

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

MARIO HERNANDEZ ESCALANTE,

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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 REPLY TO
RESPONDENTS' OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION

Respondents oppose Mr. Hernandez's motion for a preliminary injunction—effectively conceding Mr. Hernandez should prevail on the merits—but in so doing miss the entire point of the motion. As undersigned counsel conceded at the hearing on June 23, 2025 in the District of Maryland, if the reasonable fear process is followed and completed satisfactorily, then Mr. Hernandez might be removed to a third country—now identified as Mexico, or potentially Canada. Respondents claim that “Petitioner has apparently had a change of heart and believes that, absent injunctive relief, there is an imminent threat of removal to Mexico.” ECF 34 at 5. True, but rather because of conduct that Mr. Hernandez indicated is being committed by Respondents' officers that would indicate a threat of removal to Mexico *without* following the required process. Specifically,

the motion is *based on new information*, and seeks to protect Mr. Hernandez from being removed *unlawfully* while the Court completed its review of the merits.

Respondents also complain that the motion is not verified or supported by an affidavit or declaration. ECF 34 at 5-6. But Respondents themselves dispute the fact that Mr. Hernandez has been coerced to sign documents and threatened to be simply taken to the U.S.-Mexico border without verification or support by an affidavit. ECF 34 at 9. Notably, in his declaration for Respondents, SDDO Briggs does not deny or refute any of the claims that Mr. Hernandez is being threatened with removal *outside* the lawful process. ECF 34-1. Instead, SDDO Briggs highlights the appropriate legal process without addressing Mr. Hernandez's allegations of what other detention officers may be telling him. And unlike Respondents' ability to prepare a pleading in regular coordination with their client and declarant, undersigned counsel does not have this luxury. Rather, the lack of a second declaration from Mr. Hernandez reflects that Mr. Hernandez has been dragged 1400 miles from his attorneys and cannot meet with them regularly to produce a declaration. Under the circumstances, relaying the substance of a phone call is the best we can do.

Second, Respondents allege that this Court cannot enter an injunction preventing Mr. Hernandez's removal because of 8 U.S.C. § 1252(g). But Respondents again mistake Mr. Hernandez's argument. He has always conceded that if after completing the reasonable fear process described by SDDO Briggs he was found to be removable to Mexico, he would not have a lawful basis to prevent it. What Mr. Hernandez challenges in this motion, however, is being threatened into signing documents to withdraw those claims or being simply driven to the border and dumped on the other side. *See e.g. Lyttle v. U.S.*, No. 4:11-CV-152-CDL at 1 (M.D. Ga. Mar. 31, 2012) (damages for, in part, manipulating and coercing "a United States citizen with diminished mental capacity, [who] was flown to Hidalgo, Texas, transported to the Mexican

border, forced to disembark, and sent off on foot into Mexico with only three dollars in his pocket.”). Such acts are not encompassed in lawfully “effecting his final order of removal.” ECF 34 at 6-7.

Respondents next turn to the reasonable fear process. Respondents rely on SDDO Briggs’ declaration, which concedes that the “process is ongoing and Petitioner will not be removed to Mexico while that process unfolds.” ECF 34 at 10 (quoting Briggs Declaration at ¶ 9. However, Respondents—filing a declaration for the first time in the course of litigation—concede that after more than six weeks in ICE custody, a “reasonable fear interview by USCIS has not been scheduled yet” but “is expected to happen *shortly*.” Briggs Declaration at ¶ 9 (emphasis added). This is contrary to 8 C.F.R. § 208.31(b), which requires that “[i]n the absence of exceptional circumstances, this [reasonable fear] determination will be conducted within 10 days of the referral.” *See also* 8 C.F.R. § 241.8(e) (“If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture pursuant to § 208.31 of this chapter.” (emphasis added)). More importantly, the vagueness of Respondents opposition regarding the process, combined with the as-yet unknown timeline for evaluating Mr. Hernandez’s claim, continue to reflect that there is no substantial likelihood that Mr. Hernandez will be removed from the United States in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Respondents make three other notable concessions. First, for the first time in this litigation, Respondents concede that Mr. Hernandez’s release and order of supervision were not revoked by ICE until June 16, 2025, 13 days after he was taken into custody. *See* Briggs Declaration at ¶ 6.

This is an admission by Respondents that 8 C.F.R. § 241.4(l) was violated, namely because only an ICE District Director or the Executive Associate Commissioner have authority to revoke an order of supervision, and the June 16 revocation was signed by SDDO Briggs, not either of those authorities. *See* ECF 15-1. Thus, Respondents effectively concede that Mr. Hernandez has been and is unlawfully detained after violating 8 U.S.C. § 241.4(l).

SDDO Briggs also claims it was not until “[a]fter service of the Notice of Removal to Mexico [on June 18, 2025 that] Mr. Escalante expressed a fear of being removed to Mexico.” *Id.* at ¶ 8. However, the record reflects that Mr. Hernandez told officers of his fears of going to Mexico at least more than a week prior to June 18. *See* ECF 11-1 (“[O]n or about June 9 or June 10, 2025 . . . 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.”). Indeed, the affidavit at ECF 11-1 was even filed with the District of Maryland on June 16, 2025, two days prior to when SDDO Briggs alleges Mr. Hernandez claimed a fear of going to Mexico.

Third, Respondents now suggest they will “explore” Canada as an alternative for removal, though they do not specify a timeline for this exploration. Briggs Declaration at ¶ 10. But as with Mexico, the vague promise regarding Canada provides “no information, much less evidence, indicating ICE’s efforts . . . or any concrete information regarding its efforts to remove the Petitioner to [Canada] other than ‘documents are under review.’” Report & Recommendation, ECF 31 at 14. This promise, while appreciated as it might provide Mr. Hernandez with a safe, alternative third country, does not satisfy Respondents’ burden to establish a substantial likelihood that he can be removed in the reasonably foreseeable future.

Finally, Respondents contend that “[a]ny time a government’s policy is blocked by court order, it suffers irreparable harm.” ECF 34 at 11. But again, Mr. Hernandez does not seek to block

lawful policy, but rather what would be the unlawful acts of coercing, threatening, or otherwise removing him to Mexico without following the process described in SDDO Briggs' declaration. Such acts do not constitute a policy for which the government suffers harm if they are enjoined.

July 18, 2025

Respectfully submitted,

/s/ Joseph Moravec

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CERTIFICATE OF SERVICE

On July 18, 2025, undersigned counsel caused a true and correct copy of the foregoing Petitioner's Reply to Respondents' Opposition to the 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 18, 2025

Respectfully Submitted,

/s/ Joseph Moravec
JOSEPH MORAVEC