) ("[T]he District Court ha[s] the power to preserve existing conditions while it [is] determining its own authority to grant injunctive relief"). Moreover, courts have broadly construed the Act to "achieve all rational ends of law." *California v. M&P Investments*, 46 F. App'x 876, 878 (9th Cir. 2002) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)).

Whereas a traditional preliminary injunction requires a party to demonstrate likelihood of success on the merits and irreparable injury to the moving party, an injunction based on the AWA requires only that a party identify a threat to the integrity of an ongoing or prospective court proceeding. *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004) (a court may enjoin any conduct "which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.") (citing *ITT Comm. Devel. Corp. v. Barton,* 569 F.2d 1351, 1359 (5th Cir. 1978)). Thus, to issue an injunction pursuant to the AWA, this Court need not find that there is a substantial likelihood of success on the merits of the underlying habeas claims, nor must it specifically identify irreparable harm to the movant. *See Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 257 n.2 (4th Cir. 2013) (recognizing that injunctions under AWA "exist outside of the traditional injunction framework governed by Fed. R. Civ. P. 65."), *Arctic Zero, Inc. v. Aspen Hills, Inc.*, No. 17-cv-00459-, 2018

WL 2018115, at *5 (S.D. Cal. May 1, 2018) (distinguishing AWA injunction from traditional preliminary injunction and analyzing each claim in alternative). Rather, it is sufficient for the Court to identify a threat to its jurisdiction or ability to fully adjudicate the ongoing proceeding [6]

The Supreme Court, this Court, and other courts across the country have recently and repeatedly exercised this equitable authority to enjoin the removal of non-citizens pending their habeas petitions. *See, e g , A A.R.P.*, 24A1007 (Supreme Court enjoining removal of putative class of Venezuelan non-citizens under All Writs Act); *Suri*, 1.25-cv-480, Dkt. No. 7 (enjoining removal of non-citizen professor under All Writs Act); *Khalil v. Joyce*, 2.25-cv-1963, Dkt. No 81 (D.N.J. Mar. 19, 2025) (enjoining removal of non-citizen student activist under All Writs Act). Courts have been particularly inclined to do this when the noncitizen's challenge to their immigration detention intersects with an attempt by the Government to imminently remove them from the United States *Ozturk v Hyde*, 1:25-cv-10695, Dkt. No. 3 (D. Mass. Mar. 25, 2025) ("This principle applies with even greater force where the action the court enjoins would otherwise destroy its jurisdiction or moot the case."). Given that removal from the United States can and often does occur rapidly, courts recognize the need to act quickly. *See Dabone v. Karn*, 763 F 2d 593, 597 n.2 (3rd Cir. 1985) ("28 U.S.C. § 1651 gives us the power to preserve our ability to pass on a matter within our statutory jurisdiction before it becomes moot by the deportation of the [non-citizen].").

Courts likewise have equitable authority, under the AWA and the federal habeas statute, to enjoin the transfer of a habeas petitioner to a different jurisdiction. *See* 28 U.S.C. § 1651(a)

[6] When courts have declined to issue an injunction under the All Writs Act, or overruled such an injunction, it is generally because the requested federal injunction would affect state court proceedings, in violation of the Anti-Injunction Act, 28 U.S.C. § 2283. This concern is not present here.

(authorizing writs "agreeable to the usages and principles of law"); 28 U.S.C. § 2243 (authorizing habeas court to order relief "as law and justice require"). Courts have recently invoked this authority to prevent ICE from transferring non-citizens across the country. *See, e.g.*, *Ozturk*, 1:25-cv-10695, Dkt No. 3 (enjoining petitioner's transfer outside District of Massachusetts); *Perez Parra v. Castro*, 1:24-cv-912, Dkt. No. 47 (D.N.M. Feb. 9, 2025) (enjoining transfer of detained non-citizens to U.S. military base at Guantánamo Bay).

In *Perez Parra*, the court was primarily concerned that petitioners' imminent transfer to Guantanamo might deprive it of jurisdiction over their pending habeas petition. 1:24-cv-912, Dkt. No 47 at 3 ("At this time, the Court cannot say that without this injunction it would not be jurisdictionally deprived to preside over the original writ of habeas corpus should petitioners be transferred. Thus, an injunction is necessary to achieve the ends of justice entrusted to this Court."). In *Ozturk*, the U.S. District Court for the District of Vermont later ordered the petitioner returned to Vermont to "facilitate her ability to work with her attorneys, coordinate the appearance of witnesses, and generally present her habeas claims." No. 2:25-cv-374, 2025 WL 1145250, at *22 (D. Vt. Apr. 18, 2025).

1. **This Court Must Enjoin Mr. Villatoro's Removal to Ensure it Does Not Lose Jurisdiction.**

Based on the Government's statements regarding Mr. Villatoro and its recent actions with respect to other non-citizens, it is highly likely that ICE will imminently remove Mr. Villatoro from the United States now that it has taken him into custody. The Governor of Virginia publicly stated that he will be "deported immediately" once his criminal charges are dismissed.[7] The U.S. Attorney General stated that "he won't be living in this country much longer" and "as a terrorist,

[7] *See* https://www.wvtf.org/news/2025-04-10/youngkin-backs-removal-of-alleged-ms-13-gang-leader-without-trial.

he will now face the removal process."[8] Moreover, Mr. Villatoro is similarly situated to Mr. Abrego Garcia, who the Government summarily removed to CECOT in El Salvador based on a bare allegation that he too was involved with MS-13.

Mr. Villatoro's summary removal would likely deprive this Court of jurisdiction to adjudicate his pending habeas petition.[9] In general, a habeas petition challenging immigration detention becomes moot if the non-citizen is removed from the United States. *See Watson v INS*, 271 F. Supp. 2d 838 (E D. Va. 2003) (finding that noncitizen's deportation mooted habeas petition seeking release from ICE custody). Moreover, the Government has continued to maintain that courts lack jurisdiction to order the return of unlawfully deported non-citizens. *See Abrego Garcia*, No. 25-1404 ("The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order. Further, it claims in essence that because it has rid itself of custody that there is nothing that can be done."). The Court must ensure that this case does not get to that point.

Enjoining removal is particularly crucial here because ICE's lack of a legal basis to detain Mr. Villatoro—the premise of his habeas petition—also means that it lacks a legal basis to remove him Absent other procedures not applicable here, removal proceedings before an IJ are "*the sole and exclusive procedure* for determining whether an alien may be . . removed from the United States." 8 U.S.C. § 1229a(a)(3). Mr. Villatoro is not currently in removal proceedings,

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[8] *See* https://www.politico.com/news/2025/04/09/drop-criminal-case-man-called-gang-leader-00283355.

[9] Mr. Villatoro does not concede that his removal to El Salvador and detention at CECOT would necessarily deprive the court of jurisdiction over his habeas petition, which he timely filed while physically detained in this district. However, the Government would surely argue as such, and his removal would at least pose a threat to this Court's ongoing jurisdiction.

which were dismissed in 2022 due to his SIJS grant. Dkt. No. 1, Ex. 4. Indeed, for the Government to place him back in removal proceedings, it would have to issue him a new NTA charging him as removable under some other ground than the standard inadmissibility ground in his original NTA from 2014. *See* Dkt. No. 1, Ex. 1 (charging as inadmissible under 8 U S C § 1182(a)(6)(A)(i)); 8 U.S.C. § 1227(c) ("Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) . . . . shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the [non-citizen] was provided such special immigrant status.").

Thus, Mr. Villatoro's summary removal without proceedings under § 1229a would be unlawful, for the same reason that his present detention is unlawful. To prevent this, and to ensure that this Court maintains jurisdiction over the instant habeas petition, Mr. Villatoro requests that the Court immediately enjoin his removal under the AWA. *See Suri*, 1:25-cv-480, Dkt. No. 7.

2. **This Court Should Also Enjoin Mr. Villatoro's Transfer Outside the District to Preserve Venue and Ensure Access to Counsel.**

Given that Mr. Villatoro filed the instant habeas petition while physically detained in this jurisdiction, this Court retains jurisdiction notwithstanding any future transfer of Mr. Villatoro to a different jurisdiction. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004) ("*Endo* stands for the important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent.") (citing *Ex parte Endo*, 323 U.S. 283, 306 (1944)). However, if ICE were to rapidly transfer Mr. Villatoro from this district, as has become its common practice in high-profile cases, the Government will surely seek to change venue. *See, e.g., Ozturk*, 2025 WL 1145250, at *8 (D. Vt. Apr. 18, 2025) ("The government argues that the §

1631 transfer by the District of Massachusetts [to the District of Vermont] is insufficient to cure these jurisdictional defects, and that the only forum where Ms. Ozturk's petition may properly be brought is the Western District of Louisiana."); *Suri*, 1:25-cv-480, Dkt. No. 25 (Government moving to transfer), *Khalil*, 2:25-cv-1963, Dkt. No. 30 (Government moving to transfer). This dispute will consume significant judicial resources, as it has in the cases cited above. To avoid this dispute and unequivocally preserve venue, this Court should enjoin the Government from moving Mr Villatoro outside of the Eastern District of Virginia.

Moreover, this Court should enjoin Mr. Villatoro's transfer to ensure his meaningful access to counsel and his ability to participate in the removal proceedings to which he is entitled. Mr. Villatoro's previous removal proceedings, which were dismissed in 2022, were here in Virginia. *See* Dkt. No. 1, Ex. 4. If Mr. Villatoro is placed back into removal proceedings, Amica Center for Immigrant Rights ("Amica Center")—a non-profit organization providing legal assistance to detained non-citizens in Virginia—has entered into a retainer agreement with Mr. Villatoro to represent him *pro bono* in those proceedings. Amica Center routinely conducts legal visits and Know Your Rights presentations at the two ICE facilities in Virginia, Abyon-Farmville Detention Center ("Farmville") and Caroline Detention Facility ("Caroline"), and its attorneys routinely represent non-citizens in the Annandale Immigration Court, in which the cases of non-citizens detained at Farmville and Caroline are docketed.

If Mr Villatoro remains in Virginia, Amica Center will have consistent access to him through its established procedures. But if he is transferred elsewhere, particularly to a facility in Louisiana or Texas as has occurred in many other high-profile cases, *see, e g , Suri*, 1:25-cv-480,

A.A.R.P., 1:25-cv-59, Amica Center attorneys will have significant difficulty traveling to and accessing the facility for legal visits, or even conducting remote legal visitation.[10]

Keeping Mr. Villatoro in Virginia will also facilitate his access to the instant habeas proceedings. Given the intricate and potentially fluid issues in this case, Mr. Villatoro's in-person presence may be required for an evidentiary hearing before this Court in the future.[11] Regardless, it will be crucial for undersigned counsel to have consistent, uninhibited access to Mr. Villatoro throughout the habeas case. Undersigned counsel Muhammad Elsayed, a private criminal defense attorney, is barred in and practices primarily in Virginia. If Mr. Villatoro is transferred elsewhere, counsel will likely face significant challenges visiting him in-person, or even in scheduling routine legal calls. *See Ozturk*, 2025 WL 1145250, at *23 ("The Court also has the inherent authority and responsibility to protect the integrity of its proceedings which were undoubtedly impacted when Ms. Ozturk was transferred to Louisiana.").

In recent months, the Government has exhausted courts by rapidly moving non-citizens from one place to another, without giving notice to anyone. To ensure that venue remains in this Court and that Mr. Villatoro has access to his legal representation, Mr. Villatoro requests that the Court immediately enjoin his transfer outside the Eastern District of Virginia under the AWA and the federal habeas statute. *See Ozturk*, 1:25-cv-10695, Dkt. No. 3 (enjoining petitioner's

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[10] As a Salvadoran national facially eligible for asylum, Mr. Villatoro is a class member covered by the nationwide injunction in *Orantes-Hernandez v Gonzales*, 82-1107, Dkt. No 855 (C.D. Cal. Nov. 26, 2007), which remains in effect. Amongst other requirements, the Government must "[a]llow counsel or paralegals working under the supervision of counsel reasonable access to class members between the hours of 9:00 a.m. and 9:30 p.m., excluding such time as is necessary for reasonable security procedures." *Id* at 5. It would be virtually impossible for the Government to comply with this order if it transfers Mr. Villatoro outside the district.

[11] Under the *Orantes* injunction, while the Government is permitted to transfer counseled class members within the United State, "the class member must be returned to the district in which venue is set sufficiently in advance of any proceeding in order to allow the detainee adequate time to consult with counsel." *Id.* at 6.

transfer outside District of Massachusetts); *A.S.R.*, 3:25-cv-113, Dkt. No. 8 (enjoining transfer of putative class outside Western District of Pennsylvania).

II. Alternatively, this Court should enjoin Mr. Villatoro's removal and transfer through a TRO under Fed. R. Civ. P. 65.

Pursuant to Fed. R. Civ. P. 65(b)(1), this Court may issue a TRO without notice to the opposing party if the alleged facts show immediate, irreparable injury will result to the movant, and counsel certifies any efforts made to give notice to the adverse party. *See Hoechst Diafoil Co. v Nan Ya Plastics Corp* , 174 F.3d 411, 422 (4th Cir. 1999) ("[T]emporary restraining orders may be issued without full notice, even, under certain circumstances, ex parte."). In considering whether to grant a TRO, this Court considers the same four factors for a preliminary injunction: (1) the movant's likelihood of success on the merits, (2) whether the movant will likely suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities, and (4) whether an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc* , 555 U S. 7, 24 (2008); *see also Fred Hutchinson Cancer Research Ctr. v. BioPet Vet Lab, Inc.*, No. 2 10-cv-616, 2011 WL 119565, *2 (E.D. Va. Mar. 1, 2011).

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 subject to a heightened standard, whereas this motion seeks the former. keeping Mr Villatoro in the United States and in this district during the pendency of the petition. *See Pashby v. Delia*, 709 F 3d 307, 320 (4th Cir. 2013) ("Because it preserved the status quo, the injunction is prohibitory rather than mandatory, and the heightened standard of review does not apply.").

On likelihood of success, the movant "need not establish a certainty of success, but must make a showing that he is likely to succeed at trial." *Di Biase v SPX Corp.*, 872 F.3d 224, 230

(4th Cir. 2017) (internal quotations omitted). Similarly, on irreparable harm, the movant need not show that they are "certain to suffer injury," but rather that such irreparable injury is likely. *See Pashby*, 709 F.3d at 329. Injury is considered irreparable when it "cannot be remedied by money damages at the time of judgment." *Di Biase*, 872 F.3d at 230.

1. Mr. Villatoro is likely to succeed on the merits of his claim that his present detention is unlawful.

As explained in more detail in Mr. Villatoro's habeas petition, Dkt. No. 1, he is likely to succeed on the merits of his legal arguments. His current detention, without a Notice to Appear in immigration court, is patently unlawful. Section 1226 authorizes immigration detention "pending a decision on whether the [non-citizen] is to be removed from the United States." 8 U.S.C. § 1226(a). But Mr. Villatoro's removal proceedings were dismissed in 2022 due to an SIJS grant, and he has not yet received a new NTA placing him back in removal proceedings. Therefore, he cannot be legally removed and no decision on whether he is to be removed is currently "pending." Moreover, Mr. Villatoro's detention without being in removal proceedings violates his due process rights because it does not "bear[] a reasonable relation to the purpose" of immigration detention, which is removal from the United States *Demore v Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001))

2. Mr. Villatoro is likely to suffer irreparable harm in the form of removal, torture, and even death.

The Government has repeatedly indicated that Mr. Villatoro will be summarily removed from the United States, and it has repeatedly done this to similarly situated non-citizens it alleges to be gang members. *See supra* Factual Background. If Mr. Villatoro is summarily removed to El Salvador, such injury will in all likelihood be irreparable, given that the Government has thus far refused to return even non-citizens whom they admit were deported by mistake. *See Abrego Garcia*, No. 25-1404. In El Salvador, Mr. Villatoro will surely be turned over to Salvadoran

authorities for incarceration at CECOT as an alleged MS-13 gang member, especially given the high-profile nature of his case. At CECOT, the guards will likely beat him on a routine basis and subject him to brutal interrogation techniques resembling "waterboarding." *See* Ex. 10 at ¶ 12, 14, 21. Moreover, given that 350 detainees have died in Salvadoran prisons since the beginning of the "State of Exception" in 2022, *see id* at ¶ 9, 17, Mr. Villatoro is at legitimate risk of death if deported to such a prison. Deportation, torture, and death are prototypical forms of irreparable harm. *See Hernandez-Campos*, 1.25-cv-1020, Dkt. No. 3 ("[T]he likelihood that Petitioner will be subjected to torture if removed to El Salvador is sufficient to show irreparable harm for purposes of Rule 65(b)").

3. The balance of equities and the public interest favor Mr. Villatoro.

The balance of equities and public interest typically favor the movant when they plausibly allege a violation of individual rights by the Government. *See League of Women Voters*, 769 F.3d at 247-48. Here, Mr. Villatoro has shown a likelihood of success on his argument that his removal from the United States, in addition to his detention, would be unlawful absent proceedings in immigration court. Importantly, he does not seek release from custody as a preliminary remedy; he merely seeks an order preventing his removal from the United States, and keeping him in custody in Virginia, during the pendency of the petition. The balance of equities and public interest clearly favor this Court seeking to prevent yet another illegal deportation by the U.S. Government. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) ("[T]here is a public interest in preventing [non-citizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm").

CERTIFICATION OF NOTICE TO RESPONDENTS

Undersigned counsel hereby certifies that he advised counsel for Respondents of the filing of the habeas petition immediately after it was filed and simultaneously shared a copy of

this motion prior to its filing. Counsel emailed the petition and motion to Dennis Barghaan, Deputy Chief of the Civil Division of the U.S. Attorney's Office for the Eastern District of Virginia. Having received no assurances from Respondents that Mr. Villatoro will not be summarily removed or transferred from this district, counsel respectfully requests that the Court immediately order the urgent relief requested, without waiting for a written response from Respondents. *See* Fed. R Civ. P. 65(1)(B).

Respectfully submitted, Dated: April 30, 2025

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Emergency Motion for Injunctive Relief and all attachments using the CM/ECF system, which will send a notice of electronic filing (NEM) to all counsel of record. Immediately before filing, I furthermore emailed a courtesy copy of this motion to Dennis Barghaan, Deputy Chief of the Civil Division of the U.S. Attorney's Office for the Eastern District of Virginia.

Dated: April 30, 2025 */s/ Muhammad Elsayed*

Muhammad Elsayed
Counsel for Petitioner