

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

NURBOLOT MISIRBEKOV,

Petitioner,

v.

FRANK VENEGAS, et al.,

Respondents.

Case No. 25-cv-168

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER**

INTRODUCTION

This Motion for Temporary Restraining Order “presents a simple question: before the United States forcibly sends [Mr. Misirbekov] to a country other than [his] country of origin, must [he] be told where [he is] going and be given a chance to tell the United States that [he] might be killed if sent there?” *D.V.D. v. U.S. Dep’t. of Homeland Security*, --- F. Supp.3d ---, 2025 WL 1142968 (D. Mass. April 18, 2025) (“*D.V.D. I*”), at *1.

As alleged in his Verified Petition for Writ of Habeas Corpus (ECF No. 1), Mr. Misirbekov is a Kyrgyz political refugee who was detained and severely beaten for his opposition to the current regime, and he was granted withholding of removal under the Immigration and Nationality Act because he demonstrated that he faced a likelihood of persecution if returned to his homeland. As a result of the immigration court’s decision, Respondents cannot deport Mr. Misirbekov to Kyrgyzstan. However, pursuant to a March 30, 2025 guidance document issued by the Department of Homeland Security (DHS), Mr. Misirbekov faces the risk of deportation to an unspecified third country, with which he has no ties whatsoever, and Respondents have said that they will provide

him with no notice and no review, “meaning that deportations to a third country can occur without any consideration of the individual risks facing a particular alien.” *D.V.D. I*, 2025 WL 1142968, at *4.

The relief Mr. Misirbekov seeks by this motion is extremely narrow: he only asks the Court to preserve the status quo and prevent him from being deported without due process before the Court can consider the merits of his habeas petition. For the reasons below, he respectfully suggests that his motion should be granted.

BACKGROUND

A. Mr. Misirbekov’s withholding of removal case and prolonged detention

In Kyrgyzstan, Mr. Misirbekov participated in at least six protests against the authoritarian president Japarov, including protests against his unlawful arrests and detention of citizens as well as his changes to the national flag and constitution. Pet. ¶ 17. He also ran a Telegram channel where he spoke out against the government. Pet. ¶ 18. Because of his protest activities, he was arrested on several occasions and detained, and during those detentions he was brutally beaten and tased. Pet. ¶ 17. As a result of this persecution, he was once hospitalized for five days and diagnosed with a closed craniocerebral injury, a concussion, and a right kidney contusion. *Id.* His phone was seized by police, which led to the discovery of his involvement with the Telegram channel and caused the government to initiate a criminal case against him on trumped-up charges under Article 278 of the Kyrgyz criminal code, which prohibits “calling for disobedience and mass riots.” Pet. ¶ 18; *see also, e.g.,* American Bar Association, *Kyrgyzstan: Media Crackdown Continues, In Violation of International Human Rights Law*, Oct. 22, 2024, https://www.americanbar.org/groups/human_rights/reports/kyrgyzstan-media-crackdown-continues-may2024/. He subsequently fled his native country for the United States, entering on or

about June 27, 2024, at which time he was detained by ICE. Pet. ¶ 19. He has been detained ever since, a period now exceeding 13 months. *Id.*

Mr. Misirbekov's immigration court merits hearing was held on December 31, 2024, and he proved to the immigration judge's satisfaction, by a preponderance of the evidence, that he faced persecution if returned to Kyrgyzstan. Pet. ¶ 20; *see also* 8 C.F.R. § 208.16(b)(1)-(2) (setting out standard for grant of withholding of removal under the INA). The immigration judge's decision specified the country of removal to be Kyrgyzstan, but withheld removal to that country due to the risk of persecution Mr. Misirbekov faced there. ECF No. 1-4. "Withholding of removal is a mandatory form of protection preventing deportation to the country or countries where an IJ finds that the individual is more than likely to be persecuted." *D.V.D. I*, 2025 WL 1142968, at *2 (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 208.16). The immigration court's order did not specify any other countries to which the United States could remove Mr. Misirbekov. ECF No. 1-4. DHS did not appeal that decision, and therefore it became final thirty days later, on January 30, 2025. 8 C.F.R. §§ 1003.38-1003.39. Mr. Misirbekov has now been detained in excess of six months past the date of the immigration court's order, in contravention of the Supreme Court's decision in *Zadvydas*, and he has filed a petition for writ of habeas corpus requesting his release from detention.

B. Third-country removal

"In certain circumstances, where the Government may not remove an alien to any country covered by that alien's order of removal, the Government may still remove the alien to any 'country whose government will accept the alien into that country.'" *D.V.D. I*, 2025 WL 1142968, at *3 (citing 8 U.S.C. § 1231(b)(2)(E)(vii)). These are called "third-country removals." *Id.* However, "third-country removals are subject to the same mandatory protections that exist in removal [...]"

proceedings”; in other words, the United States may not remove a noncitizen to a third country where they would face torture or persecution. *Id.*

On March 30, 2025, DHS issued updated guidance on third-country removals, dictating that noncitizens can be removed to a third country without any notice whatsoever. *See D.V.D. I*, 2025 WL 1142968 at *4. Respondents’ use of third-country removals in recent months has ranged from merely aggressive to downright lawless. In one high-profile case, one of the plaintiffs in *D.V.D.*, referred to in court filings as O.C.G., was granted withholding of removal to Guatemala by an immigration judge, and the immigration court’s order did not name Mexico as a country of removal. *Id.* Nonetheless, Respondents removed O.C.G. to Mexico, which then promptly returned him to Guatemala, the very place a U.S. immigration judge said he could not be sent. *D.V.D. v. U.S. Dep’t of Homeland Security*, --- F. Supp.3d ---, 2025 WL 1487238 (D. Mass. May 23, 2025) (“*D.V.D. IIF*”), at *1. The court in that case found that “O.C.G. is likely to succeed in showing that his removal lacked any semblance of due process.” *Id.* In another now-notorious case, Respondents deported Venezuelans to a “Salvadoran mega-prison” in “willful disregard for” an order of the U.S. District Court for the District of Columbia. *J.G.G. v. Trump*, 2025 WL 1119481 (D.D.C. April 16, 2025), at *1. Those Venezuelans were subsequently refouled to Venezuela in a prisoner swap, despite the fact that some of them had pending asylum or fear-based claims pending in immigration court. *See* Aaron Reichlin-Melnick, *United States Frees Venezuelans Held in El Salvador Following Prisoner Swap*, July 21, 2025, <https://www.americanimmigrationcouncil.org/blog/united-states-frees-venezuelans-el-salvador-prisoner-swap/> (noting that “many of the men had previously fled Venezuela seeking asylum in the United States and were sent to El Salvador before their U.S. asylum cases had been decided.”)

In two other widely reported cases, migrants were deported to South Sudan and Eswatini. In *D.V.D.*, the South Sudan case, “the non-citizens at issue had fewer than 24 hours’ notice, and zero business hours’ notice, before being put on a plane and sent to a country as to which the U.S. Department of State issues the following warning: ‘Do not travel to South Sudan due to **crime, kidnapping, and armed conflict.**’” *D.V.D. v. U.S. Dep’t of Homeland Security*, 2025 WL 1453640 (D. Mass. May 21, 2025) (“*D.V.D. II*”), at *1 (citing U.S. Department of State travel advisory) (emphasis in original). Meanwhile, the mainstream media reported that noncitizens sent to the small African nation of Eswatini would simply be refouled to their home countries. See “5 immigrants deported by the US to Eswatini in Africa are held in solitary confinement,” July 17, 2025, <https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712>.

Mr. Misirbekov reasonably fears that he could be deported without notice to a country where his life would be directly endangered (e.g., by violent civil war in South Sudan or confinement in a notorious torture prison in El Salvador), or that he will be sent to a country which will simply then refool him to Kyrgyzstan, where he faces a politically motivated criminal case and likely incarceration and torture. With this motion, he seeks only reasonable notice and a chance to have any fear claim heard by an immigration judge before he is removed.

LEGAL STANDARD

To obtain a TRO, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987).

ARGUMENT

I. Mr. Misirbekov Is Likely to Succeed on the Merits

In analogous cases, district courts around the country have not hesitated to conclude that petitioners like Mr. Misirbekov are likely to succeed on the merits of their challenge to third-country removals without notice or due process. In the leading case on this issue, *D.V.D. I*, the court concluded that “Plaintiffs have established they are likely to succeed in showing that Defendants have a policy or practice of executing third-country removals without providing notice and a meaningful opportunity to present fear-based claims, and that such policy or practice constitutes a deprivation of procedural due process.” *D.V.D. I*, 2025 WL 1142968, at *19. The court relied in part on the Supreme Court’s decision in *Trump v. J.G.G.*, 604 U.S. --, 2025 WL 1024097, at *2, in which “all nine Supreme Court justices agreed” that “notice must be afforded within a reasonable time and in such a manner as will allow [noncitizens] to actually seek ... relief in the proper venue before such removal occurs.” *D.V.D. I*, 2025 WL 1142968, at *20. Although the Government argued that the noncitizens “could have brought up, during their initial removal proceedings, all the countries where they have concerns that they will be tortured,” the court rejected this as “impossible as a practical matter, since the immigration court does not normally consider claims about countries not proposed as a country of removal.” *Id.* The court also found that “the procedures outlined in DHS’s March Guidance” do not “satisfy due process. The March Guidance provides no process whatsoever to individuals whom DHS plans to remove to a third country from which the United States has received blanket diplomatic assurances.” *Id.* at *22. Significantly, as the court noted, “blanket assurances offer no protection against ... chain refoulement, whereby the third country proceeds to return an individual to his country of origin.”

Id.

In another case, *J.R. v. Bostock*, 2025 WL 1810210 (W.D. Wash. June 30, 2025), at *1, the court granted an ex parte TRO where the plaintiff “face[d] imminent deportation to a country that is neither his country of origin nor the country where the immigration judge ordered [him] to be sent.” The court found that “as the Government has not notified [the noncitizen] what country to which it intends to deport him, he has been denied an opportunity to seek withholding under CAT. Thus the Court has serious questions about the merits of his due process claim that the Government violated his rights by attempting third-country removals without providing him notice and an opportunity to seek CAT protection.” *Id.* at *3.

Other courts have also granted TRO relief in similar cases, though in those cases, courts have focused on the likelihood of success on the merits of the underlying habeas petition, rather than the merits of their arguments about third-country removal. In *Ambila v. Joyce*, 2025 WL 1534852 (D. Me. May 28, 2025), for example, the petitioner, like Mr. Misirbekov in this case, sought relief under *Zadvydas* after he was detained by ICE for eight months. He sought a TRO to “prohibit Respondents from transferring Petitioner to a facility outside of this Court’s jurisdiction and from removing Petitioner from the continental United States during the pendency of this proceeding,” or, alternatively, to be provided “with at least 2 business days’ notice of any scheduled transfer or removal.” *Ambila*, 2025 WL 1534852, at *3. In discussing the petitioner’s likelihood of success on the merits, the court limited its discussion to the likelihood of success on the underlying *Zadvydas* claim and found he was likely to succeed because the court could not “reach the conclusion that the Petitioner’s removal ... is significantly likely to occur in the reasonably foreseeable future.” *Id.* at *4 (citing *Zadvydas*, 533 U.S. at 701).

Similarly, in *Vaskanyan v. Janecka*, 2025 WL 2014208 (C.D. Cal. June 25, 2025) at *5, the petitioner had filed a habeas petition under *Zadvydas* and sought a TRO to prevent his “removal

to an undesignated third country without notice and an opportunity to be heard.” The court found he was likely to succeed on his *Zadvydas* claim since his “detention has exceeded the presumptively reasonable six-month period, and he has ‘good reason to believe’ that there is no significant likelihood of his removal in the reasonably foreseeable future.” *Id.* at *4-*5.

In short, whether this Court considers the first factor of the *Winter* test to require a likelihood of success on the merits of the underlying petition, or on the merits of the due process claim against third-country removal, either way, there is ample authority to demonstrate that Mr. Misirbekov has a likelihood of success.

II. Mr. Misirbekov Faces Irreparable Harm

“The irreparable harm factor likewise weighs in [Mr. Misirbekov’s] favor. Here, the threatened harm is clear and simple: persecution, torture and death. It is hard to imagine harm more irreparable.” *D.V.D. I*, 2025 WL 1142968, at *23. Respondents “contend that they may remove aliens to third countries with no possibility for review. It is undoubtedly ‘irreparable injury to reduce to a shell game the basic lifeline of due process before an unprecedented and potentially irreversible removal occurs.’” *Id.*, citing *J.G.G. v. Trump*, 2025 WL 914682, at *30 (D.C. Cir. March 26, 2025) (Millett, J., concurring) (internal citation omitted). *See also Vaskanyan*, 2025 WL 2014208, at *6 (“Petitioner’s removal to a third country without due process ... is likely to result in irreparable harm at this time [...] [T]he Court is persuaded by Petitioner’s argument that Respondents may try to remove him to a third country without affording him adequate notice and an opportunity to be heard. This is irreparable harm, plain and simple.”)

III. Balance of Equities and Public Interest

The third and fourth *Winter* factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). 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.” *Id.* at 436; *see also Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) (protecting people who face persecution abroad “goes to the very heart of the principles and moral precepts upon which this country and its Constitution were founded”). Conversely, the government can make no comparable claim to harm from an injunction. *See Wages & White Lion Inv., LLC v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021) (“There is generally no public interest in the perpetuation of unlawful agency action.”)

Courts in cases like this one have found that the last two *Winter* factors tip in a petitioner’s favor. *Ambila*, 2025 WL 1534852, at *5; *Vaskanyan*, 2025 WL 2014209, at *7; *D.V.D. I*, 2025 WL 1142968, at *23. In short, all four factors weigh in Mr. Misirbekov’s favor.

CONCLUSION

Mr. Misirbekov seeks only very limited relief here: adequate notice of any intended third-country removal so that, if necessary, he can seek relief from this court or an immigration judge to prevent his deportation to a place his life would be in danger or which would deport him back to Kyrgyzstan. Mr. Misirbekov respectfully requests this Court preserve the status quo and prevent Respondents from removing him without due process while his habeas case is pending.

Dated: August 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 1st day of August, 2025, and that a true copy of the foregoing was served pursuant to Fed. R. Civ. P. 4(i) via certified United States mail, sent this 1st day of August, 2025 to the Respondents at the following addresses, and a courtesy copy was sent via electronic mail to the U.S. Attorney's Office for the Southern District of Texas at USATXS.CivilNotice@usdoj.gov and daniel.hu@usdoj.gov

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