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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Nicolas Esteban Cavieres Gomez,

Petitioner,

v.

Christopher Chestnut, *et al.*,

Respondents.

Case No. 2:25-cv-00975-GMN-BNW

**Reply in Support of Emergency
Motion for Temporary Restraining
Order or Preliminary Injunction**

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I. ARGUMENT

A. Cavieres Gomez is at imminent risk of severe harm.

As noted in his motion, absent a temporary restraining order, Petitioner could be summarily removed to a yet-unknown third country, away from this Court's jurisdiction, and without adequate notice or due process. Contrary to Respondents' arguments, Petitioner's claim is based on concrete actions by the government. Namely, in recent weeks the United States has attempted to remove similarly situated noncitizens to countries with documented human rights violations directed at migrants and without complying with the due process requirements acknowledged in the Response.¹ Similarly situated noncitizens have also been removed to third countries which then removed them to their countries of origin, even where an immigration judge has found that it is likely they will face persecution.² The government's flagrant actions demonstrate that Petitioner's fear is not speculative but based on concrete actions undertaken against similarly situated noncitizens.

1. The nationwide injunction in *D.V.D. v. U.S. Dep't of Homeland Sec.* is not an adequate substitute for an individualized injunction in this case.

Respondents claim that Petitioner's fear of irreparable harm is "unfounded."³ They argue that Cavieres Gomez is covered by the nationwide injunction in the case *D.V.D. v. U.S. Dep't of Homeland Sec.*, Case No. 1:25-cv-10676-BEM (D. Mass),⁴

¹ See ECF No. 8 at 10–14; ECF No. 10 at 6.

² See ECF No. 8 at 11.

³ ECF No. 10 at 6.

⁴ ECF No. 10 at 6–7.

1 and, as such, his request is moot.⁵ Cavieres Gomez agrees he is a class member as
2 defined in *D.V.D.*, but Respondents' argument still fails for several reasons.

3 First, the government has appealed and moved to stay the injunction issued
4 in *D.V.D.* pending its appeal in that case. The First Circuit Court of Appeals denied
5 the emergency motions to stay the temporary restraining order, *D.V.D. v. DHS*, No.
6 25-1311, 2025 WL 1029774 (1st Cir. Apr. 7, 2025), and the subsequent preliminary
7 injunction, *D.V.D. v. DHS*, No. 25-1393, 2025 WL --- (1st Cir. May 16, 2025).
8 However, the government has since filed an application to stay with the Supreme
9 Court, arguing, in part, that lower federal courts lack jurisdiction to issue class wide
10 injunctions. *DHS v. D.V.D.*, No. 24A1153.

11 As noted above, the injunction issued in *D.V.D.* is subject to the appeal
12 pending in the First Circuit and the motion to stay pending with the Supreme
13 Court. If the injunction is dissolved, or even stayed, Cavieres Gomez would have no
14 protection from swift removal to a third country without review as to whether he
15 would face persecution or torture. Moreover, the merits of *D.V.D.* do not overlap
16 with the merits of Petitioner's habeas case,⁶ so a resolution on the merits of that
17 case ending the injunction would not coincide with a resolution on the merits of this
18 case. If *D.V.D.* resolves before this habeas case in favor of defendants, Cavieres
19 Gomez would be left unprotected. Furthermore, in another case, *Trump, et al. v.*
20 *Casa, Inc. et al.*, Case No. 24A884, the government has recently argued that
21 nationwide injunctions violate the constitution. A decision on that issue is
22 forthcoming from the Supreme Court.

23 Second, an injunction would provide more protection for Cavieres Gomez—a
24 remedy that is compelled by the government's recent and flagrant attempts to
25 circumvent the preliminary injunction issued in *D.V.D.* Specifically, as news reports
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27 ⁵ ECF No. 10 at 6.

⁶ See ECF No. 10-3 at 2.

1 reflect, the government recently attempted to remove class members to Libya, and
2 to South Sudan.⁷ The United States District Court for the District of Massachusetts
3 found that “no reasonable interpretation of the Court’s Preliminary Injunction [in
4 *D.V.D.*]” could endorse the deportation of noncitizens to South Sudan with “zero
5 business hours’ notice”.⁸ Third, and last, it is noteworthy—and alarming—that
6 Respondents do not represent that they will provide Cavieres Gomez with adequate
7 notice and due process in the absence of the nationwide injunction from the case
8 *D.V.D.* Granting an individualized preliminary injunction and temporary
9 restraining order will preclude Respondents from removing Cavieres Gomez to a
10 third country during these proceedings in a capricious and arbitrary manner that
11 Respondents might deem consistent with “follow[ing] the law,” but that in fact
12 violates due process.⁹

13 **B. Notably, Respondents do not allege this injunction would cause**
14 **them any harm, nor do they argue the injunction would not be**
15 **in the public interest.**

16 In their response to the motion for restraining order and preliminary
17 injunction, Respondents do not argue that they would suffer any harm if the relief is
18 granted.¹⁰ They also do not argue that an injunction would not be in the public
19 interest.¹¹ Accordingly, this Court should find that Respondents would not be
20 harmed, and this relief would be in the public interest.

21 Instead, Respondents argue that a preliminary injunction should not be
22 granted based on principles of judicial economy, and because a restraining order or
23 preliminary in this case would create the potential for conflict with the one in

24 ⁷ See ECF No. 8 at 12–13.

25 ⁸ ECF No. 10-2.

26 ⁹ See ECF No. 10 at 7.

27 ¹⁰ See ECF No. 10.

¹¹ See ECF No. 10.

1 *D.V.D.*¹² To begin with, judicial economy is not one of the factors to be considered in
2 the analysis of whether to grant a temporary restraining order and preliminary
3 injunction. *See Johnson v. California State Bd. Of Accountancy*, 72 F.3d 1427, 1430
4 (9th Cir. 1995) (laying out standard to obtain preliminary injunction). But that
5 aside, Respondents fail to specify how maintaining the status quo, i.e., ensuring
6 that Cavieres Gomez remains in this jurisdiction pending the adjudication of his
7 habeas petition, would expend additional judicial resources. Respondents' omission
8 is unsurprising as the opposite is true. Removing Cavieres Gomez from Nevada
9 would impede undersigned counsel's representation and potentially force this Court
10 to have to compel his return for trial. In short, removing Cavieres Gomez would
11 result in judicial waste.

12 **C. Cavieres Gomez is likely to succeed on the merits because his**
13 **continued detention violates his due process rights.**

14 Respondents argue that Cavieres Gomez is not likely to succeed on the merits
15 of his petition primarily because he has not yet been detained for six months after
16 his removal order and grant of withholding of removal became final.¹³ This
17 argument is based on a misreading of the Supreme Court's decision in *Zadvydas v.*
18 *Davis*, 533 U.S. 678, 699 (2001). Contrary to Respondents' claim, *Zadvydas* does not
19 bar an ICE detainee from challenging their detention until six months have passed
20 after the removal order becomes final, and they cite no case authority for their
21 assertion that a habeas case cannot properly be brought before six months. To the
22 contrary, at least one other court in this circuit has explicitly found that a claim can
23 be brought before six months have elapsed. *Trinh v. Homan*, 466 F. Supp. 3d 1077,
24 1092–93 (C.D. Cal. 2020) (rejecting the six-month requirement proposed by
25 Respondents and finding that “the central holding of *Zadvydas* is that section
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27 ¹² ECF No. 10 at 7.

¹³ ECF No. 10 at 4–5.

1 1231(a)(6) does not permit detention beyond the initial 90-day removal period when
2 removal is not reasonably foreseeable.”)

3 Here, Cavieres Gomez’s detention violates his due process rights because he
4 cannot be removed to Chile and, and because Respondents have not made any
5 efforts to undertake proper procedures to remove him anywhere else. Respondents
6 neither dispute nor deny the allegation they have made no efforts to remove him to
7 a third country through procedures complying with due process. Their silence on
8 the matter is telling. Because Petitioner can’t be removed to Chile and no efforts
9 have been made to remove him elsewhere (through the proper procedure), his
10 removal is not reasonably foreseeable, and his continued detention is
11 unconstitutional.

12 Relatedly, Respondents further claim that Petitioner’s motion is internally
13 inconsistent because he argues (1) that Respondents have not made any effort to
14 remove him through proper procedures to a third country, and (2) that he is in
15 imminent risk of being removed to a third country in violation of his due process
16 rights.¹⁴ The argument is misguided. Cavieres Gomez believes that no efforts have
17 been made to remove him to a third country through a process that complies with
18 due process (for example, through the process required by the injunction in *D.V.D.*).
19 This supports his claim that his removal is not reasonably foreseeable and that his
20 detention is unconstitutional. He requests this injunctive relief because he fears,
21 based on the governments’ recent actions against similarly situated individuals,
22 that he is in danger of being imminently removed to a third country without notice
23 and due process. The requested injunction would preclude such unlawful and
24 potentially life-threatening action by merely maintaining the status quo.
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27 ¹⁴ ECF No. 10 at 5.

1 **II. CONCLUSION**

2 This Court should grant Petitioner's motion for a temporary restraining order
3 and preliminary injunction.
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5 Dated June 16, 2025.

6 Respectfully submitted,

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Federal Public Defender

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Certificate of Service

I hereby certify that on June 16, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following non-CM/ECF participants:

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