

Case File No. 25-4140

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

Ricardo Jose PEREA ARGUELLO,
Appellant,

V.

KRISTI NOEM, Secretary of the Department of Homeland Security; United States
Immigration and Customs Enforcement; TODD LYONS, Acting Director of
Immigration and Customs Enforcement; JOHNNY CHOATE, Warden of the
Aurora Colorado Immigration Detention Facility.
Appellees,

Appeal of Order Vacating of a Temporary Restraining Order from the Federal
District Court of Utah
Case Number: 2:25-cv-00786-RJS
(HON. Federal District Judge Robert James Shelby)

APPELLANT'S MEMORANDUM BRIEF REGARDING JURISDICTION

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November 7, 2025

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Statement of Issues

Whether the District Court’s September 15, 2025 order — which restrained Respondents from removing Appellant from the United States, was modified and renewed following adversarial hearings, and remained in effect for over 24 days — constituted a preliminary injunction despite being labeled a “temporary restraining order.”

Whether the District Court’s October 9, 2025, order vacating that restraint “dissolved an injunction” within the meaning of 28 U.S.C. § 1292(a)(1), thereby rendering the order immediately appealable.

Whether the record is complete for purposes of appellate review, given the District Court clerk’s October 31, 2025, certification.

Statement of Facts and Procedural History

Appellant filed a petition for mandamus/habeas relief and a Motion for a Temporary Restraining Order on September 10, 2025. The court held a notice hearing on September 12, 2025, with both parties present.

On September 15, 2025, the court entered a written order granting the motion in part. It (a) required the Respondents to return Appellant to Utah by September 19 and (b) enjoined removal from the United States “pending further order of the court.” A detailed briefing schedule and future hearing were set. *See* Written TRO Order.

The TRO was modified on September 25, 2025, to permit transfer to a Colorado facility and was renewed on October 1, 2025. *See* Modified Order and Renewed Order. A further adversarial hearing occurred on October 7, 2025. On October 9, 2025, the District Court vacated the TRO. The Notice of Appeal was timely filed. *See* Order Vacating TRO.

Summary of the Argument

The District Court’s September 15, 2025, order restraining the Respondents from removing Appellant, although labeled a “Temporary Restraining Order,” functioned in every practical respect as a preliminary injunction. As the Supreme Court has made clear, the label a court places on an order is not dispositive; what matters is its practical effect. *Int’l Primate Protection League v. Adm’rs of Tulane Educ. Fund*, 500 U.S. 72, 76 (1991). Here, the duration of the restraint, the adversarial hearings on September 12 and October 7, the modifications and renewals, and the affirmative relief requiring Appellant’s return to Utah all demonstrate that the order bore the substantive hallmarks of an injunction. *Tooele Cnty. v. United States*, 820 F.3d 1183, 1187 (10th Cir. 2016).

Because the October 9, 2025, order vacated that TRO, it “dissolved an injunction” within the meaning of 28 U.S.C. § 1292(a)(1), making it immediately appealable. The record is complete for appellate review, as certified by the District

Court clerk on October 31, 2025. Accordingly, this Court has jurisdiction to consider this appeal.

Argument

I. THE DISTRICT COURT'S VACATUR OF APPELLANT'S TEMPORARY RESTRAINING ORDER CONSTITUTED THE DISSOLUTION OF AN INJUNCTION AND IS IMMEDIATELY APPEALABLE.

Under 28 U.S.C. § 1292(a)(1), an order “dissolving or refusing to dissolve an injunction” is immediately appealable. The Supreme Court has held that the label a district court gives an order is not dispositive; what matters is the order’s practical effect. *Int’l Primate Protection League*, 500 U.S. at 76. The Tenth Circuit follows this principle, looking to the practical effect of the order in determining whether it functions as an injunction. *Tooele Cnty.*, 820 F.3d at 1187.

The September 15, 2025, order restraining the Respondents from removing Appellant, modified and renewed over multiple hearings, bore all the hallmarks of an injunction. It remained in effect for more than twenty-four days, required affirmative action by the Respondents to return Appellant to Utah, and barred removal from the United States pending further court order. The District Court exercised ongoing supervision over the order, demonstrating continuous equitable control. These factors satisfy the Tenth Circuit’s test for converting a nominal TRO into a preliminary injunction.

The order's duration underscores its injunctive character. Federal Rule of Civil Procedure 65(b)(2) limits a temporary restraining order issued without notice to no more than fourteen days, unless extended for good cause. Here, the restraint remained in force from September 15 through October 9—twenty-four days—well beyond the statutory limit even assuming one permissible extension. This extended duration, combined with subsequent renewals and modifications, demonstrates that the order went beyond the fleeting, emergency relief contemplated by Rule 65(b) and instead functioned as a preliminary injunction under Rule 65(a).

The procedural history further confirms the injunctive nature of the order. The District Court conducted fully adversarial hearings on September 12 and October 7, 2025, and set detailed briefing schedules. Relief was neither *ex parte* nor temporary in the ordinary sense; instead, it followed notice and afforded the Respondents a meaningful opportunity to be heard. This Court has recognized that a TRO issued after adversarial proceedings and extended beyond the statutory time limit should be treated according to its practical effect as a preliminary injunction. *Tooele Cnty.*, 820 F.3d at 1187.

Finally, the District Court's ongoing supervision of the order reinforces its injunctive character. The September 25 modification and October 1 renewal indicate continuous judicial oversight, another hallmark of a preliminary injunction. By contrast, a typical TRO is self-expiring and does not involve sustained court

supervision. The combination of extended duration, adversarial hearings, affirmative relief, and ongoing judicial control clearly demonstrates that the order functioned as a preliminary injunction in all but name.

Accordingly, the lower court's TRO was, effectually, a preliminary injunction.

II. THE LOWER COURT'S ORDER VACATING THE TEMPORARY RESTRAINING ORDER CONSTITUTED THE DISSOLUTION OF AN INJUNCTION FOR PURPOSES OF § 1292(a)(1).

The District Court's October 9, 2025, order vacating the September 15, 2025, Temporary Restraining Order effectively dissolved a preliminary injunction. Although labeled a TRO, the September 15 order functioned as a preliminary injunction: it lasted more than twenty-four days, required affirmative action by respondents, prohibited Appellant's removal from the United States, and was continuously supervised and modified by the court. Under both Supreme Court and Tenth Circuit precedent, the label is immaterial; what matters is the practical effect of the order. *Int'l Primate Protection League*, 500 U.S. at 76; *Tooele Cnty*, 820 F.3d at 1187.

Because the order's practical effect was injunctive, its vacatur constitutes the dissolution of an injunction under 28 U.S.C. § 1292(a)(1), making the order immediately appealable.

III. GIVEN THE OCTOBER 31, 2025, CERTIFICATION OF THE COMPLETENESS OF THE RECORD, THE RECORD IS COMPLETE.

On October 31, 2025, the District Court clerk formally certified that the record was “complete for purposes of appeal” in case number 2:25-cv-00786. This certification resolves any prior concern that the record might be incomplete. A complete record is a prerequisite for appellate review, and the court’s certification confirms that all materials necessary for this Court to evaluate the appeal are now included.

Accordingly, there is no jurisdictional impediment to proceeding, and the appeal should move forward on the merits.

Conclusion

The District Court’s September 15, 2025, order functioned as a preliminary injunction, and the October 9, 2025, order vacating that TRO therefore constituted the dissolution of an injunction under 28 U.S.C. § 1292(a)(1). The practical effect of the order, not its label as a TRO, controls, and the Tenth Circuit and Supreme Court have consistently held that such orders are immediately appealable. *Tooele Cnty* 820 F.3d at 1187; *Int’l Primate Protection League*; 500 U.S. at 76.

Further, any prior concerns regarding the completeness of the record have been resolved by the District Court clerk’s October 31, 2025, certification that the record is complete for appellate review. Accordingly, this Court has jurisdiction to

hear the appeal, and the appeal should proceed to briefing on the merits without further delay.

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2025, I electronically filed the foregoing Opening Brief of Appellant with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit using the CM/ECF system. I further certify that all counsel of record are registered CM/ECF users and will be served electronically through the CM/ECF system.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

RICARDO JOSE PEREA ARGUELLO

Plaintiff,

v.

KRISTI NEOM, in her official capacity as
Secretary of the Department of Homeland
Security, UNITED STATES
IMMIGRATION AND CUSTOMS
ENFORCEMENT, TODD LYONS, in his
official capacity as the acting Director of
Immigration and Customs Enforcement,

Defendants.

**AMENDED ORDER GRANTING
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Civil No. 2:25-cv-00786-RJS

Chief District Judge Robert J. Shelby

Before the court is Plaintiff Ricardo Jose Perea Arguello's¹ Emergency Motions for Temporary Restraining Order and Stay of Removal.² Mr. Arguello asks the court to "prohibit[] Defendants from removing Plaintiff from the United States" and "[o]rder Defendants to provide at least 14 days' notice before taking any action to remove Plaintiff."³ Counsel for both parties presented oral argument to the court on September 12, 2025.⁴ At the conclusion of the hearing, the court found Arguello satisfied his high burden to establish a temporary restraining order and

¹ Dkt. 21, *Amended Complaint* (correcting the named plaintiff to "Ricardo Jose Perea Arguello").

² Dkt. 2, *Emergency Motion for Temporary Restraining Order and Stay of Removal*; Dkt. 4, *Amended Emergency Motion for Temporary Restraining Order and Stay of Removal (Amended Motion)*.

³ *Amended Motion* at 4.

⁴ Dkt. 19, *Amended Corrected Minute Entry for Proceedings Held Before Robert J. Shelby (Amended Minute Entry)*.

issued an oral ruling granting Arguello's motion in part. The court explained a written order would follow.⁵ This is that Order. As such, the court FINDS and ORDERS:

BACKGROUND

The following facts are drawn from Arguello's Amended Complaint.⁶

On November 6, 2024, Arguello presented himself at the United States border seeking political asylum from his country of Venezuela.⁷ Arguello had been in the United States before and it is unclear whether he previously left voluntarily or subject to an order of expedited removal.⁸ On December 17, 2024, Arguello filed an application for asylum, withholding of removal, and protection under the convention of torture (CAT), which was accepted by the Executive Office for Immigration Review.⁹ He was scheduled to appear before an immigration judge on October 19, 2026.¹⁰

On September 9, 2025, Arguello was arrested by U.S. Immigration and Customs Enforcement.¹¹ Arguello does not know the purpose of his arrest but, based on information and belief, pleads the purpose of the arrest was to effectuate his immediate removal from the United

⁵ *Id.*

⁶ During the hearing on September 12, 2025, counsel for both parties provided factual developments that have occurred since the filing of the Complaint and application for injunctive relief. *Id.* The court does not doubt that counsel for both parties faithfully represented the relevant facts as known to them. However, through no fault of either party, the court does not have clear and competent evidence before it. Neither counsel has had access to necessary evidence or adequate time to prepare. The government appeared for oral argument less than 48 hours after the case was filed. Arguello's counsel has not had access to Arguello since his arrest. As such, for the purpose of ordering this limited TRO pending further proceedings, the court limits the background section to facts alleged in the Complaint.

⁷ *Second Amended Complaint* ¶ 2.

⁸ *Id.*

⁹ *Id.* ¶ 3; *see also id.* at Ex. 2, (USCIS Form I-589 Application).

¹⁰ *Second Amended Complaint* at EOIR Automated Case Information.

¹¹ *Id.* ¶ 3.

States.¹² At the time of arrest, Arguello's application for relief remained pending before the immigration judge.¹³

On September 10, 2025, Arguello filed the present lawsuit against Kristi Neom in her official capacity as Secretary of the Department of Homeland Security, the United States Immigration and Customs Enforcement, and Todd Lyons, in his official capacity as the acting Director of Immigration and Customs Enforcement.¹⁴ Within hours of receiving Arguello's Motion for a Temporary Restraining Order, this court issued an order setting a status and scheduling conference.¹⁵ On September 12, 2025, the court heard oral argument from both parties.¹⁶

The court first considers its jurisdiction and then turns to the Motion.

JURISDICTION

The court has subject matter jurisdiction under 28 U.S.C. § 1331 (Federal Question Jurisdiction) since Arguello alleges violations of federal statutory and regulatory laws governing immigration and the U.S. Constitution.¹⁷ Parties may consent to personal jurisdiction and venue.¹⁸ During oral argument, defendants represented that they would not at this time challenge the court's jurisdiction and venue.¹⁹

¹² *Id.*

¹³ *Id.*; *see also id.* at Ex. 3 (EOIR Automated Case Information).

¹⁴ Dkt. 1, *Complaint*.

¹⁵ Dkt. 5, *Order Setting Status and Scheduling Conference*.

¹⁶ *Amended Minute Entry*.

¹⁷ *Second Amended Complaint* at 2.

¹⁸ *See* Fed. R. Civ. P. 12(b); *see Ace Invs., LLC v. Rubin*, 494 F. App'x 856, 858 (10th Cir. 2012) (personal jurisdiction).

¹⁹ *See Amended Minute Entry*.

ANALYSIS

A temporary restraining order requested under Federal Rule of Civil Procedure Rule 65(b) is an “extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”²⁰ A movant seeking a temporary restraining order must establish “(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the [temporary restraining order] is used; (3) that the threatened injury outweighs the harm that the [temporary restraining order] may cause the opposing party; and (4) that the [temporary restraining order], if issued, will not adversely affect the public interest.”²¹ The first two factors are the “most critical.”²² When the government is the opposing party, the third and fourth factors merge.²³ For the reasons below, Arguello establishes each of these factors and is entitled to a temporary restraining order, pending further proceedings.

I. Arguello Is Likely to Succeed on the Merits.

Arguello must show that there is a “substantial likelihood” that he will prevail on the merits of his claim.²⁴ Arguello argues he is likely to succeed on the merits of his due process claim.²⁵ The court agrees.

²⁰ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted); *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016) (citation omitted) (right to relief must be “clear and unequivocal”).

²¹ *Diné Citizens*, 839 F.3d at 1281 (quoting *Davis v. Mineta*, 302 F.3d 1104, 1111 (10th Cir. 2002)); *Winter*, 555 U.S. at 20.

²² *Nken*, 556 U.S. at 434.

²³ *Id.* at 435.

²⁴ *Diné Citizens*, 839 F.3d at 1281.

²⁵ *Second Amended Motion* at 3–4. Arguello also argues he is also likely to succeed on the merits of his statutory and regulatory rights claims. *Id.* It is true that noncitizens with pending asylum applications “shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application,” 8 C.F.R. § 208.5(a); see *Turcios v. Wolf*, 828 F. App'x 496, 500 (10th Cir. 2020). However, the statutes and regulations governing asylum, withholding of removal, and CAT relief do not grant a private right of action. 8 U.S.C. § 1158(d)(7) (asylum and withholding of removal); 8 C.F.R. § 208.18(e)(2) (CAT relief). As such, at this juncture, the court construes the

The Fifth Amendment prohibits depriving individuals of liberty without due process.²⁶ This right extends to noncitizens in removal proceedings.²⁷ “No person shall be removed from the United States without opportunity, at some time, to be heard.”²⁸ At minimum, “a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief.”²⁹ In *A.A.R.P.*, the Supreme Court held, “notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass [constitutional] muster.”³⁰ District courts applying *A.A.R.P.* have held due process in this context requires fourteen-day or twenty-one day notice prior to attempting removal.³¹ The court is unable to locate authority in the Tenth Circuit providing guidance concerning the due process requirements in this circuit.

The court finds the process afforded to Arguello, as pled and as represented during oral argument, constitutionally inadequate. Arguello was not given the “time and information to reasonably be able to contact counsel” as required under the Fifth Amendment.³² Arguello was arrested on September 9 to ostensibly effectuate his immediate removal. His arrest was the first notice he received of his imminent removal.³³ Arguello’s counsel represented that in the two days between his client’s arrest on September 12, 2025 and the hearing, Arguello was moved

Amended Complaint as seeking habeas relief based on the alleged due process violation. *See A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1370 (2025).

²⁶ U.S. CONST. amend. V; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

²⁷ *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (*per curiam*) (internal quotation marks omitted).

²⁸ *A.A.R.P.*, 145 S. Ct. at 1367 (citation modified).

²⁹ *Id.* at 1368.

³⁰ *Id.*

³¹ *Gutierrez-Contreras v. Warden*, 2025 WL 1400402, at *6 (C.D. Cal. May 14, 2025) (requiring fourteen-day notice); *A.S.R. v. Trump*, 782 F. Supp. 3d 224, 249 (W.D. Pa. 2025) (requiring twenty-one-day notice); *W.J.C.C. v. Trump*, 2025 WL 1703682, at *8 (W.D. Pa. June 18, 2025) (requiring twenty-one-day notice).

³² *A.A.R.P.*, 145 S. Ct. at 1370.

³³ *See Amended Minute Entry*.

first to Montana and then to Nevada.³⁴ During this forty-eight hour window, Arguello was not allowed to contact his lawyer.³⁵ Arguello’s counsel also represented that the government officials were informed of the pending TRO motion and nonetheless informed Arguello’s wife that Arguello would be deported on the next plane out of the country.³⁶ Forty-eight hours is more notice than the twenty-four-hour notice that was constitutionally deficient in *A.A.R.P.*; however, it is not meaningfully more notice since during that period Arguello was unable to communicate with counsel. The fourteen-day and twenty-one-day notice requirements imposed by other courts further underscores the high likelihood that notice here is constitutionally insufficient. Together the very short notice of removal combined with the lack of access to counsel, at least on the limited record before the court at this time, establish a substantial likelihood that Arguello will succeed on the merits of his due process claim, satisfying the first Rule 65 factor.

II. Arguello Faces Irreparable Harm Unless a Temporary Restraining Order Is Issued.

Arguello must show “irreparable injury is likely” in the absence of a temporary restraining order.³⁷ “When a plaintiff is asserting an injury in the form of a violated constitutional right, we presume that the injury will be irreparable if it exists.”³⁸ When a plaintiff shows a likelihood of success on the merits for a constitutional violation, then irreparable harm is

³⁴ *See id.*; Counsel for the government represented that Arguello was located in the Uintah County jail in Utah as of Wednesday, September 10, 2025 but could not confirm whether Arguello had been moved since then. *See id.*

³⁵ *See id.* Counsel for the government did not make any representations regarding the accuracy of this allegation. *See id.*

³⁶ *Id.* Counsel for the government did not make any representations regarding the accuracy of this allegation. *See id.*

³⁷ *Winter*, 555 U.S. at 22 (citation omitted).

³⁸ *Ortega v. Grisham*, 2025 WL 2394646, at 3 (10th Cir. Aug. 19, 2025) (discussing irreparable harm in the Second Amendment context); *see also Elrod v. Burns*, 427 U.S. 347, 373–73 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

also established.³⁹ Here, Arguello asserts his irreparable injury is a violation of his Fifth Amendment Due Process rights. Since the court has already found a likelihood of success on the merits of this claim, Arguello has shown irreparable harm.

III. The Balance of Equities and Public Interest Favor a Temporary Restraining Order.

The third and fourth factors—the public interest and balance of harms—merge when the government is the opposing party.⁴⁰ The court finds that this factor favors relief.

The public interest cuts in both directions. It is in the public interest to both prevent noncitizens from being wrongfully removed and to promptly execute removal orders of noncitizens deemed inadmissible.⁴¹ It is true that the “continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings . . . and permits and prolongs a continuing violation of United States law.”⁴² However, the court is not aware of any circumstances that heighten the government’s interest in Arguello’s prompt removal here prior to adjudicating his immigration case. During the hearing on Arguello’s motion, the United States was unable to proffer any facts that required Arguello’s immediate removal.⁴³ There is no evidence in the record that Arguello is “particularly dangerous” or that he “has substantially prolonged his stay by abusing the processes provided to him.”⁴⁴ Arguello is in the custody of Immigration and Customs Enforcement, and the Court finds he poses no threat to the community while in custody.

³⁹ *Ortega*, 2025 WL 2394646, at 3.

⁴⁰ *Nken*, 556 U.S. at 435.

⁴¹ *Id.* at 436.

⁴² *Id.* (citation modified).

⁴³ *Amended Minute Entry*.

⁴⁴ *Nken*, 556 U.S. at 436.

The final factor then turns on the balance of harms. The Supreme Court’s recent *A.A.R.P. v. Trump* decision is instructive. There, the Supreme Court balanced the same two interests: the detainees’ interest in judicial review before removal and the government’s interest in prompt removal of inadmissible noncitizens. The Supreme Court held the noncitizen’s interest was “particularly weighty” and granted preliminary relief restraining the government from removing the Venezuelan noncitizens pending further proceedings.⁴⁵ In *A.A.R.P.*, the detainees were provided notice “roughly 24 hours before removal, devoid of information about how to exercise due process rights.”⁴⁶ The court recognized that had the noncitizens been “removed from the United States to the custody of a foreign sovereign,” “the Government may have argued, as it [had] previously argued, that no U.S. court had jurisdiction to obtain relief.”⁴⁷ This would foreclose the opportunity for any meaningful judicial review. Further, the Supreme Court warned that even if a court had jurisdiction over the case after removal, the government may represent that it is unable to return the noncitizen to the United States, as the government had argued in another case.⁴⁸ Accordingly, the court provided temporary relief pending further proceedings.⁴⁹

The same principles apply here. Arguello was arrested on September 9, 2025. His lawyer filed this action the next day to avoid Arguello being immediately removed from the country. The sparse record limits the court’s ability to review the process afforded to Arguello,

⁴⁵ *Id.* at 1368.

⁴⁶ *Id.*

⁴⁷ *Id.* at 1367 (citing *Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1022673 (U.S. Apr. 7, 2025)).

⁴⁸ *Id.* at 1368 (“The Government has represented elsewhere that it is unable to provide for the return of an individual deported in error to a prison in El Salvador . . . where it is alleged that detainees face indefinite detention.” (citing *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501 (D. Md. 2025)).

⁴⁹ *See id.*

including the notice given and his access to his attorney.⁵⁰ Arguello has a great interest in having his case heard by a court in the United States. If no relief is issued, Arguello will imminently be removed from the United States. Once Arguello is removed from the United States, it is likely either no federal court will have jurisdiction to hear his case or, even if the court had jurisdiction, the federal government would be unable to comply with relief ordered. Thus, like the petitioners in *A.A.R.P.*, Arguello has a particularly weighty interest at stake that outweighs any interest the government has in his prompt removal. This factor favors relief.

In sum, Arguello has made a strong showing that he is likely to succeed on the merits of his Fifth Amendment claim, he will suffer irreparably injury absent relief, and the balance of harms weighs in his fact. He is thus entitled to the extraordinary remedy of injunctive relief, pending further proceedings.

CONCLUSION

For the reasons explained above, the court concludes Arguello has satisfied his heavy burden to obtain a temporary restraining order. Accordingly, his Motion is GRANTED IN PART and the court ORDERS as follows:

1. No later than Friday, September 19, 2025, Defendants shall physically return Arguello to the District of Utah.
2. The Court enjoins and restrains the Defendants, and any officers, employees, agents, or any other person or entity acting on behalf of the defendants, collectively or individually, from removing Arguello from the United States, pending further order from this court.

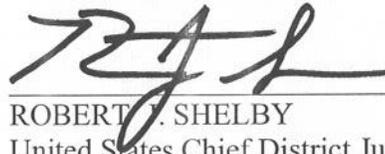
⁵⁰ During the hearing, Arguello's counsel represented that he had not been able to contact his client since Arguello's arrest two days prior. *Amended Minute Entry*.

3. The court sets the following briefing schedule. The government shall file its opposition to the TRO by September 26, 2025. Arguello shall file his reply, if any, by October 3, 2025. A TRO hearing will be set for October 7, 2025, at 10:00 AM. If Defendants wish to file a motion to dismiss challenging the sufficiency of the Amended Complaint, jurisdiction, venue, or other Rule 12 issues, they must do so by September 22, 2025. A response by Plaintiff is due by September 26, 2025. The Defendants shall file their reply, if any, by October 3, 2025.

4. No bond is required because “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”⁵¹

SO ORDERED this 15th day of September 2025, at 4:55 PM.

BY THE COURT:



ROBERT J. SHELBY
United States Chief District Judge

⁵¹ *Jorgenson v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003); see also *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1215 (10th Cir. 2009) (affirming preliminary injunction without bond and noting “the latitude given to courts in making bond decisions”).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

RICARDO JOSE PEREA ARGUELLO

Plaintiff,

v.

KRISTI NEOM, in her official capacity as Secretary of the Department of Homeland Security, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and TODD LYONS, in his official capacity as the acting Director of Immigration and Customs Enforcement,

Defendants.

**AMENDED TEMPORARY
RESTRAINING ORDER**

Case No. 2:25-cv-00786-RJS

Chief District Judge Robert J. Shelby

On September 12, 2025, the court orally granted a Temporary Restraining Order in this matter.¹ A written order memorializing the oral ruling followed on September 15, 2025.² On September 22, 2025, Defendants moved for a status conference based on the Immigration and Custom Enforcement's inability to maintain Plaintiff Ricardo Jose Perea Arguello's detention in the District of Utah, as required under the Temporary Restraining Order.³ On September 23, 2025, the court held a status conference with counsel from both parties.⁴ At the conclusion of

¹ Dkt. 19, *Amended Corrected Minute Entry for Proceedings Held Before Robert J. Shelby*.

² Dkt. 23, *Order Granting in Part Motion for Temporary Restraining Order*; see also Dkt. 24, *Amended Order Granting in Part Motion for Temporary Restraining Order* (amended to correctly identify Ricardo Jose Perea Arguello as the plaintiff).

³ Dkt. 29, *Defendants' Request for Status Conference*.

⁴ Dkt. 33, *Minute Entry for Proceedings Held Before Robert J. Shelby*.

the status conference, the court orally modified the Temporary Restraining Order and explained a written order would follow.⁵ This is that Order modifying the court's prior TRO.

In making these modifications, the court relies on oral representations made by counsel during the September 23, 2025 hearing.⁶ Specifically, defense counsel represented that before the court rules on Defendants' Motion to Dismiss, Defendants will not contest the court's personal jurisdiction, and Defendants will comply with this court's directive that Arguello shall not be removed from the United States pending further order of the court.⁷ Accordingly, the court ORDERS as follows:

1. No later than Sunday, September 21, 2025, Defendants shall physically return Arguello to the District of Utah.⁸ Thereafter, Defendants may transfer Arguello to a single detention facility in Colorado capable of (1) holding Arguello for the duration of this litigation and (2) providing him remote and personal access to counsel. Defendants must return Arguello to the District of Utah at least 24 hours before any in-person hearing to enable Arguello and his counsel to jointly prepare for the hearing.

2. The court enjoins and restrains the Defendants, and any officers, employees, agents, or any other person or entity acting on behalf of the defendants, collectively or individually, from removing Arguello from the United States, pending further order from this court.

3. The briefing schedule set forth in the prior Temporary Restraint Order remains unchanged. The government shall file its opposition to the TRO by September 26, 2025. Arguello shall file his reply, if any, by October 3, 2025. A TRO hearing will be set for October

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

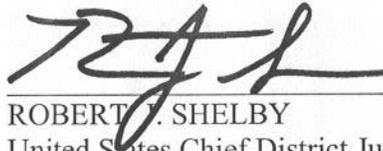
⁸ See Dkt. 27, *Order Granting Motion for Extension of Time to Return Plaintiff to the District of Utah.*

7, 2025, at 10:00 AM. If Defendants wish to file a motion to dismiss challenging the sufficiency of the Amended Complaint, jurisdiction, venue, or other Rule 12 issues, they must do so by September 22, 2025. A response by Plaintiff is due by September 26, 2025. The Defendants shall file their reply, if any, by October 3, 2025.

4. No bond is required because “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”⁹

SO ORDERED this 25th day of September 2025, at 1:25 PM.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'RJS', is written over a horizontal line.

ROBERT J. SHELBY
United States Chief District Judge

⁹ *Jorgenson v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003); *see also RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1215 (10th Cir. 2009) (affirming preliminary injunction without bond and noting “the latitude given to courts in making bond decisions”).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

RICARDO JOSE PEREA ARGUELLO

Plaintiff,

v.

KRISTI NEOM, in her official capacity as
Secretary of the Department of Homeland
Security, UNITED STATES
IMMIGRATION AND CUSTOMS
ENFORCEMENT, and TODD LYONS, in
his official capacity as the acting Director of
Immigration and Customs Enforcement,

Defendants.

TEMPORARY RESTRAINING ORDER

Case No. 2:25-cv-00786-RJS

District Judge Robert J. Shelby

On September 12, 2025, the court orally granted a Temporary Restraining Order in this matter.¹ A written order memorializing the oral ruling followed on September 15, 2025.² On September 23, 2025, the court held a status conference with counsel from both parties.³ At the conclusion of the status conference, the court orally modified the Temporary Restraining Order.⁴ A written order memorializing the modified order followed on September 25, 2025.⁵ In amending the order, the court relied on representations made by counsel during the status conference. Specifically, defense counsel represented that before the court rules on Defendants'

¹ Dkt. 19, *Amended Corrected Minute Entry for Proceedings Held Before Robert J. Shelby*.

² Dkt. 23, *Order Granting in Part Motion for Temporary Restraining Order*; see also Dkt. 24, *Amended Order Granting in Part Motion for Temporary Restraining Order* (amended to correctly identify Ricardo Jose Perea Arguello as the plaintiff).

³ Dkt. 33, *Minute Entry for Proceedings Held Before Robert J. Shelby*.

⁴ *Id.*

⁵ Dkt. 34, *Amended Temporary Restraining Order (Modified TRO)*.

Motion to Dismiss, Defendants will not contest the court's personal jurisdiction, and Defendants will comply with this court's directive that Arguello shall not be removed from the United States pending further order of the court.⁶

During both hearings, parties agreed to a briefing schedule that concluded on October 3, 2025, and set a hearing for October 7, 2025, at 10:00 AM.⁷ Finding good cause to do so, the court RENEWS the Temporary Retaining Order for an additional fourteen days or until the court takes additional action. Accordingly, the court ORDERS as follows:

1. No later than Sunday, September 21, 2025, Defendants shall physically return Arguello to the District of Utah.⁸ Thereafter, Defendants may transfer Arguello to a single detention facility in Colorado capable of (1) holding Arguello for the duration of this litigation and (2) providing him remote and personal access to counsel. Defendants must return Arguello to the District of Utah at least 24 hours before any in-person hearing to enable Arguello and his counsel to jointly prepare for the hearing.

2. The court enjoins and restrains Defendants, and any officers, employees, agents, or any other person or entity acting on behalf of the defendants, collectively or individually, from removing Arguello from the United States, pending further order from this court.

3. The briefing schedule set forth in the prior Temporary Restraining Order remains unchanged. The government shall file its opposition to the TRO by September 26, 2025. Arguello shall file his reply, if any, by October 3, 2025. A TRO hearing is set for October 7, 2025, at 10:00 AM. If Defendants wish to file a motion to dismiss challenging the sufficiency of the Amended Complaint, jurisdiction, venue, or other Rule 12 issues, they must do so by

⁶ *Id.*

⁷ *Amended Order Granting in Part Motion for Temporary Restraining Order; Modified TRO.*

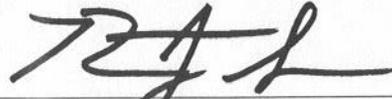
⁸ *See Dkt. 27, Order Granting Motion for Extension of Time to Return Plaintiff to the District of Utah.*

September 22, 2025. A response by Plaintiff is due by September 26, 2025. Defendants shall file their reply, if any, by October 3, 2025.

4. No bond is required because “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”⁹

SO ORDERED this 1st day of October 2025, at 3:20 PM.

BY THE COURT:



ROBERT J. SHELBY
United States District Judge

⁹ *Jorgenson v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003); see also *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1215 (10th Cir. 2009) (affirming preliminary injunction without bond and noting “the latitude given to courts in making bond decisions”).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

RICARDO JOSE PEREA ARGUELLO,

Plaintiff,

v.

KRISTI NOEM et al.,

Defendants.

**MEMORANDUM DECISION AND
ORDER ON MOTION FOR
TEMPORARY RESTRAINING ORDER**

Case No. 2:25-cv-00786-RJS

District Judge Robert J. Shelby

This case arises out of the detention and imminent removal from the United States of Plaintiff Ricardo Jose Perea Arguello. Before the court is Arguello's Motion seeking a Temporary Restraining Order (TRO).¹ For the reasons explained below, the Motion is DENIED.

BACKGROUND

Arguello is a citizen and national of Venezuela.² In 2023, he illegally entered the United States.³ On September 3, 2023, U.S. Customs and Border Protection (CBP) encountered Arguello and placed him in expedited removal proceedings.⁴ When Arguello claimed fear of persecution if returned to Venezuela, CBP referred him to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview.⁵ USCIS interviewed Plaintiff and returned a

¹ Dkt. 4, *Emergency Motion for Temporary Restraining Order and Stay of Removal (TRO Motion)*.

² Dkt. 35-1, *Statement of Ricardo Jose Perea Arguello (Arguello Declaration)* ¶¶ 1, 3.

³ Dkt. 40-1, *Amended Declaration of Evan Tjaden (Tjaden Declaration)* ¶ 5; *Arguello Declaration* ¶ 4.

⁴ *Tjaden Declaration* ¶ 5.

⁵ *Id.* ¶ 6.

negative credible fear determination.⁶ USCIS then referred Arguello to an Immigration Judge for review.⁷ The Immigration Judge reviewed Arguello's claim and affirmed the negative credible fear determination.⁸ Pursuant to an expedited removal order, the Department of Homeland Security (DHS) removed Arguello from the United States on October 18, 2023.⁹

On November 6, 2024, Arguello appeared at the San Ysidro port of entry in California.¹⁰ He showed evidence of a CBP One appointment but did not have a valid entry document.¹¹ CBP told Arguello that he had a previous deportation order but paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5).¹² The officer issued Arguello a Notice to Appear that charged Arguello with being "an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the INA."¹³ The Notice to Appear ordered Arguello to appear before an immigration judge on October 19, 2026.¹⁴

On December 17, 2024, Arguello filed an I-589 application seeking asylum, withholding of removal, and Convention Against Torture protection.¹⁵ In his application, Arguello stated under penalty of perjury, "I am requesting asylum in the United States because my life is in

⁶ Dkt. 40-1, *Tjaden Declaration Exhibits, I-869B USCIS Record of Negative Credible Fear* at 12; *see also Tjaden Declaration* ¶ 7.

⁷ *Tjaden Declaration* ¶¶ 8–9.

⁸ *Tjaden Declaration Exhibits, Executive Office for Immigration Review Order of the Immigration Judge* at 19–20.

⁹ *Tjaden Declaration* ¶¶ 10–11.

¹⁰ *Id.* ¶ 12.

¹¹ *Id.*; *Arguello Declaration* ¶ 10.

¹² *Tjaden Declaration* ¶ 12; *Arguello Declaration* ¶¶ 10–11.

¹³ Dkt. 21-1, *Department of Homeland Security Notice to Appear (Notice to Appear)*; *see also Tjaden Declaration* ¶ 13.

¹⁴ *Notice to Appear*.

¹⁵ Dkt. 21-2, *I-589 Application for Asylum and for Withholding of Removal (I-589 Application)*.

danger in my country;” “I could be beaten, deprived of my liberty or killed by people sympathetic to the [REDACTED] and “I fear torture if I were returned to my country . . . since supporters of [REDACTED] use extreme torture methods.”¹⁶

On September 9, 2025, U.S. Immigration and Customs Enforcement (ICE) officers arrested Arguello at his residence.¹⁷ DHS officials read Arguello his rights.¹⁸ He was not willing to answer any questions without his attorney present.¹⁹ DHS records indicate Arguello told officials “he has no fear of persecution or torture if removed to Venezuela.”²⁰

ICE reinstated Arguello’s prior order of removal by issuing a Form I-871, Notice of Intent/Decision to Reinstate Prior Order.²¹ The Notice is dated September 9, 2025, and signed by Arguello and a deportation officer.²² It states DHS “intends to reinstate the order of Removal” previously entered against Arguello on October 18, 2023.²³ The Notice states the alien²⁴ may “contest the determination by making a written or oral statement to an immigration officer.”²⁵ Arguello elected to not make a statement contesting the determination and signed the

¹⁶ *Id.* at 26–27.

¹⁷ Dkt. 40-1, *Tjaden Declaration Exhibits, I-213 DHS Record of Deportable/Inadmissible Alien (Record of Deportable/Inadmissible Alien)* at 24; *see also Arguello Declaration* ¶ 14.

¹⁸ *Record of Deportable/Inadmissible Alien* at 24.

¹⁹ *Id.*

²⁰ *Id.* at 25.

²¹ *Tjaden Declaration Exhibits, Notice of Intent/Decision to Reinstate Prior Order (Notice of Intent)* at 7; *see also Tjaden Declaration* ¶ 17.

²² *Notice of Intent* at 7.

²³ *Id.*

²⁴ Courts tend to use “alien” or “noncitizen” to refer to individuals seeking relief under the immigration statutes. *Compare Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) (using “aliens”), and *Awan v. Mather*, No. 2:23-cv-00258-DBB-DAO, 2023 WL 7002617, at *11 (D. Utah Oct. 24, 2023) (same), with *Thuraissigiam*, 591 U.S. at 158 (Sotomayor, J. dissenting) (using “noncitizens”), and *Vivint, Inc. v. Mayorkas*, 614 F. Supp. 3d 993 (D. Utah 2022) (same). Here, the court uses the two words interchangeably.

²⁵ *Notice of Intent* at 7.

document in acknowledgement.²⁶ The Notice of Intent includes a section for the officer to indicate the language used to communicate the facts that formed the basis of the reinstatement decision.²⁷ The Notice of Intent issued to Arguello does not identify a language.²⁸ Arguello is a native Spanish speaker and is not fluent in English.²⁹ Officer Tjaden’s Declaration explains an “ICE officer advised Plaintiff in the Spanish language that his prior order of removal was being reinstated.”³⁰ Arguello states he never signed a document agreeing to return to Venezuela; rather, he signed one document the he was told “said that [he] had an attorney.”³¹

Also on September 9, 2025, DHS filed a motion to dismiss Arguello’s removal proceedings before the immigration court.³² The next day, on September 10, 2025, the Immigration Judge granted the motion and dismissed the case.³³ Arguello has remained in ICE custody since his arrest.³⁴

PROCEDURAL HISTORY

On September 10, 2025, Arguello filed a Complaint, alleging causes of action under the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), and the U.S. Constitution,³⁵ and filed a Motion seeking a TRO.³⁶ On September 12, 2025, the court heard

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *I-589 Application* at 21.

³⁰ *Tjaden Declaration* ¶ 17.

³¹ *Arguello Declaration* ¶¶ 20–21.

³² *Tjaden Declaration* ¶ 21.

³³ *Tjaden Declaration Exhibits, Executive Office for Immigration Review Order on Motion to Dismiss (Immigration Judge Dismissal Order)* at 31; *see also Tjaden Declaration* ¶ 22.

³⁴ *See Tjaden Declaration* ¶¶ 17, 26; *Arguello Declaration* ¶ 17.

³⁵ Dkt. 1, *Complaint*. Arguello subsequently filed an Amended Complaint and a Second Amended Complaint. *See* Dkt. 3, *Amended Complaint*; Dkt. 21, *Second Amended Complaint*.

oral argument, found Arguello satisfied his burden, and issued a provisional TRO.³⁷ On September 23, 2025, the court modified the TRO during a status conference with counsel from both parties.³⁸ On October 7, 2025, the court granted Defendants' Motion to Dismiss Counts I and III for lack of subject matter jurisdiction.³⁹ That same day, the court heard oral argument on Arguello's TRO Motion.⁴⁰ The TRO Motion is fully briefed and ripe for review.⁴¹

JURISDICTION

Arguello moves for a TRO pursuant to Federal Rule of Civil Procedure 65(b) alleging violations of his Fifth Amendment Due Process rights.⁴² The Complaint states, "This case arises under the Administrative Procedure Act."⁴³ The court lacks subject matter jurisdiction to consider Arguello's claims under the APA.⁴⁴ For the reasons explained below, the court construes the Second Amended Complaint as seeking habeas relief.

Federal district courts have jurisdiction to review habeas petitions filed by noncitizens in immigration detention.⁴⁵ Habeas jurisdiction is limited to violations of core constitutional rights,

³⁶ *TRO Motion*.

³⁷ Dkt. 19, *Amended Corrected Minute Entry (September 12 Minute Entry)* (oral order); Dkt. 24, *Amended Order Granting Temporary Restraining Order* (written order memorializing the oral ruling).

³⁸ Dkt. 33, *Minute Entry* (oral order); *see also* Dkt. 34, *Amended Temporary Restraining Order* (written order memorializing the oral ruling).

³⁹ Dkt. 43, *Minute Order (October 7 Minute Entry)* (granting Dkt. 30, *Defendants Motion to Dismiss for Lack of Jurisdiction*).

⁴⁰ *Id.*

⁴¹ Dkt. 36, *Defendants' Memorandum in Opposition to Motion for Temporary Restraining Order (TRO Opposition)*; Dkt. 38, *Plaintiff's Reply to Defendants' Opposition to Motion for Temporary Restraining Order (TRO Reply)*.

⁴² *TRO Motion* at 2.

⁴³ *Second Amended Complaint* ¶ 8.

⁴⁴ *See* 8 U.S.C. § 1252(b)(9); *id.* § 1252(a)(5); 5 U.S.C. § 701(a)(1); *see also* *October 7 Minute Entry* (oral order dismissing claims arising under the APA for lack of subject matter jurisdiction).

⁴⁵ *Thuraissigiam*, 591 U.S. at 111–12 (habeas petition sought by noncitizen in expedited removal); *see also* *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (explaining that noncitizen detainees challenging their removal under the Alien Enemies Act must do so in habeas).

such as unlawful detention or denial of due process.⁴⁶ Challenges to removal under immigration statutes that “largely preclude[] judicial review” must be brought in habeas for the court to have jurisdiction.⁴⁷ When the relief sought necessarily implies the noncitizen’s confinement and removal is unlawful, the claim falls within the “core of the writ of habeas corpus” and “must be brought in habeas.”⁴⁸ Courts may construe petitions seeking other relief as a habeas petition based on the relief sought.⁴⁹

Here, the Complaint seeks relief under the INA, APA, and U.S. Constitution.⁵⁰ But the relief sought sounds in habeas. Arguello asks the court to declare “that ICE’s detention and eventual deportation of Plaintiff is unlawful,” order his “immediate release,” and enjoin ICE “from taking any adverse action against Plaintiff while his I-589 is pending.”⁵¹ The necessary implication of this requested relief is that Arguello’s detention and removal is unlawful.

Defendants argue the court should not construe Arguello’s Complaint as a habeas petition because it does not comply with procedural requirements.⁵² The court finds this argument unpersuasive. In *J.G.G.*, Venezuelan noncitizens challenged their summary removal under the APA and the Supreme Court construed the petition as seeking habeas relief.⁵³ In doing so, the

⁴⁶ See *J.G.G.*, 604 U.S. at 672.

⁴⁷ *Id.* (citing *Ludecke v. Watkins*, 335 U.S. 160, 163–64 (1948), and *Heikkila v. Barber*, 345 U.S. 229, 234–35 (1953)) (citation modified).

⁴⁸ *Id.* (citation modified).

⁴⁹ See, e.g., *id.* at 672 (construing claims arising under the APA to seek habeas relief).

⁵⁰ *Second Amended Complaint* ¶¶ 26–43.

⁵¹ *Id.* at 14–15.

⁵² *TRO Opposition* at 9; Dkt. 40, *Defendants’ Reply to Opposition to Motion to Dismiss* at 7; see also *October 7 Minute Entry*.

⁵³ *J.G.G.*, 604 U.S. at 672; see also *id.* at 674 (Kavanaugh, J., concurring).

Court did not consider whether the complaint met the procedural requirements.⁵⁴ This court follows suit and construes Arguello’s petition as seeking habeas relief.

LEGAL STANDARD

A temporary restraining order is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”⁵⁵ The right to relief must be “clear and unequivocal.”⁵⁶

A movant seeking a temporary restraining order bears the heavy burden of showing “(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the [TRO] is issued; (3) that the threatened injury outweighs the harm that the [TRO] may cause the opposing party; and (4) that the [TRO], if issued, will not adversely affect the public interest.”⁵⁷ While the court may issue the relief “only if each factor is established,”⁵⁸ the first two factors are the “most critical.”⁵⁹ The plaintiff must show there is a “substantial likelihood” that he will prevail on the merits and that “irreparable injury is likely” in the absence of the TRO.⁶⁰ Fact-intensive disputes are generally “not amenable for resolution in a TRO posture,” because a movant must establish

⁵⁴ *Id.* The concurring and dissenting opinions in *J.G.G.* also do not consider whether the complaint met the procedural requirements of a typical habeas petition. See *id.* at 674 (Kavanaugh, J., concurring); *id.* at 675–91 (Sotomayor, J., dissenting); *id.* at 691–92 (Jackson, J., dissenting).

⁵⁵ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted).

⁵⁶ *Diné Citizens Against Ruining Our Env’t v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016) (quoting *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1224 (10th Cir. 2008)); *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1223 (10th Cir. 2018).

⁵⁷ *Diné Citizens*, 839 F.3d at 1281 (quoting *Davis v. Mineta*, 302 F.3d 1104, 1111 (10th Cir. 2002)).

⁵⁸ *Den. Homeless Out Loud v. Denver*, 32 F.4th 1259, 1277 (10th Cir. 2022) (citation omitted).

⁵⁹ *Nken v. Holder*, 556 U.S. 418, 434 (2009).

⁶⁰ *Diné Citizens*, 839 F.3d at 1281; *Winter*, 555 U.S. at 22 (citations omitted).

facts supporting his position to meet his burden.⁶¹ When the government is the opposing party, the third and fourth factors merge.⁶² For the reasons below, the court concludes Arguello has not established a likelihood of success on the merits. Accordingly, Arguello's motion is DENIED, and the provisional TRO is VACATED.

ANALYSIS

Arguello fails to show a substantial likelihood that he will prevail on the merits of his due process claim. Arguello advances three arguments to establish a violation of his Fifth Amendment rights: (1) subjecting him to expedited removal when he entered the United States lawfully deprives him of due process; (2) violating the process laid out in the INA amounts to a due process violation; and (3) providing him inadequate notice of removal violates his Fifth Amendment rights.⁶³ The court considers and rejects each in turn.

⁶¹ *Tactic Franchising, LLC v. 100 Percent Chiropractic Ryan, LLC*, No. 25-cv-00088-GPG-MDB, 2025 WL 1251260, at *2 (D. Colo. Jan. 15, 2025); see also *Danfoss Power Sols. (US) Co. v. Meritor Heavy Vehicle Sys., LLC*, No. 24-cv-00880-GPG-STV, 2024 WL 2273200, at *5 (D. Colo. Apr. 12, 2024) (TRO movant failed to establish a substantial likelihood of success on the merits when parties disputed facts and both positions had evidence in support); *Inspired By Design, LLC v. Sammy's Sew Shop, LLC*, No. 16-cv-2290-DDC-KGG, 2016 WL 6093778, at *10 (D. Kan. Oct. 19, 2016) (same).

⁶² *Nken*, 556 U.S. at 435.

⁶³ See *Second Amended Complaint* ¶¶ 32–37. While perhaps not on the face of the Complaint, all three arguments are implicit within Count II of the Complaint and have been bolstered throughout the course of briefing and oral argument. See *Second Amended Complaint* ¶¶ 32–37; *TRO Motion*; *TRO Reply*; Dkt. 35, *Plaintiff's Response to Defendants' Motion to Dismiss*; *October 7 Minute Entry*. At the TRO stage, “exigent circumstances may impose practical constraints. Preliminary relief is ‘customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.’ The purpose of such relief is ‘merely to preserve the relative positions of the parties’ pending further proceedings.” *A.A.R.P. v. Trump*, 605 U.S. 91, 96 (2025) (quoting *Lackey v. Stinnie*, 145 S. Ct. 659, 667 (2025)). Here, the Complaint was filed within 24 hours of Arguello's arrest. *Complaint*. The court heard oral argument forty-eight hours later. *September 12 Minute Entry*. Following the hearing, the court ordered Arguello to file an Amended Complaint that corrected the Plaintiff's name, but stated, “As the defendants are operating on a short timeline to respond to the Complaint, Plaintiff is not permitted to make any other substantive changes” to the Amended Complaint. Dkt. 18, *Docket Text Order*. Due to the expedited schedule and the court's prohibition on amendments, the court relaxes the general requirement for this stage of proceedings.

“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”⁶⁴ “Procedural due process rules are meant to protect against the mistaken or unjustified deprivation of life, liberty, or property.”⁶⁵ “No person shall be removed from the United States without opportunity, at some time, to be heard.”⁶⁶ “Due process requires notice that is reasonably calculated, under all circumstances, to apprise interested parties and that affords a reasonable time to make an appearance.”⁶⁷ “As a predicate to obtaining relief for a violation of procedural due process rights in immigration proceedings, an alien must show that the violation prejudiced him.”⁶⁸

I. Subjecting Arguello to Expedited Removal Does Not Violate His Due Process Rights Because He Did Not Enter the United States Lawfully.

Noncitizens’ constitutional rights are tied to the circumstances of their removal.⁶⁹

Arguello is facing removal based on the reinstatement of a prior removal order.⁷⁰ 8 U.S.C.

§ 1231(a)(5) provides:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed . . . , the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

⁶⁴ *J.G.G.*, 604 U.S. at 673 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)) (citation modified).

⁶⁵ *A.A.R.P.*, 605 U.S. at 94 (quoting *Carey v. Phipus*, 435 U.S. 247, 259 (1978)) (citation modified).

⁶⁶ *Id.* (citation modified).

⁶⁷ *Id.* at 94–95 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)) (citation modified); see also *J.G.G.*, 604 U.S. at 673 (noncitizen “detainees are entitled to notice and the opportunity to be heard ‘appropriate to the nature of the case’” (quoting *Mullane*, 339 U.S. at 313)).

⁶⁸ *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 497 (9th Cir. 2007) (en banc) (quoting *Padilla v. Ashcroft*, 334 F.3d 921, 924–25 (9th Cir. 2003)) (citation modified); see also *Green v. Whitaker*, 744 F. App’x 804, 805 (4th Cir. Dec. 6, 2018) (holding no due process violation occurred when noncitizen cannot show that defect prejudiced the outcome of her case); *Ojeda-Terrazas v. Ashcroft*, 290 F.3d 292, 302 (5th Cir. 2002) (same).

⁶⁹ See *A.A.R.P.*, 605 U.S. at 94–95.

⁷⁰ *Notice of Intent*; see also *Tjaden Declaration* ¶¶ 16–17.

Arguello argues expedited removal only applies to aliens who reentered illegally, and because he entered legally, he is entitled to more due process than an individual subject to expedited removal.

As a threshold issue, Defendants suggest the court lacks jurisdiction to consider this argument because the court does not have jurisdiction to consider the merits of the underlying removal order.⁷¹ The court finds subject matter jurisdiction under the Supreme Court’s decision in *Department of Homeland Security v. Thuraissigiam*.⁷² There, the noncitizen was subject to expedited removal for being “an alien present in the United States who had not been lawfully admitted” and who lacks a valid entry document, has not been physically present in the United States for two continuous years prior to the determination, and the Secretary of Homeland Security has designated the alien for expedited removal.⁷³ The Court recognized courts have no jurisdiction to review the underlying decision but retain habeas jurisdiction to consider whether expedited removal properly applies.⁷⁴ Specifically, courts may consider whether the petitioner entered the United States legally.⁷⁵ Arguello is subject to expedited removal for reinstatement of a prior removal order, which is a different removal provision than the provision at issue in *Thuraissigiam*. The court is unaware of any differences that would distinguish the reinstatement expedited removal process here from the process at issue there, and the Defendants were not able

⁷¹ See *October 7 Minute Entry* (dismissing INA claims for lack of subject matter jurisdiction).

⁷² 591 U.S. 103.

⁷³ *Id.* at 109.

⁷⁴ *Id.* at 111–12; see also *id.* (Thomas, J. concurring) (explaining noncitizens subject to expedited removal “may seek judicial review in habeas corpus proceedings” for the court to determine “whether he can provide by a preponderance of the evidence that he is an alien lawfully admitted” (citation modified)).

⁷⁵ *Id.* at 111.

to provide any during oral argument.⁷⁶ The court applies the same principle here and retains jurisdiction to consider whether Arguello entered legally.

A noncitizen who was previously removed cannot lawfully reenter the United States unless (1) ten years have passed since their prior removal or (2) the Attorney General consents to their readmission.⁷⁷ Here, Arguello was removed in 2023 and reentered approximately one year later without seeking the Attorney General’s consent for admission.⁷⁸ This is unlawful under the statute.

Nonetheless, Arguello argues his parole into the United States renders his admission legal.⁷⁹ The court disagrees. The INA states “[a]n alien who is paroled” into the United States “shall not be considered to have been admitted.”⁸⁰ Furthermore, a “procedurally regular” entry is not a lawful entry for the purpose of determining reinstatement.⁸¹ In *Cordova-Soto*, a noncitizen faced reinstatement of a prior removal order after she reentered the country before the statutory time period lapsed and without the Attorney General’s authorization.⁸² The Tenth Circuit held that regardless of whether this entry was procedurally regular, “she could not have entered the United States legally” since she “reentered the country, without the Attorney General’s authorization, shortly” after her initial removal.⁸³ During oral argument, Arguello argued *Cordova-Soto* involved a materially different reentry procedure such that the holding did

⁷⁶ *October 7 Minute Entry*.

⁷⁷ 8 U.S.C. § 1182(a)(9)(A).

⁷⁸ *Record of Deportable/Inadmissible Alien* at 24–25; see also *Arguello Declaration* ¶¶ 4–5, 10–11; *Tjaden Declaration* ¶¶ 11, 12, 16.

⁷⁹ *TRO Reply* at 3; see also *Tjaden Declaration* ¶ 12.

⁸⁰ 8 U.S.C. § 1101(a)(13)(B).

⁸¹ *Cordova-Soto v. Holder*, 659 F.3d 1029, 1030, 1034–35 (10th Cir. 2011); see also *Green*, 744 F. App’x at 804 (holding parole is not a legal entry such that reinstatement of a prior order of removal is proper).

⁸² *Cordova-Soto*, 659 F.3d at 1032–33.

⁸³ *Id.* at 1035.

not apply here.⁸⁴ Unlike Arguello, the alien in *Cordova-Soto* did not provide her identification to the border agents and was not paroled into the United States.⁸⁵ Even so, the Tenth Circuit did not consider these facts in holding reentry is only lawful under the statute if ten years has passed since the initial removal or if the Attorney General consents to readmission.⁸⁶ The reentry in *Cordova-Soto* did not satisfy this standard and was therefore unlawful. Here, too, Arguello's reentry does not satisfy this standard, so it too is unlawful. Accordingly, Arguello is properly subject to the reinstatement of his prior removal order.

II. Violating the INA's Order of Operations Does Not Violate Constitutional Due Process.

Arguello argues Defendants violated his constitutional right to the sequential order of events required by the INA.⁸⁷ The court finds he has no such right.

Relying on the INA provisions establishing the process for deciding immigration claims before removal, Arguello argues the INA requires removal proceedings be terminated before initiating expedited removal and a nonsequential process violates constitutional due process.⁸⁸ Here, the government initiated expedited removal on September 9 and the removal proceedings were not terminated until the next day, September 10.⁸⁹ But a statutory violation does not necessarily amount to a constitutional procedural due process violation. Arguello provides no authority, other than the Fifth Amendment itself, demonstrating he has a constitutional right to

⁸⁴ *October 7 Minute Hearing*. In *Cordova-Soto*, the alien reentered the United States by taking a taxi across the border. *Cordova-Soto*, 659 F.3d at 1031. Border agents inspected the car before waving it through. *Id.*

⁸⁵ *Cordova-Soto*, 659 F.3d at 1031.

⁸⁶ *Id.* at 1035.

⁸⁷ *Second Amended Complaint* ¶ 35.

⁸⁸ *See id.* ¶¶ 34, 36 (citing INA § 208, 8 U.S.C. § 1158, and 8 CFR. §§ 1208.2(b), 1208.3(c)(3)). *But see* 8 U.S.C. § 1231(a)(5) (reinstatement of prior removal order is mandatory once the Attorney General finds that an alien reentered illegally).

⁸⁹ *Notice of Intent* at 7 (issued September 9, 2025); *Immigration Judge Dismissal Order* at 31 (matter dismissed on September 10, 2025); *see also Tjaden Declaration* ¶¶ 17, 22.

the order created by the INA.⁹⁰ Further, Arguello has not shown that this procedural violation prejudiced him. Had the statutory order been followed, Defendants would have waited until the Immigration Judge granted the Motion to Dismiss before initiating expedited removal. Arguello would have been placed in the same expedited removal process just 24 hours later than he was, but Arguello would be in the same place today: facing imminent removal due to the reinstatement of his prior removal order. Since the outcome is the same regardless of whether the government initiated expedited removal before or after the removal proceedings were terminated, there is no prejudice. Accordingly, an error in the order of operations cannot amount to a constitutional due process violation.

III. Arguello Received Constitutionally Sufficient Notice of His Removal.

Arguello argues he received constitutionally inadequate notice of his removal. Notice depends on the circumstances of removal.⁹¹ Defendants argue constitutional due process requires no more notice than what is required by the statute.⁹² While Arguello argues compliance with a statute does not necessarily meet the constitutional floor,⁹³ he identifies no authority that requires more process than what the statute requires.

The removal statute and regulations entitle an alien to the following notice and process:

(1) after unlawful reentry, the noncitizen receives written notice of the reinstatement determination; (2) the noncitizen must have the opportunity to make a statement; and (3) the

⁹⁰ See generally *Complaint*; *TRO Motion*; *TRO Reply*.

⁹¹ *A.A.R.P.*, 605 U.S. at 94–95.

⁹² *TRO Opposition* at 12–13; see also *October 7 Minute Entry*.

⁹³ *TRO Reply* at 6.

noncitizen may file for withholding of removal protection if they express fear of returning to the country designated for removal.⁹⁴

Arguello received written notice of the reinstatement determination. DHS issued Arguello a Notice of Intent/Decision to Reinstate Prior Order.⁹⁵ The Notice states DHS “intends to reinstate the order of removal entered against” Arguello.⁹⁶ It also explains the prior order was entered on October 10, 2023, and pursuant to the order, Arguello was removed from the United States on October 18, 2023.⁹⁷

The parties dispute whether Arguello had a sufficient opportunity to make a statement contesting the reinstatement. The Notice of Intent provides Arguello the opportunity to “make a statement contesting this determination.”⁹⁸ Arguello declined to make a statement and signed the Notice.⁹⁹ Arguello speaks only Spanish.¹⁰⁰ The Notice does not indicate the language used to communicate to Arguello his right to contest the determination.¹⁰¹ Defendants’ Declaration states, an “ICE officer advised Plaintiff in the Spanish language that his prior order of removal was being reinstated. Plaintiff declined to provide a statement contesting ICE’s determination”¹⁰² Arguello maintains he never signed such a document. He declares he signed only “one document,” and he was “told it said that [he] had an attorney.”¹⁰³ This is a

⁹⁴ 8 C.F.R. § 241.8(b), (e).

⁹⁵ *Notice of Intent*; see also *Tjaden Declaration* ¶ 17.

⁹⁶ *Notice of Intent*.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *I-589 Application* at 21; see also *Arguello Declaration* at 2.

¹⁰¹ *Notice of Intent*.

¹⁰² *Tjaden Declaration* ¶ 17.

¹⁰³ *Arguello Declaration* ¶¶ 20–21.

factual dispute—with evidence supporting both sides—that cannot be resolved based on the current record. For this reason, Arguello fails to satisfy his burden of establishing a clear and unequivocal right to injunctive relief based on these disputed facts.

The parties also dispute whether Arguello has had the opportunity to pursue withholding of removal protection. A deportation officer signed a DHS record saying, “PEREA states he has no fear of persecution or torture if removed to Venezuela.”¹⁰⁴ The Record does not state the language used to communicate with Arguello.¹⁰⁵ Arguello declares that he told ICE officials that he “could not safely return” to Mexico or Venezuela.¹⁰⁶ Furthermore, Arguello had a pending I-589 application that sought withholding of removal relief.¹⁰⁷ In the application, Arguello swore under penalty of perjury, “I fear I will be mistreated or harmed if I return to my home country, because I participated in demonstrations against [REDACTED] I could be beaten, deprived of my liberty or killed by people [REDACTED]”¹⁰⁸ The government terminated Arguello’s withholding of removal application after initiating expedited removal.¹⁰⁹ When the court identified this factual dispute during oral argument, counsel for Defendants represented that Arguello will be placed into proceedings for withholding of removal protection if at any point he indicates a fear of returning to Venezuela.¹¹⁰ The court accepts this representation made by an officer of the court. Given the factual dispute and

¹⁰⁴ *Record of Inadmissible/Deportable Alien* at 25.

¹⁰⁵ *Id.*

¹⁰⁶ *Arguello Declaration*, ¶¶ 18–19.

¹⁰⁷ *I-589 Application*. Aliens seeking withholding-only relief need not file a form other than the I-589, as this application seeks both asylum and withholding relief. *See I-589 Application*; *see also* 8 C.F.R. § 208.3.

¹⁰⁸ *I-589 Application* at 26.

¹⁰⁹ *Tjaden Declaration* ¶¶ 15, 21–22.

¹¹⁰ *October 7 Minute Entry*.

counsel's representations, the court finds Arguello has failed to satisfy his burden on this due process argument.

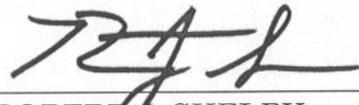
Arguello fails to show that he is substantially likely to succeed on the merits of his due process claim. The court need not consider the other Rule 65 factors.¹¹¹ Arguello is not entitled to a TRO at this stage.

CONCLUSION

For the reasons explained above, Arguello's Motion is DENIED.¹¹² The provisional TRO is VACATED.¹¹³ The court appreciates the expedited process and exigent circumstances under which the parties briefed this Motion. Arguello's arguments have developed since filing the original Complaint. If desired, Arguello may file a Third Amended Complaint within 14 days of this Order. The deadline for the government to respond to the operative Complaint is tolled during this time. After which, the government is directed to respond in accordance with Federal Rule of Civil Procedure 12.

SO ORDERED this 9th day of October 2025.

BY THE COURT:



ROBERT J. SHELBY
United States District Judge

¹¹¹ See *Denv. Homeless Out Loud*, 32 F.4th at 1277.

¹¹² Dkt. 4.

¹¹³ Dkt. 24; Dkt. 34; Dkt. 37.