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**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

Jose HERLINDO CHINCHILLA,

Petitioner,

v.

Jason STREEVAL, Warden of Stewart Detention Center, in his official capacity; George STERLING, Deputy Field Office Director of the Atlanta Field Office, U.S. Immigration and Customs Enforcement; Todd LYONS, in his official capacity as acting Director of U.S. Immigration and Customs Enforcement, Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security, and Pamela BONDI, in her official capacity as U.S. Attorney General; Daren MARGOLIN, Director for Executive Office for Immigration Review,


Respondents.

**EMERGENCY HEARING
REQUESTED**

Case No.: 4:26-cv-00082-CDL-AGH

PETITIONER'S MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner, Mr. Jose Herlindo Chinchilla (A ) is a native and citizen of Honduras who is being unlawfully detained by U.S. Immigration and Customs Enforcement

(“ICE”) based on a shocking pattern and practice of willfully apprehending and detaining individuals in the United States who have been granted protection from removal.

This egregious behavior is not aligned with the United States Constitution and is a clear violation of Petitioner’s due process rights under the Fifth Amendment.

FACTS

Petitioner Jose Herlindo Chinchilla has lived in the United States with protection from removal through a grant of Withholding of Removal since November 21, 2014. Petitioner was offered protection from removal to Honduras. Since that time, Petitioner has lawfully resided in the Charlotte, North Carolina area with his wife and six children.

On or around January 7, 2026, ICE arrested Mr. Herlindo Chinchilla. He was transferred to the Stewart Detention Center, where he remains detained. Based on knowledge and belief, ICE is preparing to remove Petitioner from the United States in the immediate future, within less than 24 hours. They are presumably removing Petitioner to a third country, yet they have not offered Petitioner the right to a Reasonable Fear Interview or confirmed the “designated” third country of removal. Notably, there is no Immigration Court order designating a third country of removal because ICE never made a formal request for such designation.

ARGUMENT

This Court should issue a temporary restraining order because Petitioner has shown all four factors required for relief: “(1) he has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction would cause the opposing party; and (4) if used, the injunction would not be adverse to the public interest.” *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268 (11th Cir. 2006). In the Eleventh Circuit, the third and fourth

traditional factors merge when the Government is the defendant. *Swain v. Junior*, 961 F.3d 1276, 1293 (11th Cir. 2020) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)).

I. Petitioner Has Established Subject-Matter Jurisdiction and Exhaustion is Not Necessary

This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–2202 (declaratory relief), and Article I, Section 9, Clause 2 of the Constitution (Suspension Clause), as Petitioner is presently in custody under the authority of the United States and challenges his custody as unlawful. Federal courts have jurisdiction under § 2241 to hear habeas claims challenging immigration detention. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The Supreme Court has upheld this jurisdiction most recently in *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

There is no statutory exhaustion bar for § 2241 detention claims. Exhaustion is prudential and may be excused where futile. See *Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75 (11th Cir. 2015).

II. Petitioner Is Substantially Likely to Succeed on the Merits

According to 8 U.S.C. § 1231(a)(1)(A), the government “shall remove the alien from the United States within a period of 90 days (in this section referred to as the “removal period”).” “During the removal period, the Attorney General shall detain the alien.” 8 U.S.C. § 1231(a)(2)(A). Certain noncitizens are required to be further detained. Such noncitizens include those with criminal convictions. Here, there is no circumstance that would render Petitioner to be detained beyond the removal period.

Additionally, 8 C.F.R. § 241.13(i) governs the re-detention of a noncitizen with an OSUP.

ICE may re-detain a noncitizen “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2).

Factors that ICE considers in the re-detention determination include “the noncitizen’s efforts to comply with the removal order; the history of ICE’s efforts to remove individuals to the destination country or to third countries; the ongoing nature of ICE’s efforts to remove the particular noncitizen and his assistance with those efforts; the reasonably foreseeable results of those efforts; and the views of the Department of State regarding the prospects for removal to the countries in question. 8 C.F.R. § 241.13(f).” *Phongsavanh v. Williams*, 2025 WL 3124032, at *5–6 (S.D. Iowa 2025).

In *Zadvydas*, the Supreme Court held that “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The Supreme Court in *Zadvydas* also determined that a six-month detention is presumptively reasonable, but that this presumption is rebuttable. *See Zavvar v. Scott, et al*, 2025 WL 2592543 (D. Md. Sept. 8, 2025) (holding that the 6-month presumption is rebuttable); *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *6 (D.N.J. June 24, 2025); *see e.g., Ali v. Dep’t of Homeland Security*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (holding that the “six-month presumption is not a bright line” and that *Zadvydas* “did not require a detainee to remain in detention for six months . . . before a habeas court could find that the detention is unconstitutional”); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) (“The Supreme Court in *Zadvydas* outlined a ‘guide’ for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months.” (*quoting Zadvydas*, 533 U.S. at 700–01)); *Cesar v. Achin*, 542 F. Supp. 2d 897, 905 (E.D. Wis. 2008) (concluding that “while

detention pursuant to § 1231(a)(6) for up to six months is presumptively lawful, an alien may still state a claim for and demonstrate a constitutional violation within the six-month window”).

Because Petitioner’s detention has not exceeded six months, *Zadvydas* requires Petitioner to show that there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701.

Unlike the Petitioner in *Zadvydas*, Petitioner has been granted withholding of removal to Honduras, “substantially increas[ing] the difficulty of removing” Petitioner to Honduras. *Zavvar v. Scott, et al*, 2025 WL 2592543, at *15; *Munoz-Saucedo*, 2025 WL 1750346, at *6; see 8 C.F.R. § 1208.24(f). Petitioner cannot be removed without the lifting of the order providing for withholding of removal. *Id.* But, he also requires protection from removal to a third country, further escalating the harm he is suffering.

Respondents have had more than 12 years to designate a country of removal for Petitioner, yet they have not even attempted to do so, making his detention even more harmful. *Zavvar v. Scott, et al*, 2025 WL 2592543, at *15; *Munoz-Saucedo*, 2025 WL 1750346, at *6; *Tadros v. Noem et al.*, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025).

As noted in *Munoz-Saucedo*, it is vital to the foreseeability analysis to acknowledge that “even if ICE identified a third country, Petitioner . . . would be entitled ‘to seek fear-based relief from removal to that country,’ which would require ‘additional, lengthy proceedings’”). 2025 WL 1750346, at *7. Petitioner must be immediately released from custody and afforded his due process rights to seek protection from a likely third country removal.

The lack of any action on behalf of Respondents for 12 years, and the lack of an explanation as to why Petitioner was detained in January 2026, all lead to the conclusion that Petitioner is unlikely to be afforded constitutional protections as required under the law without this Court’s

immediate intervention. *See Villanueva v. Tate*, 2025 WL 2774610, at *10 (S.D. Tex. 2025) (where the court granted the petition for habeas corpus based on *Zadvydas* because the petitioner had withholding of removal, respondents had not initiated proceedings to lift the order granting withholding of removal, respondents made no attempt to remove petitioner for eight years after his removal order, and there was no change in circumstances to make petitioner's removal foreseeable).

If ICE intends to remove Petitioner to a third country that was never designated during the course of his removal proceedings, or in the 12 years since he was granted withholding of removal, he must be put on notice as to the intended third country of removal and afforded a reasonable fear interview. Specifically, under “the Due Process Clause of the Fifth Amendment, noncitizens are entitled to reasonable notice of the country to which they will be removed and an opportunity to present claims for various forms of protection from removal”. *See Kumar v. Wamsley*, 2:25-cv-02055-KKE (Western District of Washington, November 17, 2025); *see also Salim Nizar Esmail v. Noem*, No. 2:25-CV08325-WLH-RAO, 2025 WL 3030589, at *5 (C.D. Cal. Sept. 26, 2025) (concluding petitioner satisfied standing to challenge possible third-country removal because “[t]he fact that [the feared violation of his constitutional right to due process] is directly traceable to a written policy” to which he, “as a noncitizen with a removal order . . . is, therefore, inherently subject . . . sufficiently demonstrate[s] that he is realistically threatened by a repetition of the violation” (citation modified)).

III. Petitioner Will Suffer Irreparable Injury Absent a Temporary Restraining Order

Petitioner will suffer irreparable harm if this Court does not grant a temporary restraining order, as he will remain detained until his removal to a third country, both in violation of his constitutional right to due process. *See Arrazola-Gonzalez v. Noem*, 2025 WL 2379285, at *3

(C.D. Cal. Aug. 15, 2025) (“It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury”) (cleaned up). His detention far away from his home, where he has lived for more than a decade, has severely hampered his ability to communicate with his family. See *Escalante v. Bondi*, 2025 WL 2212104, at *2 (D. Minn. July 31, 2025) (recognizing the irreparable harm caused by detention practices that impede communication with family and counsel). Each day of patently unlawful ICE detention inflicts irreparable harm by depriving Mr. Herlindo Chinchilla of his fundamental liberty interest and separating him from his five U.S. citizen children.

IV. The Balance of Harms Strongly Favors the Petitioner, and the Public Interest Factors Similarly Favor Petitioner

As discussed above, Petitioner suffers the substantial loss of his due process rights as well as meaningful access to his family and proper protections under the law. Respondents, by contrast, face no harm from Mr. Herlindo Chinchilla’s release under reasonable conditions of supervision while his removal proceedings continue. Continued detention only imposes unnecessary costs on taxpayers and perpetuates an unlawful deprivation of liberty. The balance of harms and the public interest thus weigh overwhelmingly in favor of granting emergency relief.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his Emergency Motion for a Temporary Restraining Order. Specifically, Petitioner asks this Court to order his immediate release from custody under reasonable conditions of supervision. Petitioner also requests that this Court issue an Order restraining Respondents from removing Petitioner from the United States until he is offered proper protections and the ability to argue against removal to

a third country.

Dated: January 16, 2026.

Respectfully submitted,

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