UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Division

ANGEL LENIN SERVELLON GIRON, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	HON. JULIEN X. NEALS Civil Action No. 2:25-cv-6301-JXN

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

While this habeas petition was pending, and after Respondents were provided an extension to answer, Petitioner Angel Lenin Servellon Giron was transferred to a Texas detention facility overnight, with reason to believe he will be imminently removed from the United States. 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:

Background

On May 30, 2025, Petitioner filed his Petition for Writ of Habeas Corpus to seek redress of his unlawful rearrest and his continued detention. ECF No. 1. On July 6, 2025, Respondents requested a 7-day extension on their time to answer the petition in order to gather more information regarding Petitioner and his detention. *See* ECF No. 6 ("Accordingly, despite the government's efforts to locate the material documents and information, this Office is still working to locate some information that is critical to Respondents' answer."). This Court granted Respondents' request, resetting the deadline to answer to July 14, 2025. ECF No. 8.

However, within approximately the last 24 hours, Respondent U.S. Immigration and Customs Enforcement (ICE), transferred Petitioner to the Port Isabel Service Processing Center, in Los Fresnos, TX (Port Isabel). *See* Ex. 1. ICE Detainee Locator printout, dated July 10, 2025, ECF No. 9-1. Upon information and belief, Port Isabel is a staging facility for removal flights that routinely take place within 24 hours of individual's arrival at the facility.

As set forth in his Petition, Petitioner was granted withholding of removal by an immigration judge who found that he was more likely than not to face persecution in Honduras, which prohibits Respondents from removing him there. ECF No. 1 ¶¶ 17-18. *See also* Immigration Judge Order, ECF No. 1-1. This order has never been reopened or set aside (*see* ECF No. 1-2), and therefore remains in effect. There is, accordingly, no legal basis to remove Petitioner to Honduras.

On May 21, 2025, Respondents revoked Petitioner's Order of Supervision and re-detained him, stating an intent to remove him to Mexico. *See* Ex. 2. ICE Request for Acceptance of Alien dated May 21, 2025, ECF No. 9-2; Ex. 3. ICE Notice of Removal to Mexico dated May 21, 2025, ECF No. 9-3; and Ex. 4. ICE Notice of Revocation dated May 21, 2025, ECF No. 9-4.

On May 28, 2025, pursuant to the (now stayed) *D.V.D.* Injunction, Petitioner expressed a fear of being removed to Mexico. *See* Request for Reasonable Fear Interview dated May 28, 2025, ECF No. 1-5. *See also D.V.D. v. DHS*, Civ. No. 25-10676-BEM, 2025 WL 1142968 (D. Md. April 18, 2025), *pending appeal; stayed by DHS v. D.V.D.*, 606 U.S. __, 145 S. Ct. 2153, 2153 (June 23, 2025). Petitioner's RFI was never scheduled by Respondents. As of today's date, he has yet to have his reasonable fear of removal to Mexico reviewed by any arbiter under any process. As such, any removal to Mexico at this time would be in contravention to Petitioner's rights under the statutes and U.S. Constitution.

Certification of Notice to Respondents

Undersigned counsel hereby certifies that she advised counsel for Respondents of the filing of this Emergency TRO Motion immediately before it was filed, on July 10, 2025, and received no substantive response. *See* Ex. 5, Communications, ECF 9-5, attached hereto. Prior to filing this TRO motion, undersigned counsel also emailed a copy to counsel for Respondents. *Id.*

Legal Standard

A preliminary injunction is an "extraordinary remedy, which should be granted only in limited circumstances." *Ferring Pharms., Inc. v. Watson Pharms., Inc.*, 765 F.3d 205, 210 (3d Cir. 2014). 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 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Ferring Pharms.*, 765 F.3d at 210, *citing Winter*, 555 U.S. at 20.

A TRO may be entered *ex parte* provided Rule 65(b) safeguards are met. *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020). Per Rule 65(b)(3), the Court must hold an expedited preliminary injunction hearing after entering the *ex parte* TRO, prior to converting the TRO to a preliminary injunction. *Id.* Further, "Rule 65(b)'s stringent requirements restrict *ex parte* TRO's to preserving the status quo and preventing irreparable harm only for the time necessary to hold a hearing, and no longer," (internal quotations omitted). *Id.* at 320-321, *citing Granny Goose Foods Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974)).

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 Respondents imminently intend to remove him – despite protections granted to him against removal to his country of origin, Honduras, and his stated fear of removal to Mexico – without proper legal procedures that neither been attempted or even commenced. Petitioner, in moving this court for a TRO, seeks only to preserve the status quo whilst his reasonable fear of removal to Mexico is duly reviewed.

First, withholding of removal under 8 U.S.C. § 1231(b)(3) prohibits the government from removing a noncitizen to a country where he is more likely than not that the individual would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.16(b). If Petitioner meets his burden, this form of relief is mandatory. *Id.* Petitioner won such an order as to Honduras. *See* ECF No. 1-1.

Petitioner's withholding of removal order has never been reopened or set aside (ECF 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. 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 termination proceedings have not occurred, or even commenced.

Next, 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). *Guzman Chavez v. Hott*, 940 F.3d 867, 880 (4th Cir. 2019) ("And precisely because withholding of removal is country-specific, as the government says, if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to that particular country."), *rev'd on other grounds Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). *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"). The government has conceded as much in a similar matter, concerning removal to a third country. *See Oral Argument Tr., Riley v. Bondi*, No. 23-1270 (S. Ct., March 24, 2025), *32-33 ("We do think we have the legal authority to do [a third country removal], 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.")

Here, Respondents have indicated that they intend to remove him to Mexico. *See* Exs. 2-4. However, on May 28, 2025, Petitioner expressed a fear of being removed to that country and – to date – has been afforded *no opportunity* to have that fear considered. *See* ECF No. 1-5. While the *D.V.D.* preliminary injunction provided for a particular process for review when an individual raised a reasonable fear, its stay does not disturb case precedent which requires that Petitioner be afforded a review of his fear prior to removal. "[T]he prohibition on removal to a country where a noncitizen would face persecution or torture remains absolute." *Guzman Chavez*, 940 F.3d at 880.

Removal of Petitioner to Mexico at this time, prior to review of his stated fear of removal to Mexico, would be unlawful. Accordingly, Petitioner is likely to succeed on the merits.

II. Petitioner 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 faces irreparable harm in that removal to Mexico puts Petitioner at considerable risk for immediate re-deportation (or refoulment) to Honduras, where Respondents have already found that he is likely to be persecuted. *See* ECF No. 1-1. To date, Respondents have not shown that Mexico has afforded Petitioner any permanent status to remain there. (Indeed, the parties are still awaiting Respondents answer to the habeas petition at all.) ECF No. 8. Rather, Mexico has a track record of re-deporting recent deportees from the United States. *See e.g. D.V.D. v. DHS*, 2025 WL 1142968 at *4 (Plaintiff O.G.C. was a recent deportee sent to Mexico and re-deported to Guatemala where he had been granted withholding of removal).

Moreover, unlike the existing process for traditional petitions for review (*Nken,* 556 U.S. at 435), there is no process by which Petitioner's fears can be considered from abroad. Respondents' current mass efforts to remove protected individuals like Petitioner to a third country – where he has no status and has stated a fear of being removed there – is without precedent. While individuals like Petitioner are guaranteed the most basic right under the Constitution to receive notice and have an opportunity to respond to the government's intentions to remove him, Respondents' actions in Petitioner's case continue to flout these requirements. Currently there is no systematic process for consideration of fear such as that expressed by Petitioner. One district court attempted to outline a minimum process, but that has been stayed. *D.V.D. v. DHS*, Civ. 2025 WL 1142968, *stayed by DHS v. D.V.D.*, 145 S. Ct. at 2153. Thus, the right to have their fears reviewed for those individuals *inside* the United States is still an ad hoc process, that to date, Respondents have entirely refused to afford to Petitioner. There is no guarantee whatsoever that *any process exists* whereby Petitioner could have these same fears reviewed once he has been removed from the United States.

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 Petitioner'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.

Equities here tip in Petitioner's favor. Petitioner is long-term resident of the United States, given the protection from removal he was afforded over a decade ago. Pet. ¶ 18. He has never been convicted of any crimes nor are there allegations that he has ever violated his supervised release. Pet. ¶ 19. Petitioner is the beneficiary of an immigrant visa petition (an I-130). Pet. ¶ 20.

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.").

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 Honduras that can be executed; and if he is removed to Honduras it certainly will not be done "under this chapter" (Chapter 12 of Title 8, U.S. Code) as that chapter prohibits such removal.

Nor is the Respondents' attempt to summarily remove him to Mexico lawful, as this would flout Petitioner's constitutional right to due process, namely his right to have his reasonable fear of persecution in Mexico reviewed by an appropriate authority.

The discretionary bars at 8 U.S.C. § 1252(a)(2)(B) do not apply, as withholding of removal is mandatory; and 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 Petitioner "under this subchapter." Accordingly, no provision of law strips this Court of jurisdiction to hear and decide this action.[1]

[1] Given the emergent nature of this application, Petitioner reserves the right to supplement these arguments upon further information.

Conclusion

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

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,

Date: July 10, 2025

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915, Ext. 1168
Email: sgibbs@murrayosorio.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded a copy of the foregoing, with all attachments thereto, to this Court's CM/CEF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

Date: July 10, 2025

/s/ Stephanie E. Gibbs

STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915
Email: sgibbs@murrayosorio.com

Counsel for Petitioner