Maria E. Quiroga, NV State Attorney ID #13939
Samantha M. Meron, NV State Attorney ID #15782
QUIROGA LAW OFFICE, PLLC
7935 W. Sahara Ave, Ste #103
Las Vegas NV 89117
Tel: (702) 972-8348
maria@quirogalawoffice.com
samatha@quirogalawoffice.com
Attorneys for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

HUGO GIL CANDIDO BOLANOS,

Petitioner,

v.

JOHN MATTOS, TODD M. LYONS and KRISTI NOEM,

Respondents.

Case No. 2:25-cv-1359-RFB-EJY

REPLY TO RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION, ECF NO. 33

I. INTRODUCTION

Plaintiff, Hugo Gil Candido Bolanos (Candido Bolanos), through counsel, Maria E. Quiroga and Samantha Meron, hereby files his reply to Respondent's Response to Motion for Preliminary Injunction.

The Petitioner easily meets the threshold for a grant preliminary injunctive relief. Respondents have offered only a "token" process, and only because this Court compelled it. That process falls far below the most minimal constitutional standard. Petitioner is likely to succeed on the merits because U.S. Immigration and Citizenship Services (USCIS) conducted a perfunctory fear-based screening. Even then, USCIS applied unlawful policies that violate the Constitution and deprived Petitioner of his right to procedural due process. Specifically, Respondent implemented

removal guidelines to undesignated third countries that improperly imposed a heightened "more likely than not" standard at the fear-based screening stage – a requirement flatly inconsistent with governing law and fundamental issues.

Additionally, as part of their improper guidelines, Respondents rely on blanket "diplomatic assurances," never provided to Petitioner, that Mexico will not be persecuted or harmed. These unseen "blanket assurances" run counter to the statutory and regulatory framework which requires an individualized assessment of diplomatic assurances.

Further, even if the immigration court were to reopen Petitioner's proceedings (which the Respondents oppose), the immigration court lacks jurisdiction to provide a sufficient remedy to Petitioner because only this Court, can rule on Petitioner's due process claims.

The irreparable harm to Petitioner is clear, *i.e.,* persecution, torture and death.

Finally, the balance of the equities and public interest weigh in favor of the Petitioner. Currently, the Respondents' rammed Petitioner through a fear-based screening and improperly held him to a heightened standard of proof. Previously, Respondents attempted to improperly remove Petitioner to El Salvador in violation of his CAT order and without any opportunity to be heard. And finally, this action began as the result of the Respondents' improperly detaining Petitioner.

In summary, the Petitioner was not provided due process in his pursuit of his fear-based claim regarding Mexico. Despite Respondents' claims that an avenue remains open to Petitioner in immigration court, not only does immigration court lack jurisdiction to hear constitutional claims, but the Respondents are also forcefully opposing the Petitioners request to reopen.

The Petitioner meets the requirements for a grant of preliminary injunctive relief, and his motion should be granted.

II. ARGUMENT

A. Legal Standard

A Petitioner seeking a preliminary injunction must establish that he is likely to succeed on the merits; he is likely to suffer irreparable harm in the absence of preliminary relief; the balance of equities tips in his favor; and an injunction is in public interest. *Winter v. Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008). The Petitioner must carry his burden by a clear showing. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). When the government is a party, the factors of public interest and equities merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). In the Ninth Circuit, courts apply a "sliding scale" standard which allows a stronger showing of one element to offset a weaker showing of another. *Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2022) (citing *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Under this approach an injunction is proper where "serious questions go to the merits" and a hardship balance "tips sharply towards the plaintiff." *Alliance for the Wild Rockies*, 632 F.3d at 1132; see also N.*D. v. Reykdal*, 102 F.4th 982, 992 (9th Cir 2024) (noting the merits factor is the most important in the court's analysis).

B. Petitioner is Likely to Succeed on the Merits Because the Procedural Guidelines USCIS Followed to Contest His Third Country Removal Falls Short of Due Process.

The Petitioner is likely to succeed on the merits by showing that the Respondents have a policy or practice of executing third-country removals without providing notice and a meaningful opportunity to present fear-based claims, in deprivation of procedural due process. Here, USCIS is following the March 30, 2025, memorandum, Guidance Regarding Third Country Removals. ECF No. 33 at 4, note 2 (Memo); see also Exhibit 2 – Guidance Regarding Third Country Removals

(Memo); Exhibit 3 – Third Country Removals Following Supreme Court's Order in Department of Homeland Security v. DVD (DVD Memo).

The Due Process Clause applies to all persons within the United States, including noncitizens here unlawfully. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). To establish a procedural due process violation, Petitioner must show that there is an interest at issue protected by the Constitution which may arise under either state or federal law. *Rogers v. U.S.* 575 F.Supp. 4 (1982). The Petitioner must also establish the government has deprived him of a liberty interest and that deprivation occurred without sufficient procedural safeguards or due process. *Dudley v. Boise State University*, ___F.4th___(9th Cir. 2025), 2025 WL 2462966. A fundamental requirement of procedural due process is the opportunity to be heard at a *meaningful* time and in a *meaningful* manner. *See Armstrong v. Manzo,* 380 U.S. 545 (1965).

Congress clearly enacted the right to deferral or withholding of removal based on a legitimate fear-based claim. *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 348 (2005). And more generally, "[i]t is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.* 604 U.S. 670, at *2 (2025) (*per curiam*) (quoting *Reno v. Flores,* 507 U.S. 292, 306 (1993))

Likewise, the same constitutional guarantees apply to withholding-only relief. *Guzman Chavez*, 594 U.S. at 557 (Breyer, J., dissenting) ("And all here agree that the aliens are legally entitled to seek . . . withholding-only relief." (citing *Fernandez-Vargas v. Gonzalez*, 548 U.S. 30, 35 n. 4 (2006))); *Abrego Garcia III*, 2025 WL 1077101, at *2 (Sotomayor, J., concurring) (explaining that the Government has an "obligation to provide [the plaintiff who was subject to an order of removal] . . . notice and an opportunity to be heard" and ensure compliance with its "obligations under [CAT]" prior to removal); *see also Andriasian v. I.N.S.*, 180 F.3d 1033, 1041

(9th Cir. 1999) (finding that "last minute designation" of removal country during formal proceedings "violated a basic tenet of constitutional due process: that individuals whose rights are being determined are entitled to notice of the issues to be adjudicated, so that they will have the opportunity to prepare and present relevant arguments and evidence").

The withholding of removal statute and FARRA were intended to bring U.S. law "into conformity with its obligations" under international treaties. *INS v. Stevic,* 467 407, 427 (1984); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 n. 25 (1987) (explaining the requirements of withholding of removal were enacted "in order to comply with" Article 33 of the 1951 United Nations Convention Related to the Status of Refugees).

(1) The USCIS Procedural Guidelines Improperly Required Petitioner to Meet a the Heightened "More Likely Than Not" Standard at the Screening Stage

Here, the Respondents assert that providing Petitioner with a fear-based screening *without the ability to seek review by an immigration judge* provides Petitioner all the process he is entitled to. Moreover, Respondents improperly required Petitioner to meet a "more likely than not" standard at the screening stage, contrary to the law (thus requiring Petitioner from the outset to meet the ultimate standard for eligibility applied in full proceedings in immigration court).

Under 8 C.F.R. § 208.31(c) an asylum officer must determine whether a noncitizen established a "reasonable possibility" of persecution or torture. This "reasonable possibility" standard is distinct from the higher "more likely than not" standard ultimately required to obtain withholding of removal. *Bartolome v. Sessions,* 904 F.3d 803 (9th Cir. 2018); *Alvarado -Herrera v. Garland*, 993 F.3d 1187 (2021) see also *Las Americas Immigrant Advocacy Center v. DHS*, 783F.Supp.3d 200, 227-228 (D.C. Cir. 2025).

Critically, a noncitizen such as Petitioner who does not pass the initial rushed screening

"will be removed" without the opportunity for judicial review notwithstanding that Congress provided that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under [CAT]." 8 U.S.C. § 1254(a)(4).

The DVD Memo (Exh. 3) updating agency officials on third country removals as well as the underlying Memo (Exh. 2) operate to functionally eliminate statutory entitlements to mandatory protection from deportation by denying Petitioner the most basic procedures necessary to obtain them. See *Califano v. Yamasaki*, 442 U.S. 682, 693 (1979) ("[T]his Court has been willing to assume a congressional solicitude for fair procedure, absent explicit statutory language to the contrary."); *Meachum v. Fano*, 4427 U.S. 215, 226 (1976) (recognizing that minimum due process rights attach to statutory rights).

Respondents are effectively nullifying Petitioner's statutory based rights to seek withholding and CAT protection meaningless by requiring Petitioner to meet the final standard of proof for eligibility in what purports to be an initial, expedited screening interview. This unlawful practice transforms the threshold inquiry into an insurmountable barrier, stripping the process of its intended protective function. Compounding this violation, the so- called "Third Country Screening Notice" is nothing more than a check-box form, devoid of any explanation, analysis, or reasoning. Such a cursory and opaque document not only fails to provide clarity but also underscores the arbitrariness of the process, depriving Petitioner of meaningful and any semblance of due process.

(2) Respondents' Reliance on Blanket Diplomatic Assurances Without a Case-Specific Analysis of Petitioner's CAT Claim Violates Procedural Due Process

It is Petitioner's position that the Memo and subsequent implementing DVD Memo are unconstitutional because the guidelines operate to deprive Petitioner of procedural due process.

However, even if the Memo and DVD Memo passed constitutional muster, Petitioner has never been provided the blanket "diplomatic assurances" that Petitioner will not be persecuted or tortured in Mexico.

In any event, blanket diplomatic assurances do not address DHS' obligation to undertake an individualized assessment as to the sufficiency of the diplomatic assurances, as required under the statutory and regulatory framework. See 8 C.F.R. § 1208(c)(1) ("The Secretary of State may forward to the Attorney General assurances that the Secretary has obtained from the government of a specific country that ***an*** alien would not be tortured there if ***the*** alien were removed to that country." (Emphasis added.)

And although the rule of non-inquiry generally limits judicial review of the Secretary of State's extradition decisions, particularly regarding the substantive evaluation of diplomatic assurances; courts retain jurisdiction to ensure the Secretary has complied with domestic legal obligations under CAT. See *Trinidad y Garcia v. Thomas*, 683 F.3d 952 (9th Cir. 2012) (While courts cannot evaluate the substance of the Secretary's decision, they can require evidence of procedural compliance, such as a declaration affirming the required determination was made).

Furthermore, even if the blanket assurances from Mexico were to satisfy due process (which they do not), the Memo precludes any further review prior to removal. See Exh. 2. (If USCIS determines that the alien has not met this standard, the alien will be removed.") There can be no right without a remedy. *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Without meaningful review, the rights Congress has provided noncitizens such as Petitioner are little more than an illusion.[1]

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[1] The Department of Justice has previously recognized its obligation to provide a case-by-case, individualized process for seeking and assessing the reliability of diplomatic assurance determinations. *See Oversight of the USA PATRIOT Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 10 (2005) ("LEAHY: What do you think that the assurances we get from countries that are known to be torturers, when they say, 'Well, we won't torture this person you're sending back' – do you really think those assurances are credible? GONZALES: I think, Senator, that's a difficult question that requires, sort of, a case-by-case analysis. . . . Well, again, Senator, we take this obligation very,

Respondents take the position that asylum officer's determination is final and insulated from any review- that it requires no referral to an Immigration Judge, affords no avenue for appeal, and leaves Petitioner with no mechanism whatsoever to challenge or correct an erroneous or unlawful finding. In effect, Respondents seek to place life or death determinations beyond the reach of any neutral adjudicator, a position that eviscerates due process and contravenes the very structure of our immigration laws.

(3) The Executive Office of Immigration Review Lacks Jurisdiction to Review Petitioner's Constitutional Due Process Claims

The only reason the Petitioner received a fear-based screening prior to Respondents' attempt to remove him to Mexico was because this Court required them to do so. See ECF. No. 11. Although Respondents characterize the screening as a "full screening", as argued *infra* the screening improperly held Petitioner to higher standard of proof than the regulations require and is violative of Petitioner's procedural due process rights. The immigration court cannot analyze whether Petitioner's screening comports with due process because the Executive Office of Immigration Review (EOIR) lacks jurisdiction to adjudicate Petitioner's constitutional challenges. *Ayala v. Sessions*, 855 F. 3d. 1012, (9th Cir. 2017); *Marroquin Abriz v. Barr*, 420 F.Supp.3d 953 (2019) Consequently, Petitioner disagrees that the pending motion to reopen provides a sufficient remedy because the EOIR lacks jurisdiction to rule on Petitioner's due process claims.

Indeed, the Respondents are vigorously opposing re-opening Petitioner's immigration proceedings. *See* Exhibit 4 – U.S. Department of Homeland Security's Opposition to Respondent's Motion to Reopen Removal Proceedings. In the Opposition, the Respondents claim they "paused" the removal because Petitioner claimed fear of removal to Mexico – more accurately, this Court

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very seriously. And we know what our legal obligations are. We know what the directive of the president is. And each case is very fact-specific.").

ordered Respondents to do so. And Respondents reiterate that Petitioner failed to establish his fear-based claim under the "more likely than not" standard – a standard of proof higher than required by the regulations and the ultimate standard Petitioner would be required to meet in immigration court.

C. Petitioner is Facing Irreparable Harm

Here, the irreparable harm to Petitioner is clear and simple: persecution, torture and death. It is difficult to imagine harm more irreparable.

As the Respondent notes, if the immigration court does not grant relief, the regulations themselves explicitly state the motions filed by the Respondent do not stay the removal proceedings. 8 C.F.R. § 1003.23(b)(1)(v). Thus, the Respondents' own argument that this court has no jurisdiction over already-removed aliens only bolsters Petitioner's argument toward finding irreparable harm.

The harms claimed by Petitioner are not "speculative" nor "self-inflicted" as argued by the Respondents. ECF No. 33 at 7. Indeed, the Petitioner has direct personal experiences of being harmed [redacted] ECF No. 28 at 13, ¶ 8-9.

The screening process conducted under the current guidelines (Exhibits 2 and 3) deprived Petitioner of procedural due process and the Petitioner has demonstrated a likelihood of irreparable harm.

D. Factors Three and Four Favor Petitioner

The balance of the equities and public interest also lean in Petitioner's favor. In cases implicating removal, "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But there is also "a public interest in prompt execution of removal orders." *Id.*

To begin with, the Supreme Court has confirmed that "our system does not permit agencies to act unlawfully even in pursuit of desirable ends." *Alabama Ass'n of Realtors v. HHS,* 594 U.S. 758, 766 (2021); see also *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 582 (1952) (affirming district court's preliminary injunction of an illegal executive order even though a wartime president said his order was "necessary to avert a national catastrophe.").

Initially, the Respondents attempted to remove Petitioner without any procedure to El Salvador in violation of his immigration court order. ECF No. 6-2. Petitioner was only granted access to a fear-based screening because the Court ordered Respondents to provide him the opportunity to address claim. ECF No. 20. Moreover, Respondents' detention of Petitioner violated the statutes and regulatory authorities requiring this Court's order to release him. ECF No. 19.

The Court should find it likely that the Respondents deprived and will continue to deprive Petitioner of a meaningful opportunity for Petitioner to demonstrate the substantial harms he may face. Such a finding leads to the conclusion that Petitioner's circumstances countervail the public's normal and meaningful "interest in prompt execution." *See Nken,* 556 U.S. at 436. Therefore, the final two factors support the relief requested by Petitioner.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court GRANT Petitioner's Motion for Preliminary Injunction.

Respectfully submitted this 3rd day of October, 2025.

QUIROGA LAW OFFICE, PLLC

/s/ *Maria E. Quiroga*
Maria E. Quiroga
Attorney for Petitioner
/s/ *Samantha Meron*
Samantha Meron
Attorney for Petitioner