

JON M. SANDS
Federal Public Defender
KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700 voice
keith_hilzendeger@fd.org
Attorneys for Petitioner Salih

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Seydixan Salih,

Petitioner,

vs.

David R. Rivas, Warden, et al.,

Respondents.

No. 2:25-cv-2096-PHX-SMB (MTM)

**Motion for a Temporary Restraining
Order and a Preliminary Injunction**

Yesterday the government announced that it had received travel documents for Mr. Salih, and so in its view his removal will “likely” occur in the next 30 days. (Dkt. #21 at 2) But the government did not explain what country issued these travel documents. Accordingly, Mr. Salih amended his petition to include new claims based on this new information.

In his amended petition, Mr. Salih contends that his detention is illegal, in violation of the Due Process Clause, to the extent that it is being used to facilitate a removal to a third country other than Syria, because respondents have afforded Mr. Salih neither adequate advance notice of the country to which they contemplate removing him nor an opportunity to request relief from removal to that country based on a fear of persecution or torture should he be removed there. (Dkt. #22 at 8–10) And this possibility is not theoretical. On July 9, 2025, Todd Lyons, the acting director of ICE, issued a memo that explained its new policy. Based on the Supreme Court’s order in *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025), Mr. Lyons allowed federal immigration officers to “deport immigrants to countries other than their own, with as little as six hours’ notice, even

if officials have not provided any assurances that the new arrivals will be safe from persecution or torture” in those third countries. Maria Sacchetti, Carol D. Leonnig, & Marianne LeVine, ICE memo outlines plan to deport migrants to countries where they are not citizens, Wash. Post, Jul. 13, 2025. Because the government has refused to explain which country issued the travel documents it says it has, there is reason to believe that Mr. Salih’s removal, if it is to be accomplished, would be to a country other than Syria, to which he has been ordered removed.

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, petitioner Seyidxan Salih respectfully asks the Court to order respondents not to remove him to a third country while this litigation is pending. This Court has two procedural devices at its disposal to accomplish this—a temporary restraining order, which acts as a prelude to a preliminary injunction, and the preliminary injunction itself. *See* Fed. R. Civ. P. 65(b)(2) (temporary restraining order), (a)(1) (preliminary injunction). The standards for issuing a temporary restraining order and for issuing a preliminary injunction are the same. *Blain v. California Dep’t of Transportation*, 616 F. Supp. 2d 952, 956 (N.D. Cal. 2022). The applicant 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.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (quoting *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). “In addition, we have applied a ‘sliding scale’ to this standard, allowing a stronger showing of one element to offset a weaker showing of another.” *Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2022) (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1131). Mr. Salih can make all four of these showings.

First, he is likely to succeed on the merits of his due-process claim involving a third-country removal. Three and a half months ago, the Supreme Court ruled that aliens are entitled to “receive notice... within a reasonable time” of the government’s intent to remove them to a third country “in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam). Inasmuch as the government has not notified Mr. Salih of its intent to remove him to some third

country, let alone afford him an opportunity to seek relief from removal to that country, he is likely to succeed on this due-process claim. Second, illegal confinement is quintessentially irreparable harm, because “the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Third, and finally, when the government is a party, as it is here, “the balance of equities and public interest factors merge.” *Pimentel-Estrada v. Barr*, 464 F. Supp. 3d 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The risk of harm to Mr. Salih far outweighs the government’s interest in illegally detaining him, for it is “always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002.

For all of these reasons, the Court should temporarily restrain and preliminarily enjoin respondents from removing Mr. Salih to any third country without adequate notice and an opportunity to seek relief from removal to that country based on a fear of persecution or torture there.

A proposed order is being lodged herewith.

Respectfully submitted:

July 22, 2025.

JON M. SANDS
Federal Public Defender

s/Keith J. Hilzendeger
KEITH J. HILZENDEGER
Assistant Federal Public Defender
Attorney for Petitioner Salih