

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Brownsville Division

Nelson Ariel Umanzor Chavez,)	
)	
<i>Petitioner,</i>)	
)	
v.)	Civil Action No. 1:25-cv-252
)	
Kristi Noem, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	

EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Nelson Ariel Umanzor Chavez, by counsel, pursuant to Fed. R. Civ. P. 65(b)(1), hereby requests that this Court issue an emergency temporary restraining order, restraining Defendants from removing him from the United States while he awaits a fear interview. In support of this motion, Petitioner respectfully represents as follows:

1. On May 16, 2019, Petitioner won an order preventing his removal to his native El Salvador. Dkt. No. 1-2. He was released from ICE custody on an Order of Supervision. On May 21, 2025, his Order of Supervision was revoked and he was re-detained, in order to remove him to Mexico. Dkt. No. 1-3.
2. Petitioner, by counsel,¹ expressed fear of removal to Mexico on the following occasions:

¹ Governing regulations provide that whenever an individual is to be notified, to submit a request or document, or to perform any act, such action "shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented." 8 C.F.R. § 292.5(a); see also 8 C.F.R. § 292.4(a). It is a bedrock principle of agency law that the acts and representations of an attorney, made within the scope of their representation, are legally attributable to the client. *See* Restatement (Third) of Agency §§ 2.01, 2.03, 5.03 (2006) (stating that an agent's communications and knowledge are imputed to the principal when acting with actual or apparent authority). In the immigration context, courts and the Board of Immigration Appeals have long recognized that communications made by counsel—particularly in the course of proceedings or case-related advocacy—bind the client. *See, e.g., Matter of Velasquez*, 19 I. & N. Dec. 377, 382 (BIA 1986) ("[A]n alien is generally bound by the

- a. May 29, 2025. *See* Dkt. No. 1-4 at 14-15. This request contained a signed declaration by Petitioner expressing fear of removal to (inter alia) Mexico. *Id.* at 21-23.
 - b. August 27, 2025. *Id.* at 75.
 - c. September 9, 2025. *Id.*
 - d. September 17, 2025. *Id.*
 - e. October 8, 2025. *Id.* at 5.
 - f. November 6, 2025. *Id.* at 1-4.
3. Respondents' internal practices for third-country removal make clear that no noncitizen who expresses a fear of removal to a third country may be removed without a fear interview. *See* Dkt. No. 1-1 at 2.
4. In addition, the withholding of removal statute, 8 U.S.C. § 1231(b)(3), would prohibit deportation to any country where persecution is feared, without legal process to determine whether that fear is well-founded. "[T]he prohibition on removal to a country where a noncitizen would face persecution or torture remains absolute. And precisely because withholding of removal is country-specific, as the government says, if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to *that* particular country." *Guzman Chavez v. Hott*, 940 F.3d 867, 879 (4th Cir. 2019), *rev'd on other grounds*, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), citing *Kossov v. INS*, 132 F.3d 405, 409 (7th Cir. 1998).
5. Due process also prohibits deprivation of liberty interests without notice and opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319 (1976)

conduct of his or her attorney."); *Hoodho v. Holder*, 558 F.3d 184, 191–92 (2d Cir. 2009) (upholding IJ's reliance on counsel's concession of removability); *Perez-Mejia v. Holder*, 663 F.3d 403, 415–16 (9th Cir. 2011) (same). Accordingly, Petitioner's counsel's documented communications to ICE transmitting his fear of return to Mexico must be treated as legally equivalent to Petitioner having personally expressed that fear to agency officials.

6. Nonetheless, Respondents have made clear their intent to remove Petitioner to Mexico today or tomorrow. *See* Dkt. No. 1-5; see also Dkt. No. 1-4 at 2.²

7. Undersigned counsel has emailed the U.S. Attorney's Office for the Southern District of Texas, to advise them of the filing of this TRO Motion. *See* Ex. 1 hereto.

8. A court may issue a preliminary injunction upon notice to the adverse party. Fed. R. Civ. P. 65(a). It is well settled law that "[a] preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). A movant seeking a preliminary injunction must establish each of the four *Winter* elements: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Id.* at 20.

9. Here, Petitioner is likely to succeed on the merits, as the DHS policy is crystal clear that Petitioner has a right to a fear interview before being removed to Mexico. *See* Dkt. No. 1-1 at 2 ("In cases where the alien affirmatively states a fear, USCIS will generally screen the alien within 24 hours of referral from the immigration officer. This screening may be done remotely. USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.").

10. The burden on the government is minimal, as this interview is generally supposed to take place within 24 hours.

11. On the irreparable harm prong, although "the burden of removal alone cannot constitute the requisite irreparable injury," *Nken v. Holder*, 556 U.S. 418, 435 (2009), this case presents far more immediate injury than the garden-variety removal case in which "[a]liens who

² SDDO Arbuco's email falsely claimed that Petitioner's deportation flight had already departed. In fact, as of the time of filing this Motion, Petitioner is still at Port Isabel.

are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal,” *id.* Petitioner is likely to suffer irreparable harm if removed to Mexico, a country where he has expressed a fear of torture and persecution.

12. Finally, on the third and fourth *Winter* factor, “once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. Here, the balance of equities and the public interest tilt sharply in favor of the issuance of a TRO, as the public has a significant stake in the Government’s compliance with the law. *See, e.g., League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (“There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.”).

13. This Court has jurisdiction to enjoin Petitioner’s removal from the United States unless and until the interview is carried out, because 8 U.S.C. § 1252(g) “strips the federal courts of jurisdiction only to review the Attorney General’s exercise of **lawful** discretion to commence removal proceedings, adjudicate those cases, and execute orders of removal.” *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025) (Thacker, J. and King, J.) (emphasis in original), *aff’d*, *Noem v. Abrego Garcia*, No. 24A949 (S. Ct. 2025)

14. Petitioner is an indigent detained noncitizen who lacks financial means to pay a TRO bond.

WHEREFORE, Petitioner respectfully requests that this Court enter a Temporary Restraining Order, prohibiting the removal of Petitioner from the continental United States until after he is interviewed on his fear of removal to Mexico.

Respectfully submitted,

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