

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

Franklin Benjamin Reyes,)	
)	
<i>Petitioner,</i>)	
)	
v.)	Civ. Action No. 1:25-cv-00344
)	
Kristi Noem, Secretary, U.S. Department of)	
Homeland Security,)	
)	
Pamela Bondi, Attorney General,)	
)	
Todd M. Lyons, Acting Director, U.S.)	
Immigration and Customs)	
Enforcement,)	
)	
Miguel Vergara, Field Office Director, U.S.)	
Immigration and Customs)	
Enforcement, Harlingen Field Office,)	
)	
Warden, Port Isabel Service Detention)	
Center,)	
)	
<i>Respondents.</i>)	

EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Franklin Benjamin Reyes, 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 review of his negative fear determination by an Immigration Judge (“IJ”). In support of this motion, Petitioner respectfully represents as follows:

1. On June 7, 2024, Petitioner won deferral of removal under the Convention Against Torture (“CAT”) preventing his removal to his native El Salvador. Dkt. No. 1-1. He was released

from ICE custody on an Order of Supervision in October 2024. Dkt. No. 1. On November 13, 2025, his Order of Supervision was revoked and he was re-detained, in order to remove him to Mexico. Dkt. No. 1.

2. Petitioner expressed a fear of being removed to Mexico, and on December 11, 2025 fear interview was carried out. Dkt. No. 1; On December 16, 2025, Respondents informed Petitioner's immigration counsel that the Respondent received a negative determination. Dkt. No. 1-4. On December 18, 2025 Petitioner, by counsel, requested that an IJ review the negative fear determination. *Id.*

3. Petitioner's removal to Mexico is imminent, and Respondents do not intend to refer Petitioner's negative fear determination to an Immigration Judge prior to doing so. Dkt. 1.

4. 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.

5. 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.

6. Here, Petitioner is likely to succeed on the merits as "[d]ue process requires the 'opportunity to be heard at a meaningful time and in a meaningful manner.'" *Sivalingam v. Garland*, 839 F. App'x 946, 947 (5th Cir. 2021) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). When the government deprives a person of a protected interest, it must provide "notice

and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). The *Mathews* standard balances: (1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements. *See Mathews*, 424 U.S. at 335.

7. Applying the *Mathews* factors, Petitioner has demonstrated a likelihood of success on the merits that he cannot be removed without IJ review of his negative fear determination. As Judge Saldaña recently held in *Sagastizado v. Noem* in a virtually identical case, Petitioner has “demonstrated a likelihood of success as to his claim that he cannot be removed to a third country without sufficient notice and a meaningful opportunity to raise a claim, and that Respondents’ failure to provide him with review of his negative [fear of removal] determination deprives him of his rights under the Due Process Clause of the Fifth Amendment.” 2025 WL 2957002, at *9 (S.D. Tex. Oct. 2, 2025). As the *Sagastizado* explained, no federal regulation directly covers the factual scenario of a noncitizen granted protection from removal to his home country, whom the Government now seeks to remove to a third country. *Id.* at *10. Nevertheless, “[h]ad Respondents designated Mexico as the country of removal during Petitioner’s initial removal proceedings under 8 U.S.C. § 1229a, he would have been provided the opportunity to apply for withholding of removal from Mexico directly before an IJ rather than complete a threshold fear-based screening. Moreover, the regulations provide for IJ review of USCIS fear interviews in situations where the noncitizens are arguably entitled to lesser procedural protections than *Sagastizado* under the Constitution.” *Id.* at *11 (internal citations omitted).

8. Since no provision in the Code of Federal Regulations directly covers the adjudication of fear-based claims to withholding of removal in the third-country context, Petitioner maintains that the procedure set forth in 8 C.F.R. § 1208.31, the Reasonable Fear Interview with IJ review, is the most directly analogous to the situation at bar in which a prior removal order is later effectuated in a manner and at a time not originally contemplated when the removal order was entered. Indeed, another similar regulation also provides for IJ review of denied fear interviews: 8 C.F.R. § 1003.42, providing for IJ reviews of denied Credible Fear Interviews, where a noncitizen has recently entered the country unlawfully and is subjected to the expedited removal process under 8 U.S.C. § 1225(b)(1). There is *no* regulation, no set of facts or circumstances, under which USCIS conducts a fear-of-removal screening interview that is *not* then subject to review by an IJ.

9. Due process requires that the same procedures be available to Petitioner as are available to noncitizens apprehended at the border seeking relief from expedited removal or from reinstatement of removal, or aggravated felons. *Sagastizado* cites *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107 (2020), which held that “aliens who have established connections in this country” have greater due process rights than “an alien at the threshold of initial entry.” *See Sagastizado* at *11. Here, Petitioner has lived in the United States since 1990. *See* Dkt. No. 1. There is no reason he would be entitled to *less* due process than someone whose removal is being reinstated under 8 U.S.C. § 1231(a)(5) because he has just committed the federal felony of illegally reentering the United States, 8 U.S.C. § 1326; or *less* due process than someone who is being removed on the basis of an aggravated felony, 8 U.S.C. § 8 U.S.C. § 1228(b). *See Thuraissigiam*, 591 U.S. at 107 (contrasting the greater due process rights of “aliens who have

established connections in this country” with the lesser due process rights of “an alien at the threshold of initial entry”).

10. If Petitioner had been apprehended while illegally entering the United States as “an alien at the threshold,” he indisputably would have had a right to IJ review of his denied Credible Fear Interview. 8 C.F.R. § 1003.42. If a third country had been named as an alternate country of removal on Petitioner’s Notice to Appear, Petitioner would not even have been required to go through the fear-interview procedure at all, he could have simply filed an application for withholding of removal directly to the IJ. 8 C.F.R. § 1240.1(a)(1)(iii). And if Petitioner is removed from the United States today and illegally reenters tomorrow, he indisputably would have a right to IJ review of his denied Reasonable Fear Interview as to any country Respondents might name in the future. 8 C.F.R. § 1208.31(e). Petitioner has no less due process rights today than he would in those scenarios. Put differently, Respondents cannot cut off Petitioner’s due process rights by waiting seven years to spring a surprise alternate country of removal. *See also Sagastizado* at *12; *Cruz Medina v. Noem*, 2025 WL 2841488 (D. Md. Oct. 7, 2025), at *6.

11. On the second prong of the *Mathews* test, review by an Administrative Law Judge would provide additional probative value over an interview with a non-judicial officer resulting in a check-the-box form providing no reasons; this is why the government affords IJ review in every other analogous circumstance. The procedures applied here to date do not meet the constitutional minimum requirements of notice and opportunity to be heard. In contrast, in a normal Reasonable Fear Interview, the asylum officer creates (and the noncitizen is given) “a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officers, and the officer’s determination of whether, in light of such facts, the alien has established a reasonable fear of persecution or torture.” 8 C.F.R. §

208.31(c). The IJ reviewing the matter (and the noncitizen) is provided with “[t]he record of determination, including copies of the Notice of Referral to Immigration Judge, the asylum officer’s notes, the summary of the material facts, and other materials upon which the determination was based[.]” 8 C.F.R. § 208.31(g).

12. As the Western District of Washington recently explained, “a noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation. The guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim.” *Nguyen v. Scott*, 2025 WL 2419288, at *18 (W.D. Wash., Aug. 21, 2025). Indeed, the procedures that the District Court in *Nguyen* found necessary were significantly more robust than the procedure that Petitioner seeks here: while the *Nguyen* court held that “removal proceedings must be reopened so that a hearing can be held,” *id.*, Petitioner here merely seeks IJ review of his denied fear interview, following which he would be allowed to file a full application for withholding of removal only if he *passes* the IJ review. *See also Sagastizado* at *12 (“Requiring IJ review in Petitioner’s case provides significant but minimally burdensome procedural safeguards in the form of independent review by a subject-matter expert and the opportunity to receive a written explanation of a denial by an IJ. Moreover, this procedure is already provided for in various other removal contexts where noncitizens are entitled to lesser due process rights[.]” (Internal citations omitted)); *Cruz Medina*, 2025 WL 2841488, at *7 (“The government offers no articulable reason why there is any lesser risk of erroneous deprivation in this scenario than in scenarios where DHS regulations contemplated the potential risk of erroneous deprivation of a noncitizen’s liberty interest and determined to mandate review by an immigration judge. While there remains a risk of erroneous

deprivation following review by an immigration judge, this Court defers to DHS's own longstanding determination that similar circumstances call for providing IJ review to lessen the risk of erroneous deprivation of relief under the [CAT].").

13. Finally, on the third *Mathews* prong, burden to the government, Respondents cannot complain of excessive burden in extending to Petitioner a procedure that already exists in so many other contexts. 8 C.F.R. § 1208.31(g) ("In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I-863, Notice of Referral to Immigration Judge, and the complete record of determination with the immigration court."). *See also Sagastizado* at *12; *Cruz Medina* at *7–*8.

14. For the foregoing reasons, due process requires that Petitioner be afforded no less procedural protections than as set forth in 8 C.F.R. § 1208.31(g). If an aggravated felon would be given an IJ review of a denied Reasonable Fear Interview, if an individual who illegally reentered the United States after prior removal would be given an IJ review of a denied Reasonable Fear Interview, if an "alien at the threshold" would be given an IJ review of a denied Credible Fear

15. 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 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, and has provided country conditions evidence demonstrating same. *See* Dkt. No 1-3.

16. Further, removal to Mexico creates an acute and well-documented danger of “chain refoulement,” since Mexico routinely deports noncitizens to their home countries notwithstanding prior U.S. findings of persecution risk. *See, e.g., Santamaria Orellana v. Baker* 2025 WL 2444087, at *12 (D. Md. Oct. 7, 2025) (“Indeed, in several recent third-country removals, the third country promptly deported noncitizens to the very countries to which the United States had withheld removal due to the risk of persecution, torture, or death.”); *D.A. v. Noem*, 2025 WL 2646888, at *3 (D.D.C. Sept. 15, 2025) (describing a 2025 example of noncitizen who had been granted withholding of removal to his home country of Guatemala based on a fear of torture was instead deported to Mexico, only to be deported from Mexico to Guatemala.).

17. 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 at 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.”).

18. Finally, the burden on the government is minimal: likely an additional ten days of detention if the government applies the analogous Reasonable Fear Interview referral regulations. *See* 8 C.F.R. § 1208.31(g) (“In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I-863, Notice of

Referral to Immigration Judge, and the complete record of determination with the immigration court.”).

19. 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 an Immigration Judge reviews the denial of his Fear Interview.

Respectfully submitted,

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Date: December 18, 2025

Certificate of Service

I, Simon Sandoval-Moshenberg, hereby certify that on this 18th day of December, 2025, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Warden, Port Isabel Detention Center
27991 Buena Vista Blvd,
Los Fresnos, TX 78566.

Respectfully submitted,

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