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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Oscar Armando Solis Quintanilla,

Petitioner,

v.

Kristi Noem *et. al.*,

Respondents.

Case No.:
CV-25-03828-PHX-MTL
(DMF)

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Petitioner Oscar Armando Solis Quintanilla (AKA Jose Oscar Armando Solis Quintanilla), by counsel, pursuant to Fed. R. Civ. P. 65(a), (b), hereby requests that this Court enjoin Respondents from removing him from the continental United States unless and until an Immigration Judge ("IJ") affirms the

denial of his third-country fear interview. In support of this motion, Petitioner respectfully represents as follows:

Procedural History

Petitioner Oscar Armando Solis Quintanilla (AKA Jose Oscar Armando Solis Quintanilla) is a citizen of El Salvador with no claim to citizenship or legal status in any other country. Dkt. No. 1 ¶ 29. He entered the United States in 2015 and was placed in removal proceedings. *Id.* at ¶ 30. On April 10, 2019, an immigration judge ordered Petitioner removed from the United States but granted him withholding of removal pursuant to 8 C.F.R. § 1208.16(c), after finding that he had established it was more likely than not that he would be tortured in El Salvador. *Id.* at ¶ 31; Dkt. No. 1-1, Exh. 1. Both parties waived appeal of the IJ order and neither party has moved to vacate it. *Id.* Following the IJ's grant of withholding of removal, Petitioner was issued an Order of Supervision and attended ICE check-ins for years without issue. Dkt. No. 1 ¶ 32. In September 2025, Respondents abruptly detained Petitioner at a scheduled check-in without an explanation for the legal or factual basis for his detention. *Id.* at ¶ 33.

The law permits Respondents to remove Petitioner to any third country on earth, 8 U.S.C. § 1231(b)(2)(E)(vii); but only if the country's "government will accept [Petitioner] into that country," *id.* In other words, what is true as a matter of practicality is also required as a matter of law: Respondents may only remove Petitioner to a country if that country is willing to accept Petitioner into its borders. Accordingly, following his detention, Respondents verbally informed Petitioner of their intent to remove him to Mexico. Dkt. No. 1 ¶ 35. On October 6, 2025, Petitioner, through counsel, initially raised a fear of removal to Mexico. Dkt. No. 1-1, Exh. 3. On October 23, 2025, Respondents later served Petitioner with a one-page written "Notice of Removal" informing Petitioner of ICE's intent to remove him to Mexico. *See* Exh. A hereto. On that day, ICE confirmed by telephone and email that Petitioner would be referred to USCIS for a third-country fear screening.

Petitioner's counsel attempted to enter an appearance with USCIS but was informed that the agency had not yet received a referral for a fear screening for Petitioner.

Petioner's third-country fear interview took place on October 28, 2025. Counsel was not present for the interview. On October 29, 2025, Counsel was emailed a one-page result indicating that the fear screening was negative. *See* Ex. B hereto. Respondents' policy and practice regarding third-country removal is to promptly remove individuals whose fear screenings are negative; they do not allow for review by an IJ. *See* Dkt. 1-1, Exh. 4 ("If USCIS determines that the alien has not met this standard, the alien will be removed."). Counsel requested IJ review from USCIS and ICE but was informed none would be provided. *See* Exh. C hereto.

Standard of Review

A court may issue a preliminary injunction upon notice to the adverse party. Fed. R. Civ. P. 65(a). A preliminary injunction is a form of equitable relief intended to prevent irreparable harm to Petitioner while a lawsuit remains pending. To justify such relief, Petitioner must demonstrate: (1) a substantial likelihood of success on the underlying merits of his claims; (2) that he is likely to suffer irreparable injury without the entry of an injunction; (3) that the balance of hardships between Petitioner and Respondents warrants the relief; and (4) that the injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A temporary restraining order is issued pursuant to Fed. R. Civ. P. 65(b), but the analysis for granting a temporary restraining order is "substantially identical" to that for granting a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)

Argument

I. Respondents violate due process by seeking to remove Petitioner to Mexico without an Immigration Judge reviewing his claim of fear of removal to that country.

Third-country removal is permitted under 8 U.S.C. § 1231(b)(2), but like all removal, it is subject to the requirements of procedural due process. "'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025), quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993).

Now that a USCIS officer has reviewed and denied Petitioner's claim of fear of removal to Mexico, *see* Ex. B hereto, Respondents contend that they may remove him to Mexico without any further legal process. Respondents do not dispute that if they had named Mexico as well as El Salvador during Petitioner's removal proceedings, he would have been entitled to have his claim of fear of removal to that former country adjudicated by an IJ during his immigration court trial on April 10, 2019. As the Southern District of Texas explained in *Sagastizado Sanchez v. Noem*, 2025 WL 2957002 (S.D. Tex. Oct. 2, 2025), "Had Respondents designated Mexico as the country of removal during Petitioner's initial removal proceedings under 8 U.S.C. § 1229a, he would have been provided the opportunity to apply for withholding of removal from Mexico directly before an IJ rather than complete a threshold fear-based screening." Slip op. at 21. But Respondents did not breathe a word about Mexico at that time, instead springing it as a surprise more than six years later. While the statute allows them to do this, due process requires that Petitioner be afforded the same process now that he would have been afforded then.

Petitioner has been present in the United States since 2015. Dkt. No. 1 ¶ 30. The additional procedure he requests, IJ review of his denied USCIS fear interview, is indisputably available to noncitizens who have just been caught crossing the border illegally, 8 C.F.R. § 1003.42; and is indisputably available to noncitizens who have just been caught *re*-entering the United States illegally after a prior

deportation, 8 C.F.R. § 1208.31(g). Respondents' claim that Petitioner is entitled to less due process than "an alien at the threshold of initial entry," *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020), simply because they designated Mexico as a country of removal *after* El Salvador and not *together with* El Salvador, holds no water. As the court in *Sagastizado Sanchez* explained, "Petitioner's argument that he cannot be entitled to lesser protections now than he would have been upon his initial entry or upon a future commission of felony illegal reentry into the United States carries significant weight." 2025 WL 2957002 at *11.

As the Ninth Circuit has explained, the Due Process Clause imposes "procedural constraints on governmental decisions that deprive individuals of liberty or property interests." *Nozzi v. Housing Authority of City of Los Angeles*, 806 F.3d 1178, 1190 (9th Cir. 2015) quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The *Mathews* standard balances: "(1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements." *Id.* at 742. As the Southern District of Texas held in *Sagastizado Sanchez* and the District of Maryland held in *Cruz-Medina v. Noem*, 2025 WL 2841488 (D. Md. Oct. 7, 2025), Respondents' third-country removal protocols fail the *Mathews* test because they do not allow for IJ review of a claim of fear of removal.

On the first *Mathews* prong, Petitioner's private interest in "not being removed to a country where he alleges he would face persecution or torture" is "precisely the type of interest that courts consistently have held is significant enough to justify procedural protections to ensure that individuals who are actually entitled to withholding of removal under § 1231(b)(3) or the Convention Against Torture receive such protection." *Cruz-Medina*, 2025 WL 2841488, at *6, citing *J.G.G.*, 604 U.S. at 673. *See also Sagastizado Sanchez*, 2025 WL 2957002 at *12.

On the second *Mathews* prong, review by an Administrative Law Judge would provide additional probative value over an interview with a non-judicial officer resulting in a check-the-box form providing no reasons; this is why Respondents afford IJ review in every other analogous circumstance. The procedures applied here to date do not meet the constitutional minimum requirements of notice and opportunity to be heard. Petitioner has received only a check-the-box form showing him the result of his interview but providing no reasoning for why his fear claim was denied. *See* Exh. B hereto. In contrast, in a normal Reasonable Fear Interview, the asylum officer creates (and the noncitizen is given) "a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officers, and the officer's determination of whether, in light of such facts, the alien has established a reasonable fear of persecution or torture." 8 C.F.R. § 208.31(c). The IJ reviewing the matter (as well as the noncitizen) is then provided with "[t]he record of determination, including copies of the Notice of Referral to Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based[.]" 8 C.F.R. § 208.31(g).

The Supreme Court has found that the risk of erroneous deprivation of liberty or property is impermissibly high where an individual is not provided "notice of the factual basis" for a material government decision and "a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004). As the *Cruz-Medina* court found:

> [T]he question is whether a decision by a single asylum officer, rather than the opportunity for review by an immigration judge, is sufficient to adequately minimize the risk of an erroneous rejection of a fear-of-persecution claim. The Court need look no further than DHS regulations themselves to conclude that, where a person alleges that he would be persecuted or tortured if removed to a particular country, a single review by an asylum officer creates an unacceptably high risk of erroneous deprivation.

> DHS regulations address various scenarios where individuals may seek protection from removal based on a fear of how they will be treated in another country, and in every scenario addressed by those regulations they entitle noncitizens to de novo review by an immigration judge of negative asylum officer determinations—from applicants for admission who are found inadmissible, to reinstated removal orders, Even in the context of expedited removal, an applicant who indicates either an intention to apply for asylum or a fear of persecution may appeal to an immigration judge, who can take further evidence and shall make a de novo determination.
>
> In short, there are no regulations that provide for circumstances under which USCIS is given the authority to conduct fear-screening interviews without providing for independent review of that screening by an IJ. . . . The government offers no articulable reason why there is any lesser risk of erroneous deprivation in this scenario than in scenarios where DHS regulations contemplated the potential risk of erroneous deprivation of a noncitizen's liberty interest and determined to mandate review by an immigration judge.

2025 WL 2841488, at *7 (internal citations omitted). *See also Sagastizado Sanchez*, 2025 WL 2957002 at *14-15.

Finally, on the third *Mathews* prong, Respondents cannot complain of excessive burden in extending to Petitioner a procedure that already exists in so many other contexts, and that generally must take place within a mere ten days. 8 C.F.R. § 1208.31(g) ("In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I-863, Notice of Referral to Immigration Judge, and the complete record of determination with the immigration court."). *See also Cruz-Medina*, 2025 WL 2841488, at *7-*8; *Sagastizado Sanchez*, 2025 WL 2957002 at *14-15.

As the Western District of Washington held, "a noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation. The guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the

merits of his or her particular claim." *Nguyen v. Scott*, 2025 WL 2419288, at *18 (W.D. Wash., Aug. 21, 2025), citing *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019). Indeed, the procedures that the District Court in Nguyen found necessary were significantly more robust than the procedure that Petitioner seeks here: while the Nguyen court held that "removal proceedings must be reopened so that a hearing can be held," *id.*, Petitioner here merely seeks IJ review of his denied fear interview, following which he would be allowed to file a full application for withholding of removal only if he passes the IJ review. For the foregoing reasons, if an individual who illegally reentered the United States after prior removal would be given an IJ review of a denied Reasonable Fear Interview, if an "alien at the threshold" would be given an IJ review of a denied Credible Fear Interview, then so must Petitioner be given an IJ review of a denied third-country fear interview.

II. This Court has jurisdiction to decide Petitioner's due process claim for IJ review of his denied fear interview, and to enjoin removal unless and until an IJ affirms the denial

This Court has jurisdiction to decide Petitioner's due process claim seeking IJ review of a denied fear interview. In the absence of a jurisdiction-stripping statute that clearly states otherwise, there exists a "strong presumption in favor of judicial review" of constitutional claims. *Ibarra-Perez v. United States*, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) quoting *Arce v. United States*, 899 F.3d 796, 801 (9th Cir. 2018).

No statute strips this Court of jurisdiction over this issue. Although 8 U.S.C. § 1231(h) clarifies that Petitioner cannot sue directly under the statute if he claims it to have been violated—for example if he considered the designation of Mexico to be impermissible under Section 1231(b)(2), or if he considered that Respondents erred in determining that Mexico is not a country where his life or freedom would be threatened under Section 1231(b)(3)—it does not purport to strip this Court's jurisdiction over due process challenges to removal procedures. *See Riley v. Bondi*,

145 S. Ct. 2190, 2201-02 (U.S. 2025) ("[W]e are reluctant to label a rule 'jurisdictional' unless Congress has clearly signaled that the rule is meant to have that status. . . . our pattern of recent decisions shows that we will not categorize a provision as 'jurisdictional' unless the signal is exceedingly strong."). *See also Garcia v. Johnson*, 2014 WL 6657591, at *5 n.3 (N.D. Cal. Nov. 21, 2024).

Further, while the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), strips this Court of jurisdiction to review a substantive merits determination of whether Petitioner will be tortured in Mexico, here, "Petitioner is not seeking review of a 'cause or claim' under the Convention Against Torture; he is seeking a ruling that, under regulations applicable to reinstatement of removal orders, or as a matter of due process, he is entitled to IJ review of the asylum officer's negative reasonable fear determination[.]" *Cruz-Medina*, 2025 WL 2841488, at *3. Petitioner does not ask this Court to review the asylum officer's decision; rather, he asks this Court to decide whether the procedures employed by Respondents comport with due process. The FARRA's jurisdiction-stripping provision therefore is not implicated. As the District of Maryland explained in *Santamaria Orellana v. Baker*, 2025 WL 2841886, at *8 (D. Md. Oct. 7, 2025), Petitioner "has CAT withholding in relation to [his native country] and is seeking IJ review of his claim that he has a reasonable fear of removal to Mexico. In the Petition, however, he does not seek review of any determination by an IJ or the BIA pursuant to CAT; rather, he seeks only the opportunity to have an IJ hear his reasonable fear claim that may be based on CAT. The Court therefore does not find that he is seeking judicial review of a claim under CAT for purposes of § 1254(a)(4) or FARRA § 2242(d)." The court went on to explain, "Even if viewed separately, FARRA § 2242(d) does not bar Santamaria Orellana's claim because it does not challenge a determination under CAT but instead contests the lack of due process arising from the inability to have such a claim heard by an IJ." *Id.* at *9, citing *Zhenli Ye Gon v. Dyer*, 651 F. App'x 249 (4th Cir. 2016). *See also Zakzouk*

v. Becerra, 2025 WL 2899220, at *4 (N.D. Cal. Oct. 10, 2025) ("Petitioner does not seek review of the regulations adopted to implement CAT or claims considered under CAT. Rather, he seeks review of only his potential re-detention and notice and opportunity to apply for CAT relief if removal becomes reasonably foreseeable. Thus, FARRA, by its plain language, does not bar this Court's review of such claims." (Internal citations omitted.)).

8 U.S.C. § 1252(g) also does not give rise to a jurisdictional bar here. Although § 1252(g) strips the federal District Courts of jurisdiction to review certain discretionary decisions by the Attorney General, this "discretion-protecting provision" that "was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion" leaves undisturbed a District Court's "jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (internal citations omitted).

Nor do 8 U.S.C. §§ 1252(a)(5), (b)(9) require Petitioner's claims to be made in a Petition for Review to the U.S. Court of Appeals. Petitioner is not seeking judicial review of his removal order entered in 2019; rather, he is seeking judicial review of the procedures under which Respondents will determine whether it is permissible to carry out that removal order to one country in particular. As the Supreme Court recently explained, "the finality of an order of removal does not depend in any way on the outcome of the withholding-only proceedings." *Riley v. Bondi*, 145 S. Ct. 2190, 2199 (2025). Put differently, if Petitioner wins his case for protection to Mexico, he will still have a final removal order; there will simply be two countries instead of one to which that removal order may not be executed. Again, the Ninth Circuit in *Ibarra-Perez*:

> Because Ibarra-Perez challenges ICE's actions taken after his removal proceedings before the IJ and BIA had ended, neither section applies. Section 1252(a)(5) does not apply because Ibarra-Perez does not seek review of his removal order. Similarly, § 1252(b)(9) does not apply because Ibarra-Perez

> brings claims that arose after completion of his removal proceedings. Instead, Ibarra-Perez challenges ICE's separate and post-hearing decision to remove him to Mexico. He could not have contested this decision through the normal petition-for-review process because it was made after his removal proceedings had ended. The government attorney never mentioned Mexico as a possibility during Ibarra-Perez's proceedings before the IJ, and the IJ did not designate Mexico as an alternative country of removal. To state the obvious, Ibarra-Perez could not seek review of a decision that had not been made.

2025 WL 2461663, at *9, citing *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (holding that a habeas petitioner's challenge to a country-of-removal designation was not barred by § 1252(a)(5) because ICE acted "outside of removal proceedings").

Finally, the Supreme Court recently held that due process challenges to removal-related procedures *must* be brought in habeas. *J.G.G.*, 604 U.S. at 672. "Regardless of whether the detainees formally request release from confinement . . . their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas. And immediate physical release is not the only remedy under the federal writ of habeas corpus." *Id.* (internal citations omitted). For the foregoing reasons, this Court has jurisdiction to consider Petitioner's due process claim and order the relief requested herein.

III. The other *Winter* factors weigh in favor of a preliminary injunction

On the irreparable harm prong, although "the burden of removal alone cannot constitute the requisite irreparable injury," *Nken v. Holder*, 556 U.S. 418, 435 (2009), this case presents far more immediate injury than the garden-variety removal case in which "[a]liens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal," *id.* Petitioner is likely to suffer irreparable harm if removed to Mexico, a country where he has expressed a fear of torture and persecution. The

government has questioned its own ability to return deported noncitizens, *see, e.g.*, *D.A. v. Noem*, 2025 WL 2646888 (D.D.C. Sept. 15, 2025) (after noncitizens with grants of withholding or deferral of removal were removed to Ghana as a third-country removal, and Ghana threatened to re-deport them to their home countries, District Court lacked jurisdiction to order the government to bring them back). And where a plaintiff has established a likely violation of a constitutional right, the Court will be likely to find that the violation of the right constitutes irreparable harm. *Am. Coll. of Obstetricians & Gynecologists v. FDA*, 472 F. Supp. 3d 183, 228 (D. Md. 2020). On the third and fourth *Winter* factors, "once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435.

Here, the balance of equities and the public interest tilt sharply in favor of the issuance of at TRO, as the public has a significant stake in the Government's compliance with the law. *See, e.g.*, *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.").

Finally, Petitioner is an indigent detained noncitizen who lacks financial means to pay a TRO or PI bond. Counsel for Respondents has not yet been assigned; however, notice has been provided to Respondents via email on October 29, 2025. *See* Exh. D attached hereto.

Conclusion

For the foregoing reasons, this Court should enter a preliminary injunction, prohibiting Respondents from removing Petitioner to Mexico unless an Immigration Judge reviews the denial of his fear screening, and concurs in the denial.

Respectfully submitted,

//s//Lauren Hodges Date: October 29, 2025

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Certificate of Service

I, the undersigned, hereby certify that on this date, I emailed the foregoing, with all attachments thereto, to:

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Respectfully submitted,

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Date: October 29, 2025