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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF ARIZONA**
5

6 KEVIN ALEXANDER POLANCO
7 RETANA,

8 Petitioner,
9

10 vs.

11 PAMELA BONDI, in her official
12 capacity as Attorney General; KRISTI
13 NOEM, in her official capacity as
14 Secretary of the Department of
15 Homeland Security; TODD M.
16 LYONS, in his official capacity as
17 Current Acting Director of Immigration
18 and Customs Enforcement; JOHN E.
19 CANTU, in his official capacity as
Phoenix ICE Field Office Director;
WARDEN, Florence Service
Processing Center.

20 Respondents
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Case No.:

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER; HEARING
REQUESTED

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Petitioner is a citizen of El Salvador and a permanent resident of Mexico. He
5 has lived in the United States since 2021 subsequent to his unlawful entry. He and
6 his wife came to the United States with their daughter to give their children a better
7 life.

8 In May of 2025, Petitioner was detained by ICE agents. He was informed that
9 he is subject to a warrant for unlawful association in El Salvador. Petitioner
10 understands this to mean that he is suspected of gang membership. Petitioner fears
11 that he will not have an opportunity to demonstrate that he is not a gang member
12 under the current regime in El Salvador. Therefore, he applied for asylum,
13 withholding of removal, and relief under the Convention Against Torture.

14 At Petitioner's individual hearing on November 14, 2025, Petitioner's
15 attorney, the attorney for DHS, and the Immigration Judge discussed Petitioner's
16 fear of removal to El Salvador and not to Mexico. The Judge informed Petitioner
17 that he would order that Petitioner be removed to Mexico *only*. Mr. Polanco agreed
18 to withdraw all applications for relief so long as he would not be removed to El
19 Salvador.

20 Petitioner is now detained at Florence Service Processing Center in Florence,
21 AZ and is being staged for imminent removal to El Salvador.

22 **II.**

23 **STATEMENT OF FACTS**

24
25 Petitioner is a native and citizen of El Salvador. He is 29 years old. He is a
26 husband and the father of two children, one of whom is a U.S. citizen. He is a devout
27 Evangelical Christian.
28

1 Petitioner moved to Mexico in 2013 when he was 18 years old. He holds
2 permanent residence in Mexico.

3 Petitioner entered the United States approximately four years ago without
4 being inspected or admitted. He and his wife came to give their daughter and unborn
5 son a better life.

6 In May of 2025, Petitioner was arrested by ICE agents. He was informed that
7 he is a fugitive from El Salvador. El Salvador has charged him with “unlawful
8 association.” It has been unclear to Petitioner what association he is accused of
9 being a member of, or what year these allegations are from. Mr. Polanco
10 understands these allegations to allege that he is a gang member.

11 Petitioner has no criminal record anywhere in the world.

12 Petitioner was placed in detained removal proceedings. Based on the
13 allegations of unlawful association, Petitioner fears he will be jailed, deprived of all
14 due process rights, and tortured or killed in El Salvador. He filed an application for
15 asylum, withholding of removal, and relief under the Convention Against Torture.
16

17 At Petitioner’s individual hearing on November 14, 2025, Petitioner’s
18 attorney, the attorney for DHS, and the Immigration Judge discussed Petitioner’s
19 fear of removal to El Salvador and not to Mexico. The Judge informed Petitioner
20 that he would order that Petitioner be removed to Mexico *only*. Mr. Polanco agreed
21 to withdraw all applications for relief so long as he would not be removed to El
22 Salvador.

23 On November 19, 2025, Petitioner’s counsel emailed ICE at Adelanto, CA
24 where Petitioner was then housed. She inquired about Petitioner’s removal to
25 Mexico. On that same day, ICE responded that Petitioner’s removal to Mexico
26 would be executed soon.

27 In the early morning hours of November 22, 2025, Petitioner was informed
28 that he was being moved and had been told that he will be removed to El Salvador.

1 On information and belief, Petitioner is in Florence, AZ at the Florence
2 Service Processing Center and is being staged for removal to El Salvador on Sunday,
3 November 23 in the morning.
4

5 * * *

6 Petitioner has filed a Petition for Writ of Habeas Corpus on November 22,
7 2025. He is entitled to challenge his removal to El Salvador prior to being removed.
8

9 III.

10 LEGAL STANDARD

11 To prevail on a motion for temporary restraining order, the moving party
12 must establish that (1) she is likely to succeed on the merits, (2) she is likely to
13 suffer irreparable harm absent relief, (3) the balance of equities tips in her favor,
14 and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
15 555 U.S. 7, 20 (2008). A petitioner seeking a mandatory injunction must show that
16 the law and facts clearly favor her position. *See Garcia v. Google, Inc.*, 786 F.3d
17 733, 740 (9th Cir. 2015) (*en banc*). Under the Ninth Circuit's "sliding scale"
18 approach, a stronger showing of one element may offset a weaker showing of
19 another, as long the petitioner "establish[es] that irreparable harm is likely." *All. for*
20 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

21 A temporary restraining order preserves the *status quo ante litem*, which
22 refers to the "last uncontested status which preceded the pending controversy."
23 *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1191 (9th
24 Cir. 2024); *Shilling v. United States*, No. 25-CV-241-BHS, 2025 WL 926866, at *11.

25 Here, Petitioner meets both the irreparable harm and likelihood of success
26 prongs, and the requested relief is not overly burdensome on Respondents.
27 Accordingly, Petitioner merits issuance of a TRO.
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IV.

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ARGUMENT

A. Petitioner is Likely to Succeed on the Merits.

DHS has the authority to remove noncitizens to a third country but only where removal to the country designated in the final order is “impracticable, inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii); see also 8 U.S.C. § 1231(b) (outlining framework for designation). However, DHS is barred from removing a non-citizen to a country where the non-citizen’s life or freedom would be threatened because of five protected grounds. *Id.* at § 1231(b)(3)(A). In addition, DHS is barred from deporting a non-citizen to a country where they face a threat of torture. *See* 8 C.F.R. §§ 208.16-208.18. “In other words, third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings.” *D.V.D.*, 2025 WL 1453640, at *3 (D. Mass. May 21, 2025)

On March 30, 2025, DHS issued a policy memorandum entitled Guidance Regarding Third Country Removals, outlining its policy on third country removals for individuals with final orders of removal pursuant to 8 U.S.C. §§ 1229a, 1251(a)(5), or 1228(b). Under the memo, if the U.S. State Department receives credible diplomatic assurances from the third country that persons will not be persecuted or tortured, *no further process is provided*. If no such assurances have been provided, a notice of removal is to be provided to the noncitizen detainee and only if the detainee affirmatively expresses fear of removal to that country will DHS refer the detainee for a screening interview.

In its stay application to the Supreme Court, the government represented that these individuals are entitled to some “additional process, before any one of them is deported to a third country.” Defendants’ Application for Stay of Preliminary Injunction at 28, *DHS v. D.V.D.*, No. 24A1153 (S. Ct. Jun. 23, 2025). Notwithstanding the statutory and regulatory prohibitions on removing non-citizens to countries where they face potential persecution or torture, Respondent Noem’s March 30 “Guidance Regarding Third Country Removals” states that if the United

1 States has received “diplomatic assurances” from a third country that non-citizens
2 removed to that country will not be persecuted or tortured, DHS may remove that
3 non-citizen “without the need for further procedures.”

4 The procedure laid out in this memo violates the statutory and regulatory
5 provisions requiring Respondents to provide a non-citizen with a forum to
6 demonstrate an individualized risk of torture or persecution in a specific country.
7 The memo purports to rely on blanket assurances from third countries that non-
8 citizens generally will not be tortured or persecuted to circumvent the obligation to
9 determine if an individual non-citizen faces a risk of torture or persecution.

10 Respondents’ detention of Petitioner with the intent to remove him to a third
11 country (including, but not limited to, El Salvador) without notice or the opportunity
12 to demonstrate that he is at a particularized risk of torture or persecution in that third
13 country is unlawful.

14
15 **B. Petitioner will suffer irreparable injury absent a TRO**

16 Petitioner will suffer irreparable harm if he is forced to remain in detention
17 indefinitely. His life and freedom are threatened in El Salvador. He sought to fight
18 his removal to El Salvador in detention for more than six months. He withdrew his
19 request for asylum, withholding of removal, and relief under the Convention
20 Against Torture only when he was told that he would be removed to Mexico. Ex.
21 A. He suddenly faces removal to El Salvador with no notice and no opportunity to
22 present the claims he withdrew only when told he would not be removed to El
23 Salvador.

24 **C. The Public Interest and Balance of Equities weigh heavily in Petitioner’s**
25 **favor**

26 The balance of equities and the public interest merge in cases against the
27 government. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance here
28 overwhelmingly favors Petitioner. The public has a critical interest in preventing

1 wrongful removals, “particularly to countries where they are likely to face
2 substantial harm.” *Id* at 436. Here, Petitioner faces a likelihood of persecution and
3 torture in El Salvador, a country known to imprison, detain, and torture suspected
4 gang members.

5
6 **V.**
7 **CONCLUSION**

8 For all the above reasons, this Court should find that Petitioner warrants a
9 temporary restraining order and order DHS not to remove Petitioner to a third
10 country until he has had a meaningful opportunity to present his claim of fear to that
11 country.

12 Respectfully submitted,

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14 Dated: November 22, 2025

15 /s/Keli M. Reynolds
16 Counsel for Petitioner
17 Keli M. Reynolds
18 Olmos and Reynolds Law Group, LLP
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- Exhibit A** Immigration Judge’s order of removal to Mexico
- Exhibit B** Email Correspondence with ICE regarding removal
- Exhibit C** March 30, 2025 Guidance re Third Country Removals
- Exhibit D** Petitioner’s Declaration in Support of Asylum, Withholding of Removal and CAT relief

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