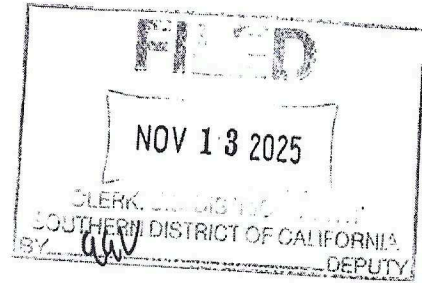


 ORIGINAL

1 **Manuel Avila-Hebra**  
2 ~~XXXXXXXXXX~~  
3 Otay Mesa Detention Center  
4 P.O. Box 439049  
5 San Diego, CA 92143-9049

6 Pro Se<sup>1</sup>



7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 MANUEL AVILA-HEBRA,

CIVIL CASE NO.: '25CV3140 AGS BJW

11  
12 Petitioner,

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

13 v.

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

23 Respondents.

24  
25  
26 <sup>1</sup> Mr. Avila-Hebra is filing this motion with the assistance of the Federal  
27 Defenders of San Diego, Inc., who drafted the instant motion and simultaneously  
28 has consistently used this procedure in seeking appointment for immigration  
habeas cases.

1 **Introduction**

2 Mr. Avila-Hebra (“Petitioner”) is a Cuban national who has simultaneously  
3 filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 (“Habeas  
4 Petition”). In the Habeas Petition, Petitioner asserts four claims that his continued  
5 detention and Respondent’s attempts to remove him to a third country violates the  
6 Fifth Amendment’s Due Process Clause. Specifically, Petitioner alleges that ICE  
7 re-detained him after decades of living in the community under an order of  
8 supervision without any notice or opportunity to be heard in violation of ICE’s  
9 own regulations.

10 Most urgently, Petitioner alleges that ICE may not remove Petitioner to a  
11 third country without first following the procedures set out in 8 U.S.C.  
12 § 1231(b)(2) and without adequate notice and an opportunity to be heard. ICE’s  
13 intentions to imminently deport him to a third country, Mexico, without his  
14 voluntary consent, without allowing him to raise a fear or deportation to Mexico,  
15 and without allowing him enough time to consult with a lawyer and file  
16 appropriate requests for relief with an immigration judge all violate due process.

17 Finally, he also alleges because more than 6 months have passed since his  
18 final order of removal and there is no significant likelihood of removal to Cuba in  
19 the reasonably foreseeable future, his continued detention is a violation his due  
20 process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

21 Petitioner is therefore facing both unlawful detention and a threat of  
22 removal to a third country with which he has no relationship and no legal status,  
23 both without due process. The requested temporary restraining order (“TRO”)  
24 would preserve the status quo while Petitioner litigates these claims by  
25 (1) reinstating Petitioner’s release on supervision, (2) prohibiting the government  
26 from removing him to a third country without first following the required removal  
27 statutory procedures and (3) prohibiting the government from removing him to a  
28 third country without an opportunity to file a motion to reopen with an IJ.



1 of the case against him and the opportunity to meet it.” *Mathews v. Eldridge*, 424  
2 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S.  
3 123, 171-72 (Frankfurter, J., concurring). Petitioner’s detention in immigration  
4 custody and removal to a third country violates due process.

5 First, ICE failed to follow its own regulations requiring changed  
6 circumstances before Mr. Avila-Hebra’s re-detention, as well as its procedural  
7 regulations requiring it to notify him of those circumstances and allow him an  
8 opportunity to contest them. This was a violation of both the regulations and due  
9 process and requires his release. *See, e.g., See Phan v. Noem*, 2025 WL 2898977,  
10 No. 25-CV-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025) (explaining this  
11 regulatory framework and granting a habeas petition for ICE’s failure to follow  
12 these regulations for a refugee of Vietnam who entered the United States before  
13 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at \*2 (same  
14 as to an Iranian national).

15 Second, Respondents cannot remove Mr. Avila-Hebra to a third country  
16 without first following the consecutive removal commands of 8 U.S.C.  
17 § 1231(b)(2). *Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 341 (2005).

18 Third, Respondents also cannot remove Petitioner to a third country  
19 without providing notice and a sufficient opportunity to be heard before an  
20 immigration judge. Their current policy allowing third-country removal  
21 “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL  
22 2419288, \*19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE  
23 memo contravenes Ninth Circuit law on the process due to noncitizens in detail);  
24 *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D.  
25 Cal. Sept. 29, 2025) (granting temporary restraining order preventing a  
26 noncitizen’s deportation to a third country pending litigation in light of due  
27 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.  
28 6 (S.D. Cal. Sept. 18, 2025) (same).

1 Fourth, *Zadvydas v. Davis* holds that immigration statutes do not authorize  
2 the government to detain immigrants like Petitioner, for whom there is “no  
3 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.  
4 678, 701 (2001); *see, e.g., Alic v. Dep’t of Homeland Sec./Immigr. Customs Enft.*,  
5 No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025);  
6 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 \*17 (W.D. Wash. Aug.  
7 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,  
8 \*5, \*7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary  
9 restraining order on these same grounds).

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

11 Petitioner also meets the second factor, irreparable harm. “It is well  
12 established that the deprivation of constitutional rights ‘unquestionably constitutes  
13 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
14 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation  
15 of a constitutional right is involved, most courts hold that no further showing of  
16 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02  
17 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*  
18 *Procedure*, § 2948.1 (2d ed. 2004)).

19 Third-country deportations pose that risk and more. Recent third-country  
20 Cuban deportees to Mexico lack legal documentation there, and have thus “spent  
21 weeks searching for work, food and shelter, and sleeping on the street.” Claire  
22 Healy & Syria Ortiz-Blanes, *Cubans with criminal records in the U.S. are being*  
23 *quietly deported to Mexico*, Miami Herald (Oct. 21, 2025).<sup>2</sup>

24 **III. The balance of hardships and the public interest weigh heavily in**  
25 **Petitioner’s favor.**

26 Third, and finally, when the government is a party, as it is here, “the balance  
27

28 <sup>2</sup> Available at  
<https://www.miamiherald.com/news/local/immigration/article312432237.html>.

1 of equities and public interest factors merge.” *Pimental-Estrada v. Barr*, 464 F.  
2 Supp. 3d 1225, 1237 (W.D. Wash 2020) (citing *Drakes Bay Oyster v. Jewell*, 747  
3 F.3d 1073, 1092 (9th Cir. 2014). The risk of harm to Petitioner far outweighs the  
4 government’s interest in illegally detaining him, fir it is “always in the public  
5 interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695  
6 F.3d at 1002.

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

9 When Federal Defenders first started filing TROs in immigration habeas  
10 cases, a Federal Defenders attorney contacted the United States Attorney’s Office  
11 regarding service. The USAO requested that Federal Defenders provide notice of  
12 these motions via email after the motion has been filed with the court.

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

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

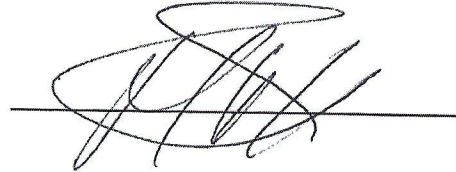
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Conclusion**

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

DATED: 11/13/25

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Petitioner

**PROOF OF SERVICE**

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

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

Date: November 13, 2025

/s/ Zandra L. Lopez  
Zandra L. Lopez