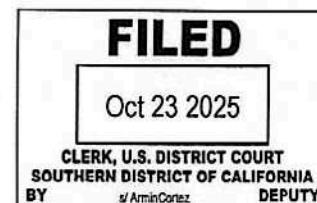


ORIGINAL

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8 Pro Se¹
9



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 MIGUEL CABRERA-TRILLO,

11 CIVIL CASE NO.:

12 Petitioner,

13
14 '25CV2865 CAB MSB

15 Notice of Motion
16 and
17 Memorandum of Law
18 in Support of
19 Temporary Restraining Order

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

26 Respondents.

27
28
1 Mr. Cabrera-Trilo is filing this motion with the assistance of the Federal
Defenders of San Diego, Inc., who drafted the instant motion and simultaneously
filed motion for appointment of counsel and habeas petition. Federal Defenders
has consistently used this procedure in seeking appointment for immigration
habeas cases. The Declaration of Zandra Lopez in Support of Appointment
Motion attaches case examples.

Introduction

Mr. Cabrera-Trilo (“Petitioner”) has simultaneously filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 (“Habeas Petition”). In the Habeas Petition, Petitioner asserts four claims that his continued detention and Respondent’s attempts to remove him to a third country violates the Fifth Amendment’s Due Process Clause. Specifically, Petitioner alleges that ICE re-detained him after decades of living in the community under an order of supervision without any notice or opportunity to be heard in violation of ICE’s own regulations. He also alleges because more than 6 months have passed since his final order of removal and there is no significant likelihood of removal in the reasonably foreseeable future, his continued detention is a violation his due process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Finally, Petitioner alleges that ICE may not remove Petitioner to a third country without first following the procedures set out in 8 U.S.C. § 1231(b)(2) and without adequate notice and an opportunity to be heard.

Petitioner is therefore facing both unlawful detention and a threat of removal to a dangerous third country without due process. The requested temporary restraining order (“TRO”) would preserve the status quo while Petitioner litigates these claims by (1) reinstating Petitioner’s release on supervision, (2) prohibiting the government from removing him to a third country without first following the required removal statutory procedures and (3) prohibiting the government from removing him to a third country without an opportunity to file a motion to reopen with an IJ.

Petitioner incorporates by reference the facts and arguments set forth in that Habeas Petition.

Argument

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

The *Winter* factors weigh in favor of granting a TRO as to all claims set out in the Habeas Petition. *See Winter*, 555 U.S. at 20.

I. Petitioner is likely to succeed on the merits.

Petitioner is likely to succeed on the merits as to all claims. The Fifth Amendment's Due Process Clause forbids the Government to "depriv[e]" any "person ... of ... liberty ... without due process of law." *Zadvydas*, 533 U.S. at 690. Due process requires that "a person in jeopardy of a serious loss [be given] notice of the case against him and the opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S.

1 123, 171-72 (Frankfurter, J., concurring). Petitioner's detention in immigration
2 custody and removal to a third country violates due process.

3 First, ICE failed to follow its own regulations requiring changed
4 circumstances before Mr. Cabrera-Trilo's re-detention, as well as its procedural
5 regulations requiring it to notify him of those circumstances and allow him an
6 opportunity to contest them. This was a violation of both the regulations and due
7 process and requires his release. *See, e.g., See Phan v. Noem*, 2025 WL 2898977,
8 No. 25-CV-2422-RBM-MSB, *3-*5 (S.D. Cal. Oct. 10, 2025) (explaining this
9 regulatory framework and granting a habeas petition for ICE's failure to follow
10 these regulations for a refugee of Vietnam who entered the United States before
11 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same
12 as to an Iranian national).

13 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize
14 the government to detain immigrants like Petitioner, for whom there is "no
15 significant likelihood of removal in the reasonably foreseeable future." 533 U.S.
16 678, 701 (2001); *see, e.g., Alic v. Dep't of Homeland Sec./Immigr. Customs Enft*,
17 No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025);
18 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 *17 (W.D. Wash. Aug.
19 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
20 *5, *7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary
21 restraining order on these same grounds).

22 Third, Respondents cannot remove Mr. Cabrera-Trilo to a third country
23 without first following the consecutive removal commands of 8 U.S.C.
24 § 1231(b)(2). *Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 341 (2005).

25 Fourth, Respondents also cannot remove Petitioner to a third country
26 without providing notice and a sufficient opportunity to be heard before an
27 immigration judge. Their current policy allowing third-country removal
28 "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL

1 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE
2 memo contravenes Ninth Circuit law on the process due to noncitizens in detail);
3 *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D.
4 Cal. Sept. 29, 2025) (granting temporary restraining order preventing a
5 noncitizen's deportation to a third country pending litigation in light of due
6 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
7 6 (S.D. Cal. Sept. 18, 2025) (same).

8 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

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

17 Here, the potential irreparable harm to Petitioner is even more concrete.
18 Petitioner is almost 69 years old and has numerous medical issues. *See Cabrera-*
19 *Trillo Declaration*, Exhibit A to Habeas Petition at ¶8. He has serious medical
20 issues including chronic claudication of the arteries in his legs, diabetes,
21 hypertension, and chronic obstructive pulmonary disease. *Id.* at ¶ 8. Furthermore,
22 "[u]nlawful detention" itself "constitutes 'extreme or very serious damage, and
23 that damage is not compensable in damages.'" *Hernandez v. Sessions*, 872 F.3d
24 976, 999 (9th Cir. 2017).

25 Third-country deportations pose that risk and more. Recent third-country
26 deportees have been held, indefinitely and without charge, in hazardous foreign
27 prisons. *See Edward Wong et al, Inside the Global Deal-Making Behind Trump's*

1 *Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to
2 solitary confinement. Gerald Imray, *3 Deported by US held in African Prison*
3 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They have been
4 removed to countries so unstable that the U.S. government recommends making a
5 will and appointing a hostage negotiator before traveling to them. *See Wong, supra.*
6 These and other threats to Petitioner's health and life independently constitute
7 irreparable harm.

8 **III. The balance of hardships and the public interest weigh heavily in
Petitioner's favor.**

9 Third, and finally, when the government is a party, as it is here, "the balance
10 of equities and public interest factors merge." *Pimental-Estrada v. Barr*, 464 F.
11 Supp. 3d 1225, 1237 (W.D. Wash 2020) (citing *Drakes Bay Oyster v. Jewell*, 747
12 F.3d 1073, 1092 (9th Cir. 2014)). The risk of harm to Petitioner far outweighs the
13 government's interest in illegally detaining him, for it is "always in the public
14 interest to prevent the violation of a party's constitutional rights." *Melendres*, 695
15 F.3d at 1002.

16 **IV. Petitioner gave the government notice of this TRO, and the TRO
should remain in place throughout habeas litigation.**

17 When Federal Defenders first started filing TROs in immigration habeas
18 cases, a Federal Defenders attorney contacted the United States Attorney's Office
19 regarding service. The USAO requested that Federal Defenders provide notice of
20 these motions via email after the motion has been filed with the court. *See Exhibit*
21 *A, Lopez Declaration in support of Motion for Appointment*. Federal Defenders
22 will do so in this case. *Id.*

23 Additionally, Petitioner requests that this TRO remain in place until the
24 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because
25 the same considerations will continue to warrant injunctive relief throughout this
26 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*
27 *Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003). A proposed order is attached.

Conclusion

For those reasons, Petitioner requests that this Court issue a temporary restraining order.

DATED: 10-24-25

Respectfully submitted,

Miguel Cabrera &

Miguel Cabrera-Trillo

Petitioner