UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Luis Demetrio Perez Sanchez, Petitioner, vs. **Bobby Thompson**, Jail Administrator, South Texas ICE Processing Center **Michael Vergara**, Field Office Director, San Antonio, U.S. Immigration and Customs Enforcement **Todd Lyons,** Acting Director, U.S. Immigration and Customs Enforcement, Respondents.	**CASE NO: 5: 25 -cv-1122** **HEARING REQUESTED**

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

In the past few months, Immigration and Customs Enforcement (ICE), the U.S. government agency charged with removing noncitizens from the U.S., has implemented a sea change in its practice of detaining and removing noncitizens who have final orders of removal but who have been granted certain country-specific protections from removal. In the past, ICE did not often pursue the removal of such noncitizens to third countries. But, pursuant to a recent change in policy, ICE agents are now being encouraged to target these noncitizens for detention and removal. Effecting a noncitizen's removal to a third country is easier said than done, primarily because this process requires that a third country, often one which the noncitizen has no ties to, accepts the noncitizen for removal. ICE is now detaining an untold number of noncitizens in this position with little prospect of ever executing their removal orders.

Mr. Perez Sanchez is in this exact position with no apparent hope of removal. Supposedly with the intent to execute Mr. Perez Sanchez's removal order from 2000 by removing him to a third country, Mr. Perez Sanchez has been in ICE custody for over six months, but without any indication that ICE has a plan to remove him to any specific third country. To remain in compliance with the Immigration and Nationality Act (INA) and the U.S. Constitution, ICE may only detain someone like Mr. Perez Sanchez for as long as is reasonably necessary to remove him or her. Once removal of that noncitizen to either the country of origin or a third country is no longer reasonably foreseeable, continued detention is no longer authorized under the INA or the U.S. Constitution.

ICE's detention of Mr. Perez Sanchez plainly does not meet this threshold. By the above-captioned Petition for Writ of Habeas Corpus, Mr. Perez Sanchez challenges the lawfulness of his present detention and seeks his release from ICE custody pursuant to an order of supervision. Mr. Perez Sanchez expects that ICE will respond to the above-captioned Petition – as it has done to

other noncitizens similarly situated to Perez Sanchez – by expeditiously attempting to remove Perez Sanchez to an unsafe third country, *i.e.*, where Perez Sanchez is likely to be persecuted or tortured, to avoid the consequences of its unlawful conduct. To protect himself from such an ambush removal, by the instant Motion Mr. Perez Sanchez seeks to maintain the pre-litigation *status quo* through the issuance of a judicial order which prohibits the Respondents from transferring Perez Sanchez out of the Western District of Texas – in the absence of judicial permission obtained after 72 hours' notice to Perez Sanchez's counsel – while the above-captioned Petition is litigated.

As outlined above and as described in more detail below, Mr. Perez Sanchez's present detention is unlawful and he is likely to succeed on the merits of the above-captioned Petition. Moreover, as also outlined above and as described in more detail below, Mr. Perez faces a substantial risk of irreparable harm if he is removed from the Western District of Texas without notice while the above-captioned Petition is adjudicated. And finally, as described in more detail below, both the balance of equities and public interest respecting Mr. Perez Sanchez's requested provisional relief weigh heavily in his favor.

Thus, based on the foregoing and the argument that follows, Mr. Perez Sanchez respectfully requests that the Court: (1) issue a temporary restraining order which prohibits the Respondents from transferring Mr. Perez Sanchez out of the Western District of Texas in the absence of judicial permission obtained after 72-hours' notice to Mr. Perez Sanchez's counsel; (2) order Respondents to respond to the above-captioned Petition and oppose the instant motion within 10 days of receiving said order; and (3) set a hearing pursuant to Rule 65(a)(2) for adjudication of the instant Motion and above-captioned Petition.

RELEVANT FACTS

1. Mr. Perez Sanchez's removal proceedings, 2000

Luis Demetrio Perez Sanchez entered the United States in 1967 or 1968. Habeas Petition ("Pet.") at ¶ 30; Pet., Ex. 1 at ¶ 6. Immigration authorities initiated removal proceedings against him in 2000 and designated Cuba as the only country of removal. Pet. at ¶ 35; Pet., Ex. 1, Sub-Ex. A. The immigration judge (IJ) issued a final order of removal to Cuba but found that Mr. Perez Sanchez was more likely than not to be subject to torture if returned to Cuba and granted him deferral of removal to Cuba under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Pet. at ¶ 37; Pet., Ex. 1, Sub-Ex. A. The Immigration and Naturalization Service (INS), the predecessor agency to ICE, appealed the IJ's decision, and the Board of Immigration Appeals (BIA) affirmed the IJ's decision and dismissed the appeal in 2000. Pet. at ¶ 38; Pet., Ex. 1, Sub-Ex. B.

2. Mr. Perez Sanchez's penal custody and parole

In 1971, at the age of 19, Mr. Perez Sanchez participated in a robbery in Lowell, Massachusetts, which resulted in a death and a structure fire. Pet. at ¶ 32. In 1973, following a jury trial, Mr. Perez Sanchez was convicted of first-degree murder, armed robbery, arson, and larceny of a motor vehicle. He was sentenced to life. Pet. at ¶ 33; Pet., Ex. 1 at ¶ 8. In prison, Mr. Perez Sanchez worked hard to change and better himself – he had no disciplinary infractions after 2006, completed over 70 programs, worked as a law library clerk, graduated college, and became an ordained minister. Pet. at ¶ 34; Pet., Ex. 1 at ¶ 9. Mr. Perez Sanchez was granted parole on December 19, 2024. Pet. at ¶ 41; Pet., Ex. 1 at ¶ 17. Mr. Perez Sanchez was released from Massachusetts state prison on February 5, 2025, and was transferred to ICE custody the same day. Pet. at ¶ 42; Pet., Ex. 1 at ¶ 18.

3. Mr. Perez Sanchez's immigration custody

Mr. Perez Sanchez was taken into ICE custody on February 5, 2025, where he remains to this day. Pet. at ¶ 42; Pet., Ex. 1 at ¶¶ 18-19. During the entirety of his more than six months of immigration custody, ICE has not provided formal, written notice to Mr. Perez Sanchez of which country, if any, they might intend to remove him to. Pet. at ¶ 58; Pet., Ex. 1 at ¶ 34. During the entirety of his more than six months of immigration custody, ICE has not contacted Mr. Perez Sanchez or his attorneys about interviews with foreign consulates or the issuance of travel documents. Pet. at ¶ 59; Pet., Ex. 1 at ¶ 33. In or around March 19, 2025, an ICE agent asked Mr. Perez Sanchez how he would feel about being sent to El Salvador, Mexico, or Guantanamo Bay. Pet. at ¶ 43; Pet., Ex. 1 at ¶ 21. Mr. Perez Sanchez expressed a fear of being sent to those places but stated that Mexico would be a good alternative, but he did not know if there would be any guarantee of his safety there. Pet. at ¶ 44; Pet., Ex. 1 at ¶ 22. Mr. Perez Sanchez is afraid that he will be tortured if sent to El Salvador, so he filed a motion to reopen his removal proceedings to apply for relief from removal to El Salvador with the BIA. Pet. at ¶¶ 45-46; Pet., Ex. 1 at ¶¶ 23-25. That motion is still pending. Pet. at ¶ 47; Pet., Ex. 1 at ¶ 26; Pet., Ex. 2 at ¶ 6. Mr. Perez Sanchez's has tried to secure his own removal to Mexico and has contacted ICE, through his attorneys, to facilitate his removal to Mexico. Pet. at ¶¶ 49-50, 52; Pet., Ex. 1 at ¶¶ 28-32; Pet., Ex. 2 at ¶¶ 7-8. ICE has not provided responsive information to Mr. Perez Sanchez or his attorneys regarding his willingness to be removed to Mexico and his request that ICE seek travel documents for Mexico. Pet. at ¶¶ 52-57; Pet. Ex. 1 at ¶ 32; Pet. Ex. 2 at ¶¶ 9-12.

ARGUMENT

I. APPLICABLE LAW

To obtain temporary and preliminary injunctive relief, movants must demonstrate (1) a likelihood of success on the merits, (2) a substantial threat of irreparable injury in the absence of preliminary relief, (3) that the balance of equities tips in their favor, and (4) that an injunction is consistent with the public interest. *Louisiana v. Biden*, 55 F.4th 1017, 1022 (5th Cir. 2022). When the government is a party, the balance of equities and public interest merge. *Mock v. Garland*, 75 F.4th 563, 577 (5th Cir. 2023); *Nken v. Holder,* 556 U.S. 418, 435 (2009).

II. MR. PEREZ SANCHEZ IS LIKELY TO SUCCEED ON THE MERITS OF THE ABOVE-CAPTIONED PETITION

Through specific facts, Mr. Perez Sanchez has shown that ICE is not significantly likely to execute his removal order to any third country any time soon, if ever. As Mr. Perez Sanchez's continued detention is untethered from the possibility of his removal in the near future, his detention is unlawful and he is likely to succeed on the merits.

a. The Zadvydas Standard for Continued Detention.

Following the issuance of a final removal order, the noncitizen is mandatorily detained for up to 90 days while ICE attempts to effectuate that person's removal. 8 U.S.C. § 1231(a)(1). For certain classes of noncitizens, like those such as Mr. Perez Sanchez, ICE may continue detention if there is a significant likelihood of removal in the reasonably foreseeable future, and if not, ICE must release the noncitizen subject to terms of supervision pursuant to 8 C.F.R. § 241.13. 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. § 241.13(g)(1), (h)(1); *see also Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) ("if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute").

The continued detention of a noncitizen with a final order of removal where there is no significant likelihood of removal in the reasonably foreseeable future is unauthorized under the INA or the U.S. Constitution. *See id.* at 689-690 (finding that detention must be limited to a period reasonably necessary to bring about the noncitizen's removal). The Supreme Court has reasoned that post-order detention is presumptively reasonable for the first six months following the order of removal, as it is supposed that there is a significant likelihood of removal during that period. *Id.* at 701. However, beyond six-months, the likelihood of removal can no longer be presumed and the government must release the individual where removal is not forthcoming. *Id.*

To challenge the reasonableness of one's continued detention, the noncitizen bears the initial burden of showing that there is no significant likelihood of removal in the reasonably foreseeable future, which may be met by showing there are institutional or individual barriers to their removal. *Id.*; *Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003) ("To shift the burden to the government, petitioner must demonstrate that the circumstances of his status or the existence of particular individual barriers to his repatriation to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.") (internal quotations omitted).[1] The burden then shifts to respondents to adduce specific facts showing that ICE has a plan for removal and is taking affirmative steps to

[1] Institutional or individual barriers include where the government is prohibited from returning a noncitizen to a specific country because of an Executive Office for Immigration Review (EOIR) country-specific grant of relief from removal, where the country of removal will not accept or issue travel documents for the noncitizen, or where the government has no plan for transportation to effect the removal. *See Zadvydas v. Davis*, 285 F.3d 398, 404 n.8 (5th Cir. 2002) (Petitioner met burden by showing that no country would accept him); *Khan v. Gonzales*, 481 F. Supp. 2d 638, 643 (W.D. Tex. 2006) (Petitioner met burden by showing countries of removal would not issue travel documents any time soon); *Rodriguez Del Rio v. Price*, No. EP-20-CV-00217-FM, 2020 WL 7680560, at *3 (W.D. Tex. Nov. 3, 2020) (Petitioner met burden by showing no date for removal set and no plan for removal).

carry out that plan. *See Zadvydas*, 533 U.S. at 701; *Heagan v. Jolicoeur*, No. EP-05-CA-0413-FM, 2006 WL 897709, at *3 (W.D. Tex. Mar. 31, 2006) (explaining ICE must present plan for removal and prove it is carrying out that plan).[2] If the government fails to meet its burden, thereby failing to sufficiently justify continued detention, it must release the noncitizen, subject to appropriate conditions of supervision. *Zadvydas*, 533 U.S. at 701.

b. Mr. Perez Sanchez Has Met His Burden By Showing That His Removal is Not Significantly Likely Due to a Firm Institutional Barrier and Individual Barriers And the Respondents Cannot Rebut this Showing.

Mr. Perez Sanchez has now been in immigration custody for more than six months under the supposed premise of executing his removal order from 2000. Mr. Perez Sanchez cannot be removed to Cuba, his county of nationality, as he was granted deferral of removal under the CAT by an IJ back in 2000. Pet. at ¶ 37; Pet., Ex. 1, Sub-Ex. A. Therefore, to execute his removal order ICE must identify a safe third country that will accept Mr. Perez Sanchez for removal and it must facilitate his removal to that country.

However, there is no evidence that ICE has undertaken any affirmative steps to do so. ICE has not sent Mr. Perez Sanchez a formal notice informing him of which third country it intends to send him to and ICE has not reached out to Mr. Perez Sanchez or his attorneys regarding any interviews with foreign consulates or about signing travel documents. Pet. at ¶¶ 53-54, 58-59; Pet.,

[2] This showing should include the identification of a country for removal, proof of the removal country's acceptance or likely acceptance of the noncitizen, proof that the removal country has already or is likely to issue travel documents for the noncitizen, and, finally, proof that the government has already or is likely to be able to transport the noncitizen to the removal country. 8 U.S.C. § 1231(b)(2)(E)(vii) (the third country must accept the noncitizen); *Khan*, 481 F. Supp. at 643 (finding government did not present sufficient evidence to show any country would issue travel documents); *Heagan*, No. EP-05-CA-0413-FM, 2006 WL 897709, at *8-9 (finding government presented no evidence for court to determine whether countries for removal would issue travel documents); *Rodriguez Del Rio*, No. EP-20-CV-00217-FM, 2020 WL 7680560, at *4 (finding removal not significantly likely where scheduled removal flights canceled and no new date for removal scheduled).

Ex. 1 at ¶¶ 32-33; Pet., Ex. 2 at ¶¶ 9, 13; Pet., Ex. 3 at ¶ 5. To the contrary, Mr. Perez Sanchez has asked ICE, through his attorneys, to facilitate his removal to Mexico and Mr. Perez Sanchez has received no evidence from ICE showing that it is doing so. Pet. at ¶¶ 49-55; Pet., Ex. 1 at ¶¶ 28-33; Pet., Ex. 2 at ¶¶ 7-9. There is simply no evidence that ICE has a plan for his removal or is even taking any steps to form and execute a plan, and his six-month detention with no end in sight is further evidence of this point.

Mr. Perez Sanchez's removal seems particularly improbable where ICE has admitted that executing a noncitizen's removal order to a third country is a complicated and time-consuming process, especially where the noncitizen has a criminal history such as Mr. Perez Sanchez's. *See* Decl. of Acting Deputy Exec. Assoc. Dir. Garrett J. Ripa, Exhibit 4 (hereinafter "Ripa Dec.") at ¶¶ 22, 24. Securing an agreement with a third country to accept the noncitizen alone can take a significant amount of time and can require involvement from other agencies and departments of the Executive. *See id.* at ¶ 22. ("[Removal to a third country] is time consuming, operationally burdensome, and requires delicate engagement with foreign officials, often necessitating direct engagement by the U.S. Department of State to convince a foreign government to accept for removal a dangerous criminal alien with no or limited ties to that country."). With Mr. Perez Sanchez's criminal history, it is very likely that no safe third country will be willing to accept him for removal. If ICE has any chance of removing him, it is likely to a country that has entered into an agreement to accept criminal deportees, such as El Salvador or South Sudan – countries where Mr. Perez Sanchez would likely face persecution or torture.

III. MR. PEREZ SANCHEZ FACES A SUBSTANTIAL THREAT OF IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF

The government cannot remedy its unlawful conduct with more unlawful conduct, and this is the exact risk that Mr. Perez Sanchez faces. Pursuant to a recent policy change, ICE has

dramatically increased its focus on detaining and removing noncitizens with final orders of removals but country specific relief from removal. However, as described above, it is incredibly difficult for ICE to effectuate *safe* third country removals and in practice ICE is simply leaving people to sit in detention or resorting to unsafe third country removals with minimal notice. *See* ICE July 9, 2025 Mem., Exhibit 5 (outlining ICE policy to effectuate removals to third country after providing 24 hours' notice); *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2157 (2025) (Sotomayor, J., dissenting) (noting that the Executive removed noncitizens to dangerous third country with less than 16 hours' notice). And ICE is quite clear about the purpose of this policy to effect removal after providing 24 hours' notice – to discourage noncitizens from raising a fear of torture or persecution or from otherwise objecting to the removal. Ripa Dec. at ¶ 7. In line with this policy, when noncitizens like Mr. Perez Sanchez dare to speak up, ICE moves swiftly to effect their removals. *See, e.g.*, *Abrego Garcia v. Noem*, 8:25-cv-02780-PX, Doc. No. 1 at ¶ 45, Petition for Writ of Habeas Corpus (D. Md. Aug. 25, 2025), Exhibit 6 (alleging that government is seeking to remove Petitioner to Uganda, despite Petitioner having received offer of resettlement from Costa Rica, as punishment for enforcing his constitutionally protected rights).

Accordingly, in response to the above-captioned Petition, ICE is likely to try to remove Mr. Perez Sanchez to El Salvador, which has agreed to accept deportees with criminal histories such as Mr. Perez Sanchez and where he is likely to be imprisoned in torturous conditions. *See Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 518 (D. Md. 2025) (describing dangerous and life-threatening conditions at maximum-security prison in El Salvador where U.S. criminal deportees are being imprisoned). ICE is also likely to try to remove Mr. Perez Sanchez to South Sudan, a country that has been beset by dangerous internal armed conflict for years and which has already accepted Cuban deportees with criminal histories such as Mr. Perez Sanchez's. *See D.V.D. v. Dep't*

of Homeland Sec., 1:25-cv-10676-BEM, Doc. No. 118, Memorandum on Preliminary Injunction (D. Mass. May 21, 2025), Exhibit 7 (noting dangerous conditions in South Sudan as reported by U.S. Department of State); Decl. of Acting Ass. Dir. Marcos D. Charles, Exhibit 8, at ¶¶ 4, 6-8, 12-17 (reviewing criminal histories of two Cuban nationals who were removed to South Sudan in May 2025). Finally, ICE is also likely to try to remove Mr. Perez Sanchez to Eswatini, another country that has already accepted deportees with similar criminal histories and where Mr. Perez Sanchez faces imprisonment and the possibility of being further removed to Cuba where an IJ has already found that he risks torture or death. *See Eswatini says it is holding U.S. deportees in prisons, aims to repatriate them*, Reuters (July 16, 2025, 10:31 AM), Exhibit 9.

Removal to such dangerous countries, where Mr. Perez Sanchez is more likely than not to face persecution or torture, would violate the INA and U.S. treaty obligations. 8 U.S.C. § 1231(b)(3)(A); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984); 8 C.F.R. § 1208.16; *see also* 8 U.S.C. § 1231(b)(1), (2) (removal to alternative countries subject to limits prescribed in 8 U.S.C. § 1231(b)(3)); *Matter of A-S-M-*, 28 I&N Dec. 282 (BIA 2021) (noncitizen has right to seek withholding of removal to third country they fear persecution or torture in). Simply put, ICE cannot remedy the prolonged unlawful detention of a noncitizen by removing them to a country where they are more likely than not to be persecuted or tortured. *See J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *30 (D.C. Cir. Mar. 26, 2025) (Millett, C.J., concurring) [*J.G.G. I*] ("It is irreparable injury to reduce to a shell game the basic lifeline of due process before an unprecedented and potentially irreversible removal occurs."). Moreover, if Mr. Perez Sanchez were removed during the pendency of the above-captioned Petition, the Court would lose its ability to end Mr. Perez Sanchez's unlawful detention, leaving Mr. Perez Sanchez

entirely unprotected from ICE's ongoing refusal to comply with the INA. *See Noem v. Abrego Garcia*, 604 U.S. ----; 145 S. Ct. 1017, 1018 (2025) (acknowledging limited ability of Judicial Branch to remedy wrongful ICE conduct after detainee is removed from United States).

To try to prevent this irreparable harm, Mr. Perez Sanchez simply requires enough notice of removal to assess the potential risk of persecution or torture so that he may act accordingly – by filing a motion to reopen his removal proceedings with the BIA to present his fear based claim of removal to that country, if one so exists, and by filing for a stay of removal pending the adjudication of his application for relief with the BIA.

IV. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH IN FAVOR OF LIMITING ICE'S ABILITY TO TRANSFER MR. PEREZ SANCHEZ OUTSIDE OF THE WESTERN DISTRICT OF TEXAS DURING THE ADJUDICATION OF THE ABOVE-CAPTIONED PETITION

The provisional remedy sought by Mr. Perez Sanchez seeks to maintain the *status quo* while the Court adjudicates in a timely manner the lawfulness of Mr. Perez Sanchez's current detention. ICE can hardly object to keeping Mr. Perez Sanchez at the South Texas ICE Processing Center while the above-captioned Petition is adjudicated, as ICE chose this facility as its desired facility for detention after it transferred him there in March of 2025. Pet., Ex. 1 at ¶ 20. Moreover, the government has no legitimate interest in sending a person overseas to be tortured, in violation of statute, regulation, the U.S. Constitution and the United States' treaty obligations. *See Louisiana*, 55 F.4th at 1035 ("... there is generally no public interest in the perpetuation of unlawful agency action.") (internal quotations omitted); *see also D.V.D.*, 145 S. Ct. at 2159 (Sotomayor, J., dissenting) ("Besides the facially absurd contention that the Executive is 'irreparabl[y]' harmed any time a court orders it temporarily to refrain from doing something it would like to do...the Government has identified no irreparable harm from the challenged preliminary injunction [requiring notice and opportunity to pursue relief prior to third-country removal].").

Meanwhile, the public has a strong interest in not seeing people removed extrajudicially to places they will be tortured. *See Nken*, 556 U.S. at 436 ("there is a public interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm."); *see also State v. Biden*, 10 F.4th 538, 560 (5th Cir. 2021) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)) ("And '[t]here is generally no public interest in the perpetuation of unlawful agency action.'").

On this record, Mr. Perez Sanchez has satisfied the requirements of Rule 65 and has established his entitlement to the provisional remedy that he seeks.

CONCLUSION

Based on the foregoing, Mr. Perez Sanchez respectfully reiterates his request that the Court:

i. issue a temporary restraining order which prohibits the Respondents from transferring Mr. Perez Sanchez out of the Western District of Texas in the absence of judicial permission obtained after 72-hours' notice;

ii. order Respondents to answer the above-captioned Petition and oppose the instant Motion within ten days of receiving said order; and

iii. set a hearing pursuant to Rule 65(a)(2) for adjudication of the instant Motion and above-captioned Petition.

Respectfully submitted,

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Dated: September 8, 2025

Certificate of Service

I, Claire Maguire, served the foregoing Motion for Temporary Restraining Order and Preliminary Injunction on all Respondents on September 8, 2025, via first class mail at the following addresses:

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Date: September 8, 2025