

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) **Joel Rodriguez Rosales,**)
)
Petitioner,) Case No. 5:25-cv-01139-J
)
v.) **HABEAS CORPUS**
)
(1) **Don Jones,** Warden, Kay County)
Detention Center;)
(2) **Russell Holt,** Director of Chicago Field)
Office, U.S. Immigration and Customs)
Enforcement;)
(3) **Kristi Noem,** Secretary of the U.S.)
Department of Homeland Security; and)
(4) **Pamela Bondi,**)
Attorney General of the United States,)
in their official capacities,)
)
Respondents.)
_____)

**PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER AND BRIEF IN SUPPORT**

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I. INTRODUCTION

Petitioner is a Honduran national who has been languishing in immigration detention for over a year. Through his habeas petition, Petitioner is challenging his detention and threat of removal to a third country where he fears harm. He seeks immediate injunctive relief to protect him from ongoing and imminent harm caused by Respondents' attempts to now remove him to a third country without allowing him to seek deferral of removal under the Convention Against Torture.

Petitioner, having previously been persecuted in his home country, was granted withholding of removal to Honduras by an Immigration Judge on December 30, 2024 (amended to deferral of removal on January 28, 2025). Nevertheless, ICE has refused to release Petitioner from detention. Now, ten months after the Immigration Judge's order granting protection against removal to Honduras, ICE seeks to remove Petitioner to the third country of Mexico. Petitioner also fears persecution in Mexico and is entitled to seek deferral of removal from that country as well.

For these reasons, Petitioner urges this Court to provide immediate relief, enjoining Respondents from removing Petitioner to Mexico until Petitioner is afforded a final decision from the Immigration Judge on his reasonable fear interview regarding removal to Mexico.

II. LEGAL BACKGROUND

Six months is the presumptively reasonable period during which ICE may detain non-citizens with a final removal order in order to effectuate their removal. *Zadvyas v.*

Davis, 533 U.S. 678, 701 (2001). After six months of detention, if “the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, DHS must respond with evidence sufficient to rebut that showing” or else a Constitutional violation occurs. *Id.* Moreover, “an inversely proportional relationship is at play: the longer a [] [noncitizen] is detained, the less he must put forward to obtain relief.” *Alexander v. Att’y Gen. U.S.*, 495 F. App’x 274, 276-77 (3d Cir. 2012).

Even though individuals granted withholding of removal from a specific country may be removed to a third country, the regulations provide that they may not be removed to a country where they are likely to be tortured: “The immigration judge shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or she is not likely to be tortured.” 8 C.F.R. §1208.17(b)(2).

Pursuant to § 1231(b)(3)(A), courts have repeatedly held that noncitizens cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (per curiam) (permitting designation of third country where individuals received “ample notice and an opportunity to be heard”).

Additionally, multiple courts have held—including in the context of purported removals to third countries—that “affirming a deportation order without a fair hearing concerning that deportation violates due process.” *Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that the noncitizen must be given the opportunity to brief removal to a third country when there was no indication during removal proceedings that she could be removed there); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) (“It follows that a failure to provide notice and, upon request, stay removal or reopen the case for adjudication of [the noncitizen’s] applications as to Burma would constitute a due process violation *if* Burma becomes the proposed country of removal.”); *Romero v. Evans*, 280 F. Supp. 3d 835, 847 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioner to a third country, as DHS would first need to give petitioner notice and the opportunity to raise any reasonable fear claims.”).

After a reasonable fear interview, a noncitizen is entitled to a hearing with an immigration judge. If the interview decision is positive (finding a reasonable fear supporting a withholding of removal claim), the officer “*shall* so inform the alien and issue a Form I-863, Notice of Referral to the Immigration Judge, for full consideration of the request for withholding of removal only.” 8 C.F.R. § 208.31(e) (emphasis added). If the interview decision is negative (finding no viable withholding of removal claim), that “negative decision regarding reasonable fear *shall* be subject to review by an immigration judge upon the alien’s request.” 8 C.F.R. § 208.31(g) (emphasis added). Regardless of the nature of the reasonable fear interview finding, a noncitizen is clearly and unequivocally entitled to seek relief before an immigration judge.

III. STATEMENT OF FACTS

Petitioner was detained by ICE on September 11, 2024, and his prior removal order from 2012 was reinstated. However, he expressed fear of returning to Honduras and, following a positive reasonable fear decision, his case was referred to the Immigration Court for withholding-only proceedings. On December 30, 2024, an immigration judge granted Petitioner's request for protection from removal to Honduras under the Convention Against Torture (Pet. Exh. 1). Thus, the removal order remains in place, but the government is prohibited from removing him to Honduras based on the substantial likelihood that he would be tortured there. *Id.*

ICE has continued to hold Petitioner in immigration custody for the last ten months since the Immigration Judge's decision granting protection from removal to Honduras (Pet. Exh. 2). Only now that Petitioner has brought a habeas corpus petition challenging such lengthy detention, ICE has filed notice with this Court of its intent to remove Petitioner to the third country of Mexico on October 28 or 29, 2025 (Resp. Notice to the Ct.).

Petitioner fears persecution in Mexico, a fact which he divulged to ICE. Petitioner was given a reasonable fear interview with an asylum officer from USCIS on October 23, 2025. As of October 27, 2025, Petitioner's counsel has only received notice that a decision on this interview has been issued, but no details as to the nature of that decision have been revealed to counsel or Petitioner (see attached email exhibit).

Respondents have filed no updated Notice with this Court altering their plans to remove Petitioner promptly to Mexico, despite Petitioner's fear of harm in that country.

IV. ARGUMENT

To obtain temporary and preliminary injunctive relief, Petitioner must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

A. Petitioner Is Likely to Succeed on the Merits.

1. Petitioner Is Likely to Prevail on His Claim That His Prolonged Detention Violates the Immigration and Nationality Act.

Petitioner's continued detention by Respondents is unlawful and violates the Immigration and Nationality Act as codified in 8 U.S.C. § 1231(a)(6), and as interpreted by the Supreme Court in *Zadvydas*. See *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner's 90-day statutory removal period and six-month presumptively reasonable period under *Zadvydas* for continued removal efforts both expired many months ago. Mr. Rodriguez Rosales has been detained for over a year in total and well over six months after his removal order became final. Respondents have had more than sufficient time to remove Petitioner from the country and yet have not done so.

Although Respondents now, upon filing of this habeas petition, present their sudden intention to remove Respondent to the third country of Mexico, Petitioner has claimed fear of persecution in that country specifically and is still in the midst of his reasonable fear

interview process. Regardless of the outcome of his reasonable fear interview, Petitioner still has a statutory right to present his case for withholding of removal to Mexico to an immigration judge. Thus, Respondents still cannot show they plan to *lawfully* and imminently remove Petitioner at this time.

2. Petitioner Is Likely to Prevail on His Claim That His Prolonged Detention Violates His Fifth Amendment Right to Substantive Due Process.

The Petitioner has a liberty interest under the Fifth Amendment Due Process Clause in not being detained for an indeterminate length of time by the Attorney General. Further, deprivation of a fundamental liberty interest can only be justified if narrowly tailored to serve a compelling governmental interest. *Flores v. Reno*, 507 U.S. 292, 302 (1993).

The Supreme Court in *Zadvydas* found that the government interests at stake were not compelling in continuing to detain a noncitizen beyond six months after the removal period started. The Court considered two interests asserted by the government: ensuring the noncitizen's appearance at any future proceedings and preventing danger to the community. The first interest was held to be "weak or nonexistent" when an individual cannot be lawfully deported in the foreseeable future. *Zadvydas*, 533 U.S. at 690. The second interest, preventative detention, could only be upheld where "limited to specially dangerous individuals and subject to strong procedural protections." *Id.* at 690-91. DHS has not alleged that Petitioner falls within this category. As the Supreme Court held in *Zadvydas*, neither governmental interest is compelling here, in Petitioner's case.

Since the continued detention of Mr. Rodriguez Rosales is not authorized by statute, he is now being held unlawfully by Respondents and is being deprived of his substantive due process rights.

3. Petitioner Is Likely to Prevail on His Claim That His Prolonged Detention Violates His Fifth Amendment Right to Procedural Due Process.

Respondents simply cannot, consistent with procedural due process, deport Petitioner to a third country without allowing him to fully pursue a protection-based claim. *See Kossov*, 132 F.3d at 408 (a fair hearing provides a noncitizen “an adequate opportunity to defend themselves against that deportation,” including seeking protection from the alternate country).

Since Respondents designated Mexico as the country of removal, Petitioner has asserted his fear of persecution in that country and undergone a reasonable fear interview as the first step in requesting deferral of removal from that country. Petitioner is still in the midst of that process and is entitled to present his fear claim to an immigration judge, regardless of the outcome of the interview. At minimum, Petitioner is entitled to immigration judge review of a negative decision in his fear interview. Thus, Respondents have not afforded Petitioner his procedural due process rights as he is still in the midst of the process for claiming relief from removal.

B. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Emergency Injunctive Relief.

Parties seeking preliminary injunctive relief must also show they are “*likely* to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable

harm is harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

Petitioner currently is suffering and will suffer irreparable harm resulting from Respondents’ insistence on lengthy detention and attempt to remove him to the third country of Mexico. Respondents’ enforced detention and present attempt at removal to Mexico have caused, and are causing, irreparable harm in the form of continued detention beyond a year under harsh conditions, complete deprivation of liberty, and the imminent threat of persecution and torture in a country to which he may be now unlawfully removed. Additionally, Respondents have provided no assurance that Mexico will not deport Petitioner to Honduras, thereby subjecting him to the very harmful action that an immigration judge has prohibited.

This sort of harm, and particularly the last—persecution and torture—are clearly irreparable. Should Petitioner be removed to Mexico and there (or in Honduras if Mexico should deport him) subjected to the sort of severe physical and mental anguish that constitutes persecution and/or torture, there is no repair available. Further, it is entirely possible that if Petitioner were removed to Mexico (or subsequently Honduras), he would disappear due to the actions of the persecutors, rendering it impossible for him to be even offered any sort of relief.

Absent injunctive relief, Respondents evidently plan to remove Petitioner to a country where he fears persecution, in spite of his continuing rights to present his fear-

based claim to an immigration judge. Thus, Petitioner is in immediate danger of suffering imminent and entirely irreparable harm in the form of persecution and torture via removal to a country where he will likely be hunted down and attacked.

For these reasons, Petitioner has demonstrated irreparable harm.

C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.

The final two factors for injunctive relief—the balance of hardships and public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships, namely the complete deprivation of his liberty after a full year in immigration detention, as well as the chilling, imminent hardship of likely persecution and torture should he be removed to the country of Mexico.

Respondents face no hardship whatsoever. Respondents have chosen to detain Petitioner for over a year now, taking no action to effect his removal during that time. Until now, Respondents have been unable to remove Petitioner from the United States, or they simply were uninterested in trying to do so, being content with allowing him to languish in a detention facility. Respondents can provide no reasonable explanation for their sudden urgency to remove Petitioner ten months after the Immigration Judge granted deferral of removal. Clearly, Respondents have been quite content with the status quo for at least the last ten months.

Moreover, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice . . .” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The

public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration laws applied correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the public interest in Government observance of the Constitution and laws”).

V. CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant temporary injunctive relief, enjoining Respondents from removing Petitioner to any country without a final decision on his reasonable fear interview from an immigration judge and ordering Respondents to immediately file a notice of intent to comply with such order.

Respectfully submitted,

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Dated: October 27, 2025

CERTIFICATE OF SERVICE

I, Elissa Stiles, hereby certify that the above document was served upon Respondents electronically via ECF on October 27, 2025.

Date: October 27, 2025

/S/ Elissa R Stiles