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10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12 Dagmar Jesus Diaz-Gonzalez,

13 Petitioner,

14 v.

15 John Mattos, NSDC Warden; Michael  
16 Bernacke, Field Director, Salt Lake City  
17 Field Office of ICE ERO; Todd Lyons, ICE  
18 Acting Director; Kristi Noem DHS  
Secretary; Pam Bondi, U.S. Attorney  
General, et al.,

19 Respondents.  
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Case No. 2:25-cv-02622-JAD-BNW

**Emergency Motion for Temporary  
Restraining Order**

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## POINTS AND AUTHORITIES

Petitioner Dagmar Diaz-Gonzalez faces immediate irreparable harm: (1) lack of adequate medical care necessary to treat his two life-threatening chronic illnesses; (2) lack of mobility assistance and assistive care to address activities of daily living (ADLs); (3) continued medical neglect and inconsistent medical care; (4) potential removal to a third country never considered by an IJ; (5) removal to a country that cannot meet the medical and assistive care needs of Mr. Diaz-Gonzalez. Therefore, this Court should grant temporary relief.

The statements in the following paragraphs are made on information and belief, unless otherwise specifically noted. On December 15, 2025, an immigration judge issued Mr. Diaz-Gonzalez an order of removal.<sup>1</sup> On January 2, 2026, an appeal was received.<sup>2</sup> In December 2025, attempts were made to send Mr. Diaz-Gonzalez to Mexico, a country he has no ties to and that he fears being removed to. Mr. Diaz-Gonzalez is fearful of being deported to any country that cannot provide him with proper medical and assistive care due to his chronic illnesses and physical disabilities.

Mr. Diaz-Gonzalez has been in ICE custody since November 14, 2025; nearly three months. Mr. Diaz-Gonzalez's health has quickly deteriorated while in ICE custody. Mr. Diaz-Gonzalez is a disabled person with two chronic conditions. He suffers from malignant multiple sclerosis and re-occurring tonic-clonic ("grand mal") seizures caused by epilepsy.<sup>3</sup> His multiple sclerosis (M.S.) is in a progressed state causing him to require the use of a wheelchair. Mr. Diaz-Gonzalez cannot stand up on his own and is struggling with meeting his basic needs. The multiple sclerosis is

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<sup>1</sup> ECF No. 10-4.

<sup>2</sup> ECF No. 10-4.

<sup>3</sup> P. Ex. 1 (filed under seal); P.Ex. 2 (filed under seal); ECF No. 1-1 at 12–14.

1 also causing him to lose grip strength in his hands and arms. Also concerning, is  
2 Mr. Diaz-Gonzalez's epilepsy, which causes tonic-clonic seizures which can be life-  
3 threatening. It can also cause secondary injuries and concussions because of the  
4 risk of falling. As recently as this weekend, Mr. Diaz-Gonzalez suffered multiple  
5 serious seizures causing him to hit his head and sustain other injuries. This wasn't  
6 discovered right away because he is segregated and alone in a cell.

7 For the last three months, Mr. Diaz-Gonzalez should have received various  
8 medications to treat his M.S. and epilepsy.<sup>4</sup> He should also be receiving treatment  
9 specifically targeted towards his M.S. and any M.S. flare-ups, including injections.  
10 While he has been in ICE custody, no such medical attention has been given  
11 causing his already chronic conditions to rapidly deteriorate his health and put his  
12 life at risk. It is also causing Mr. Diaz-Gonzalez much pain, discomfort, and  
13 humiliation as he finds it increasingly difficult to attend to activities of daily living.

14 Without the proper medical treatments and care, Mr. Diaz-Gonzalez's life is  
15 at risk. Malignant M.S. is a particularly rapid and progressive form of M.S. causing  
16 life expectancy to be diminished. ICE, by not providing Mr. Diaz-Gonzalez with the  
17 proper and consistent medical care, medications, treatment, and  
18 rehabilitative/accessibility care, is acting with deliberate indifference to Mr. Diaz-  
19 Gonzalez's life.

20 Mr. Diaz-Gonzalez's continued detention is unconstitutional and in violation  
21 of the 5<sup>th</sup> Amendment to the U.S. Constitution, the Administrative Procedure Act  
22 (APA), and the Immigration and Nationality Act (INA). Mr. Diaz-Gonzalez must be  
23 immediately released.

24 Petitioner is facing both unconstitutional detention and the threat of removal  
25 to a dangerous third country without due process. The requested temporary  
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27 <sup>4</sup> P.Ex. 2 (filed under seal).

1 restraining order (“TRO”) would ensure, while petitioner litigates his §2241 claims,  
2 his medical safety and disallow his removal to a country that he is fearful of being  
3 removed to because of the uncertain level of medical and assistive care available to  
4 him as a disabled and chronically ill person (e.g. Mexico). This TRO would remedy  
5 ongoing harms while Petitioner litigates these claims by, (1) allowing Mr. Diaz-  
6 Gonzalez to receive the medical care he needs for his two chronic illnesses, (2)  
7 placing Mr. Diaz-Gonzalez in an environment equipped to accommodate his  
8 disabilities and provide the necessary supportive care, (3) prohibiting the  
9 government from removing him to a third country without an opportunity to file a  
10 motion to reopen with an IJ.

11 In granting this motion, this Court would not break new ground. Several  
12 courts have granted TROs or preliminary injunctions mandating release for  
13 petitioners whose immigration cases are still pending. *See, e.g., Hinestroza v.*  
14 *Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at \*2 (N.D. Cal. Sept. 9, 2025);  
15 *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at \*12 (D. Mass. Sept.  
16 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-SKO (HC), 2025 WL  
17 2617255, at \*6 (E.D. Cal. Sept. 9, 2025). These courts have determined that, for  
18 these long-term releasees, liberty is the status quo, and only a return to that status  
19 quo can avert irreparable harm.

20 Several courts have likewise granted temporary restraining orders  
21 preventing third-country removals without due process. *See, e.g., J.R. v. Bostock*,  
22 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v.*  
23 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega*  
24 *v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Hoac v.*  
25 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D. Cal. July 16,  
26 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*7 (E.D.  
27 Cal. July 16, 2025); *Suarez-Ramirez v. Bondi et. al.*, No. 2:25-cv-02369-MMD-EJY

1 (D. Nev. Dec. 17, 2025); *Suarez-Ramirez v. Bondi et. al.*, No. 2:25-cv-02369-MMD-  
2 EJY, 2026 WL 115020 (D. Nev. Jan 15, 2026) (granting the § 2241 petition).

3 Petitioner therefore respectfully requests that this Court grant this TRO.

#### 4 STATEMENT OF FACTS

5 Petitioner filed his First Amended § 2241 Petition on January 23, 2026.<sup>5</sup>  
6 Petitioner incorporates by reference the statement of facts set forth in those  
7 pleadings.

#### 8 ARGUMENT

9 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on the  
10 merits, that he is likely to suffer irreparable harm in the absence of preliminary  
11 relief, that the balance of equities tips in his favor, and that an injunction is in the  
12 public interest.” *Winter v. Nat. Res. Def Council, Inc.*, 555 U.S. 7, 20 (2008); *accord*  
13 *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th  
14 Cir. 2001) (noting that a TRO and preliminary injunction involve “substantially  
15 identical” analysis). A “variant[] of the same standard” is the “sliding scale”: “if a  
16 plaintiff can only show that there are ‘serious questions going to the merits’—a  
17 lesser showing than likelihood of success on the merits—then a preliminary  
18 injunction may still issue if the balance of hardships tips *sharply* in the plaintiff’s  
19 favor, and the other two *Winter* factors are satisfied.” *Immigrant Defs. L. Ctr. v.*  
20 *Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks omitted). Under  
21 this approach, the four *Winter* elements are “balanced, so that a stronger showing of  
22 one element may offset a weaker showing of another.” *All. for the Wild Rockies v.*  
23 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be granted where there  
24 are “‘serious questions going to the merits’ and a hardship balance ... tips sharply  
25 toward the plaintiff,” so long as the other *Winter* factors are met. *Id.* at 1132.

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27 <sup>5</sup> ECF No. 9.

1 Here, this Court should issue a temporary restraining order because  
2 “immediate and irreparable injury . . . or damage” is occurring and will continue in  
3 the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents detained  
4 Petitioner in violation of his due process, statutory, and regulatory rights putting  
5 his life and health at risk, ICE policy also allows them to remove him to a third  
6 country in violation of his due process, statutory, and regulatory rights. This Court  
7 should order Petitioner’s release and enjoin removal to a third country with no or  
8 inadequate notice.

9 **I. Petitioner will likely succeed on the merits, or at a minimum,**  
10 **Petitioner raises serious merits questions.**

11 In his amended § 2241 petition, Petitioner raised five claims that he has been  
12 unconstitutionally detained and that he cannot be removed to a third country  
13 without due process. Petitioner addresses the merits of each claim below:

14 **A. Petitioner is likely to succeed on the merits of his claim that**  
15 **his detention violates his Fifth Amendment right to due**  
16 **process because ICE’s denial of or inadequate medical care**  
17 **amounts to punishment. (Ground One).**

18 The Fifth Amendment guarantees detainees are not denied medical care and  
19 are not subject to conditions that “amount to punishment.” *Bell v. Wolfish*, 441 U.S.  
20 520, 535 (1979). The federal government may not detain an individual and then  
21 deny that person medical care through their deliberate indifference. *Charles v.*  
22 *Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019). Deliberate indifference “involves  
23 culpable recklessness, i.e., an act or a failure to act that evinces a conscious  
24 disregard of a substantial risk of serious harm.” *Id.* at 87 (quoting *Cuoco v.*  
25 *Moritsugu*, 222 F.3d 99, 107) (2d Cir. 2000) (cleaned up).

26 Mr. Diaz-Gonzalez has diagnosed malignant, fulminate multiple sclerosis.  
27 “This rare form Multiple Sclerosis is also known as malignant Multiple Sclerosis or  
Marburg-type Multiple Sclerosis. This type of Multiple Sclerosis is rapidly

1 progressive and results in death due to the extensive brain involvement.  
2 Additionally, Mr. Diaz suffers from a chronic seizure disorder resulting from a  
3 childhood head injury.”<sup>6</sup> Mr. Diaz-Gonzalez has a shortened lifespan, even with  
4 proper medical care and treatment.<sup>7</sup>

5 Mr. Diaz-Gonzalez, in the past, had been prescribed and administered  
6 multiple medications. Past medical records list at least 18.<sup>8</sup> He also received M.S.  
7 flare up treatment via injections. Yet, while in ICE custody, Mr. Diaz-Gonzalez is  
8 not receiving any medications for his M.S. Mr. Diaz-Gonzalez is likely taking one  
9 medication related to his epilepsy but believes he regularly was given more. He has  
10 had at least two tonic-clonic seizures while in ICE custody. The first known seizure  
11 caused him secondary injury, including a black eye. The most recent seizure,  
12 occurring over the weekend, caused him to hit his head as he fell.

13 Mr. Diaz-Gonzalez’s M.S. is in a progressed state causing him to require the  
14 use of a wheelchair. Although he has access to a wheelchair in ICE custody, he is  
15 still having a hard time attending to his basic needs such as eating, bathing, and  
16 toileting. Mr. Diaz-Gonzalez cannot stand up on his own. Mr. Diaz-Gonzalez is in  
17 constant pain. The multiple sclerosis, as it rapidly progresses, is also causing him to  
18 lose grip strength in his hands and arms. He cannot hold a pen easily and struggles  
19 with feeding himself. For safety reasons arising from the nature of his criminal  
20 history, Mr. Diaz-Gonzalez is now housed in isolated segregation. This is very  
21 difficult for him because of his need for assistance due to his physical disabilities. It  
22 is also dangerous as there is no one around to alert personnel if he has another tonic  
23 clonic seizure.

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26 <sup>6</sup> ECF No. 1-1 at 12–14.

27 <sup>7</sup> ECF No. 1-1 at 12–14.

<sup>8</sup> P. Ex. 2. (filed under seal).

1 Mr. Diaz-Gonzalez's chronic medical conditions are extensively recorded. His  
2 conditions are serious and life-threatening. Without the proper medical care his  
3 conditions are worsening, increasing the risk to his life. Yet, ICE has not been  
4 providing him with the care he requires. They have ignored his medical needs and  
5 have been unable to accommodate him because of his disabilities. ICE's deliberate  
6 indifference to Mr. Diaz-Gonzalez's conditions is life-threatening. This is not mere  
7 hyperbole with more than 30 deaths in ICE custody reported in 2025.<sup>9</sup> When  
8 combined with deaths in Customs and Border Protection custody, the total amount  
9 of people who have died while detained by the Department of Homeland Security in  
10 the last year is over 50.<sup>10</sup>

11 In the last three days, counsel for Federal Respondents has communicated  
12 with undersigned counsel regarding Mr. Diaz-Gonzalez's medical conditions.  
13 Counsel for Federal Respondents, in coordination with counsel for Respondent  
14 Mattos, requested information concerning Mr. Diaz-Gonzalez's medications and  
15 necessary care. To the best of undersigned counsel's knowledge, NDOC medical  
16 records have also been requested by ICE/NSDC in the past three days. While  
17 undersigned counsel acknowledges these recent actions, they are far too little and  
18 too late. No comparable action was taken during the preceding three months of Mr.  
19 Diaz-Gonzalez's detention in ICE custody.

20 The belated attempt to determine Mr. Diaz-Gonzalez's medical needs  
21 demonstrates that his serious conditions went unaddressed for months. Mr. Diaz-

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23 <sup>9</sup> It's the deadliest year for people in ICE custody in decades; next year could  
24 be worse, NPR.org, October 23, 2025, <https://www.npr.org/2025/10/23/nx-s1-5538090/ice-detention-custody-immigration-arrest-enforcement-dhs-trump>

25 <sup>10</sup> Letter to Kristi Noem, Committee on Homeland Security, January 22,  
26 2026, *available at* [https://democrats-](https://democrats-homeland.house.gov/imo/media/doc/chs_letter_to_noem_re_ice_and_cbp_condemning_deaths.pdf)  
27 [homeland.house.gov/imo/media/doc/chs\\_letter\\_to\\_noem\\_re\\_ice\\_and\\_cbp\\_condemnin](https://democrats-homeland.house.gov/imo/media/doc/chs_letter_to_noem_re_ice_and_cbp_condemning_deaths.pdf)  
[g\\_deaths.pdf](https://democrats-homeland.house.gov/imo/media/doc/chs_letter_to_noem_re_ice_and_cbp_condemning_deaths.pdf)

1 Gonzalez's chronic illness is physically self-evident and his records should have  
2 been immediately transferred and reviewed when ICE took him into their custody.  
3 Although Respondents have now initiated efforts to get Mr. Diaz-Gonzalez care, it  
4 remains uncertain when or if Mr. Diaz-Gonzalez will receive the required  
5 treatment, medications, and disability-related supportive care. It also remains  
6 uncertain whether that care will be sufficient and consistent. Given the prolonged  
7 lapse in care, immediate relief is necessary to protect Mr. Diaz-Gonzalez's health  
8 and physical safety. Mr. Diaz-Gonzalez has family with the financial ability and  
9 capacity to arrange and provide appropriate medical care and caregiving support.

10 Based on the reported conditions at detention centers<sup>11</sup> and his own reports,  
11 it is clear Mr. Diaz-Gonzalez is being denied his due process rights. ICE is violating  
12 Mr. Diaz-Gonzalez's Fifth Amendment guarantees by refusing to provide him with  
13 medical care and address his accessibility needs, along with the medications  
14 required to treat his chronic conditions putting his life at risk. Mr. Diaz-Gonzalez's  
15 civil detention has become punitive in nature, as there is no other discernable  
16 reason that detention is warranted for an individual with the advanced and  
17 debilitating conditions afflicting Mr. Diaz-Gonzalez. As such, Mr. Diaz-Gonzalez  
18 must be immediately released.

19 **B. Petitioner is likely to succeed on the merits of his claim that**  
20 **ICE violated its own regulations concerning the detention of**  
21 **chronically ill and/or disabled persons. (Grounds 2).**

22 ICE is required to follow its own regulations. *United States ex rel. Accardi v.*  
23 *Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th  
24 Cir. 2004) ("The legal proposition that agencies may be required to abide by certain  
25 internal policies is well-established.").

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26 <sup>11</sup> Health Issues for Immigrants in Detention Centers, Kaiser Family  
27 Foundation, September 30, 2025, *available at* <https://www.kff.org/racial-equity-and-health-policy/health-issues-for-immigrants-in-detention-centers/>

1 ICE Directive 11737.3 sets forth ICE’s policy for the care of individuals with  
2 chronic illnesses, “to ensure patients with chronic disease, or other significant  
3 health conditions, disabilities, and other special needs receive ongoing  
4 multidisciplinary care that aligns with evidence-based guidelines.” ICE Directive  
5 11737.3(1).<sup>12</sup> The directive sets forth ICE’s requirement to treat individuals with  
6 chronic illnesses accordingly, including accommodations, medications, treatment,  
7 and other medical care.

8 ICE Directive 11737.3 specifically indicates that Chronic Care Health  
9 Assessments should be completed for each patient and that a Medical-Psychiatric  
10 Alert (Form IHSC 834) should be completed as well.<sup>13</sup> ICE is required to identify  
11 detainees with chronic illnesses during intake.<sup>14</sup>

12 ICE Directive 11746.1 sets forth the policy for the administration and use of  
13 Medical-Psychiatric Alerts.<sup>15</sup> It indicates that a “health care professional shall  
14 immediately complete the Med/Psych Alert Form (IHSC-834) in relation to: . . . All  
15 chronic conditions.”(5-1.4).<sup>16</sup>

16 ICE Directive 11071.1 sets forth ICE’s policy for assessing and administering  
17 accommodations for detainees with disabilities. The policy states that ICE must  
18 provide reasonable accommodations to those with disabilities to enable them to  
19 access services and programs, but most importantly must provide, “proper  
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21 <sup>12</sup> Directive: 11737.3 Care of Patients with Chronic Health Conditions and  
22 Special Needs, U.S. Immigration and Customs Enforcement, ICE Health Services  
23 <https://www.ice.gov/doclib/foia/policy/directive11737.3.pdf>

24 <sup>13</sup> *Id.* at 2–3.

25 <sup>14</sup> *Id.* at 2.

26 <sup>15</sup> Directive: 11746.1 Medical-Psychiatric Alert, U.S. Immigration and  
27 [Customs Enforcement, ICE Health Service Corps, January 27, 2022, available at  
https://www.ice.gov/doclib/foia/policy/directive11746.1\\_MedicalPsychAlert.pdf](https://www.ice.gov/doclib/foia/policy/directive11746.1_MedicalPsychAlert.pdf)

<sup>16</sup> *Id.* at 2.

1 medication and medical treatment; accessible housing, toilet, and shower facilities;  
2 devices like bed transfer, accessible beds or shower chairs, wheelchairs, walkers or  
3 canes; and assistance with toileting and hygiene.” ICE Directive 11071.1-3.1(1).<sup>17</sup>

4 ICE Directive 11071.1 also outlines that Disability Access Coordinators and  
5 supporting roles are required to review information submitted by Field Office  
6 Directors (FOD) regarding “the identification of detainees with mobility and  
7 communication impairments.”<sup>18</sup> ICE facilities and the FOD are required to notify  
8 their personnel “that they are obligated to maintain an interactive process.”<sup>19</sup> This  
9 interactive process includes, “notification to detainees of their right to request  
10 accommodations” and an “individualized and interactive assessment of a detainee’s  
11 disability-related needs to access the facility and its programs.”<sup>20</sup>

12 ICE Directive 11853.3 sets forth ICE’s policy for individuals who have  
13 significant illnesses and emphasizes the need for continuity of care and coordination  
14 of medical services.<sup>21</sup> ICE medical personnel “must provide daily updates on  
15 detainees or residents with serious medical conditions via email to the Managed  
16 Care Coordinators managing the SDI list for the field.”<sup>22</sup>

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20 <sup>17</sup> Directive: 11071.1 Assessment and Accommodations for Detainees with  
21 Disabilities, U.S. Immigration and Customs Enforcement, December 15, 2016,  
*available at* <https://www.ice.gov/node/65142>

22 <sup>18</sup> *Id.* at 6.

23 <sup>19</sup> *Id.* at 7.

24 <sup>20</sup> *Id.* at 7.

25 <sup>21</sup> Directive 11853.3 Significant Detainee Illness(SDI), U.S. Immigration and  
26 Customs Enforcement, ICE Health Services Corps, December 3, 2021, *available at*  
[https://www.ice.gov/doclib/foia/policy/directive11853.3\\_SignificantDetaineeIllness.p  
df](https://www.ice.gov/doclib/foia/policy/directive11853.3_SignificantDetaineeIllness.pdf)

27 <sup>22</sup> *Id.* at 4.

1 At this time, undersigned counsel is unaware that ICE has completed any of  
2 the above required and obligated processes. Based on the fact that Respondents  
3 have only recently sought documentation relating to Mr. Diaz-Gonzalez’s medical  
4 conditions, it appears that formal identification of Mr. Diaz-Gonzalez’s chronic  
5 conditions was not done upon intake. Any documentation, including the Chronic  
6 Care Health Assessments and the Medical-Psychiatric Alerts (Form IHSC 834),  
7 daily email reports, and assessments should be provided to this Court and  
8 Petitioner—if they exist as they should.

9 **C. Petitioner is likely to succeed on the merits of his claim that**  
10 **ICE violated its own regulations concerning discretionary**  
11 **parole of individuals with serious medical conditions, making**  
12 **his detention punitive in nature. (Ground 3).**

13 Under the Immigration and Nationality Act (“INA”), the Secretary of  
14 Homeland Security has broad discretion to parole noncitizens on a case-by-case  
15 basis. Parole may be granted even if the individual is otherwise inadmissible or  
16 removable. 8 U.S.C. § 1182(d)(5)(A); INA § 212(d)(5)(A). Consistent with INA parole  
17 authority, 8 C.F.R. § 212.5(b) expressly acknowledges that an alien with a *serious*  
18 *medical condition in which continued detention would not be appropriate* is  
19 precisely the category of individual for whom discretionary parole is justified. 8  
20 C.F.R. § 212.5(b)(1).

21 ICE’s own detention management policies affirm that factors such as a  
22 *serious medical condition* must be considered in custody decision-making, including  
23 but not limited to discretionary parole and release evaluations.<sup>23</sup> ICE guidance on  
24 detention management directs ICE officers to weigh humanitarian considerations,

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26 <sup>23</sup> Detention Management, U.S. Immigration and Customs Enforcement,  
27 01/08/2026, available at <https://www.ice.gov/detain/detention-management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations.>

1 including significant health conditions when making continued detention or release  
2 determinations. Its own detention policy states, “detention is non-punitive.”<sup>24</sup>

3 Despite these clear statutory and policy directives, ICE has refused to grant  
4 parole to Mr. Diaz-Gonzalez, even though he is afflicted with a serious and chronic  
5 medical condition that cannot be adequately managed in detention and for which he  
6 is *not* receiving constitutionally or medically appropriate care. Mr. Diaz-Gonzalez’s  
7 chronic illnesses trigger parole policy considerations. Mr. Diaz-Gonzalez is at an  
8 elevated risk of harm, especially given ICE’s failure to adhere to their own policies  
9 and to ensure continuity of prescribed medical treatment, medication, and adequate  
10 care while in custody.

11 Discretionary parole with conditions is justified under these applicable  
12 federal regulations and ICE policy. ICE’s own policies recognize humanitarian  
13 factors, such as serious medical conditions, yet ICE has not acted. ICE’s denial of  
14 parole, or any consideration of it, is inconsistent with its own policy. ICE’s refusal to  
15 grant or consider Mr. Diaz-Gonzalez for parole directly undermines the agency’s  
16 obligation to consider medical conditions in discretionary release decisions and to  
17 exercise its parole authority in cases where continued detention poses serious  
18 medical risk. And in this case, a risk to life.

19 In addition, the Administrative Procedure Act (APA) prohibits agency action  
20 that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
21 with law. 5 U.S.C. § 706(2)(A). ICE’s refusal to provide Mr. Diaz-Gonzalez with  
22 parole despite compelling statutory, regulatory, and policy grounds constitutes an  
23 abuse of discretion that this Court should address.

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<sup>24</sup> Detention Management, U.S. Immigration and Customs Enforcement,  
01/08/2026, *available at* <https://www.ice.gov/detain/detention-management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations>.

1           **D. Petitioner is likely to succeed on the merits of his claim that he**  
2           **is entitled to adequate notice and an opportunity to be heard**  
3           **prior to any third country removal (Grounds 4 and 5).**

4           Finally, Petitioner is likely to succeed on the merits of his claim that he may  
5 not be removed to a third country absent adequate notice and an opportunity to be  
6 heard.

7           U.S. law enshrines protections against dangerous and life-threatening  
8 removal decisions. By statute, the government is prohibited from removing an  
9 immigrant to any third country where a person may be persecuted or tortured, a  
10 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).  
11 The government “may not remove [a noncitizen] to a country if the Attorney  
12 General decides that the [noncitizen's] life or freedom would be threatened in that  
13 country because of the [noncitizen's] race, religion, nationality, membership in a  
14 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,  
15 1208.16. Withholding of removal is a mandatory protection.

16           Similarly, Congress codified protections enshrined in the Convention Against  
17 Torture (CAT) prohibiting the government from removing a person to a country  
18 where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231  
19 note) (“It shall be the policy of the United States not to expel, extradite, or  
20 otherwise effect the involuntary return of any person to a country in which there  
21 are substantial grounds for believing the person would be in danger of being  
22 subjected to torture, regardless of whether the person is physically present in the  
23 United States.”); 28 C.F.R. § 200.1; *id.* §§ 208 .16-208.18, 1208.16-1208.18. CAT  
24 protection is also mandatory.

25           To comport with the requirements of due process, the government must  
26 provide notice of the third country removal and an opportunity to respond. Due  
27 process requires “written notice of the country being designated” and “the statutory  
basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v.*

1 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep't*  
2 *of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May  
3 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

4 Due process also requires the following: “[A]sk[ing] the noncitizen whether  
5 they fear persecution or harm upon removal to the designated country and  
6 memorialize in writing the noncitizen's response. This requirement ensures DHS  
7 will obtain the necessary information from the noncitizen to comply with section  
8 1231(b)(3) and avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at  
9 1019. “Failing to notify individuals who are subject to deportation that they have  
10 the right to apply for asylum in the United States and for withholding of  
11 deportation to the country to which they will be deported violates both INS  
12 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at  
13 1041.

14 If the noncitizen claims fear, measures must be taken to ensure that the  
15 noncitizen can seek asylum, withholding, and relief under CAT before an  
16 immigration judge reopened removal proceedings. The amount and type of notice  
17 must be “sufficient” to ensure that “given [a noncitizen’s] capacities and  
18 circumstances, he would have a reasonable opportunity to raise and pursue his  
19 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing  
20 *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405,  
21 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring a minimum of 15  
22 days notice).

23 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,  
24 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and  
25 for good reason: To have a meaningful opportunity to apply for fear-based protection  
26 from removal, immigrants must have time to prepare and present relevant  
27 arguments and evidence. Merely telling a person where they may be sent, without

1 giving them a chance to look into country conditions, does not give them a  
2 meaningful chance to determine whether and why they have a credible fear.

3 Here, Mr. Diaz-Gonzalez, as a person with disabilities and severe chronic  
4 illnesses must also ensure that the country will not harm or discriminate against  
5 him because of his conditions. He must also be able to determine whether that  
6 country has adequate resources to address his physical disability and chronic  
7 illnesses.

8 Respondents' third country removal policy skips over these statutory and  
9 constitutional procedural protections. According to ICE's July 9, 2025 guidance,  
10 individuals can be removed to third countries "without the need for further  
11 procedures," so long as "the [U.S.] has received diplomatic assurances."<sup>25</sup> Petitioner  
12 is likely to succeed on the merits of his claim on this fact alone, because the policy  
13 instructs officers to provide no notice or opportunity to be heard of any kind. The  
14 same is true of the minimal procedures ICE offers when no diplomatic assurances  
15 are present. The policy provides no meaningful notice (6-24 hours), instructs officers  
16 not to ask about fear, and provides no actual opportunity to see counsel and prepare  
17 a fear-based claim (6-24 hours), let alone reopen removal proceedings. In sum, it  
18 directs ICE officers to violate the rights of those whom they seek to subject to third  
19 country removal.

20 Faced with similar arguments, several courts have recently granted  
21 individual TROs against removal to third countries. See *Rodriguez-Gutierrez*, No.  
22 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025) *J.R.*, 2025 WL 1810210; *Vaskanyan*,  
23 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL 1993771, at \*7; *Phan*,  
24 2025 WL 1993735, at \*7.

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27 <sup>25</sup> ECF No. 10-2; ECF No. 10-3.

1 Because ICE's new policies for third country removal fail to comply with  
2 existing law, they also violate the Administrative Procedures Act. Furthermore,  
3 given the unlawfulness and unconstitutionality of ICE's policies, Petitioner's  
4 detention under the color of those policies is unlawful.

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

6 Petitioner also meets the second factor, irreparable harm. "It is well  
7 established that the deprivation of constitutional rights 'unquestionably constitutes  
8 irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
9 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged deprivation  
10 of a constitutional right is involved, most courts hold that no further showing of  
11 irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th  
12 Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*,  
13 § 2948.1 (2d ed. 2004)). Further, unlawful detention itself "constitutes extreme or  
14 very serious damage, and that damage is not compensable in damages." *Hernandez*  
15 *v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (internal citations omitted).

16 Here, the harm is also directly related to Mr. Diaz-Gonzalez's life and  
17 wellbeing. Mr. Diaz-Gonzalez suffers from malignant multiple sclerosis and re-  
18 occurring tonic-clonic ("grand mal") seizures caused by epilepsy.<sup>26</sup> His multiple  
19 sclerosis (M.S.) is in a progressed state causing him to require the use of a  
20 wheelchair. Mr. Diaz-Gonzalez cannot stand up on his own and is struggling with  
21 meeting his basic needs. The multiple sclerosis is also causing him to lose grip  
22 strength in his hands and arms. Mr. Diaz-Gonzalez's epilepsy, which causes tonic-  
23 clonic seizures can be life-threatening.

24 Mr. Diaz-Gonzalez is diagnosed with a specific form of M.S. called malignant,  
25 fulminate multiple sclerosis. "This rare form Multiple Sclerosis is also known as  
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27 <sup>26</sup> P. Ex. 1 (filed under seal); P.Ex. 2 (filed under seal); ECF No. 1-1 at 12–14.

1 malignant Multiple Sclerosis or Marburg-type Multiple Sclerosis. This type of  
2 Multiple Sclerosis is rapidly progressive and results in death due to the extensive  
3 brain involvement. Additionally, Mr. Diaz suffers from a chronic seizure disorder  
4 resulting from a childhood head injury.”<sup>27</sup> Mr. Diaz-Gonzalez has a shortened  
5 lifespan.<sup>28</sup> Unlike more typical forms of M.S., malignant M.S. can lead to significant  
6 and severe damage at a much quicker pace. His continued lack of medical care is  
7 deteriorating his health and putting his life at risk.

8       Aside from the irreparable harm to his health, third-country deportations  
9 pose that risk and more. Recent third-country deportees have been held, indefinitely  
10 and without charge, in hazardous foreign prisons.<sup>29</sup> They have been subjected to  
11 solitary confinement.<sup>30</sup> They have been removed to countries so unstable that the  
12 U.S. government recommends making a will and appointing a hostage negotiator  
13 before traveling to them.<sup>31</sup> These and other threats to Petitioner’s health and life  
14 independently constitute irreparable harm.

15       In addition, given his disabilities and severe chronic illnesses, Mr. Diaz-  
16 Gonzalez must determine whether the receiving country can safely accommodate  
17 his medical conditions without discrimination. He must also determine whether  
18 that country has the infrastructure and resources to provide the medical care  
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20       <sup>27</sup> ECF No. 1-1 at 12–14.

21       <sup>28</sup> ECF No. 1-1 at 12–14.

22       <sup>29</sup> Edward Wong et al., *Inside the Global Deal-Making Behind Trump’s Mass*  
23 *Deportations*, N.Y. Times (Jun. 25, 2025), available at  
24 [https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)  
[deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)

25       <sup>30</sup> Gerald Imray, *Men deported by US to Eswatini in Africa will be held in*  
26 *solitary confinement for undetermined time*, Associated Press (Jul. 18, 2025),  
27 available at [https://apnews.com/article/eswatini-united-states-trump-deportation-](https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbcbfe6caff87d0bb8)  
[immigrants-a5853b16b7b275cbcbfe6caff87d0bb8](https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbcbfe6caff87d0bb8)

<sup>31</sup> See Wong, *supra*.

1 necessary for his survival. The harm he would face if such a country were not  
2 identified is irreparable.

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

5 The final two factors for a TRO—the balance of hardships and public  
6 interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556  
7 U.S. 418,435 (2009). That balance tips decidedly in Petitioner’s favor.

8 The government “cannot reasonably assert that it is harmed in any legally  
9 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d  
10 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent  
11 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at  
12 436 (describing public interest in preventing noncitizens “from being wrongfully  
13 removed, particularly to countries where they are likely to face substantial harm”);  
14 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when  
15 government's treatment “is inconsistent with federal law, ... the balance of  
16 hardships and public interest factors weigh in favor of a preliminary injunction.”).

17 Petitioner also faces weighty hardships: unlawful, and potentially indefinite  
18 detention and removal to a third country where he is likely to suffer imprisonment  
19 and serious harm. Yet those pale in comparison to the weighty hardship of  
20 navigating ICE detention with a disability and two chronic illnesses, putting  
21 petitioner’s life at risk. The balance of equities favors preventing the violation of  
22 “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053,  
23 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful  
24 detention and third country removal.

25 **CONCLUSION**

26 For these reasons, Petitioner requests that this Court issue a temporary  
27 restraining order.

1 Dated February 6, 2026

2 Respectfully submitted,

3  
4 Rene L. Valladares  
5 Federal Public Defender

6 /s/ Ashlyn Saenz-Ochoa  
7 Ashlyn Saenz-Ochoa  
8 Assistant Federal Public Defender  
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**DECLARATION IN SUPPORT OF EMERGENCY MOTION**

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2 1. My name is Ashlyn Saenz-Ochoa. I am an Assistant Federal Public  
3 Defender in the district of Nevada. I am the attorney representing Dagmar Jesus  
4 Diaz-Gonzalez in this case, Case No. 2:25-cv-02622-JAD-BNW.

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6 2. Mr. Diaz-Gonzalez has been in ICE custody since November 2025, in  
7 violation of his constitutional rights and the Government's own policies, as outlined  
8 in his petition (ECF No. 9).

9  
10 3. This case constitutes an emergency because the DHS, ICE, and/or its  
11 acting agents, and/or contractors have not been providing Mr. Diaz-Gonzalez with  
12 adequate medical care, necessary medications, and assistive support in regard to  
13 his two chronic illnesses (malignant M.S. and epilepsy) and physical disabilities.

14  
15 4. My office number is 702-388-6577. My address is 411 E. Bonneville  
16 Ave., Ste. 250, Las Vegas, Nevada 89101.

17  
18 5. Attorney for Respondents is AUSA Christian Ruiz. His number is 702-  
19 388-6336 and his address is 501 Las Vegas Blvd. So., Suite 1100, Las Vegas,  
20 Nevada 89101. Attorney for Respondent Mattos is Atty. Ashlee Hesman. Her  
21 number is 480-420-1600 and her address is 3100 West Ray Road, Suite 300,  
22 Chandler, Arizona 85226.

23  
24 6. I spoke with AUSA Christian Ruiz on February 4, 2026, regarding the  
25 subject matter of this TRO. I have also corresponded with AUSA Ruiz and Atty.  
26 Hesman as it relates to Mr. Diaz-Gonzalez's medical care. As explained above,  
27 initial actions have been taken and those are acknowledged, but due to the  
seriousness of Mr. Diaz-Gonzalez's conditions and the recent severe seizures that

1 occurred over the weekend, this TRO is necessary for immediate relief and attention  
2 to this matter.

3 I declare under penalty of perjury that the forgoing statement is true. This  
4 statement was executed in Las Vegas, Nevada, on February 6, 2026.  
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6  
7 /s/ Ashlyn Saenz-Ochoa  
8 Ashlyn Saenz-Ochoa  
9 Assistant Federal Public Defender  
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