IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

EDIN PORTELA-HERNANDEZ

Petitioner,

v.

Donald J. TRUMP, *et al*

Respondents.

Case No. 1:25-cv-1633-BAH

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner, 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 on Feb 28, 2020 granting him withholding of removal, which prohibits Respondents from removing him to Guatemala. *See* Dkt. No. 1-2. This order has never been reopened or set aside and therefore remains in effect. Petitioner had early in 2017 been taken in to the custody of the Respondents, but as was bond eligible, an immigration judge released him on bond, finding that he was neither a danger to the community nor a flight risk.

Petitioner attended all hearings during his removal proceeding from 2017 to 2020; undersigned Counsel's firm represented him throughout and won the withholding order in 2020. Afterward,

Petiitoner was obligated to report to Respondent ICE on a regular basis for routine " check-ins," a procedure by which ICE determines whether a noncitizen in removal proceedings is compliant with all applicable laws and conditions of release.

On May 20, 2025 Petitioner appeared for a routine ICE check-in and was detained. To date, he has not been provided any explanation as to why he was taken into custody over 5 years after winning withholding and without erstwhile incident. Instead, he was handed papers in English he could not understand and told to sign them. He refused, saying he would sign nothing until receiving instructions from counsel.

Counsel, having tried unsuccessfully to call Respondent ICE-ERO Baltimore throughout the morning, finally emailed ERO and later in the afternoon, received a response that ICE would not release Petitioner, and that any disclosure of location would happen after transportation was complete. In other words, that ICE would tell undersigned Counsel neither where nor when they would move Petitioner, but move him they would.[1]

Sadly, Respondents have flouted law and regulation and basic norms of decency and due process with the turbocharged deportations that were central to President Trump's campaign for re-election. In at least one other case arising in this District, Respondents deported a man without any hearing and to the very country from which a judge had granted withholding of removal. . *See Abrego Garcia v. Noem*, Civ. No. 8:25-cv-951-PX, Dkt. Nos. 1, 10 (D. Md., filed March 24, 2025). Earlier, Respondents deported 238 Venezuelan nationals to El Salvador, celebrating this flouting of the law and leading Judge Boasberg of the US District Court of the District of Columbia to rule that there was probable cause to hold the US Government in contempt for disobeying a clear court order to turn those

[1] Hence the necessity of " emergency" filings of writs of habeas corpus and temporary restraining orders such as this, and, presumably, the reason for this Court's standing order earlier today regarding preservation of the status quo for habeas corpus proceedings filed by noncitizen detainees.

planes around.

After filing the writ of habeas corpus in the instant case, Counsel immediately called the duty US Attorney and sent by email a courtesy e-copy of the complaint and all attached exhibits, and confirmed the Petitioner's A# (alien number) to the US Attorney's Office. As of approximately 7 pm on May 21 when counsel was first able to speak to Petitioner, Petitioner advised that he was still in the ICE office in Baltimore. The writ of habeas corpus was filed nearly 6 hours before, at 1:12 pm on May 21, and the standing order of the Court preventing removal and/or alteration of immigration status was effective as of 5 pm the day before, May 20, 2025 and therefore would apply to the instant case.

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 presumably intends to strip him of his withholding status and perhaps remove him to a third country or even Guatemala, without observing proper legal procedures that have not occurred or even commenced.

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]

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[2] Indeed, the Solicitor General's office acknowledged this legal principle earlier this year 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

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.

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 a third country such as El Salvador, now notorious for its 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).

Petitioner would suffer irreparable harm if he were deported to Guatemala, and this would be in direct violation of the finding that he would suffer persecution on account of his sexual orientation.

For these reasons, Plaintiff has made an adequate showing of irreparable harm to justify

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> 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.

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.

The discretionary bars at 8 U.S.C. § 1252(a)(2)(B) do not apply, as 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.

Dated: May 22, 2025
Sterling, Virginia

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Emergency Motion for Temporary Restraining Order and all attachments using the CM/ECF system.

Dated: May 22, 2025

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