

UNITED STATES DISTRICT COURT
FOR THE EASTER DISTRICT OF TEXAS
BEAUMONT DIVISION

MARIO HERNANDEZ ESCALANTE,
A-070-847-011

Petitioner,

v.

KRISTI NOEM,
In her official capacity as Secretary of
Homeland Security,

TODD M. LYONS,
In his official capacity as Acting Director,
Immigration and Customs Enforcement;

NIKITA BAKER,
In her official capacity as Field Director of
ICE Baltimore Field Office,

Respondents.

Case No. 9:25-CV-182-MAC-CLS

PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION

Petitioner Mario Hernandez Escalante ("Mr. Hernandez"), is a native and citizen of El Salvador who has been granted protection from removal to El Salvador under the Convention Against Torture ("CAT") and has been unlawfully detained in Immigration and Customs Enforcement ("ICE") custody since June 3, 2025. On July 11, 2025, the Magistrate Judge issued a Report and Recommendation recommending the Court grant the petition and order Mr. Hernandez's release. *See* Report and Recommendation ("R&R"), ECF No. 31.

Based on new information, Mr. Hernandez moves this Court to enter a preliminary injunction pending a final order in this case to a) preclude his removal to any third country without first receiving the required statutory process for seeking protection from such removals, b) enjoin Respondents or their agents and officers from making any additional threats or taking any other

coercive act against Mr. Hernandez to force him to relinquish his rights or advance his claims in this matter, and c) enjoin Respondents from transferring Mr. Hernandez outside this District until the matter is resolved.

RELEVANT FACTUAL BACKGROUND

Mr. Hernandez is a citizen of El Salvador. On December 12, 2019, an immigration judge ordered Mr. Hernandez removed from the United States, but granted him deferral of removal under the U.N. Convention Against Torture (“CAT”) as to El Salvador. ECF 1-2. Both Mr. Hernandez and the government waived appeal of the decision and Mr. Hernandez was later released. *Id.* ICE then placed Mr. Hernandez on an order of supervision pursuant to his CAT protection, allowing him to obtain work authorization while requiring him to periodically check in with ICE. By operation of 8 U.S.C. § 1231(a)(1), the period in which the government should have removed Mr. Hernandez expired after 90 days on March 11, 2020. Mr. Hernandez was then detained on June 3, 2025.

Since June 3, 2025, Respondents have offered three separate versions of the decisions to terminate Mr. Hernandez’s order of supervision and return him to custody. As previously noted in briefing, none of these documents are accurate, persuasive, or legally sufficient to take Mr. Hernandez into custody. *See also* R&R at 2-3. Since the last document was provided to the District of Maryland on June 23, 2025, *see* ECF 15-1 and 15-2, no further evidence has been provided by Respondents, and no further effort has been made to clarify why these documents are so riddled with errors. Respondents have furthermore failed to comply with the applicable regulations. *See* R&R at 9-10.

In any case, Mr. Hernandez remains detained at the IAH Secure Adult Detention Center in Livingston, Texas. Based on the documentation (which Mr. Hernandez does not concede is

proper), on or about June 27, Mr. Hernandez's immigration counsel renewed his prior request to be interviewed to determine a reasonable fear of being sent to Mexico. *See* ECF 11-1 at 3. To date, Respondents have taken no action to conduct the reasonable fear interview or otherwise informed Mr. Hernandez of the progress to do so. *See* R&R at 13.

Instead, Mr. Hernandez has informed undersigned counsel that while detained in Livingston, Texas, he has been pressured by Respondents' officers to sign paperwork acquiescing to his removal from the United States. Mr. Hernandez stated to counsel that an officer told him that if he did not sign, he would be handcuffed and physically forced to sign and would be deported regardless of his fears. An officer also indicated Respondents may simply drive Mr. Hernandez to the U.S.-Mexico border to drop him on the other side. Mr. Hernandez states that he asked officers about requesting an alternative removal to Canada, as he has family there and no fear of being harmed, but was told that removal to Canada is not an option.

Based on the six weeks Mr. Hernandez has been detained—allegedly pursuant to attempts to remove him to Mexico—there is now no reason to believe that Respondents have anything close to an agreement with Mexico or any other country to take Mr. Hernandez. Furthermore, it seems clear, based on the filings at ECF 12 and 15, that ICE had no indication that Mr. Hernandez could be removed to Mexico when it revoked his order of supervision on June 3. And upon information relayed from Mr. Hernandez to counsel, based on their failure to secure his removal to a third country, Respondents and their officers are now attempting to coerce Mr. Hernandez into voluntarily accepting his removal from the United States, despite a stated fear of travelling to Mexico.

ARGUMENT

“To obtain a preliminary injunction, the applicant must show (1) a substantial likelihood

that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) that his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) that granting the preliminary injunction will not disserve the public interest.” *Planned Parenthood of Houston & Southeast Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005). “The function of a preliminary injunction is merely to preserve the status quo until the merits of a case can be adjudicated.” *Morgan v. Fletcher*, 518 F.2d 236, 239 (5th Cir. 1975); *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

In the absence of any evidence provided by Respondents on which this Court could rely, there is no substantial likelihood that Mr. Hernandez can be removed from the United States in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2021); R&R at 13-14. This Court should adopt the Report and Recommendation and order Mr. Hernandez’s release. *See* R&R. However, it has become clear that, absent injunctive relief pending the final outcome of this case, Mr. Hernandez is at risk from Respondents’ continued violation of the regulations and coercive pressure to accept removal to a country he fears. Because he must be restrained during the pendency of the case, Mr. Hernandez moves for a preliminary injunction to protect him and protect this Court’s review of the merits of his petition by keeping the status quo until the Court’s review is completed.

First, Mr. Hernandez has shown a likelihood that he will prevail on the merits. *See* R&R. Having determined that his removal was unlikely to occur to a third country, Mr. Hernandez was released from ICE custody more than five years ago. To rebut the presumption that he still cannot be removed now, the burden is on the government to establish that there is a substantial likelihood that Mr. Hernandez will be removed within the reasonably foreseeable future. *Zadvydas*, 533 U.S.

at 701. Respondents could not make such a showing as required to re-detain Mr. Hernandez on June 3,¹ and Respondents have since failed to make such a showing in the six weeks he has been held since.²

Moreover, “noncitizens have a right to meaningful notice and opportunity to be heard before being deported to a third country.” *Mahdejian v. Bradford*, No. 9:25-CV-191-MJT-CLS at *6 (E.D. Tex. July 3, 2025) (citing *Aden*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019) and *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025)). Ostensibly, Mr. Hernandez’s ongoing detention is to effectuate his removal to a third country. But the only country proposed by Respondents has been Mexico, and Mr. Hernandez has repeatedly claimed a fear of travel to Mexico:

I told him I would not sign it because I was under CAT protection I told him that I could not return to El Salvador, and he told me that deportees usually go to Mexico. However, I notified the officer that I could not be deported to Mexico because one of my brothers had been murdered in Mexico, and it was not a safe country for me. The officer told me that, whether or not I signed the documentation, I would be removed at any time. I have not spoken to any officers since.

ECF 11-1.

Thus, until the process is followed to determine if Mr. Hernandez will be persecuted or tortured there—or in another yet unnamed country—his removal cannot move forward. Therefore,

¹ See Exhibit, Transcript of Hearing in *Abrego Garcia v. Noem*, No. 8:25-CV-951-PX (D. Md. July 10, 2025) (Testimony of ICE Enforcement and Removal Operations Interim Assistant Director for Field Operations, Thomas Giles). Mr. Giles testified that ICE does not “work on” cases involving third-country removals until the noncitizen “arrive[s] in ICE custody.” *Id.* at p. 26-27, 30-31. While this hearing only took place the day before the Report and Recommendation was issued in this case and therefore the testimony was not available at the time of briefing or the status report in this case, the testimony is from Respondents’ agents and thus is information that should have been known to them at all material times relevant in this case.

² *Cf. id.* at 114 (testifying that if a noncitizen expresses a fear of removal to an identified third country, the officer should immediately notify USCIS of the expressed fear and an interview would be scheduled).

he is likely to prevail on his claim that he is currently held in violation of the Fifth Amendment, as there is no substantial likelihood of his removal from the United States in the reasonably foreseeable future. *See Mahdejian*, 9:25-CV-191 at *6; *Zadvydas*, 533 U.S. at 701.

Second, Mr. Hernandez will suffer irreparable injury if the injunction is not granted. Simply, Mr. Hernandez is being detained in conditions synonymous with prison while Respondents try to coerce him into consenting to his removal to a country where he may be persecuted, tortured, and/or killed. Such efforts establish a clear irreparable harm to Mr. Hernandez absent this Court's intervention. *See Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) ("Deportation to a country where one's life would be threatened obviously would result in irreparable injury."). Indeed, the unlawful detention and potential deportation alone creates such irreparable harm. *See, e.g. Beyhaqi v. Noem*, No. 4:25-CV-1788 (S.D. Tex. Apr. 22, 2025) (DHS termination of a student visa created irreparable harm in the form of economic and educational hardships with the mere risk of detention and deportation).

Third, the harm to Mr. Hernandez outweighs any harm the injunction would do to Respondents. "There is generally no public interest in the perpetuation of unlawful agency action," *Louisiana v. Eiden*, 55 F.4th 1017, 1035 (5th Cir. 2022), and this case involves significant and ongoing unlawful action by Respondents. Neither Mr. Hernandez's detention nor Respondents' current attempts to coerce his waiver of protections from removal from the United States comply with the INA, federal regulation, or due process. Therefore, the balance of equities in the third factor favors Mr. Hernandez.

Fourth, a limited injunction protecting Mr. Hernandez will not disserve the public interest. Namely, the Supreme Court has held that the public has a strong interest in "preventing aliens from being wrongfully removed." *Nken v. Holder*, 556 U.S. 418, 435-36 (2009). Here, Mr. Hernandez

has been granted protection from removal to El Salvador by an immigration judge, protection which is mandatory regardless of any discretionary factors, reflecting U.S. commitments to its treaty obligations to prevent torture. *See* 8 C.F.R. § 208.17(a) (“An alien who[] has been ordered removed . . . shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.”); *Tomas-Ramos v. Garland*, 24 F.4th 973, 977 (4th Cir. 2022) (“if he can establish a clear probability that he would be persecuted or that he would more likely than not be tortured, then relief is mandatory and the government must withhold removal to the country in question.” (quotation omitted)). Moreover, the public has a strong interest in immigration officers following federal regulations which protect against coercive or threatening acts against detainees. Indeed, “government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise discretionary decisions.” *Wilkinson v. Legal Servs. Corp.*, 27 F. Supp. 2d 32, 34 n.3 (D.D.C. 1998) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–69 (1954)).

In this case, Respondents have violated several regulations designed to protect due process, and the public interest in mandating those regulations be followed far outweighs the government’s efforts to expedite removing Mr. Hernandez unlawfully. *See e.g.*, 8 C.F.R. § 241.4(l) (procedures for revoking an order of supervision); 8 C.F.R. § 241.14(d)(3) (outlining procedures for custody determination. Indeed, social norms in this country demand that “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The public interest does not and cannot favor the unlawful detention or coercive treatment of Mr. Hernandez in an attempt to skirt U.S. treaty obligations or due process.

RELIEF

Having met his burden to establish each element for a preliminary injunction, the Court must craft the injunction to appropriately maintain the status quo until the merits of Mr. Hernandez's petition may be finally adjudicated. Mr. Hernandez requests three provisions be included in the Court's injunction:

First, the Court should preclude Mr. Hernandez's removal to any third country and order that he receive a reasonable fear interview as to his potential removal to Mexico. The INA imposes on Respondents a duty not to remove Mr. Hernandez to a country where his life or freedom could be threatened. *See* 8 U.S.C. § 1231(b). Despite this duty and several requests from Mr. Hernandez, Respondents have not taken any action to comply with that duty. *But see supra* n. 2. Rather, Respondents made attempts to coerce Mr. Hernandez into facilitating his removal in order to avoid that duty. This Court should order that Respondents expeditiously schedule and hold the necessary interview to determine if Mr. Hernandez has a reasonable fear of being sent to Mexico or any other proposed third country which may not have been disclosed.

Second, the Court should enjoin Respondents and their agents and officers from making any additional threats or taking any other coercive act against Mr. Hernandez to force him to relinquish his rights or advance his claims in this matter. Such coercive tactics—and the threatened use of force—are clearly unlawful. *See Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1505 (C.D. Cal. 1988), *aff'd sub nom. Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990) (finding that the due process rights of Salvadoran asylum seekers was violated by an INS policy and practice of duress and misrepresentation intended to coerce asylum seekers into abandoning

their right to apply for asylum and instead agree to voluntary departure).³

Finally, the Court should enjoin Respondents from transferring Mr. Hernandez outside this District until the matter is resolved. This case has already been transferred to this District following Mr. Hernandez's swift transfer across the country from Maryland to Texas. Establishing regular communication between Mr. Hernandez and his attorneys has been difficult, and further transfer will only continue to frustrate his access to counsel. Accordingly, the Court should order that Mr. Hernandez be kept at the IAH Secure Detention Center until its final ruling on the merits of his petition.

CONCLUSION

Based on the foregoing reasons, Petitioner requests the Court grant the motion and issue a preliminary injunction precluding Respondents from transferring Mr. Hernandez outside this district, removing Mr. Hernandez from the United States without honoring the necessary process, and otherwise preclude Respondent's from attempting to coerce Mr. Hernandez into giving up any of these protections.

July 14, 2025

Respectfully submitted,

/s/ Joseph Moravec

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³ Notably, the *Orantes* injunction remains in place and continues to protect Mr. Hernandez. See *Orantes-Hernandez v. Holder*, 321 F. App'x 625 (9th Cir. 2009).

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CERTIFICATE OF SERVICE

On July 14, 2025, undersigned counsel caused a true and correct copy of the foregoing Petitioner's Motion for Preliminary Injunction to be filed with the Clerk of the Court for the U.S. District Court for the Eastern District of Texas via the Court's CM/ECF, which will send a notice of this filing to all participants in this case, including counsel for Respondents.

Date: July 14, 2025

Respectfully Submitted,

/s/ Joseph Moravec
JOSEPH MORAVEC

CERTIFICATE OF CONFERENCE

On July 14, 2025, undersigned counsel conferred by phone with counsel for Respondents, who indicated Respondents will oppose Petitioner's Motion for Preliminary Injunction.

Date: July 14, 2025

Respectfully Submitted,

/s/ Jessica Dawgert
JESSICA DAWGERT