UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Laredo Division

ISRAEL ADONAY SAGASTIZADO SANCHEZ, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	Civil Action No. 5:25-cv-104

Motion for Preliminary Injunction

Petitioner Israel Adonay Sagastizado Sanchez, by counsel, pursuant to Fed. R. Civ. P. 65(a), hereby requests that this Court issue a preliminary injunction, restraining Defendants from removing him from the United States while he awaits review of his denied Reasonable Fear Interview ("RFI") by an Immigration Judge ("IJ"). In support of this motion, Petitioner respectfully represents as follows:

Procedural History

1. On February 22, 2024, Petitioner won an order preventing his removal to his native El Salvador. Dkt. No. 7-3. He was released from ICE custody on an Order of Supervision on May 6, 2024. Dkt. No. 7-4.

2. On May 6, 2025, Petitioner's Order of Supervision was revoked and he was re-detained, in order to remove him to Mexico. Dkt. No. 7-5. Several months went by without Respondents making any apparent progress on that removal.

3. On August 15, 2025, Petitioner, by counsel, expressed fear of removal to Mexico. *See* Dkt. No. 16-1 at ¶ 3; Dkt. Nos. 16-2, 16-3.

4. Petitioner's RFI interview was carried out on August 29, 2025. *See* Dkt. No. 16-1 at ¶ 4; Dkt. No. 16-6. Petitioner, by counsel, then requested that an IJ review his denied RFI. *See* Dkt. No. 16-5.

5. On September 8, 2025, Respondents confirmed that they intended to remove Petitioner to Mexico on September 12, 2025. Dkt. No. 15.

6. Petitioner moved for a Temporary Restraining Order on September 9, 2025. Dkt. No. 16. On September 10, 2025, this Court entered a 14-day Temporary Restraining Order, enjoining Respondents from removing Petitioner prior to carrying out the IJ review of the denied RFI. Dkt. No. 18.

7. The Court set a Preliminary Injunction hearing date of September 23, 2025, at 10:00am, and graciously allowed Petitioner's counsel to attend by videoconference. Dkt. No. 19.

Standard of Review

A court may issue a preliminary injunction upon notice to the adverse party. Fed. R. Civ. P. 65(a). A preliminary injunction is a type of emergency relief, the purpose of which is to preserve the status quo. *Exhibitors Poster Exchange, Inc. v. Nat'l Screen Serv. Corp.*, 441 F.2d 560, 561 (5th Cir. 1971). It is an "extraordinary remedy never awarded as of right," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (internal citations omitted). To justify such relief, Petitioner must demonstrate: (1) a substantial likelihood of success on the underlying merits of his claims; (2) that he is likely to suffer irreparable injury without the entry of an injunction; (3) that the balance of hardships between Petitioner and Respondents warrants the relief; and (4) that the injunction is in the public interest. *Id.* at 20.

Argument

Respondents seek to remove Petitioner to Mexico, a country entirely foreign to him which was not designated during his initial removal proceedings. Petitioner has stated a fear of removal to Mexico. He has now been given half of his due process—a Reasonable Fear Interview ("RFI") was conducted on August 29, 2025—but the other half of his due process, review by an Immigration Judge ("IJ"), has not yet occurred, and Respondents have confirmed (Dkt. No. 15) that absent judicial intervention, they intend to remove him to Mexico promptly without that IJ review hearing taking place.

But the regulation is clear: a noncitizen who receives a negative determination on an RFI is eligible for *de novo* review of that decision by an IJ. 8 C.F.R. § 1208.31(g).[1] The regulation provides that "[t]he asylum officer's negative decision regarding reasonable fear shall be subject to de novo review by an immigration judge upon the alien's request," and that "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." If the Immigration Judge's review is negative, "the case shall be returned to DHS for removal of the alien.

[1] The noncitizen is not able to trigger 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." 8 C.F.R. § 1208.31(g). 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[.]").

No appeal shall lie from the immigration judge's decision." 8 C.F.R. § 1208.31(g)(1). But if the Immigration Judge's review is positive, "the alien may submit an Application for Asylum and for Withholding of Removal. Such application shall be considered de novo in all respects by an immigration judge[.]" 8 C.F.R. § 1208.31(g)(2).

In addition, it would violate due process to deny Petitioner an IJ review of his denied RFI. Respondents cannot dispute that if they had named both El Salvador and Mexico as countries of removal during Petitioner's *initial* removal proceedings, he would have been entitled to (at a minimum) IJ review of his denied RFI—or, if applicable, full removal proceedings in front of the IJ—as to both countries. But Respondents did not breathe a word about Mexico at that time, instead springing it as a surprise over a year later. While the statute allows them to do this, due process requires that Petitioner now be afforded the same process now as he would have been afforded then. If anything, Petitioner's full year of supervised release with no violations has only given him *greater* standing to press his due process rights before being expelled from this country.

As this Court explained in its Memorandum Opinion granting a TRO (Dkt. No. 18), "Noncitizens have a right to meaningful notice and opportunity to be heard before being deported to a third country." Slip Op. at 3, citing *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 387 (D. Mass. 2025). Failure to carry out an IJ review "deprives [a noncitizen] of his opportunity to be heard before he is removed to a third country and violates his rights under the Constitution." Slip op. at 4, citing *D.V.D.*, 778 F. Supp. 3d at 365.

"Due process requires the 'opportunity to be heard at a meaningful time and in a meaningful manner.'" *Sivalingam v. Garland*, 839 F. App'x 946, 947 (5th Cir. 2021), quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). When the government deprives a person of a protected interest,

it must provide "notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). The *Mathews* standard balances: "(1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements." *Id.* at 742.

On the first *Mathews* prong, it is well-established that "[w]here an individual meets the high standard for showing that she will face persecution or torture in a given country, relief is mandatory, and the government must withhold removal to that country." *Guzman Chavez v. Hott*, 940 F.3d 867, 869–70 (4th Cir. 2019), *rev'd on other grounds*, 594 U.S. 523 (2021). "And precisely because withholding of removal is country-specific, as the government says, if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to *that* particular country." *Id.* at 879 (emphasis in original), citing *Kossov v. INS*, 132 F.3d 405, 409 (7th Cir. 1998).

On the second *Mathews* prong, IJ review significantly reduces the risk of erroneous deprivation. The current review resulted in a check-the-box form with the "no" box being checked. Dkt. No. 16-6 at 2. An IJ review would be a *de novo* review in front of an independent Administrative Law Judge. But perhaps most significantly, the second *Mathews* prong (risk of erroneous deprivation) and the third prong (burden to the government) are no different now than they would have been a year ago, when Petitioner was first going through removal proceedings. If Respondents would indisputably have been required to offer Petitioner this additional layer of due process had they designated Mexico as an alternative country of removal back then, they cannot articulate a reason why the *Mathews* analysis is different simply because they have waited until now to so

designate Mexico.

For the foregoing reasons, due process requires that Petitioner have his claim of reasonable fear of removal to Mexico reviewed by an IJ before he is removed to that country.

As to the other *Winter* factors: 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. The government has questioned its own ability to return deported noncitizens, *see Abrego Garcia*, *supra*. "A finding of irreparable injury is mandated if a constitutional right is threatened or impaired." *Nuziard v. Minority Bus. Dev. Agency*, 676 F. Supp. 3d 473, 484 (N.D. Tex. 2023), citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

On the third and fourth *Winter* factors, "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 at 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.").

Finally, this Court has jurisdiction to enjoin Petitioner's removal from the United States unless and until the Immigration Judge review is carried out, because 8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful** discretion to commence removal proceedings, adjudicate those cases, and execute orders of removal." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025) (emphasis in original). The regulatory IJ review set forth in 8 C.F.R. § 1208.31(g) is not optional, and Respondents do not have discretion to remove Petitioner without first allowing him an IJ review of his denied RFI. *See also Mahdejian v. Bradford*, No. 9:25-CV-00191, 2025 WL 2269796, at *3 (E.D. Tex. July 3, 2025), citing *Kong v. United States*, 62 F.4th 608, 618 (1st Cir. 2023) (holding that § 1252(g) insulates only the discretionary decision to commence removal, not related, potentially unlawful acts). As the Fifth Circuit explained in *Texas v. United States*, the Supreme Court has "rejected the unexamined assumption that § 1252(g) covers the universe of deportation claims—that it is a sort of 'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review.'" 126 F.4th 392, 417 (5th Cir. 2025), citing *Reno v. American–Arab Anti–Discrimination Committee*, 525 U.S. 471 (1999).

To be clear, Petitioner does not—and will not—ask this Court to wade into the substantive decision of whether he expressed a sufficient fear of removal to Mexico, pursuant to the standards set forth in the statute, regulations, caselaw, and the Convention Against Torture. A District Court would, indeed, lack jurisdiction to review the substantive merits of Petitioner's claim of fear of removal. But a District Court does have jurisdiction to ensure that ICE follows the procedures set forth in its own regulations.

Conclusion

For the foregoing reasons, this Court should enter a preliminary injunction, prohibiting Respondents from removing Petitioner to Mexico until 7 days after an Immigration Judge reviews the denial of his Reasonable Fear Interview, and only if the Immigration Judge affirms such denial.

Petitioner is an indigent detained noncitizen who lacks financial means to pay a PI bond. Notice has been given to counsel for Respondents by means of filing this motion and all attachments thereto on this Court's CM/ECF system, which will send a Notice of Electronic Filing.

Respectfully submitted,

Date: September 12, 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 12, 2025

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