

ORIGINAL

Emmanuel McSweeney

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Otay Mesa Detention Center

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Pro Se¹



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EMMANUEL McSWEENEY,

Petitioner,

v.

KRISTI NOEM, Secretary of the
Department of Homeland Security,
PAMELA JO BONDI, Attorney General,
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
JESUS ROCHA, Acting Field Office
Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 25-cv-02488-
RBM-DEB

**Notice of Motion
and
Memorandum of Law
in Support of
Temporary Restraining Order**

¹ Mr. McSweeney is filing this motion and all associated documents with the assistance of the Federal Defenders of San Diego, Inc. That same counsel also assisted the petitioner in preparing and submitting his renewed request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition. FDSDI has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Zandra Lopez in Support of the Renewed Appointment Motion attaches case examples. ECF No. 8.

Introduction

Petitioner Emmanuel McSweeney ("Petitioner") faces immediate irreparable harm: (1) removal to Haiti on the claim that he is not a citizen of the Bahamas; and (2) detention that prevents him from effectively litigating his motion to reopen and resolving his affairs. This Court should grant temporary relief.

Emmanuel McSweeney is a 29-year-old citizen of the Bahamas who is currently detained in Otay Mesa Detention Center. He was born in the Bahamas in 1996. Both his parents were born in the Bahamas. His mother is a Bahamian citizen. In 1998, Mr. McSweeney came to the United States with his mother from the Bahamas. In 2020, he was ordered removed by an immigration judge for overstaying his visa and for having misdemeanor convictions for possession of marijuana or cannabis. The immigration judge designated the Bahamas as the country of removal.

Following the order of removal, Mr. McSweeney was on immigration supervision until March 18, 2025. On that day, ICE arrested him during an immigration check-in in Florida. In a document titled "Notice of Revocation of Release," Mr. McSweeney was informed that ICE obtained travel documents to remove him to Cuba. The notice also informed Mr. McSweeney that he would have a prompt opportunity to challenge the revocation of his release. He did not receive that opportunity. According to the Record of Deportable/Inadmissible Alien form, an immigration officer wrote that Mr. McSweeney indicated that he did not have a fear of being removed to Venezuela.

Mr. McSweeney was then placed in a detention center in Florida where he did not speak to an immigration officer and remained in the same clothes he was arrested in for five days. Weeks later, he was placed on a plane and not told where he was going. Mr. McSweeney was brought to the detention center in San Diego. He later filed a pro se petition for habeas relief with this Court.

1 On September 30, 2025, Respondents informed the Court that ICE now has
2 travel documents to remove Mr. McSweeney. He would not be removed to the
3 designated country of the Bahamas, but he would be removed to Haiti instead.
4 According to Respondents, Haiti accepted Mr. McSweeney only after receiving
5 confirmation from the Bahamas that Mr. McSweeney was not a citizen of the
6 Bahamas. After the government's filing with the Court, government counsel
7 informed Federal Defenders that Mr. McSweeney will be moved out of Otay
8 Detention Center over the weekend and placed on a flight to Haiti likely on
9 Wednesday.

10 Mr. McSweeney intends to file motion to the immigration judge in Maimi,
11 Florida seeking to reconsider or reopen his removal proceedings to show that he is
12 a citizen of the Bahamas. But there is a high prospect that he will be removed
13 before an immigration judge can adjudicate this motion.

14 The requested temporary restraining order ("TRO") would preserve the
15 status quo while Petitioner litigates these claims by (1) preventing ICE from
16 removing Mr. McSweeney while his motion to reconsider/reopen is pending,
17 (2) releasing him from detention to allow him to litigate this motion and resolve
18 his affairs in Florida; and (3) prohibiting the government from removing him to
19 Haiti during this process.

20 In granting this motion, this Court would not break new ground. Several
21 years ago, a district court judge in Los Angeles granted a class of petitioners from
22 Cambodia the same relief, prohibiting ICE from removing them without the
23 opportunity to file a motion to reopen and have that motion adjudicated. *See*
24 *Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1151 (C.D. Cal. 2018) (attached to
25 habeas petition as Exhibit B). Two years later, the same judge enjoined ICE from
26 re-detaining class members without complying with the agency's own regulations.
27 *See Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020) (attached
28 to habeas petition as Exhibit C). Other courts have likewise granted temporary

1 restraining orders preventing third-country removals without due process. *See*,
2 *e.g.*, *J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30,
3 2025); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D.
4 Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D.
5 Cal. June 26, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
6 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-
7 DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025). Petitioner therefore
8 respectfully requests that this Court grant this TRO.

9
10 **Statement of Facts**

11 **A. Mr. McSweeney is a citizen of the Bahamas.**

12 Emmanuel Johnson and his family entered the United States from the
13 Bahamas in 1998. Exhibit C to TRO, Johnson Declaration at ¶ 1. Both of his
14 parents were born in the Bahamas. *Id.* His mother had Bahamian citizenship. Mr.
15 McSweeney has never been to Haiti. *Id.*

16 In 1998, Mr. McSweeney came to the United States with his mother from
17 the Bahamas. In 2020, he was ordered removed by an immigration judge for
18 remaining in the United States for a time longer than permitted and for having
19 misdemeanor convictions for possession of marijuana or cannabis. The
20 immigration judge “designated the Bahamas as the country of removal.”
21 Respondent’s Response Exhibits (Resp. Exh.), ECF No. 9-2 at 13. On appeal, Mr.
22 McSweeney did not contest that he was a native of the Bahamas. *Id.* On April 20,
23 2021, his appeal to the Board of Immigration Appeals was denied. *Id.*

24 Following his deportation in 2020, Mr. McSweeney was released from
25 detention and remained in the United States.

26 **B. Mr. McSweeney is detained after being told he would be removed to**
27 **Cuba without an opportunity to respond to his re-detention.**

28 On March 18, 2025, ICE rearrested Mr. McSweeney after he “reported to the

1 ICE office in Miramar, Florida.” Resp. Exh. 9-2 at 18; *Id.* at ¶ 4. He was detained
2 and provided with a “Notice of Revocation of Release” (“Notice of Revocation”).
3 *Id.* at ¶ 5. The Notice of Revocation stated that the reason for the revocation of his
4 release was that the government of *Cuba* had issued travel documents for him and
5 that he would be removed to Cuba expeditiously. *Id.* The Notice of Revocation also
6 advised Mr. McSweeney that under 8 C.F.R. § 241.4, he was entitled to a prompt
7 informal interview where he could have the opportunity to respond to the reasons
8 for the revocation. *Id.* at ¶ 6. According to the Record of Deportable/Inadmissible
9 Alien I-213 completed on March 18, Mr. McSweeney stated that “he is not afraid
10 of persecution, torture, or physical harm if returned to his native country of
11 *Venezuela*.” Resp. Exh. 9-2 at 19 (emphasis added).

12 After months of being detained, he learned from an immigration officer that
13 the Notice of Revocation was incorrect. McSweeney Decl. Ex. C at ¶ 7. The
14 government of Cuba had not issued travel documents for him. *Id.* He also learned
15 that ICE did not have travel documents to remove him to the Bahamas. *Id.* at 10.
16 What’s more, Mr. McSweeney did not receive the *prompt interview* or the
17 opportunity to respond to the reasons for the revocation of release as required under
18 8 C.F.R. § 241.4. *Id.* at ¶ 7.

19 After Mr. McSweeney was detained in March of this year, he was sent to the
20 Krome Detention Center in Miami, Florida. *Id.* at ¶ 8. He was placed in a cell with
21 over 60 men in a cell that was meant for 25. The men in the cell were wearing the
22 same clothes they were arrested in. Some of them men had not showered in weeks.
23 For five days, Mr. McSweeney remained in the same clothes he was arrested in and
24 was not allowed to shower. He slept on the floor and was given bagged lunches for
25 breakfast, lunch, and dinner. *Id.* at ¶ 8. During his time in that detention center, he
26 did not speak to an immigration officer.

27 On or about March 25, 2025, Mr. McSweeney was then placed on an airplane
28 and not told where he was going. *Id.* at ¶ 9. He then arrived at the Otay Detention

1 Center in San Diego. *Id.*

2 About two months after being detained was the first time Mr. McSweeney
3 spoke to an officer about his detention. *Id.* at ¶ 10. At that meeting, he was told that
4 the Bahamas was not accepting him and would not issue travel documents. *Id.* at ¶
5 10. Mr. McSweeney was told that immigration would attempt to get travel
6 documents from Haiti a country he has never been to. *Id.*

7 **C. Mr. McSweeney learns that he will be removed to Haiti within a week**
8 **and he will be filing a motion to reconsider or reopen his prior removal**
9 **proceedings.**

10 On September 19, 2025, six months after his detention, ICE conducted, for
11 the first time, a personal interview under 8 C.F.R. § 241.4(i)(3). Resp. Exh. 9-2 at
12 33. During that interview, Mr. McSweeney informs ICE that he has provided his
13 birth certificate from the Bahamas. He has informed ICE that his father lives in the
14 Bahamas. Mr. McSweeney informs ICE that he has family and community support
15 in Florida. His mother, sisters, wife, and two young children all live in Florida. He
16 is a volunteer of a children's football team, he is a volunteer at his church, and he
17 has letters of recommendation from the church and his pastor. *Id.*

18 On September 30, the government informed this Court that ICE now has
19 travel documents from Haiti. Respondent's Response, ECF No. 9. According to the
20 government's filing, on September 23, 2025, the Bahamian Consulate provided the
21 Enforcement and Removal Operations (ERO) with a letter confirming that Mr.
22 McSweeney is not a citizen of the Bahamas. With that letter, ERO was able to
23 obtain travel documents from Haiti for Mr. McSweeney. After the government's
24 filing with the Court, government counsel informed Federal Defenders of San
25 Diego, Inc. (FDSDI) that Mr. McSweeney will be moved out of Otay Detention
26 Center over the weekend and placed on a flight to Haiti on Wednesday.

27 Mr. McSweeney has advised FDSDI that he fears being removed to Haiti and
28 asked for assistance with reopening his immigration case. Mr. McSweeney will be

1 filing a pro se motion to reconsider or reopen his removal proceedings with the
2 immigration court in Miami, Florida.

3 **Argument**

4 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
5 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
6 relief, that the balance of equities tips in his favor, and that an injunction is in the
7 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
8 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
9 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
10 “substantially identical” analysis). A “variant[] of the same standard” is the
11 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
12 going to the merits—a lesser showing than likelihood of success on the merits—
13 then a preliminary injunction may still issue if the balance of hardships tips
14 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
15 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
16 (internal quotation marks omitted). Under this approach, the four *Winter* elements
17 are “balanced, so that a stronger showing of one element may offset a weaker
18 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
19 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
20 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
21 long as the other *Winter* factors are met. *Id.* at 1132.

22 Here, this Court should issue a temporary restraining order because
23 “immediate and irreparable injury . . . or damage” is occurring and will continue
24 in the absence of an order. Fed. R. Civ. P. 65(b). Mr. McSweeney is a citizen of
25 the Bahamas. He is now being removed to Haiti based on an error that he is not a
26 citizen of the Bahamas. Respondents have stated that he will be removed from
27 Otay Detention Center over the weekend and that he will be removed to Haiti
28 within the week. This will not give him sufficient opportunity to have his motion

1 reconsidered or his motion to reopen adjudicated. What's more, Respondents re-
2 detained Petitioner in violation of his due process, statutory, and regulatory rights,
3 preventing him from effectively litigating his motion to reconsider/reopen and
4 resolving his affairs. This Court should grant Petitioner a stay of removal to
5 adjudicate his motion, order Petitioner's release.

6 **II. Petitioner is likely to succeed on the merits, or at a minimum, he raises**
7 **serious merits questions.**

8 **A. Petitioner is likely to succeed on the merits of his claim that procedural**
9 **due process prevents his removal during the adjudication of his motion**
10 **to reconsider and reopen.**

11 Mr. McSweeney wishes to challenge his removal to the alternative country
12 of Haiti. That is because, he can prove that he is in fact a citizen of the Bahamas.
13 Because the Bahamas is the designated country he has chosen for his removal, he
14 should be removed to that country. Mr. McSweeney also cannot be removed to
15 Haiti because he has not been given an opportunity to make a credible fear
16 application.

17 First, Mr. McSweeney can prove that he is a citizen of the Bahamas and
18 that he should be removed to that country. Under 8 U.S.C. § 1231(b)(2)(A)(i)-(ii),
19 a non-arriving alien who has been ordered removed "may designate one country
20 to which the alien wants to be removed" and "the Attorney General shall remove
21 the alien to the country the alien so designates." Mr. McSweeney designated the
22 Bahamas.

23 According to the Respondents, the Bahamas recently provided ICE with a
24 letter confirming that Mr. McSweeney is not a citizen. Mr. McSweeney has not
25 seen that letter. Mr. McSweeney is a citizen of the Bahamas. According to the
26 Government of the Bahamas, a person obtains automatic Bahamian citizenship if
27 he was born in the Bahamas to married parents, with either parent being a
28 Bahamian citizen or born to an un-married Bahamian female in or outside of the
Bahamas. *See The Government of the Bahamas, Department of Immigration,*

1 [https://www.immigration.gov.bs/applying-to-stay/applying-for-](https://www.immigration.gov.bs/applying-to-stay/applying-for-citizenship/#:~:text=AUTOMATIC%20BAHAMIAN%20CITIZENSHIP%20IS%20GIVEN,or%20outside%20of%20The%20Bahamas)
2 [citizenship/#:~:text=AUTOMATIC%20BAHAMIAN%20CITIZENSHIP%20IS](https://www.immigration.gov.bs/applying-to-stay/applying-for-citizenship/#:~:text=AUTOMATIC%20BAHAMIAN%20CITIZENSHIP%20IS%20GIVEN,or%20outside%20of%20The%20Bahamas)
3 [%20GIVEN,or%20outside%20of%20The%20Bahamas](https://www.immigration.gov.bs/applying-to-stay/applying-for-citizenship/#:~:text=AUTOMATIC%20BAHAMIAN%20CITIZENSHIP%20IS%20GIVEN,or%20outside%20of%20The%20Bahamas) (last viewed on October
4 1, 2025). ICE has proof that Mr. McSweeney was born in the Bahamas. They
5 have his birth certificate.

6 Mr. McSweeney can also provide additional information that his mother
7 was also born in the Bahamas and was a citizen of the Bahamas. See Exhibit D.
8 Based on these facts and the law in the Bahamas, Mr. McSweeney is a citizen of
9 the Bahamas. Because the Bahamas is the designated country of removal, he
10 should be removed to the Bahamas, not Haiti.

11 Second, U.S. law enshrines protections against dangerous and life-
12 threatening removal decisions. By statute, the government is prohibited from
13 removing an immigrant to any country where a person may be persecuted or
14 tortured, a form of protection known as withholding of removal. *See* 8 U.S.C.
15 § 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if
16 the Attorney General decides that the [noncitizen’s] life or freedom would be
17 threatened in that country because of the [noncitizen’s] race, religion, nationality,
18 membership in a particular social group, or political opinion.” *Id.*; *see also* 8
19 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

20 Similarly, Congress codified protections in the CAT prohibiting the
21 government from removing a person to a country where they would be tortured.
22 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy
23 of the United States not to expel, extradite, or otherwise effect the involuntary
24 return of any person to a country in which there are substantial grounds for
25 believing the person would be in danger of being subjected to torture, regardless
26 of whether the person is physically present in the United States.”); 28 C.F.R. §
27 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

28 Due process also requires “ask[ing] the noncitizen whether he or she fears

1 persecution or harm upon removal to the designated country and memorialize in
2 writing the noncitizen's response. This requirement ensures DHS will obtain the
3 necessary information from the noncitizen to comply with section 1231(b)(3) and
4 avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing
5 to notify individuals who are subject to deportation that they have the right to
6 apply for asylum in the United States and for withholding of deportation to the
7 country to which they will be deported violates both INS regulations and the
8 constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

9 If the noncitizen claims fear, measures must be taken to ensure that the
10 noncitizen can seek asylum, withholding, and relief under CAT before an
11 immigration judge in reopened removal proceedings. The amount and type of
12 notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and
13 circumstances, he would have a reasonable opportunity to raise and pursue his
14 claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009
15 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
16 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring a
17 minimum of 15 days' notice). "[L]ast minute" notice of the country of removal
18 will not suffice, *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed.
19 App'x 724 (9th Cir. 2016), and for good reason: To have a meaningful
20 opportunity to apply for fear-based protection, immigrants must have time to
21 prepare and present relevant arguments and evidence. Merely telling a person
22 where they may be sent does not give them a meaningful chance to determine
23 whether and why they have a credible fear.

24 Mr. McSweeney fears being removed to Haiti. According to the March 18,
25 2025 I-213, Mr. McSweeney was asked if he feared "persecution, torture, or
26 physical harm if returned to his native country of Venezuela." Resp. Exh. ECF 9-
27 2 at 19. There is no record of him being asked if he feared being sent to Haiti. He
28 has not had the opportunity to make a credible fear application.

1 Mr. McSweeney would like to make this record before the immigration
2 judge, and he has requested to reopen his case so that he could do so. Procedural
3 due process prevents the government from removing him while his motion to
4 reconsider or reopen is adjudicated.

5 That is precisely what the district court in *Chhoeun v. Marin*, 306 F. Supp.
6 3d 1147 (C.D. Cal. 2018), concluded. In *Chhoeun*, a class of hundreds of
7 Cambodian nationals subject to old removal orders who ICE abruptly detained
8 and threatened with imminent deportation challenged the government's conduct
9 as a violation of Due Process, seeking a stay of removal so that they could pursue
10 their motions to reopen. *Id.* at 1151. Applying the procedural due process test in
11 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976), the court granted the petitioners'
12 motion for a temporary restraining order, as well as a preliminary injunction. *Id.*
13 at 1159–63.

14 In balancing the familiar three *Mathews v. Eldridge* factors—the private
15 interest affected, the risk of erroneous deprivation, and the government's
16 interest—the court concluded that the factors weighed in favor of the petitioners.
17 First, the court found they “clearly have a strong liberty interest in remaining in
18 this country” because they “grown up in our communities, obtained gainful and
19 productive employment, and raised families of their own.” *Id.* at 1159–60. Second,
20 the court found that “the manner in which Petitioners were detained and the
21 conditions of detention have made it prohibitively difficult for Petitioners with
22 meritorious challenges to file motions to reopen”; thus, the petitioners “are at risk
23 of an erroneous deprivation of liberty *now*, if they are not afforded additional time
24 to file and litigate motions to reopen.” *Id.* at 1161. Finally, the court found that
25 “the relief that Petitioners seek does not materially impinge on the Government's
26 interests” because it required only a short delay. *Id.* Thus, the court granted relief,
27 holding that their removals be enjoined for 60 days to allow the petitioners to file
28 motions to reopen and extending that stay through the adjudication of the motions

1 for those who filed. *Id.* at 1151.

2 Here, the balancing of the factors is similar to *Chhoeun*. Mr. McSweeney
3 has been in the United States for nearly 30 years. He is a citizen of the Bahamas
4 and that is the designated country that he chose before the immigration judge. Mr.
5 McSweeney has never lived in Haiti and has no family in that country. Moreover,
6 there is a basis for fear for removal to Haiti. On July 15, 2025, the State
7 Department has issued a warning to United States Citizens to not travel to Haiti
8 “due to kidnapping, crime, terrorist activity, civil unrest, and limited health care.”
9 U.S. Department of State, *Haiti Travel Advisory*, available at
10 [https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html)
11 [travel-advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html). The travel warning is listed as Level 4, which “is the highest
12 advisory level due to life-threatening risks.” U.S. Department of State, *Travel*
13 *Advisories*, available at [https://travel.state.gov/en/international-travel/travel-](https://travel.state.gov/en/international-travel/travel-advisories.html#accordion-45664e3835-item-ee5484c8be)
14 [advisories.html#accordion-45664e3835-item-ee5484c8be](https://travel.state.gov/en/international-travel/travel-advisories.html#accordion-45664e3835-item-ee5484c8be).

15 Moreover, the risk of erroneous deprivation of this interest is high because
16 ICE states that it now has travel documents for him and that he’ll be put on the
17 next plane to Haiti within days. Finally, any inconvenience to the government is
18 minimal—Mr. McSweeney seeks only a short delay to have a chance to
19 adjudicate his motion to reconsider and reopen his removal proceedings. Because
20 these factors weigh heavily in Mr. McSweeney’s favor, he is likely to succeed on
21 the merits of his claim.

22
23 **B. Petitioner is likely to succeed on the merits of his claim that ICE violated
its own regulations.**

24 ICE’s own regulations provide extra process for someone who, like
25 Petitioner, is re-detained following a period of release. Under 8 C.F.R. § 241.4(l),
26 ICE may re-detain an immigrant on supervision only with an interview and a
27 chance to contest a re-detention. When an immigrant is specifically released after
28 giving good reason why they cannot be removed, additional regulations apply:

1 ICE may revoke a noncitizen's release and return them to ICE custody due to
2 failure to comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on
3 account of changed circumstances," a noncitizen likely can be removed in the
4 reasonably foreseeable future. *Id.* § 241.13(i)(2).

5 The regulations further provide noncitizens with a chance to contest a re-
6 detention decision. ICE must "notif[y] [the person] of the reasons for revocation
7 of his or her release." *Id.* § 241.13(i)(3). ICE must then "conduct an initial
8 informal interview promptly" after re-detention "to afford the alien an opportunity
9 to respond to the reasons for revocation stated in the notification." *Id.* During the
10 interview, the person "may submit any evidence or information" showing that the
11 prerequisites to re-detention have not been met, and the interviewer must evaluate
12 "any contested facts." *Id.*

13 ICE is required to follow its own regulations. *United States ex rel. Accardi*
14 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
15 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
16 abide by certain internal policies is well-established."). A court may review a re-
17 detention decision for compliance with the regulations. *See Phan v. Beccerra*, No.
18 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v.*
19 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
20 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

21 None of the prerequisites to detention apply here. ICE never claimed that
22 Petitioner violated the conditions of his release. Instead, ICE claimed that the
23 detention was due to obtaining travel documents from Cuba. Nor did ICE provide
24 the required prompt interview or opportunity to contest his removal. This is
25 precisely why the district court in *Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d
26 1233 (C.D. Cal. 2020), enjoined ICE from detaining a class of Cambodian
27 petitioners. Applying the three-factor *Mathews v. Eldridge* test, the court
28 explained that notice of detention "provides great value," including giving the

1 individual “an opportunity to contact an attorney, gather any documents they
2 have, make FOIA requests for other documents, say goodbye to their families and
3 loved ones, and wrap up their affairs, including ensuring adequate childcare and
4 notifying their employers.” *Id.* at 1249. Echoing the concerns here, the court
5 determined that “[t]he extraordinary circumstances of this case—including the
6 long-dormant removal orders, changes in the law and in Petitioners’ lives, the
7 sudden and unexpected threat of removal, and the barriers to accessing attorneys
8 and documents while in detention—have undermined Petitioners’ ability to avail
9 themselves of the administrative procedures in place to protect them from
10 erroneous removals.” *Id.* at 1251. Thus, individuals must be released so they have
11 “adequate time and opportunity to contact attorneys and access the system that
12 has been constructed to prevent erroneous removals.” *Id.*

13 Other courts have released re-detained immigrants after finding that ICE
14 failed to comply with applicable regulations. District Judge Hiu recently granted
15 release where ICE failed to comply with 8 C.F.R. § 241.13, holding that the
16 “[g]overnment agencies are required to follow their own regulations.” *Rokhfirooz*
17 *v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept.
18 15, 2025). District Judge Simmons granted a temporary restraining order on the
19 basis that ICE failed to comply with the same regulations. Order on Motion for
20 TRO, *Tran v. Bondi et al*, 25-cv-02334-JES-MSB (Sept. 29, 2025). *Ceesay v.*
21 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
22 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387
23 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352,
24 at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA,
25 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No.
26 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025);
27 *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
28 Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025

1 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025). “[B]ecause officials did not
2 properly revoke petitioner’s release pursuant to the applicable regulations, that
3 revocation has no effect, and [Mr. McSweeney] is entitled to his release (subject
4 to the same Order of Supervision that governed his most recent release).” *Liu*,
5 2025 WL 1696526, at *3. Thus, Mr. McSweeney is likely to succeed on the
6 merits of his claim for release.

7 **III. Petitioner will suffer irreparable harm absent injunctive relief.**

8 Petitioner also meets the second factor, irreparable harm. “It is well
9 established that the deprivation of constitutional rights ‘unquestionably constitutes
10 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
11 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged
12 deprivation of a constitutional right is involved, most courts hold that no further
13 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
14 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
15 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

16 Here, the potential irreparable harm to Petitioner is even more concrete.
17 After living in the United States for nearly 30 years, Mr. McSweeney is at
18 imminent risk of being removed on the basis of a factual error, without the
19 opportunity to have his motion to reopen be adjudicated. What’s more,
20 “[u]nlawful detention certainly constitutes ‘extreme or very serious damage, and
21 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d
22 976, 999 (9th Cir. 2017). The deportation to Haiti poses the risk of being held
23 indefinitely in hazardous foreign prisons. *See Wong et al., supra*. These and other
24 threats to Petitioner independently constitute irreparable harm.

25
26 **IV. The balance of hardships and the public interest weigh heavily in petitioner’s favor.**

27 The final two factors for a TRO—the balance of hardships and public
28 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,

1 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. All
2 Mr. McSweeney seeks is the chance to have his motion to reopen adjudicated
3 before he is removed. The government “cannot reasonably assert that it is harmed
4 in any legally cognizable sense” by being compelled to make sure he is not
5 deported on the basis of a legal error. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir.
6 1983). Moreover, it is always in the public interest to prevent individuals from
7 being “wrongfully removed.” *Nken*, 556 U.S. at 436; *see also Moreno Galvez v.*
8 *Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government’s
9 treatment “is inconsistent with federal law, . . . the balance of hardships and
10 public interest factors weigh in favor of a preliminary injunction.”). On the other
11 hand, Petitioner faces weighty hardships: wrongful removal, unlawful detention,
12 and removal to Haiti where he is likely to suffer imprisonment or serious harm.
13 The balance of equities thus weigh in his favor.

14 **V. Petitioner gave the government notice of this TRO, and the TRO should**
15 **remain in place throughout habeas litigation.**

16 Upon filing this motion, proposed counsel emailed the assigned AUSA,
17 notice of this request for a temporary restraining and all the filings associated with
18 it. Additionally, Petitioner requests that this TRO remain in place until the habeas
19 petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because the
20 same considerations will continue to warrant injunctive relief throughout this
21 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*
22 *Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003). A proposed order is attached.
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Conclusion

For those reasons, Petitioner requests that this Court issue a temporary restraining order ordering the relief requested.

DATED: 10-1-25

Respectfully submitted,



Emmanuel McSweeney

Petitioner

EXHIBIT C

1 **Emmanuel McSweeney**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 EMMANUEL MCSWEENEY,

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of the
14 Department of Homeland Security,
15 PAMELA JO BONDI, Attorney
16 General, TODD M. LYONS, Acting
17 Director, Immigration and Customs
18 Enforcement, JESUS ROCHA,
Acting Field Office Director, San
Diego Field Office, CHRISTOPHER
LAROSE, Warden at Otay Mesa
Detention Center,

19 Respondents.

CIVIL CASE NO.: 25-cv-02488-
RBM-DEB

**Declaration of
Emmanuel McSweeney in
Support of Temporary
Retraining Order**

1 I, Emmanuel McSweeney, declare:
2

- 3 1. I was born in the Bahamas in 1996. My mother and my father
4 were both born in the Bahamas. My mother had Bahamian
5 citizenship. I came to the United States with my mother in 1998
6 from the Bahamas. I was one year old at the time. I have lived in
7 the state of Florida ever since I arrived in the United States.
- 8 2. My mother and my father were both born in the Bahamas. My
9 mother had Bahamian citizenship.
- 10 3. I was ordered removed on May 21, 2020. My appeal was
11 dismissed on April 20, 2021.
- 12 4. I was released from immigration custody in 2020. I have been
13 reporting to an immigration officer every year since my release.
- 14 5. On March 18, 2025, I went to my yearly check-in with
15 immigration officials in Florida and I was detained.
- 16 6. At the time I was detained, I was given a document titled Notice
17 of Revocation of Release. The document stated that the reason for
18 my revocation was that the government of Cuba has issued travel
19 documents for me and that I would be removed to that country.
- 20 7. The Notice of Revocation of Release also stated that under 8
21 C.F.R. §§ 241.4, I would be "promptly afforded an informal
22 interview" where I would have the "opportunity to respond to the
23 reasons for the revocation."
- 24 8. I never got the opportunity to respond to the reasons for the
25 revocation. After being detained for months, I learned from an
26 officer that the Notice of Revocation of Release was incorrect and
27 that Cuba had not issued travel documents for me.
28

1 9. After I was detained, I was sent to Krome Detention Center in
2 Miami, Florida. The first night I slept in a visitation room. I was
3 then placed in a cell that was meant for 25 men but there were at
4 least 60 men in the cell. People were wearing the clothes they
5 were arrested. Some of them men had not showered in weeks. I
6 was not processed for 5 days. That means that I remained in the
7 same clothes I was arrested in for five days and was not allowed
8 to shower. I slept on the floor and was given bagged lunch for
9 breakfast, lunch, and dinner. When my family came to see me at
10 the detention center, they were told by officers that they did not
11 know where I was located. The conditions were very difficult.

12 10. On or about March 25, 2025, I was placed on an airplane
13 and not told where I was going. I then arrived at the Otay
14 Detention Center in San Diego.

15 11. In May 2025, I spoke to a deportation officer for the first
16 time. I was told that Bahamas was not accepting me and would
17 not issue travel documents. I have cooperated in obtaining my
18 travel documents.

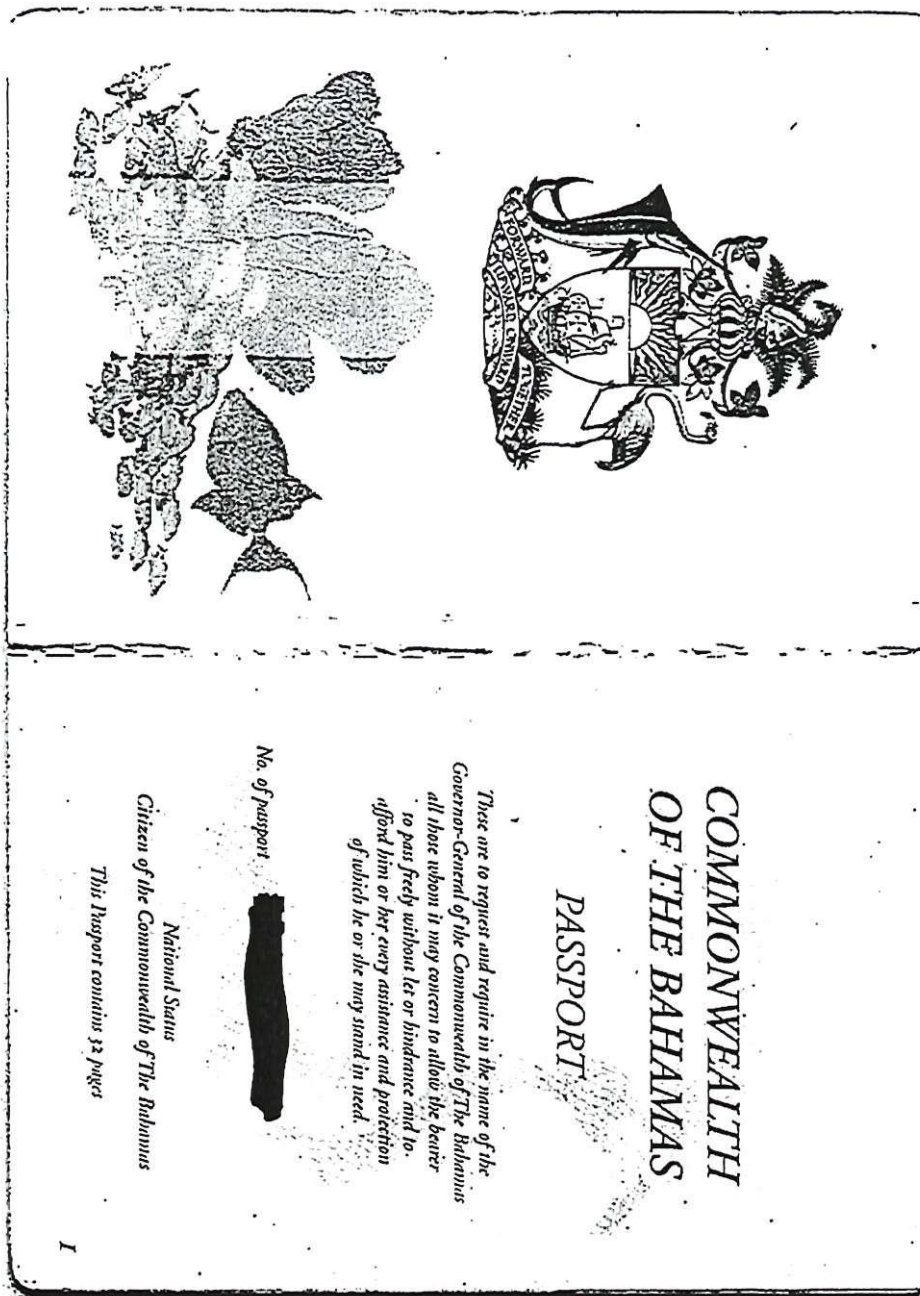
19 12. I have two young children at home. I support my family
20 financially by working multiple jobs like construction. I make
21 very little money and do not have savings or property.

22 13. I graduated high school and have no legal education or
23 training. I also do not have free access to the internet in custody.
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1 I declare under penalty of perjury that the foregoing is true and correct,
2 executed on 10-09-25, in San Diego, California.

3
4 
5 **Emmanuel McSweeney**
6 Declarant
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EXHIBIT D

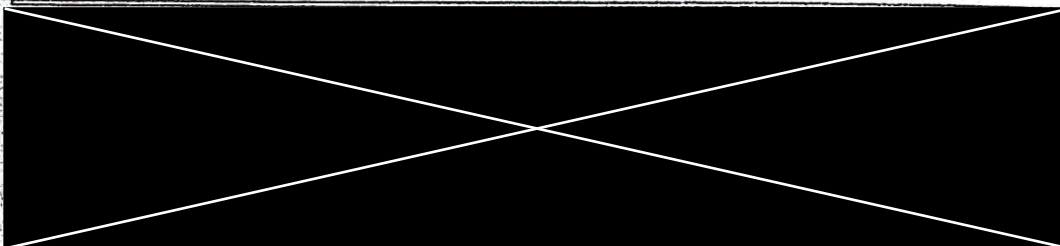


Certified



BIRTHS REGISTRATION
CERTIFIED COPY OF ENTRY IN REGISTER OF BIRTHS

Occupation of Mother: Domestic Worker Marital Status: Spinster Age: 
Occupation of Father: _____ Age: _____
Where Mother Born: _____ Where Father Born: _____



BIRTHS REGISTRATION
CERTIFIED COPY OF ENTRY IN REGISTER OF BIRTHS

Child's Surname: JEAN
Child's Christian or First Names: REGINE
Sex: Female Date of Birth: 
Place of Birth: P.M. HOSPITAL District of Birth: Nassau
Island of Birth: New Providence
Mother's Maiden Surname: JEAN Christian or First Names: PHILOMENE
Married Surname: _____
Father's Surname: _____ Christian or First Names: _____

I CERTIFY THAT THE ABOVE STATED PARTICULARS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Informant: SOEUR CLOTILDE-MARIE

I AM SATISFIED AS TO THE CORRECTNESS AND SUFFICIENCY OF THIS STATEMENT AND REGISTER THE BIRTH THIS 8th DAY OF JUNE 1977.

Assistant Registrar: Gomez, R.N.

Registrar: Roberts, A. Dorothea

CORRECTIONS OR ADDITIONS

Certified to be a true copy of an entry in the register of births. Given at Nassau, The Bahamas this 29th day of April, 2025.

Authentication
WgqNuZY

Registrar General



PRINCESS MARGARET HOSPITAL

29 April 2025

REGISTRAR GENERAL'S DEPARTMENT
Nassau, Bahamas

HEALTH INFORMATION MANAGEMENT UNIT

TO WHOM IT MAY CONCERN:

RE: EMMANUEL MCSWEEENY
D.O.B. [REDACTED]
Mother's Name REGINE DORCELY

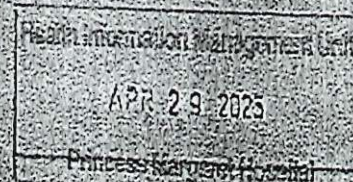
This letter is to verify that the above mentioned mother gave birth to a live baby BOY

Our research confirmed that the birth occurred: On the Maternity Ward of the Princess Margaret Hospital

If there are any queries or concerns, please contact the Medical Records Department at (242)397-1231 or 322-2861 ext 2777

Yours Sincerely,

Christine King-Curry
CHRISTINE KING-CURRY (Mrs.)
SR. MEDICAL RECORDS OFFICER



Researched by: TRANIA MCKENZIE (Ms.)

Telephone: (242) 322-2861
www.phabahamas.org | P.O. Box N-3730, Nassau, Bahamas

