IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

Leobardo Oviedo Olguin,

Petitioner,

v.

Dale J. Schmidt, Sheriff, Dodge County Detention Facility

Sam Olson, Deputy Field Office Director, Chicago Field Office, Immigration and Customs Enforcement;

Kristi Noem, Secretary, Department of Homeland Security;

Todd Lyons, Director, Immigration and Customs Enforcement;

Pamela Bondi, Attorney General, U.S. Department of Justice.

Respondents.

Civil No.: 2:25-cv-01822

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner, Leobardo Oviedo Olguin ("Petitioner" or "Mr. Oviedo"), by and through his undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") from his unlawful, ongoing immigration detention in its custody. In the alternative, should the Court deny Mr. Oviedo's request for injunctive relief, at a minimum

it should order Respondents to show cause within three days establishing why Mr. Oviedo's habeas petition should not be granted, in accordance with 28 U.S.C. § 2243. Mr. Oviedo also seeks an order enjoining Respondents from removing him to any third country without first providing him with constitutionally compliant procedures, including adequate notice and an opportunity to respond.

Mr. Oviedo is a 31-year-old Mexican national. He received an administratively final grant of withholding of removal by an Immigration Judge (IJ) on April 28, 2025.

ICE continues to detain Mr. Oviedo more than six months after his grant of withholding of removal became final. This exceeds the six-month presumptive limit on post-removal order detention established by the Supreme Court, which cast doubt on the constitutionality of detention past this point. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Moreover, since the IJ's grant of relief and as of this writing, DHS has not identified any country to which it is considering removing Mr. Oviedo. The Immigration and Nationality Act (INA) and the U.S. Constitution do not permit the government to detain Mr. Oviedo indefinitely while it endlessly pursues removal to a third country, and such detention violates Mr. Oviedo's statutory and substantive due process rights. *See id.* at 689–90.

Furthermore, removal to a third country without sufficient notice and an opportunity to apply for fear-based relief as to that country would violate the INA, due process, and the Convention Against Torture (CAT). On March 30 and July 9, 2025, ICE issued two independent memorandums purporting to expand its authority as to third country removals.[1] Both memos fail

[1] DHS, *Guidance Regarding Third Country Removals*, March 30, 2025, https://iptp-production.s3.amazonaws.com/media/documents/2025.03.30_DHS_Guidance_Regarding_Third_Country_Removals.pdf [hereinafter "March ICE Memo"]; DHS, *Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025), July 10, 2025, https://iptp-production.s3.amazonaws.com/media/documents/2025.07.09_ICE_-_Third_Country_Removals_Following_Dept_of_Homeland_Sec._v._D.V.D..pdf [hereinafter "July ICE Memo"].

to uphold DHS's obligations under the INA, CAT, and Due Process Clause and are therefore unlawful. For example, each memo provides no notice and no opportunity to apply for protection to noncitizens whom DHS seeks to remove to a country that has provided generalized "diplomatic assurances." *See* March ICE Memo; July ICE Memo. Even without such assurances, the July ICE Memo purports to allow ICE to move forward with a third country removal with as little as six hours' notice to the noncitizen. As a result of the March and July memos, and as exemplified by ICE's recent efforts to expand third country removals, Mr. Oviedo is at risk of removal to a third country with little to no opportunity to respond absent this Court's intervention.

Mr. Oviedo meets the standard for a temporary restraining order. He will continue to suffer immediate and irreparable harm stemming from his unlawful detention if not released. Mr. Oviedo will also suffer immediate and irreparable harm if removed to a third country where his life could be in danger, which is a real possibility unless this Court enjoins Respondents from removing him to any third country without first providing adequate notice and a meaningful opportunity to respond. Because federal agencies cannot be harmed by being held accountable to the Constitution and because protecting constitutional rights is in the public interest, the balancing factors also weigh strongly in Mr. Oviedo's favor. In the alternative, should the Court deny Mr. Oviedo's request, at a minimum it should order Respondents to show cause why his habeas petition should not be granted.

FACTUAL BACKGROUND[2]

Mr. Oviedo is a 31-year-old Mexican national. Exh. B, Psychological Evaluation. He grew up in Guanajuato, Mexico with his mother and several siblings. *Id.* He came to the United States as a young man and was deported in 2019. *Id.* Shortly after returning to Guanajuato, he began a

[2] Petitioner refers to Exhibits as marked in his contemporaneously filed Petition for a Writ of Habeas Corpus. ECF 1.

brief romantic relationship with a woman who, unbeknownst to him, was affiliated with [redacted]

Id.

Fearing for his life, Mr. Oviedo re-entered the United States in 2020. Exh. B. Upon return, he resumed the work he had done for many years in roofing. *Id.*

In August 2021, Mr. Oviedo fell two stories in a roofing accident and suffered a traumatic brain injury, as well as serious injury to his wrist. Exh. B. His extensive injuries prevented him from returning to work and required care at home. *Id.* In the years after the accident, Mr. Oviedo's behavior changed drastically. He has struggled with mood swings, confusion, paranoia, frequent head pain, and has had significant memory problems. *Id.* In April 2025, he was diagnosed with mixed impaired cognition as a result of the injuries he sustained in the roofing accident. *Id.* He was also diagnosed with Post Traumatic Stress Disorder (PTSD) and depression. *Id.*

In November 2023, Mr. Oviedo was arrested and charged with resisting arrest under WI § 946.41(1). In February 2024, he was convicted of the resisting arrest charge and sentenced to 90 days in jail. Exh. F, Criminal History Chart. After serving his sentence in criminal custody, Mr. Oviedo was transferred to ICE custody at the Dodge County Detention Facility. Exh. C, Declaration of Colleen Ward. DHS placed him in reinstatement proceedings due to his 2019 removal order. *Id.* Mr. Oviedo expressed a fear of return to Mexico and was referred for a reasonable fear interview. *Id.* DHS issued a negative reasonable fear determination; however, that decision was reversed by an IJ and Mr. Oviedo was subsequently placed in withholding-only proceedings pursuant to 8 C.F.R. § 1208.31(g)(2). *Id.*

At no point during proceedings did DHS name another country to which it would try to remove Mr. Oviedo if removal to Mexico was not possible. Exh. A.

Mr. Oviedo initially appeared *pro se* in his removal proceedings before the IJ. Exh. C. In September 2024, he appeared for an individual merits hearing on his applications for withholding of removal and relief under the Convention Against Torture. *Id.* After brief questioning, the IJ found Mr. Oviedo incompetent to represent himself. *Id.* The National Immigrant Justice Center (NIJC) was subsequently appointed as a Qualified Representative to represent him in his removal proceedings. *Id.*

On April 28, 2025, Mr. Oviedo, with counsel, appeared for a second individual merits hearing before the IJ. Exh. C. Mr. Oviedo claimed a fear of return to Mexico based on his severe mental illness and the risk that he will be institutionalized and tortured if returned, as well as a fear based on [redacted] prior to fleeing. *Id.*

After brief testimony from Mr. Oviedo, DHS stipulated to relief. Exh. C. The IJ ordered Mr. Oviedo removed to Mexico and simultaneously granted his application for withholding of removal under 8 U.S.C. § 1231(b)(3). Exh. A. This approach–issuing a removal order and adjudicating a claim for withholding of removal at the same time–is the standard approach for such cases. *See, e.g. Nasrallah v. Barr*, 590 U.S. 573 (2020). DHS waived appeal of the IJ's decision. Exh. A. Because no appeal has been pursued, Mr. Oviedo's grant of withholding of removal became administratively final as of the date of the IJ decision, April 28, 2025. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).

Despite this order prohibiting DHS from removing Mr. Oviedo to the only country to which he has ties, the Government continues to detain him in conditions that are indistinguishable from penal confinement. *See, e.g.* Exh. C.

Upon information and belief, DHS is detaining Mr. Oviedo following the IJ's withholding grant so that it can attempt to remove him to a third country. However, Mr. Oviedo has no lawful status or ties to any third country. Exh. C. DHS has not requested that Mr. Oviedo fill out applications for travel documents to any country, nor speak to any consulate. *Id.*

Further, the Government, more than six months after the IJ's decision and over a year since his withholding-only proceedings were initiated, has not indicated any countries to which it is purportedly pursuing removal. Exh. C. Due to his mental illness, including his cognitive disability, Mr. Oviedo would likely have a fear of return to any country the Government may seek to designate and has a right to notice and an opportunity to be heard in regard to any such third country designation.

On May 5, 2025, counsel for Mr. Oviedo emailed his ICE deportation officer, expressing opposition to any third country removal and requesting notice and an opportunity to be heard as to any potential third country ICE may identify. Exh. D, Email Communications with ICE. Counsel also requested that ICE release Mr. Oviedo, particularly given his brain injury and mental health diagnoses. *Id.* In response, ICE stated that the request was forwarded to ICE headquarters and that they "do not have a timeline for their response." *Id.* To date, no response has been issued.

During the 19 months that Mr. Oviedo has been in the DHS's custody, he has struggled to gain access to adequate medical and mental health care, including additional cognitive testing and counseling services that were recommended at the time of his psychological evaluation. Exh. B; Exh. C.

Upon release, Mr. Oviedo plans to live with his brother in Wisconsin. Exh. E, Letters of Support. Mr. Oviedo will also have the support of several siblings and family members who live

in Wisconsin. *Id.* He will also have access to primary and mental health care services through the Partnership Community Health Center in Greenville, Wisconsin. *Id.*

LEGAL STANDARD

The court should grant both Mr. Oviedo's motion for temporary relief and his underlying motion for a writ of habeas corpus. As to the request for temporary relief, a district court may grant a motion for preliminary relief while the merits are under consideration when four factors favor the grant. Those four factors are a likelihood of success on the merits, irreparable harm to the movant without relief, the risk of harm to the non-movant (the government) if this court grants relief, and the public interest. *See Winter v. Nat'l Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020). The four factors are not prerequisites that must be met but should be balanced against each other. *Nken v. Holder*, 556 U.S. 418 (2009).

In the Seventh Circuit, once the moving party establishes "some likelihood of succeeding on the merits" and that irreparable harm will occur in the absence of a TRO, the court performs a sliding scale evaluation of the factors, which requires a lesser showing on the other factors if an individual demonstrates greater likelihood of success on the merits or that their irreparable harm outweighs any anticipated harm from a TRO. *Cassell v. Snyders*, 900 F.3d 539 (7th Cir. 2021). Because each of these factors strongly favors Mr. Oviedo, this court should grant the motion.

I. Petitioner is likely to succeed on the merits of his claims.

The appropriate standard for likelihood of success on the merits is "some likelihood." *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020); *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) ("[L]ikelihood of success on the merits" means that a plaintiff has "a reasonable chance, or probability, of winning . . . A

likelihood does not mean more likely than not."). Mr. Oviedo easily meets this showing and is likely to prevail on the merits of his claim that his detention is unlawful. Under 28 U.S.C. § 2241(c)(3), a petitioner is entitled to a writ of habeas corpus if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States."

Further, Mr. Oviedo is likely to succeed on his claim that, if the government purports to identify any third country willing to accept him, he is entitled to adequate notice and an opportunity to respond regarding removal to that country.

A. Petitioner is likely to succeed on the merits of his claim that his continued detention violates the INA and due process because it is indefinite.

Mr. Oviedo's continued detention is unlawful: the six-month mark of presumptively reasonable post-removal order detention has passed, *see Zadvydas*, 533 U.S. at 701, and DHS has not identified any country to which it is considering removing him. Therefore, Mr. Oviedo's detention has become indefinite and lacks a legitimate government purpose, in violation of the INA and due process.

When a noncitizen is ordered removed, the government ordinarily must secure the noncitizen's removal from the United States within a period of 90 days, known as the "removal period." 8 U.S.C. § 1231(a)(1)(A). As relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final". *Id.* § 1231 (a)(1)(B)(i)-(iii). If not removed within the removal period, the noncitizen is normally to be released under the government's supervision. *Id.* § 1231(a)(3).

Detention beyond the 90-day removal period must comport with a legitimate government purpose. Absent a legitimate government purpose for detention, immigration detention violates a noncitizen's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90; *see also Hussain*, 510 F.3d at 743.

The Supreme Court has stated that the purpose of Section 1231 post-final-order detention is to "bring about the [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689.

Although the "basic purpose [of] effectuating [a noncitizen's] removal" is a legitimate government purpose, *Zadvydas*, 533 U.S. at 697, detention for this purpose may only be for a "very limited time." *Demore*, 538 U.S. at 529 n.12; *see also Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005). In *Zadvydas*, the Supreme Court cast doubt on the "constitutionality of detention for more than six months" after a removal order became administratively final. 533 U.S. at 701.

Additionally, the Supreme Court has repeatedly affirmed that detention must be constitutional as applied to individuals regardless of what is authorized or even mandated by a detention statute. *Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (explicitly declining to reach "constitutional arguments on their merits" after finding no statutory limit on the length of mandatory immigration detention under 8 U.S.C. § 1226(c)); *see also Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) ("Our decision today on the meaning of [section 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.").

Accordingly, if the government is purporting to detain an individual beyond the 90-day period, it must show a legitimate government purpose; namely, that it is seeking to effectuate the individual's removal and that removal is likely to occur in the "reasonably foreseeable future." *Zadvydas*, 533 U.S. at 700. Further, "for detention to remain reasonable, as the period of [] postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

Where there is no possibility of removal—or only a small possibility of removal—there are substantive due process concerns in continuing an immigrant's detention.

It is incredibly rare for DHS to remove individuals who have been granted protection from removal to their home country. In such circumstances, removal to a third country has historically been highly unlikely. For example, the Supreme Court previously noted that in 2017, only 1.6% of noncitizens who were granted withholding of removal were actually removed to an alternative country. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2286 (2021).

In Mr. Oviedo's case, since the IJ's grant of withholding of removal, the government has not sought to designate an alternative country for removal, much less initiate removal proceedings regarding an alternative country. Exh. C. Furthermore, ICE has not requested that Mr. Oviedo complete any paperwork or meet with consular officials from any alternative country. *Id.* Without such requests, it is unlikely that DHS intends to try to remove Mr. Oviedo to any other country. Thus, Mr. Oviedo's continued detention is no longer reasonably related to its limited purpose and is therefore unlawful, under both the INA and the Constitution.

Additionally, even assuming DHS had the ability to remove Mr. Oviedo to a third country, his continued detention is not reasonably related to its stated purpose when alternative conditions of release could mitigate flight risk. *Bell v. Wolfish*, 441 U.S. 520, 536-39 (1979) (observing that pretrial detention not reasonably related to a legitimate government purpose would constitute punishment in violation of Due Process).

DHS regularly utilizes orders of supervision when releasing individuals from its custody when a final order of removal is in place. An order of supervision operates like terms of probation, with the ability to impose "conditions of supervision" on individuals. *See* 8 C.F.R. § 241.5(a). For example, noncitizens released on such orders regularly are prohibited from leaving the state in which they reside without advance permission from an ICE officer. *Id.*(a)(4). They may also be required to report to an ICE officer in person or by telephone on a periodic basis. *See Fernandez*

Aguirre v. Barr, No. 19-CV-7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (listing alternatives to detention, "such as home detention, electronic monitoring, and so forth"); *Mathon v. Searls*, 623 F. Supp. 3d 203, 218 (W.D.N.Y. 2022) ("[T]he form used by ICE to list the terms of supervision (Form I-220B) includes a section for 'other specified conditions', which implies that ICE has flexibility in imposing release terms.").

Such conditions of release would be sufficient to ensure Mr. Oviedo's presence in the unlikely event that removal to a third country becomes possible. If released, Mr. Oviedo plans to live with his brother in Wisconsin and will have the support of several siblings and family members. Exh. E.

Finally, as discussed below, while ICE has attempted to expand its third country removal practices, these practices fail to follow the statutory procedures outlined in the INA, the requirements of due process, and binding treaty obligations under the CAT, which ensure an individual has a meaningful opportunity to make a fear-based claim against removal to that country. Where, as here, the Petitioner has been detained for over six months with a final order of removal, no ICE memo or practice authorizes the noncitizen's indefinite detention while the government purportedly pursues removal to a third country. ICE's efforts to expand third country removals do not displace the Supreme Court's decision in *Zadvydas* nor the requested relief in this case.

In sum, because Mr. Oviedo's removal is not reasonably foreseeable and because alternative conditions of release could mitigate flight risk, his detention does not have a legitimate government purpose. Thus, Mr. Oviedo is likely to succeed on his claim that his continued detention is unconstitutional.

B. Petitioner is likely to succeed on the merits of his claim that he is entitled to constitutionally adequate procedures prior to any third country removal.

The Due Process Clause and the INA require the government to give a noncitizen notice and a hearing where the immigrant can present evidence to defend against his or her removal. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (an immigrant in removal proceedings "shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government"); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.").

Further, "[n]oncitizens facing removal of any sort are entitled under international and domestic law to raise a claim under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting) (citing Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 113). The United States is a party to the Convention and passed the Foreign Affairs Reform and Restructuring Act (FARRA) and subsequent regulations "to implement its commands." *Id.* "Article 3 of the Convention prohibits returning any person 'to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.'" *Id; see also* UN Convention Against Torture, *supra* n.1. Regulations implementing the Convention provide, among other things, that "[a] removal order . . . shall not be executed in circumstances that would violate Article 3." 28 C.F.R. § 200.1 (2024).

As multiple courts have recognized, "affirming a deportation order without a fair hearing concerning that deportation violates due process." *Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that a noncitizen must be given the opportunity to brief removal to a third country when there was no indication during removal proceedings that the noncitizen could be removed there);

see also Mahdejian v. Bradford, No. 25-cv-00191, 2025 WL 226796 (E.D. Tex. July 3, 2025) (issuing temporary restraining order, where petitioner had been granted withholding of removal as to Iran, prohibiting DHS from removing him to a third country without notice and a meaningful opportunity to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, No. 25-cv-05259, 2025 U.S. Dist. LEXIS 121997 at *7, 2025 WL 1771438 at *3 (N.D. Cal. June 26, 2025) (finding that where petitioner was granted CAT relief as to El Salvador, "there are no countries to which [petitioner] could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires"); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) ("ICE's authority to remove a noncitizen to a country not specified in the immigration judge's order of removal" comes with "an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting him."); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) ("It follows that a failure to provide notice and, upon request, stay removal or reopen the case for adjudication of [the noncitizen's] applications as to Burma would constitute a due process violation *if* Burma becomes the proposed country of removal (as opposed to an alternative country of removal).") (superseded by statute on other grounds); *Romero v. Evans*, 280 F. Supp. 3d 835, 847 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioner to a third country, as DHS would first need to give petitioner notice and the opportunity to raise any reasonable fear claims.").

A fair hearing provides a noncitizen "an adequate opportunity to defend themselves against that deportation," including seeking protection from removal to that alternate country. *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1998).

However, a detained noncitizen may not seek protection from any theoretical third country until the Government has affirmatively designated that country for removal. *See Hwa She*, 629

F.3d at 965 ("Under the plain wording of 8 C.F.R. § 1208.16, an applicant is not entitled to adjudication of an application for withholding of removal to a country that nobody is trying to send them to."); *Yakubov v. Att'y Gen.*, 586 F. App'x 86, 87 (3d Cir. 2013) ("Yakubov's claim for deferral [to Russia] will not become ripe unless and until the Government's efforts to remove him to Israel prove unsuccessful.").

Recently announced DHS policy allows ICE to give noncitizens as little as six hours' notice before removal to a country to which they have no connection whatsoever, or to give no notice at all if the accepting country has made "diplomatic assurances" that deportees will not be persecuted or tortured. *See* July ICE Memo. This policy violates the INA, the Convention Against Torture, and due process. Six hours may not be enough time for a detained noncitizen to even reach his or her counsel from detention, let alone research a third country's conditions and assert a fear. Neither this short notice nor "diplomatic assurances" from a third country can replace the individualized proceedings required by statute or the CAT. This is especially true where evidence demonstrates that the countries the government has recently pursued for third country removals are dangerous, commit human rights violations, including chain-*refoulement*, and/or mistreat deportees while denying them due process and the ability to seek asylum.[3]

Recognizing these violations, a federal district court issued a nationwide preliminary injunction in April 2025, precluding Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief. *D.V.D., et al v. U.S. Dep't of Homeland Sec., et al,* No. 25-10676 (D. Mass. Apr. 18, 2025). The Supreme Court later stayed that injunction while the case continues to be litigated on the merits. *U.S. Dep't of Homeland Security, et al. v.*

[3] *See generally* The New York Times, *Inside the Global Deal-Making Behind Trump's Mass Deportations,* June 25, 2025, https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html; Rolling Stone, *ICE is Deporting People to Africa on Nearly Un-Trackable Military Flights,* Sept. 21, 2025, https://www.rollingstone.com/politics/politics-features/ice-deporting-africa-military-flights-1235431848/.

D.V.D., et al., No. 24A1153, 2025 WL 1732103 (June 23, 2025). The stay order is not accompanied by an opinion and was issued just four days before the Court published *Trump v. Casa,* No. 24A884 (June 27, 2025), limiting nationwide injunctions. Thus, the order signals disagreement with the procedure, and not the substance, of the nationwide preliminary injunction.

Because of the stay, individual lawsuits like the instant case are currently the only method to prevent illegal third-country removals. In his individual habeas petition, Mr. Oviedo submits that he cannot be removed to any third country unless he is first provided with adequate notice and a meaningful opportunity to apply for withholding of removal and protection under the Convention Against Torture. Several federal district courts have already issued similar relief, further indicating that Mr. Oviedo has established a likelihood of success on the merits. *See, e.g., Ortega*, 2025 WL 2243616, at *8 (prohibiting the government from "arresting, detaining, or removing" the petitioner to a third country "without notice and a hearing."); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025) (prohibiting the government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Delkash v. Noem*, No. 5:25-CV-01675-HDV-AGR, 2025 WL 2683988, at *6 (C.D. Cal. Aug. 28, 2025) (prohibiting the government from removing Petitioner "to a third country without notice and an opportunity to be heard"); *Santamaria Orellana v. Baker,* No. CV 25-1788-TDC, 2025 WL 2841886, at *11 (D. Md. Oct. 7, 2025) (same); *Mahdejian v. Bradford,* No. 25-cv-00191, 2025 WL 226796 (E.D. Tex. July 3, 2025) (same).

II. Petitioner will suffer irreparable harm absent injunctive relief.

Consistent with several Circuits to consider the issue, the Seventh Circuit has recognized that "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm." *Preston v. Thompson,* 589 F.2d 300, 303 n. 3 (7th Cir. 1978); *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011); *see also Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001)

("[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated."); *Elrod v. Burns,* 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). A temporary restraining order is the only way to prevent deprivations of Mr. Oviedo's constitutional rights.

Furthermore, courts within the Seventh Circuit have recognized that continued unlawful detention constitutes irreparable harm. *See, e.g., U.S. ex rel. Newman v. Rednour,* 917 F. Supp. 2d 765, 789 (N.D. Ill. 2012) ("The injury that Petitioner will suffer by continued detention is undeniably irreparable."); *Stone v. Jeffreys,* No. 21 C 5616, 2022 WL 4596379, at *2 (N.D. Ill. 2022) ("Absent injunctive relief, [Plaintiffs] will continue to be imprisoned, which constitutes an irreparable harm."); *Thomas v. City of Chicago,* 1984 WL 946 at *6 (N.D. Ill. 1984) ("[T]he harm of prolonged investigative detention lacking in probable cause is irreparable and without legal remedy."). As the Supreme Court has explained, time spent in detention "has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972).

Here, Mr. Oviedo faces irreparable harm each day he remains detained in violation of his constitutional rights. He is detained in conditions indistinguishable from penal confinement. Exh. C. Further, while detained, he has struggled to gain access to adequate medical and mental health care, including treatment related to his brain injury that was recommended at the time of his psychological evaluation. *Id.* The continuation of these grave harms can only be prevented if the Court grants this preliminary injunction; this factor therefore weighs heavily in Mr. Oviedo's favor.

Finally, Mr. Oviedo will suffer clear irreparable harm if he is unlawfully removed without process to a third country where he is at risk of persecution or torture. Individuals removed pursuant to DHS's recent policies have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.[4] One man, removed in violation of a prior grant of withholding of removal, reported that he faced severe torture at the hands of government agents.[5] Others, held in a shipping container while their removal was challenged in court, suffered high temperatures, exposure to malaria, and proximity to burning trash and human waste.[6] In addition to the usual harms accompanying third-country removal, Mr. Oviedo would be at a particular risk of harm in many countries due to [redacted]

[redacted]

II. The remaining factors favor granting a temporary restraining order.

The third and fourth factors weigh in Mr. Oviedo'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 TRO or 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*, 129 S. Ct. at 376.

The Seventh Circuit recognizes that "the public has a strong interest in the vindication of an individual's constitutional rights." *O'Brien v. Town of Caledonia,* 748 F.2d 403, 408 (7th Cir. 1984); *Faust v. Vilsack,* 519 F. Supp. 3d 470, 477 (E.D. Wis. 2021) ("it is 'always in the public

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[4] NPR, *Asylum seekers deported by the U.S. are stuck in Panama unable to return home*, May 5, 2025, https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home.

[5] NPR, *Abrego Garcia says he was severely beaten in Salvadoran prison*, July 3, 2025, https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture.

[6] NPR, *U.S. Supreme Court allows—for now—third-country deportations*, June 23, 2025, https://www.npr.org/2025/06/23/g-s1-71529/supreme-court-south-sudan-deportation.

interest to prevent the violation of a party's constitutional rights.'") (quoting *Deja Vu of Nashville, Inc. V. Metro. Gov't of Nashville and Davidson Cnty., Tenn.*, 274 F.3d 377, 400 (6th Cir. 2001)). Further, the Court has recognized that the government cannot reasonably assert that it will be harmed when the record demonstrates a "strong likelihood" of constitutional violations. *Id.* at 409; *see also Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) (finding that federal respondents "cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations."); *Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982) ("[Appellee] has no right to the unconstitutional application of state law."). Thus, any burden imposed by requiring the Respondents to release Mr. Oviedo from custody is both *de minimis* and clearly outweighed by the substantial harm he will suffer as long as he continues to be detained. Similarly, any burden of requiring Respondents to provide Mr. Oviedo with notice and an opportunity to respond as to any third country removal is outweighed by the substantial harm he will suffer if removed to a country where he will face persecution or torture.

Absent a temporary restraining order, the government would effectively be granted permission to continue detaining Mr. Oviedo without a legitimate purpose, or to summarily remove him to any third country in violation of the requirements of the INA, due process, and binding treaty obligations.

CONCLUSION

Based on the foregoing, Mr. Oviedo requests that this Court grant the motion for a temporary restraining order. In the alternative, he asks this Court to order Respondents to show cause within three days establishing why his habeas petition should not be granted.

Dated: November 19, 2025

s/ Colleen Cowgill
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