UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

ISRAEL ADONAY SAGASTIZADO SANCHEZ,	§	
Petitioner,	§	
v.	§	CIVIL ACTION NO. 5:25-CV-104
KRISTI NOEM, Secretary of Homeland Security, ET AL.,	§	
Respondents.	§	

RESPONDENTS' RESPONSE TO
PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the Respondents, Kristi Noem, Secretary of the U.S. Department of Homeland Security, Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE), Daniel Bible, San Antonio Field Office Director for ICE, Pamela Bondi, Attorney General of the United States, and the unnamed Warden of the Webb County Detention Center, in their official capacities, by and through the United States Attorney for the Southern District of Texas, and hereby respectfully present their Response to Petitioner's Motion for Preliminary Injunction.

BACKGROUND

Petitioner Israel Adonay Sagastizado Sanchez (Sagastizado) is a native and citizen of El Salvador who entered the United States without inspection on an unknown date and location. On February 22, 2024, Sagastizado was found inadmissible and was ordered removed from the United States to El Salvador by an immigration judge (IJ) at his removal hearing. The Order of the IJ further indicates that withholding of removal to El Salvador was granted. On May 6, 2024,

Sagastizado was released from immigration custody on an Order of Supervision. On May 6, 2025, Sagastizado was served with a Notice of Revocation of Release notifying him that his former Order of Supervision had been revoked and that he would be detained in ICE custody because the Government of Mexico had agreed to accept his repatriation to facilitate his removal from the United States. On that date, he was also served with a Warrant of Removal/Deportation and was taken into ICE Custody. [1]

On June 25, 2025, Sagastizado filed his Petition for Writ of Habeas Corpus in this Court seeking his release from ICE custody at the Webb County Detention Center in Laredo, Texas, where he was detained pending removal from the United States. See Civil Docket for Case # 5:25-CV-00104 (SDTX), [Docket # 1]. On August 8, 2025, Respondents filed their Motion to Dismiss Petitioner's Petition for Writ of Habeas Corpus [Docket # 7]. On September 9, 2025, Sagastizado filed his Emergency Motion for Temporary Restraining Order (TRO Motion) [Docket # 16], and on September 10, 2025, this Court issued a Memorandum & Order granting the Motion for Temporary Restraining Order (TRO) [Docket # 18]. On September 11, 2025, the Court issued a Notice of Setting, setting a Preliminary Injunction (PI) Hearing for this case for September 23, 2025, at 10:00 a.m. [Docket # 19]. On September 12, 2025, Sagastizado filed a Motion for Preliminary Injunction (PI Motion) [Docket # 20].

PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

Sagastizado's TRO Motion was premised on his contention that ICE failed to follow its own regulations in attempting to effect his third country removal to Mexico. In his TRO Motion, Sagastizado cited 8 C.F.R. § 1208.31(g) for the proposition that a noncitizen who receives a

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[1] Documents which support the facts set out in this paragraph may be found appended to Respondents' Motion to Dismiss Petitioner's Petition for Writ of Habeas Corpus [Docket # 7] as Exhibits A – G [Docket #'s 7-2 – 7-8].

negative determination on a Reasonable Fear Interview (RFI) is entitled to *de novo* review of that decision by an IJ, and only if the IJ concurs with the determination that the alien does not have a reasonable fear of persecution or torture would the case be returned to DHS for removal of the alien. See TRO Motion at pages 1 – 2, ¶ 3; page 3, ¶ 6. Sagastizado relied on that premise to posit that he was likely to succeed on the merits, the first of four factors which a movant seeking a preliminary injunction must establish. Id. at ¶ 6; see also *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). Sagastizado also appended the decision in *D.V.D. v. Dep't of Homeland Sec.*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required ICE to comply with certain procedures before initiating removal to a third country as part of Exhibit C to his TRO Motion in support of his contention that his negative RFI finding must be reviewed by an IJ. [2]

This Court, in granting Sagastizado's TRO motion and issuing a TRO prohibiting ICE from removing him to Mexico until the negative RFI finding was reviewed by an IJ, found that he showed a substantial likelihood of success on the merits of his Fifth Amendment due process claim. TRO at page 3. The Court further indicated that "[f]ederal regulations plainly provide the extent of process due to noncitizens expressing fear of persecution or torture once ordered removed", citing to 8 C.F.R. § 1208.31. Id. The Court opined that Sagastizado was not afforded the full extent of due process required by federal regulations, because Respondents did not follow the

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[2] Exhibit C to Sagastizado's TRO Motion consists of a letter sent by his counsel to DHS and attachments articulating fear of persecution or torture in specified countries and demanding a stay of removal and reopening of removal proceedings if DHS intended to remove him to any of those countries. The twenty countries listed in that letter are Mexico, Belize, Costa Rica, Guatemala, Honduras, Nicaragua, Panama, Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela, Cuba, Dominican Republic, and Haiti. Apparently, Sagastizado fears not only being removed to Mexico, but virtually to all countries in Central and South America.

procedure set out in 8 C.F.R. § 1208.31(g), since he was entitled to an IJ review of his negative RFI determination. Id. at pages 3-4. The Court concluded that "[d]isregard for the regulations controlling this process deprives Sagastizado of his opportunity to be heard before he is removed to a third country and violates his rights under the Constitution", citing to *D.V.D.* The Court therefore granted the TRO Motion and issued a TRO restraining Respondents from transferring Sagastizado out of the Southern District of Texas and removing him from the United States without review of his RFI by an IJ until September 24, 2025. Id. at page 5.

In his PI Motion, Sagastizado contends that he has now been given "half of his due process – an RFI was conducted on August 29, 2025 – but the other half of his due process, review by an IJ, has not yet occurred…". PI Motion at page 3. Again, Sagastizado relies on the procedure set out in 8 C.F.R. § 1208.31(g): "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". Id. Sagastizado further contends that it would violate due process to deny him an IJ review of his denied RFI. Id. at pages 4 - 6. He concludes by asserting that he has established the four *Winter* factors for the granting of a preliminary injunction. Id. at pages 6 – 9.

RESPONSE OF RESPONDENTS

I. The procedure set out at 8 C.F.R. § 1208.31(g) is not applicable to Sagastizado:

By its own terms, the regulation relied on by Sagastizado in requesting a TRO and a PI, and by the Court in issuing a TRO, is not applicable to Sagastizado. That regulation, 8 C.F.R. § 1208.31, is entitled "Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act." (emphasis ours). Subsection (a) of said regulation, entitled "Jurisdiction" sets out the following: "This section shall apply to any alien ordered removed under

section 238(b) of the Act or whose deportation, exclusion, or removal order is reinstated under section 241(a)(5) of the Act who, in the course of the administrative removal or reinstatement process, expresses a fear of returning to the country of removal." (emphasis ours).

INA § 238(b) (8 U.S.C. § 1228(b)) involves aliens who are subject to expedited removal. Administrative removal under 1228(b) authorizes DHS to order removal of some noncitizens without a hearing before an IJ. *Orellana v. Garland*, 117 F.4th 679, 682 (5th Cir. 2024). The first step of an administrative removal proceeding is service to the noncitizen of the Notice of Intent to Issue a Final Administrative Removal Order (NOI). *Id.* citing 8 C.F.R. § 238.1(b)(2). The NOI must allege three predicates necessary to establish that a noncitizen is eligible for administrative removal: 1) she is an alien, 2) she has not been lawfully admitted to the United States, and 3) she has a final conviction for an aggravated felony. *Id.* citing § 238.1(b)(1), (b)(2)(i). A recipient also must be informed of her rights, including the right to counsel at no expense to the government, the right to rebut the charges against her, and the right to request withholding of removal if she fears persecution or torture in the country to which she would be removed. *Id.* citing § 238.1(b)(2)(i).

Pursuant to 8 C.F.R § 238.1(c)(1), a noncitizen has 10 days to respond before the Final Administrative Removal Order (FARO) is issued and can be served on her. *Id.* If the noncitizen does not file a response, or concedes removability, a DHS officer can issue the FARO, which may not be executed for 14 days without written waiver by the noncitizen. *Orellana* at 682-83 citing 8 U.S.C. § 1228(b)(3); 8 C.F.R. 238.1(f)(1). If the FARO is issued and the noncitizen requests withholding relief, the DHS officer must refer the case to an asylum officer for an RFI. *Id.* at 683 citing 8 C.F.R. 238.1(f)(3). If the asylum officer determines that the noncitizen has a reasonable fear of persecution or torture, the case is transferred to an IJ for withholding proceedings. *Id.*

citing § 208.31(e). If the asylum officer determines she does not have a reasonable fear of persecution or torture, the noncitizen may seek review from an IJ. *Id.* citing § 208.31(g). If the IJ upholds the asylum officer's adverse determination, the FARO may be executed. *Id.*

INA § 241(a)(5) (8 U.S.C. § 1231(a)(5)) involves aliens who are subject to a valid removal order which is reinstated when they reenter the United States. Under the reinstatement statute, DHS may remove an alien "'under [a] prior [removal] order at any time after the [alien's] reentry,'" but only if an authorized official "'finds that [the] alien has reentered the United States illegally after having been removed.'" *Anderson v. Napolitano*, 611 F.3d 275, 277 (5th Cir. 2010) (quoting 8 U.S.C. § 1231(a)(5)). "The implementing regulation for the statute indicates that before reinstating a removal order an immigration officer must determine that: (1) 'the alien has been subject to a prior order of removal'; (2) 'the alien is in fact an alien who was previously removed . . .'; and (3) 'the alien unlawfully reentered the United States.'" *Anderson*, 611 F.3d at 277 (quoting 8 C.F.R. § 241.8(a)). "[T]he prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed." 8 U.S.C. § 1231(a)(5).

While reinstatement bars an alien from seeking relief, including asylum, it remains possible to apply for withholding of removal and Convention Against Torture (CAT) protection. See *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 489-91 (5th Cir. 2015), reh'g en banc denied, 813 F.3d 240 (5th Cir. 2016). If an alien subject to reinstatement expresses a fear of returning to the country of removal, the alien is referred to an asylum officer for a reasonable fear determination pursuant to 8 C.F.R. § 208.31. If the asylum officer determines that the alien has not established a reasonable fear, the alien may request review of that determination by an IJ. See 8 C.F.R. § 208.31(f). If the IJ concurs with the U.S. Citizenship and Immigration Services (USCIS) determination that no reasonable fear of persecution or torture exists, the case is returned to

deportation officials for execution of the reinstated order of removal, and no administrative appeal is available. See 8 C.F.R. § 208.31(g)(1). On the other hand, if the IJ finds that the alien does have a reasonable fear, then the alien may apply for withholding of removal under 8 U.S.C. § 1231(b)(3) and withholding or deferral of removal under regulations promulgated pursuant to section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, 112 Stat. 2681, which implements the United States' obligations under the CAT. See 8 C.F.R. § 208.31(g)(2); see also 8 C.F.R. §§ 208.16(b), (c), .17(a), 1208.16(b), (c), .17(a).

Meanwhile, if USCIS instead itself determines that the alien has established a reasonable fear of persecution or torture, then USCIS refers the alien to an IJ for the filing of an application for, and consideration of, withholding or deferral of removal under 8 U.S.C. § 1231(b)(3) and CAT. See 8 C.F.R. § 208.31(e); see also 8 C.F.R. §§ 208.16(b), (c), .17(a), 1208.16(b), (c), .17(a). The IJ's decision on withholding and deferral of removal is appealable to the Board of Immigration Appeals (BIA), but the appeal is limited to that decision. See 8 C.F.R. §§ 208.31(e), (g)(2)(ii), 1208.31(e), (g)(2)(ii).

Under procedures applicable to both expedited removal and reinstatement of prior removal orders, aliens are not ordered removed by IJ's. Sagastizado, on the other hand, was involved in full blown removal proceedings where he was ordered removed by an IJ under INA § 240 (8 U.S.C. § 1229a) – "An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien." 8 U.S.C § 1229a(a)(1); "At the conclusion of the proceeding, the immigration judge shall decide whether an alien is removable from the United States." 8 U.S.C. § 1229a(c)(1)(A). See Exhibit B – Removal Order of Immigration Judge [Docket # 7-3] to Respondents' Motion to Dismiss Petitioner's Petition for Writ of Habeas Corpus [Docket # 7]. Therefore, the procedures set out above regarding expedited removal and reinstatement of prior

removal orders are not applicable to Sagastizado, and 8 C.F.R. § 1208.31 is inapposite.

II. Third-Country Removal Procedure in *D.V.D.* has been stayed by the Supreme Court:

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the nationwide preliminary injunction in *D.V.D. v. Dep't of Homeland Sec.*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required ICE to comply with certain procedures before initiating removal to a third country. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). On July 9, 2025, the ICE Director issued written guidance to all ICE employees that explicitly rescinded all prior guidance implementing the previously issued preliminary injunction. See Exhibit A to this Response ("July 9 Guidance"). The July 9 Guidance ordered ICE, effective immediately, to adhere to the Secretary of Homeland Security, Kristi Noem's, March 30, 2025, memorandum, *Guidance Regarding Third Country Removals*. See Exhibit B to this Response ("March Guidance").

The March Guidance provides that aliens may be removed to a "country [that] had provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured". Id. If the State Department finds the representations credible, the "alien may be removed without the need for any further procedures". Id. The process provided in the March Guidance satisfies all Constitutional requirements. The Supreme Court has held that when an Executive determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702 – 03 (2008); see also *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee"), *cert. denied*, 559 U.S. 1005 (2010). As now-Justice Kavanaugh explained in concurrence in *Kiyemba*, the "*Munaf* decision applies here a fortiori: That case involved the transfer of *American Citizens*, whereas this case involves the

transfer of alien detainees with no constitutional or statutory right to enter the United States". *Kiyemba*, 561 F.3d at 517 – 18 (Kavanaugh, J., concurring). These cases stand for the proposition that when the Executive decides an alien will not be tortured abroad, courts may not "second guess [that] assessment," unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citations omitted); *Munaf*, 553 U.S. at 703 n.6. [3]

If removal is to a third country not covered by adequate assurances, the March Guidance makes clear that DHS will first inform the alien of the intent to remove him to that country and then give him an opportunity to establish that he fears removal there. See Exhibit B to this Response - March Guidance. If the alien affirmatively states a fear, immigration officials from USCIS will screen the alien, generally within 24 hours, to determine whether he "would more likely than not" be persecuted on a statutorily protected ground or tortured in the country of removal. Id. at 2. If USCIS determines that the alien has not met this standard, the alien will be removed. Id. If the alien does meet the standard, the alien will be referred to the IJ in the first instance, or if previously in proceedings before an IJ, USCIS will notify ICE to file a motion to reopen those proceedings, as appropriate, for the sole purpose of determining eligibility for protection under INA § 241(b)(3) and CAT, specifically to the newly designated country of removal. Id. Alternatively, ICE may choose another country for removal, subject to the same processes. Id.

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[3] This framework also requires rejection of any argument of entitlement to an individualized determination under the CAT regulations. The law provides for assurances that an alien would not be tortured if removed to a "specific country", but once the Attorney General and the Secretary of State deem those assurances "sufficiently reliable", that is the end of the inquiry. See 8 C.F.R. § 1208.18(c)(1)-(3); see also *Munaf*, 553 U.S. at 703 n.6.

III. Respondents have complied with all applicable provisions for Third-Country Removal:

The March Guidance affords sufficient process to aliens subject to final orders of removal. It confirms that the alien will be notified of a third country removal and afforded an opportunity to assert a fear claim. That process has been followed with regard to Sagastizado. On August 12, 2025, Sagastizado was served with a Notice of Removal which informed him of ICE's intentions to remove him to Mexico, and the contents of the notice were read to him in Spanish. See Exhibit C to this Response – DHS ICE Notice of Removal. On August 15, 2025, Sagastizado expressed fear of removal to Mexico. PI Motion at page 1, paragraph 3. On August 29, 2025, Sagastizado was interviewed by a DHS Asylum Officer to determine whether it was more likely than not that he would be tortured in Mexico. See Exhibit D to this Response – USCIS Third Country Screening Notice. On that date, the Asylum Officer determined that Sagastizado did not establish that it was more likely than not that he would be persecuted or tortured in Mexico. Id. Therefore, pursuant to the March Guidance, Sagastizado may now be removed to Mexico.

The March Guidance does not require that an alien be brought before an IJ unless the USCIS Asylum Officer finds that the alien has established that it is more likely than not that he would be persecuted or tortured in the third country designated for removal. Such was not the case for Sagastizado. Moreover, Sagastizado has not shown a likelihood that he will be erroneously deprived of his rights under the March Guidance, such that he is entitled to any additional or substitute procedural safeguards. See *Matthews v. Eldridge*, 424 U.S. 319, 355 (1976) (no due process concerns where there is a low risk of an erroneous deprivation through the procedures used). As such, it is unlikely that he will succeed on the merits of his due process claims.

CONCLUSION

Contrary to Sagasitzado's contentions, this is not a case of Respondents failing to follow their own procedures in attempting to remove him to Mexico, but rather a case of Sagastizado trying to prevent the Respondents from following the applicable procedures. Sagastizado is lawfully detained by statute, and his detention comports with the limited due process he is owed as an alien with a final order of removal. Given the fact that the March Guidance affords Sagastizado an opportunity to present a fear claim prior to removal to any third country, and the fact that he did present such a claim which was denied, he is not likely to prevail on the merits of his due process claims. Consequently, the TRO should be immediately dissolved, and Sagastizado's PI Motion should be denied.

Respectfully Submitted,

NICHOLAS J. GANJEI
United States Attorney

"S/" Hector C. Ramirez
HECTOR C. RAMIREZ
Assistant United States Attorney
State Bar I.D. # 16501850
Fed. Adm. # 18155
P.O. Box 1179
Laredo, Texas 78040
Tel.: (956)-723-6523
Email: hector.ramirez@usdoj.gov
ATTORNEY IN CHARGE
FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENTS' RESPONSE TO PETITIONER'S MOTION PRELIMINARY INJUNCTION** in the case of ISRAEL ADONAY SAGASTIZADO SANCHEZ v. KRISI NOEM, ET AL, Civil Action Number 5:25-CV-104, was sent to Simon Y. Sandoval-Moshenberg, Murray Osorio PLLC, 4103 Chain Bridge Road, Suite 300, Fairfax, Virginia 22030, by electronic mail through the District Clerk's electronic case filing system, on this the 22nd day of September, 2025.

"S/" Hector C. Ramirez
HECTOR C. RAMIREZ
Assistant United States Attorney