

that appeal directly with the immigration court; rather, “[i]f the alien requests review of the asylum officer's negative decision regarding reasonable fear, the asylum officer shall serve the alien with a Form I-863, Notice of Referral to Immigration Judge. The record of determination, including copies of the Form I-863, Notice of Referral to Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I-863, Notice of Referral to Immigration Judge, and the complete record of determination with the immigration court.” *Id.* In other words: the noncitizen requests IJ review *to USCIS*, and USCIS refers the matter to the immigration court. *See also* USCIS Reasonable Fear Procedures Manual, available at <https://www.uscis.gov/sites/default/files/document/guides/ReasonableFearProceduresManual.pdf>, at p.35 (upon a “Negative Reasonable Fear Determination,” where the “Alien Requests Review of the Determination, or Refuses to Request or Decline Such Review,” then “The asylum office files the [relevant] documents with the immigration court[.]”).

4. Respondents have made clear their intent to remove Petitioner to Mexico on Friday, September 12, 2025. *See* Dkt. No. 15 at ¶ 3. Respondents do not intend to refer Petitioner’s denied RFI to an Immigration Judge prior to doing so. *Id.*; Exs. E, F.

5. 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 movant seeking a preliminary injunction must establish each of the four *Winter* elements: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the

absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Id.* at 20.

6. Here, Petitioner is likely to succeed on the merits, as the regulation is crystal clear that Petitioner has a right to IJ review of his denied RFI, and only “[i]f the immigration judge concurs with the asylum officer’s determination that the alien does not have a reasonable fear of persecution or torture,” then “the case shall be returned to DHS for removal of the alien.” 8 C.F.R. § 1208.31(g)(1).

7. On the irreparable harm prong, 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 is likely to suffer irreparable harm if removed to Mexico, a country where he has expressed a fear of torture and persecution, and has provided country conditions evidence demonstrating same. *See* Ex. C.

8. Finally, on the third and fourth *Winter* factor, “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. Here, the balance of equities and the public interest tilt sharply in favor of the issuance of a TRO, as the public 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.”).

9. Finally, the burden on the government is minimal: an additional (maximum) ten days of detention. See 8 C.F.R. § 1208.31(g) (“In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I-863, Notice of Referral to Immigration Judge, and the complete record of determination with the immigration court.”).

10. Petitioner is an indigent detained noncitizen who lacks financial means to pay a TRO bond.

WHEREFORE, Petitioner respectfully requests that this Court enter a Temporary Restraining Order, prohibiting the removal of Petitioner from the continental United States until after an Immigration Judge reviews the denial of his Reasonable Fear Interview.

Respectfully submitted,

Date: September 9, 2025

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CERTIFICATE OF SERVICE

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

Respectfully submitted,

Date: September 9, 2025

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