UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Jose Adonay Urbina Salazar,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Miguel Vergara, Director, Harlingen Field Office Immigration and Customs Enforcement,

and,

Warden of Port Isabel Service Detention Center

Respondents.

4:25-cv-6147

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Jose Adonay Urbina Salazar (hereinafter "Petitioner") respectfully requests an immediate Temporary Restraining Order ("TRO") barring Respondents from removing Petitioner to El Salvador, or to a third country, without being provided notice of any action to reopen his prior removal proceedings or an opportunity to apply for protection from removal a third country as required by the Immigration and Nationality Act ("INA"). Petitioner seeks immediate relief to protect him from ongoing and imminent harm that Petitioner's removal in violation of law will cause.

A noncitizen with a final removal order may not be removed to a country where the "Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). Subparagraphs 1231(b)(1) and (b)(2) of Title 8 authorize Respondents to remove noncitizens with a final order to a third country if a noncitizen cannot be removed to the designated country (usually the country of origin) or alternatively designated country. However, § 1231(b)(3) expressly mandates that "[n]otwithstanding paragraphs (1) and (2)," DHS may not remove noncitizens to any country if their "life or freedom would be threatened in that country" on the basis of a protected ground. Similarly, the statute and regulations

implementing the United States' obligations under the Convention Against Torture (CAT), separately instruct that Respondents may not remove noncitizens to a country where the foreign government is likely to torture the individual.

Respondents are acting contrary to law by violating Petitioner's statutory protection against removal to El Salvador. Respondents are also acting contrary to law by not providing Petitioner with notice and an opportunity to apply for protection from removal to countries where he fears persecution or torture. Respondents' actions also violate Petitioner's constitutional right to due process.

For these reasons, Petitioner asks this Court to provide immediate relief enjoining Respondents from removing Petitioner to El Salvador or any third country, unless and until Petitioner has been provided with written notice and a meaningful opportunity to challenge his removal. Petitioner asks this Court to order his immediate release under supervision, or any conditions this Court sees appropriate.

FACTS

Petitioner, a native and citizen of El Salvador, first entered the United States in 2006. He was removed in 2012. Petitioner then reentered the United States in 2013. He was placed in expedited removal proceedings but expressed fear of returning to El Salvador. Petitioner passed his reasonable fear interview and was placed in withholding only proceedings. ECF #2- Exh. B, Exh. C. The immigration court granted Petitioner withholding of removal on December 5, 2013.

ECF #2- Exh. A. Respondents subsequently released Petitioner from ICE custody under an Order of Supervision consistent with 8 U.S.C. § 1231. He has attended annual check-ins with ICE.

Respondents arrested Petitioner in Minnesota on December 9, 2025, in Minnesota at a regular ICE check-in appointment. Respondents did not serve Petitioner with a notice of revocation prior to his detention, and Respondents did not conduct an interview or even attempt to comply with any of the revocation and custody-review procedures in 8 C.F.R. §§ 241.4 and 241.13. Respondents hastily moved Petitioner out of Minnesota to Texas.

As Respondents seized Petitioner, Petitioner reminded ICE that he has a withholding of removal grant. Petitioner subsequently alerted numerous ICE agents of the same throughout his detention through the electronic messaging system available to detainees. No agent has acknowledged Petitioner's communications.

Petitioner was transferred to Port Isabel Detention Center in Los Fresnos, Texas, where he remains today. Petitioner was informed of plans to remove him from the United States on Monday December 22, 2025. This is clearly illegal.

Petitioner has not received any notice that Respondents have identified a third country willing and able to receive him. Respondents have not afforded Petitioner the opportunity to respond to the third country designation, which means he has not been afforded a chance to articulate that he has a well-founded fear of

persecution in the third country. Petitioner must be afforded an opportunity to challenge the legality of his removal to a potential, yet still unknown, third country.

ARGUMENT

I. A TEMPORARY RESTRAINING ORDER IS APPROPRIATE.

Rule 65 of the Federal Rules of Civil Procedure governs temporary restraining orders. Courts have specified that a temporary restraining order is "simply a highly accelerated and temporary form of preliminary injunctive relief, which requires that the party seeking such relief establish the same four elements for obtaining a preliminary injunction." *Greer's Ranch Café v. Guzman*, 540 F. Supp. 3d 638, 644–45 (N.D. Tex. 2021). Petitioner maintains that he has met this burden here.

The Court must issue a temporary restraining order if Petitioner demonstrates: "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) that the balance of hardships weighs in its favor; and (4) that the issuance of the preliminary injunction will not disserve the public interest." *Daniels Health Servs., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013). Petitioner acknowledges that the party seeking relief "bears the burden of proving all four elements of the requested injunctive relief." *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008). Petitioner also is cognizant that temporary restraining orders are "extraordinary relief and rarely issued." *Albright v. City of New Orleans*, 46 F. Supp. 2d 523, 532 (E.D. La. 1999). *See also Planned*

Parenthood of Houston & Se. Tex. v. Sanchez, 403 F.3d 324, 329 (5th Cir. 2005). The decision to grant or deny injunctive relief is committed to a district court's discretion. *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985).

Petitioner maintains that the Court should exercise its discretion here. Petitioner asks that the Court restrain the very action that Respondents previously agreed needed restraining as a matter of statute. Petitioner asks the Court to order Respondents to abide by the order of withholding of removal it has respected for over a decade. Likewise, if Respondents suggest that a country other than El Salvador is the actual country of removal, the Court should order Respondents to provide Petitioner no fewer than 30 days to petition for protection under 8 U.S.C. § 1231(b)(3)(A) and Article III of the United Nations Convention Against Torture. Such a limited request – preservation of the status quo to prevent an abrogation of Petitioner's legal rights – is a worthy exercise of this Court's discretion.

Respondents may suggest that intervention is not necessary because Respondents are aware of the immigration court's order. There is no confirmation that Respondents are acknowledging this order despite Petitioner's pleas.[1] The date

[1] Moreover, Respondents' assurances are of little comfort. Petitioner knows that Respondents just removed a person to El Salvador who had successfully reopened his removal proceedings. The government attorney confirmed that Respondents knew of the reopening and there was no final order to execute. He nonetheless was

of intended removal is Monday, December 22, 2025. Petitioner is requesting that the Court act without delay.[2]

II. THE COURT HAS JURISDICTION.

A person challenging the lawfulness of immigration-related detention may also avail themselves of a writ of habeas corpus. *Covarrubias v. Vergara*, 2025 WL 2950096, at *5 (S.D. Tex. Oct. 3, 2025). Respondents might contend that 8 U.S.C. § 1252(b)(9) precludes review of Petitioner's claims. However, § 1252(b)(9) comes under the authority of § 1252(b), which lists "[r]equirements for review of orders of removal." This provision channels review of "final orders of removal" to federal courts of appeals. 8 U.S.C. § 1252(b)(9). Petitioner is not seeking such relief here. 8 U.S.C. § 1252(b)(9) alone does not inhibit this Court. Custody is entirely separate

---

removed to El Salvador on Friday, December 19, 2025. Petitioner accordingly does not afford any administrative reassurances, even if they were suddenly to come into existence, as having sufficient weight to negate the necessity of an order from this Court.

[2] Petitioner maintains in his Petition for a Writ of Habeas Corpus that Respondents also violated his right to Due Process and committed an *Accardi* violation by not complying with 8 C.F.R. § 241.4(l)(2) before re-detaining him.

Petitioner received no advance notice that Respondents intended to detain him or remove him to any other country. Petitioner, however, limits his motion to keeping him in the United States until the Court can come to understand what Respondents' intentions are and to determine whether Respondents have followed the law when acting. *See Marquez-Amaya v. Thompson*, 2025 WL 3654327 at *6 (Dec. 15, 2025); *Villanueva v. Tate*, -- F. Supp. 3d -- , 2025 WL 2774610 (S.D. Tex. Sep. 26, 2025).

and independent from removal proceedings. The Supreme Court has also rejected the government's proffered broad interpretation of 8 U.S.C. § 1252(b)(9) as it "would lead to staggering results." *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018).

8 U.S.C. § 1252(g) also is irrelevant. Petitioner is asserting that the Court has the authority to compel Respondents to comply with 8 U.S.C. § 1231(b)(3), Board of Immigration Appeals precedent, and Respondents' regulations. He is not challenging any decision to commence proceedings, adjudicate cases, or execute removal orders *if Respondents do so lawfully*. This matter is a challenge to how to interpret the sections that address the ordered restraint on Respondents' authority to remove Petitioner to El Salvador or to a third country without an opportunity to assert protection under § 1231(b)(3). Nothing in 8 U.S.C. § 1252(a)(2)(B)(ii) prevents the Court from considering a "challenge to the manner in which the government revoked his Order of Supervision or considering whether the government followed its own regulations in doing so." *Villanueva v. Tate*, -- F. Supp. 3d -- , 2025 WL 2774610 at *4 (S.D. Tex. Sep. 26, 2025).

The Supreme Court characterized § 1252(g) as a narrow provision, determining that it applies "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The Supreme Court found it "implausible

that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to all claims arising from deportation proceedings." *Id.* (emphasis added). This is a pure question of law in the habeas context. 8 U.S.C. § 1252(g) does not apply. *See, e.g.*, *Jimenez Chacon v. Lyons*, -- F.Supp. -- , 2025 WL 3496702 at *6 (D. N.M. Dec. 4, 2025); *Gomez-Simeon v. Bondi*, 2025 WL 3470872, at *1 (W.D. Tex. Nov. 24, 2025); *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition"). *Mantena v. Johnson*, 809 F.3d 721, 728-29 (2d Cir. 2015) (ruling that when denies review of discretionary decisions it "does not strip jurisdiction over procedural challenges" and when procedural requirements bind an official's exercise of discretion, "courts retain jurisdiction to review whether those requirements have been met").

Petitioner is not seeking review of a discretionary decision. Rather, Petitioner is challenging the extent of Respondents' authority under § 1231, the failure to adhere to its regulations, and violation of the Fifth Amendment. The Court has jurisdiction under 28 U.S.C. § 2241 to act. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

Finally, § 1252, titled "Judicial Review of Orders of Removal," contains a provision detailing "[m]atters not subject to judicial review." *See* 8 U.S.C. § 1252(a)(2). This provision contains four subsections outlining categories of claims

that are not subject to judicial review. *See* 8 U.S.C. § 1252(a)(2)(A)-(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite to 8 U.S.C. § 1231(b)(3). No part of § 1252 deprives the Court of jurisdiction.

III. PETITIONER HAS SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS AS A MATTER OF LAW.

There is no doubt that Petitioner will prevail in this matter. First, Respondents' proposed action will violate the Immigration & Nationality Act. Second, Respondents failed to provide Petitioner any notice of a third country designation. This failure denied Petitioner an opportunity to seek protection under 8 U.S.C. § 1231(b)(3)(A). The Court must intercede.

Petitioner was previously granted protection against removal to El Salvador under 8 U.S.C. § 1231(b)(3). The section provides,

> Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1231(b)(3).

The Board of Immigration Appeals has also resolved that, if Respondents seek to remove Petitioner to a third country, he must be afforded the opportunity to seek protection against a country not originally specified in the first proceeding. *Matter*

of A-S-M-, 28 I. & N. Dec. 282, 284 (BIA 2021) considered whether "an applicant in withholding-only proceedings may seek to have his removal withheld from a country to which the DHS indicates he may be removed, even if that country is different from the original "country of removal" designated on the reinstated order on which the withholding-only proceedings are based." It answered affirmatively. Respondents have not afforded Petitioner this opportunity here. It is illogical that Petitioner would be afforded less protection under that law than individuals designated under the Alien Enemies Act. *See M.A.P.S v. Garite,* 785 F.Supp. 1026, 1060 (W.D. Tex. Jun. 9, 2025).

Villanueva v. Tate, 2025 WL at *8, demonstrates that Petitioner is likely to succeed on the merits. *Villanueva* summarizes succinctly the statutory and regulatory authority that Respondents must follow. It is evidence that Respondents have not done so, and the imminent action is contrary to law. *Villanueva* identified,

> In that circumstance, the government may remove the noncitizen to any third "country whose government will accept the [noncitizen] into that country." 8 U.S.C. § 1231(b)(2)(E)(vii). But the noncitizen may not be removed to any country in which there is reason to believe that he would be tortured or persecuted. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16-208.18; 8 C.F.R. §§ 1208.16-1208.18. Therefore, when the government intends to remove a noncitizen to a third county, the government must provide notice of the intended removal that is sufficient to enable the noncitizen to challenge that removal either as violating an order of withholding or as removing him to a country that will subject him to torture or persecution. *See, e.g., Noem v. Abrego Garcia*, —— U.S. ——, 145 S.Ct. 1017, 1019–20, 225 L.Ed.2d 655 (2025) (Sotomayor, J., concurring); *Andriasian v. Immigr. &*

> *Naturalization Serv*, 180 F.3d 1033, 1041 (9th Cir. 1999). The "notice must be afforded within a reasonable time and in such a manner as will allow [the noncitizen] to actually seek ... relief in the proper venue before removal occurs." *J.G.G.*, 604 U.S. at 673, 145 S.Ct. 1003.

Id. at *8.

The circumstances presented here are materially indistinguishable from *Villanueva*. Petitioner secured an order of withholding of removal against his country of citizenship. Respondents re-detained Petitioner after years of compliance with supervision. Respondents then failed to give Petitioner an opportunity to question this detention and failed to provide him notice of any third country removal. Now, Respondents appear to have detained Petitioner without any cause or administrative review. **The urgent difference, however, is that Petitioner has been told that he is scheduled for removal to El Salvador in direct conflict with the order of withholding of removal granted on his behalf.** "Unless the Government returns 'to the immigration court to seek an order lifting the order for a withhold of removal,' it cannot remove Petitioner to El Salvador." *Marquez-Amaaya v. Thompson,* 2025 WL 3654327, at *6 (W.D. Tex. Dec. 15, 2025). A temporary restraining order to prevent such an egregious violation of the administrative is necessary.

The Court has also recognized that, even if Respondents are attempting to perfect removal to a third country, Respondents must provide Petitioner with

sufficient notice of the new designation and the opportunity to assert a claim for protection consistent with 8 U.S.C. § 1231(b)(3). "And even if ICE were to identify a country that would accept Petitioner, 'any efforts to remove [him] to a third country would likely be delayed by proceedings contesting his removal to the third country finally identified.'" *Aguilar v. Noem*, 2025 WL 3514282, at *4 (D. Colo. Dec. 8, 2025) (quoting *Villanueva v. Tate*, 2025 WL at *10). "When a petitioner 'likely will have the opportunity to seek further relief from the Immigration Court, and then potentially file appeals from any adverse rulings,' the circumstances 'further demonstrate[ ] that removal is not likely in the reasonably foreseeable future.'" *Shengelia v. Ortega*, 2025 WL 3654368, at *4 (W.D. Tex. Dec. 16, 2025) (quoting *Zavvar v. Scott*, 2025 WL 2592543 (D. Md. Sept. 8, 2025). This reality further militates towards the Court exercising its discretion and granting this motion for a temporary restraining order.

IV. LIKELIHOOD OF IRREPARABLE HARM TO PETITIONER IS CLEAR.

"[T]he remaining two factors necessary for imposing a preliminary injunction include: (1) the balance of equities must favor the movant and (2) an injunction would not disserve the public interest." *League of United Latin Am. Citizens v. Abbott*, 2025 WL 3215715, at *59 (W.D. Tex. Nov. 18, 2025). The Court must balance the equities at issue when deciding whether to restrain Respondents. The

Court balances "the relative harm to both parties if the injunction is granted or denied." *Id.* The Court often considers the equities and public interest simultaneously because the two factors overlap, and especially when the government is a party. *Id.*

The public interest is not served by allowing the removal of person to a country against whom the United States determined is a mortal threat to that person. "Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken v. Holder*, 556 U.S. 418, 436 (2009). This interest is omnipresent in this matter.

Granting Petitioner's injunctive relief is fully consistent with the government's ability to enforce its immigration laws. Petitioner acknowledges the Supreme Court's suggestion that there is public interest in enforcing removal orders. This case, however, is not like *Nken*. Petitioner cannot cure the wrong through a Petition for Review litigated abroad. Moreover, the adverse factors identified in *Nken* – criminality or litigation designed to cause delay – are absent here. The removal process is done, and it resolved favorably for Petitioner. Petitioner is merely seeking for the Court to enforce the law by granting this motion. If the Court grants this motion, Respondents retain all their tools to seek proper removal to a third country and monitor his compliance with conditions of release. In short, the

government can enforce the law, and the Court can ensure that enforcement proceeds within constitutional bounds by ordering Respondents to release Petitioner from their custody.

The harms to Petitioner have been articulated, *supra*, and they are severe. "There is generally no public interest in the perpetuation of unlawful agency action." *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025). The federal interest in an action is "minimal" where the plaintiff has illustrated a "strong likelihood of success in showing it exceeds agency authority." *Id.* This is evident here. The Court should grant this motion.

CONCLUSION

The evidence compels the conclusion that Petitioner, who has demonstrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a temporary restraining order. The Court must grant this motion to prevent Respondents from removing Petitioner contrary to statute and regulation.

DATED: December 20, 2025

Respectfully submitted,

/s/ David L. Wilson
David L. Wilson
Wilson Law Group
MN #0280239 / Federal ID No. 3919583
3019 Minnehaha Avenue
Minneapolis, MN 55406
(612) 436-7100
dwilson@wilsonlg.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, David L. Wilson, hereby certify consistent with LR5.3 that I served this filing on the opposing party via ECF and to the US Attorney's Office Public Email at txspublicinquiry@usdoj.gov & USATXS-CivilNotice@usa.doj.gov.

DATED: December 20, 2025

Respectfully submitted,

/s/ David L. Wilson
David L. Wilson
Wilson Law Group
MN #0280239
Federal ID No. 3919583
3019 Minnehaha Avenue
Minneapolis, MN 55406
(612) 436-7100
dwilson@wilsonlg.com
Attorney for Petitioner