ORIGINAL

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Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS,

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.:

'25CV2866 JES VET

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

[1] Mr. Rios 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. Rios ("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.

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

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

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

Third, Respondents cannot remove Mr. Rios to a third country without first following the consecutive removal commands of 8 U.S.C. § 1231(b)(2). *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005).

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

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

II. Petitioner will suffer irreparable harm absent injunctive relief.

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

Here, the potential irreparable harm to Petitioner is even more concrete. Petitioner is 65 years old and has made a life for himself during the four years of his immigration supervision. *See* Rios Declaration, Exhibit A to Habeas Petition at ¶4. He married and works to contribute to his new family. *Id.* Furthermore, "[u]nlawful detention" itself "constitutes 'extreme or very serious damage, and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

Third-country deportations pose that risk and more. Recent third-country deportees have been held, indefinitely and without charge, in hazardous foreign prisons. *See* Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to

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

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

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

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

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

Additionally, Petitioner requests that this TRO remain in place until the habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because the same considerations will continue to warrant injunctive relief throughout this litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas 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: 10/05/2025

Respectfully submitted,

CARLOS RIOS

Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served the within Notice of Motion and Memorandum of Law in Support of Temporary Restraining Order by email, at the request of Janet Cabral, Chief of the Civil Division, to:

U.S. Attorney's Office, Southern District of California
Civil Division
Janet.Cabral@usdoj.gov

Date: October 23, 2025

/s/ *Zandra L. Lopez*
Zandra L. Lopez