UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Esau Ernesto Chicas Ortega, *Petitioner,* v. Sylvester Ortega, Acting Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; Pamela Bondi, United States Attorney General; Bobby Thompson, South Texas Detention Complex, Warden; Maria DeLeon, United States Immigration and Customs Enforcement, *in their official capacities*, *Respondents.*	Civil Action No.: 5:25-cv-1229

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE, FOR A PRELIMINARY INJUNCTION

Petitioner Esau Ernesto Chicas Ortega (Petitioner) files this motion requesting the Court's request for a temporary restraining order (TRO) or, in the alternative, for a preliminary injunction preventing his removal pending a final decision in his petition for a writ of habeas corpus.

Petitioner is a Salvadoran national presently detained by Respondents in the Enforcement and Removal Offices in San Antonio, Texas. Petitioner entered the United States in January of 2017 and was immediately removed. He returned in December of 2017. He was detained immediately. He applied for and received protection under the Convention Against Torture which was signed by Immigration Judge Newaz in San Antonio, Texas on October 3, 2023, in Immigration Court proceedings. Despite receiving this protection from removal to his home country, Respondents have forcibly detained Mr. Chicas Ortega and intend to remove Mr. Chicas Ortega to a third country. Because Respondents have no discretion to detain Petitioner or execute Petitioner's removal order as per § 1254a(a)(1)(A), Petitioner urges this Court to issue a temporary restraining order barring the execution of the removal order.

Respondents' expressed intent to remove Petitioner is prohibited by federal law. Petitioner requests this Court's assistance to ensure that Respondents comply with federal law and prevent Petitioner's removal and order his release.

I. FACTUAL BACKGROUND

ARGUMENT

Respondents' Attempted Removal to a Third Country Violates the Convention Against Torture and a Nationwide Federal Injunction. Petitioner has been granted protection under the United Nations Convention Against Torture (CAT) by Immigration Judge Newaz on October 3, 2023. This protection prohibits his removal to El Salvador, the country where he faces a clear probability of torture. While the removal order remains in place, the CAT grant prevents DHS from executing removal to El Salvador or to any third country where he may face similar harm.

DHS's attempt to remove Petitioner to a third country not designated during prior immigration proceedings—and without any formal motion to reopen or vacate the CAT

protection—violates binding federal law and a nationwide preliminary injunction issued in D.V.D. v. DHS, No. 1:25-cv-10676-BEM (D. Mass. Apr. 18, 2025).

In D.V.D., the U.S. District Court enjoined DHS from removing individuals with final orders of removal to a third country unless and until the agency:

1. Provides written notice in a language the individual understands to both the noncitizen and their counsel;
2. Offers a meaningful opportunity to assert fear of return to that third country;
3. Moves to reopen immigration proceedings if the person demonstrates "reasonable fear"; and
4. Allows at least 15 days to file a motion to reopen if DHS declines to reopen on its own.

None of these procedural safeguards have been provided to Petitioner. He has not received any written notice identifying a third country of removal, nor has he been allowed to raise a fear-based claim concerning any third country. To the extent DHS is considering such removal, it violates not only due process but also the court-ordered protections in D.V.D. It also violated the procedural safeguards set out in the policy memos ICE issued in the summer of 2025.

Moreover, CAT protection cannot be revoked by ICE or DHS without a formal motion to reopen and new evidentiary hearing. See 8 C.F.R. § 1208.17(d). No such motion has been filed or granted in this case. Accordingly, DHS lacks any authority to remove Petitioner to a third country, including Mexico, without violating the Immigration Judge's CAT order and the procedural mandates of D.V.D.

Petitioner's continued detention in anticipation of unlawful removal also raises serious constitutional concerns. Where removal is not reasonably foreseeable due to legal barriers, continued detention violates the Due Process Clause. See Zadvydas v. Davis, 533 U.S. 678, 701 (2001). Because DHS is legally barred from removing Petitioner to El Salvador or any third country without additional process, his detention cannot be justified.

A. The Legal Standard for a Preliminary Injunction

A plaintiff is entitled to a preliminary injunction to preserve the status quo and prevent irreparable harm until the parties' rights can be determined at trial on the merits. *City of Dallas v. Delta Air Lines, Inc.*, 847 F.3d 279, 285 (5th Cir. 20217). The "status quo" sought to be restored is "the last peaceable uncontested status existing between the parties before the disputed developed." Charles Alan Wright & Arthur R. Miller, 11A FEDERAL PRACTICE & PROCEDURE § 2948 (3d ed. 2013). Thus, the status quo in this case means preventing Respondents from executing Petitioner's removal order..

To obtain a preliminary injunction, a plaintiff must show (1) a substantial likelihood of prevailing on the merits; (2) a substantial likelihood of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the nonmovant if the injunction is not granted; and (4) the injunction will not disserve the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 374 (2008). The first two factors, substantial likelihood of prevailing on the merits and of irreparable harm, are the most critical. *Nken v. Holder*, 556 U.S. 418, 434 (2009). In this circuit, the first factor, likelihood of success on the merits, is the most important. *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005). Further, "where there is a serious legal question involved and the balance of the equities heavily

favors [an injunction]...the movant only needs to present a substantial case on the merits." *Lake Eugenie Land & Dev., Inc. v. BP Exploration & Prod. (In re Deepwater Horizon)*, 732 F.3d 326, 345 (5th Cir. 2013) (quoting *Weingarten Realty Investors v. Miller*, 661 F.3d 904, 910 (5th Cir. 2011)).

B. Petitioner is entitled to a TRO and/or a Preliminary Injunction Because Respondents' threatened action violates federal law

The main issue before this Court is a legal one: whether Respondents are authorized to remove Petitioner without proper safeguards provided by the caselaw for persons with existing removal orders under CAT. It is clear that if this Court finds that Petitioner holds protected status, then Respondents have no authority to execute his removal order without following the required safeguards.

Based on this and other evidence that will be developed at a hearing on this motion, Petitioner is likely to succeed in showing that Respondents' threatened actions violate federal law. The record will show that Respondents cannot lawfully remove Petitioner and that an order from this Court is needed to require Respondents' compliance with federal law.

1. Respondents' Threatened Removal Violates Federal Law

Petitioner is a Salvadoran National who received protection from removal from the United States less than two years from the date Defendants detained him and threatened his removal. Although he has a final order of removal, 8 U.S.C. § 1254a(a)(1) protects Petitioner from removal and prevents the Department of Homeland Security from executing the removal order.

Under these circumstances, it is plain that Respondents cannot remove Petitioner notwithstanding the existence of a removal order.

2. Petitioner will suffer irreparable harm if Respondents are allowed to execute his removal order

"In general, a harm is irreparable where there is no adequate remedy at law, such as monetary damages." *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2000). No amount of money physically restores Petitioner's status in the United States. If denied preliminary relief, Petitioner will suffer irreparable harm, namely the loss of his protected status, the ability to live with his family, and the opportunity to work in this country. Of greater concern is that he will be transported to a county where he does not have a support network, may not know the language, will have no resources, and could be at risk of the same torture he endured in his home country of El Salvador.

3. The Balance of Equities Tips Heavily in Favor of Petitioner and an Injunction is in the Public Interest

The threatened injury to Petitioner far outweighs any harm that will result to Respondents if the Court issues a TRO or an injunction. Further, the issuance of an injunction does not disserve the public interest but rather promotes it because it upholds the rule of law.

Petitioner is presently detained but has been reporting faithfully and without fail under the terms of his order of supervision. There is no basis to believe that he will abscond from ICE supervision.

The resulting harms to the Defendants are nonexistent or at most minimal. They are simply held to the rule of law.

In addition, granting the injunction does not disserve the public interest but rather promotes it. It is in the public interest for government officials to comply with federal law. *MCR Oil Tools, L.L.C v. United States DOT*, 2024 U.S. App. LEXIS 14297 at *19 (5th Cir. June 12, 2024) ("There is a 'substantial public interest in having governmental agencies abide by the

federal laws that govern their existence and operations.'") (quoting *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022)). In this case, the law is clear that the Respondents have no authority to execute the Petitioner's removal order, given the lack of procedural safeguards under U.S. law and policy. Granting the injunction promotes the rule of law. Petitioner therefore satisfies prongs 3 and 4 of the *Winter* test.

II. CONCLUSION

For the foregoing reasons, this Court should issue a restraining order or preliminary injunction and instruct Respondents to abstain from executing Petitioner's removal order.

Dated: September 29, 2025

Respectfully submitted,

/s/ Alicia Perez
Alicia Perez
Texas Bar No. 24060280
500 6th St.
San Antonio, Texas 78215
Ph: (210) 284-4081
Ali@aliperez.com
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

On September 29, 2025, undersigned counsel made a good-faith attempt to confer with the Assistant U.S. Attorney regarding this motion. Due to the exigent circumstances and time sensitivity, counsel was unable to obtain the government's position before filing. A copy of this motion has been sent to AUSA Lacy McAndrew at Lacy.McAndrew@usdoj.gov

CERTIFICATE OF SERVICE

On September 29, 2025, undersigned counsel served a copy of this motion on the U.S. Attorney for the Western District of Texas as required by serving one of his designated agents for service of process.

/s/ Alicia Perez
Alicia Perez
Texas Bar No. 24060280
500 6th St.
San Antonio, Texas 78215
Ph: (210) 284-4081
Ali@aliperez.com

/s/ Alfonso Otero
Alfonso Otero
Texas Bar No. 24009189
8620 N. New Braunfels Suite 605
San Antonio, Texas 78217

ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT FOR
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ESAU ERNEST CHICAS ORTEGA, *Petitioner,* v. Sylvester Ortega, Acting Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; Pamela Bondi, United States Attorney General; Bobby Thompson, South Texas Detention Complex, Warden; Maria DeLeon, United States Immigration and Customs Enforcement, *in their official capacities*, *Respondents.*	Civil Action No.:

ORDER

Pending before the Court is Plaintiff's Motion for a Temporary Restraining Order or, in the Alternative, for a Preliminary Injunction. After having reviewed the motion and the evidence in support of the motion, the parties' arguments and the applicable law, the Court is of the opinion that the motion should be GRANTED.

The Court concludes that Plaintiff has satisfied the factors necessary for issuance of a preliminary injunction. He is likely to succeed on the merits of his claim, and he is likely to suffer irreparable harm. Further, the balance of equities tilts in his favor, and an injunction promotes the public interest by requiring federal officers to comply with regulations that bind them.

Defendants shall release Petitioner from ICE custody and permit him to remain in the United States pending further order of this Court within 10 days of this Order.

Signed this ___ day of _____, 2025.

_____
UNITED STATES DISTRICT JUDGE