IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Roman Antatolevich **SUROVTSEV**,	§	
	§	
Petitioner-Plaintiff,	§	
	§	
	§	
v.	§	
	§	Case No. 3:25-cv-3065
Kristi **NOEM**, *et al.*,	§	
	§	
Respondents-Defendants.	§	
	§	

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Petitioner-Plaintiff Roman Antatolevich Surovtsev ("Mr. Surovtsev" or "Petitioner"), by and through the undersigned counsel, hereby moves the court for a temporary restraining order and preliminary injunction restraining Respondents-Defendants' ("Respondents") from removing Mr. Surovtsev to Ukraine or any third country before his eligibility for statutory withholding of removal or CAT protection has been determined. This motion is based upon the Petition for Writ of Habeas Corpus, its exhibits, the accompanying memorandum of points and authorities, and relevant law.

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BACKGROUND

Mr. Surovtsev is a 41-year-old husband to a U.S. citizen wife and father to two young U.S. citizen daughters. ECF No. 1 ¶ 1. Over 20 years ago, at 19 years old, Mr. Surovtsev pleaded guilty to carjacking in California. *Id.* ¶ 2. In 2007, he pleaded guilty to a burglary that took place when he was 18. *Id.* He served an 11.5-year sentence. *Id.*

After completing his sentence in 2014, he was ordered removed from the United States pursuant to 8 U.S.C. §§ 1227(a)(2)(A)(i)-(ii), (C). *Id.* ¶ 3. Because his carjacking charge *per se* constituted a "particularly serious crime," Mr. Surovtsev was barred from applying for statutory withholding of removal under 8 U.S.C. §1231(b)(3)(B), even though he expressed fear of persecution. *Id.* He also involuntarily waived his right to apply for protection under the Convention Against Torture upon being informed that it would prolong his detention. *Id.* ¶ 4.

On September 3, 2025, the Superior Court of California vacated Mr. Surovtsev's convictions for carjacking, conspiracy to commit carjacking, and use of a firearm on substantive, constitutional grounds. *Id.* ¶ 6. With the cooperation of the Deputy District Attorney for Placer County, California, Mr. Surovtsev is in the process of entering no-contest pleas to kidnapping, in violation of Cal. Pen. Code § 207(a) and carrying a concealed firearm in violation of Cal. Pen. Code § 24500(a)(3). *Id.* ¶ 7. Previously, Mr. Surovtsev had been convicted of Cal. Pen. Code §215(a), an aggravated felony for which he had been sentenced to over five years. 8 U.S.C. §1231(b)(3)(B). Subsequent to obtaining post-conviction relief on substantive

constitutional grounds, none of his new convictions nor the remaining conviction under Cal. Pen. Code 207(a) is an aggravated felony or a *per se* particularly serious crime. *See id.* ¶¶ 49-57.

Based on his post-conviction relief, on November 3, 2025, Mr. Surovtsev's immigration counsel filed a motion to reopen pursuant to 8 U.S.C. § 1229a(c)(7) before an Immigration Judge ("IJ"), which will either render him not removable or will open avenues for immigration relief previously unavailable to him. *Id.* ¶ 8. The motion is pending before an Immigration Judge in Imperial, California, within the Ninth Circuit. *Id.* On November 1, Mr. Surovtsev's immigration counsel supplemented the November 3 motion to reopen by explaining that he is now eligible for statutory withholding under 8 U.S.C. §1231(b)(3)(A) because the recent post-conviction relief eliminated his "particularly serious crime." *Id.* ¶ 10.

On November 8, Mr. Surovtsev was informed by an ICE officer at the Prairieland Detention Facility that he will be removed from the country via commercial airline this week. *Id.* ¶ 9. He has repeatedly informed his ICE custodians that he fears being removed to Ukraine, a country that is presently at war and under invasion. *Id.* Not only will Mr. Surovtsev face a high likelihood of being killed by the Russian military, but as a foreigner who speaks Russian and not Ukrainian, he faces a high likelihood of persecution from Ukrainian authorities as well. *Id.*

LEGAL STANDARD

Mr. Surovtsev is entitled to a temporary restraining order and preliminary injunction if he establishes "(1) a substantial likelihood of success on the merits, (2)

a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest." *Jones v. Tex. Dep't of Crim. J.*, 880 F.3d 756, 759 (5th Cir. 2018) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)). "The standard for deciding whether to use a preliminary injunction is the same standard used to issue a temporary restraining order." *Texas v. United States*, 524 F. Supp. 3d 598, 651 (S.D. Tex. 2021) (citing *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987)). The final two factors "'merge when the Government is the opposing party.'" *Clarke v. Commodity Futures Trading Comm'n*, 74 F.4th 627, 643 (5th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

ARGUMENT

I. Mr. Surovtsev is Likely to Succeed on the Merits.

A. Mr. Surovtsev's Imminent Removal to Ukraine or a Third Country Violates His Right to Apply for Statutory Withholding of Removal.

Mr. Surovtsev is likely to succeed on the merits of his claim that his imminent removal to Ukraine or a third country violates his statutory right to apply for mandatory relief under the withholding of removal statute, 8 U.S.C. § 1231(b)(3)(A).

"[T]he Due Process Clause applies to all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

8 U.S.C. § 1231(b)(3)(A) provides that "the Attorney General *may not* remove a[non-citizen to a country if the Attorney General decides that the [non-citizen's] life or freedom would be threatened in that country because of the [non-citizen's] race, religion, nationality, membership in a particular social group, or political opinion." (emphasis added).

This language creates a vested liberty or property interest giving rise to procedural due process protection because it confers more than a mere expectation of a benefit." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). There is an entitlement to the benefit as directed by statute, and the statute "act[s] to limit meaningfully the discretion of the decision-makers." *Bd. of Pardons v. Allen*, 482 U.S. 369, 382 (1987) (O'Connor, J., dissenting))." Here, the statutory scheme which conferred withholding of removal also entitled Mr. Surovtsev to not be returned to Ukraine absent process. And the statutes at issue eliminated the discretion altogether.

"Withholding of removal is thus a mandatory protection for noncitizens who demonstrate that they meet its criteria rather than a discretionary grant." *Sagastizado v. Noem*, --- F. Supp. 3d ----, 2025 WL 2957002, at *9 (S.D. Tex. Oct. 2, 2025) (citing *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 419-20 (1999)); *See also Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 517 (D. Md. 2025) ("Abrego Garcia has demonstrated that he had a liberty interest by virtue of the INA in avoiding forcible removal to El Salvador.").

Determining the requirements of due process requires consideration of three factors: (1) "the private interest that will be affected by the official action;" (2) "the

risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The private interest at stake for Mr. Surovtsev "is his right to have his removal withheld from a country where he is more likely than not to be persecuted. Given the significance of this interest and the mandatory nature of withholding of removal for noncitizens who qualify, [Mr. Surovtsev's] private interest weighs heavily in favor of a robust due process requirement." *Sagastizado*, 2025 WL 2957002, at *12.

Mr. Surovtsev faces a high risk of erroneous deprivation of this right because he has not had a meaningful opportunity to present his case for withholding of removal, which he may now do as a result of the fact that the crime that was *per se* particularly serious and rendered him ineligible to apply for withholding has been vacated. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333.

This due process right is supported by federal regulations which recognize that non-citizens who *appear* to be barred from applying for statutory withholding *must* be given the opportunity to show why such a bar should not apply: "If the evidence indicates the applicability of one or more of the grounds for denial of withholding enumerated in the Act, the applicant shall have the burden of proving by a

preponderance of the evidence that such grounds do not apply." 8 C.F.R. § 208.16(d)(2).

Whether Mr. Surovtsev is barred from receiving a reasonable fear interview due to his criminal record is not a discretionary question. The Supreme Court held in *Kucana v. Holder*, 558 U.S. 233, 246-48 (2010) that a provision is not "specified . . . to be in the discretion of the Attorney General" unless the statute explicitly refers to the discretion of the Attorney General. The statute at issue here, § 1231(b)(3)(B)(ii), does not specify that the Attorney General has discretion to consider whether a non-citizen is barred from applying for withholding. As the Ninth Circuit has held: "This provision does not explicitly vest discretion in the Attorney General" and is therefore not discretionary. *Delgado v. Holder*, 648 F.3d 1095, 1099-1100 (9th Cir. 2011) (holding that *Kucana* required overturning prior decision finding withholding bar was discretionary issue over which court lacked jurisdiction). This also means that Mr. Surovtsev will be able to appeal any Immigration Judge decision denying him access to a reasonable fear interview to the BIA and then the Ninth Circuit.

Respondents have not informed Mr. Surovtsev of the country to which he will be removed. Assuming it is Ukraine, a country of removal designated on his order of removal, Mr. Surovtsev has never had a meaningful opportunity to establish entitlement to withholding of removal because he was previously ineligible under 8 U.S.C. § 1231(b)(3)(B). He was unrepresented by counsel during his immigration proceedings, and, in any case, conditions in Ukraine have changed dramatically since

2015. *See* 8 U.S.C. § 1229a(c)(7)(C) (eliminating time limit on seeking withholding of removal based on changed country conditions).

While "the Government has a significant interest in the prompt execution of removals," there is also "'a public interest in preventing [non-citizens] from being removed wrongfully, particularly to countries where they are likely to face substantial harm.'" *Sagastizado*, 2025 WL 2957002, at * 12 (quoting *Nken*, 556 U.S. at 436. The withholding procedures "create minimal delay in the process." *Id.*

Mr. Surovtsev has expressed a fear of removal to Ukraine to ICE and has moved the immigration court to reopen his case so that his eligibility for withholding of removal can be adjudicated. None of Mr. Surovtsev's operative convictions facially trigger the exceptions to withholding eligibility in 8 U.S.C. § 1231(b)(3)(B). Thus, Mr. Surovtsev's removal to Ukraine or a third country without a meaningful opportunity to prove his statutory entitlement to withholding of removal would violate his Fifth Amendment due process rights. He is therefore likely to succeed on the merits of this claim.

B. Mr. Surovtsev's Imminent Removal to Ukraine or a Third Country Violates His Right to Seek Protection under the Convention Against Torture.

Mr. Surovtsev is also likely to succeed on the merits of his claim that his 2015 waiver of his right to apply for protection under the Convention Against Torture ("CAT") was not voluntary, and that he is entitled to be screened for CAT protection before he can be removed.

Mr. Surovtsev "waived" his right to apply for relief under the Convention Against Torture, even though Form I-213 notes that he stated in 2014 that he was

fearful of being removed to the former Soviet Union. Now a war is raging that has killed hundreds of thousands of people.

Mr. Surovtsev's waiver was not voluntary, because Mr. Surovtsev was presented with the choice of abandoning an application for relief to which he had a statutory right, or remain in detention for a prolonged period of time. Because Mr. Surovtsev was stateless and the government was proving unable to remove him to Ukraine in 2014-15, he under the impression he would be released unless he continued to pursue CAT protection, in which case he would stay detained pending adjudication.

Given that he had been detained in prison for 12 years and in immigration custody for many months longer, this waiver was not voluntary. *United States v. Robinson,* 187 F.3d 516, 517 (5th Cir.1999); *United States v. Portillo,* 18 F.3d 290, 292 (5th Cir.1994) ("To be valid, a defendant's waiver of his right to appeal must be informed and voluntary. A defendant must know that he had a 'right to appeal his sentence and that he was giving up that right.'") (citing *United States v. Melancon,* 972 F.2d 566, 567–68 (5th Cir.1992)).

The Supreme Court has repeatedly refused to condone state action that forces citizens to sacrifice one right to exercise another. "If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guarantees embedded in the Constitution of the United States may thus be manipulated out of existence." *Frost v. R.R. Comm'n of State of Cal.*, 271 U.S. 583, 593-94 (1926); *see, e.g., Simmons v. United*

States, 390 U.S. 377, 394 (1968) (deeming it "intolerable that one constitutional right should have to be surrendered in order to assert another"); *accord Garrity v. New Jersey*, 385 U.S. 493, 497 (1967); *Aptheker v. Sec'y of State*, 378 U.S. 500, 507 (1964).

Mr. Surovtsev's "waiver" of his right to apply for CAT protection was not voluntary. He only waived CAT protection, despite expressing a fear of being removed to the former Soviet Union, because he was led to believe that making the application would delay his release from detention after over a decade behind bars.

As a result, Mr. Surovtsev is likely to succeed on the merits of his claim that his 2015 waiver of his right to apply for CAT protection was not voluntary, and that he is entitled to be screened for CAT protection before he can be removed.

C. Mr. Surovtsev's Imminent Removal to Ukraine or a Third Country Based on Vacated Convictions Violates His Fifth Amendment Right to Due Process.

Mr. Surovtsev is also likely to succeed on the merits of his claim that his removal to Ukraine or a third country violates his Due Process right to have an Immigration Judge adjudicate his motion to reopen removal proceedings based on a substantive constitutional defect in his prior conviction *under binding BIA and Ninth Circuit precedent*.

In the Ninth Circuit, where Mr. Surovtsev's immigration proceedings are pending, "'[a] conviction vacated because of a procedural or substantive defect is not considered a conviction for immigration purposes and cannot serve as the basis for removability.'" *Reyes-Torres v. Holder*, 645 F.3d 1073, 1077 (9th Cir. 2011) (quoting *Cardoso-Tlaseca v. Gonzales*, 460 F.3d 1102, 1107 (9th Cir. 2006)).

"Until the BIA determines that the conviction was not vacated on the merits, [a non-citizen is] not properly found removable under the INA[.]" *Id.* at 1078. Upon the grant of a motion to reopen, "the final deportation order is vacated—that is, it is as if it never occurred. . . . The previously terminated immigration proceedings thus are reinstated, and the [non-citizen] is restored to his prior status." *Bonilla v. Lynch*, 840 F.3d 575, 589 (9th Cir. 2016).

If a motion to reopen, whether statutory or sua sponte, is denied based on a "legal or constitutional error," the circuit court may remand to the BIA to correct it. *See id.* at 588. In the Ninth Circuit, immigration courts follow *In re Pickering*, 23 I. & N. 621 (B.I.A. 2003) and will reopen proceedings when a removal order was based on convictions vacated on constitutional grounds.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey*, 408 U.S. at 481. Mr. Surovtsev's removal order was based on constitutionally invalid convictions that have since been vacated. He has a pending motion to reopen with an immigration court in California, where binding BIA and Ninth Circuit precedent hold that due process requires correction of the legal errors that flow from his unconstitutional convictions.

As such, Mr. Surovtsev is likely to succeed on the merits of his claim that his removal to Ukraine or a third country violates his Due Process right to have an

Immigration Judge adjudicate his motion to reopen removal proceedings based on a substantive constitutional defect in his prior conviction.

II. Mr. Surovtsev Will Suffer Irreparable Harm in the Absence of Emergency Injunctive Relief.

The violation of an individual's constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). "'The loss of [constitutional] freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Opulent Life Church v. City of Holly Spring, Miss*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod*, 427 U.S. at 373); *see also* Charles Alan Wright & Arthur R. Miller, *11A Federal Practice and Procedure* § 2948.1 (3d ed. 1998) ("When an alleged deprivation of a constitutional right is involved, . . . most courts hold that no further showing of irreparable injury is necessary.").

Persecution, torture, and death are irreparable harms. "Courts have agreed that removal to a country in which an individual faces persecution constitutes irreparable harm." *Sagastizado*, 2025 WL 2957002, at *14. "Deportation to a country where one's life would be threatened obviously would result in irreparable injury." *Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982), *appeal dismissed without op.*, 692 F.2d 755 (5th Cir. 1982); *see also Mahdejian v. Bradford*, No. 9:25-cv-00191, 2025 WL 2269706, at *4 (E.D. Tex. July 3, 2025) ("Here, the threatened harm is simple and clear: persecution, torture, and death."); *Tesfamichael v. Gonzalez*, 411 F.3d 169, 178-79 (5th Cir. 2005) (threat of persecution is an irreparable harm).

III. The Balance of Equities Weighs Heavily in Mr. Surovtsev's Favor and Emergency Injunctive Relief is in the Public Interest.

The third and fourth factors tip strongly in Mr. Surovtsev's favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken*, 556 U.S. at 435.

When assessing whether a preliminary injunction is warranted, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008) (internal quotation omitted). "'[I]njunctions protecting [constitutional] freedoms are always in the public interest." *Opulent Life Church*, 697 F.3d at 298 (quoting *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)); *see also Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) ("[W]e have held that plaintiffs who are able to establish a likelihood that [a] policy violates the U.S. Constitution . . . have also established that both the public interest and the balance of equities favor a preliminary injunction.") (cleaned up).

While "the Government has a significant interest in the prompt execution of removals," there is also "'a public interest in preventing [non-citizens] from being removed wrongfully, particularly to countries where they are likely to face substantial harm.'" *Sagastizado*, 2025 WL 2957002, at * 12, 15 (quoting *Nken*, 556 U.S. at 436). The injury Mr. Surovtsev faces, both in the violation of his constitutional rights and his risk of persecution, torture, or death, vastly outweighs any harm that would result from the issuance of emergency injunctive relief.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Surovtsev's emergency motion for a temporary restraining order and preliminary injunction restraining Respondents-Defendants from removing Mr. Surovtsev to Ukraine or any third country before his eligibility for statutory withholding of removal or CAT protection has been determined.

Dated: November 10, 2025

Respectfully Submitted,

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CERTIFICATION PURSUANT TO FED. R. CIV. P. 65(b)

I hereby certify that on November 10, 2025, counsel for Petitioner-Plaintiff provided a copy of the Petition for Writ of Habeas Corpus and this Emergency Motion for a Temporary Restraining Order and Preliminary Injunction by email to Acting U.S. Attorney for the Northern District of Texas Nancy Larson (nancy.larson@usdoj.gov) and Assistant U.S. Attorney Ann Cruce-Haag (ann.haag@usdoj.gov).

Further notice should not be required before the issuance of a temporary restraining order because Mr. Surovtsev faces imminent and irreparable harm if immediate relief is not granted. Specifically, Mr. Surovtsev is scheduled for removal from the United States as early as the evening of Wednesday, November 12, 2025, and absent a temporary restraining order, removal will occur before a hearing can be held on a motion for a preliminary injunction.

Because the injury—removal from the United States to a country wherein Mr. Surovtsev faces the risk of persecution, torture, or death—would result in loss of access to this Court's jurisdiction and the deprivation of constitutional rights without an opportunity for review, immediate and *ex parte* relief is necessary to preserve the status quo and prevent irreparable harm.

/s/ Eric Lee
Eric Lee
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