

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**AT CHANDEE AKA
("XAYASOUNETHONE"),**

Petitioner,

v.

KRISTI NOEM, in her capacity as Secretary of the United States Department of Homeland Security;

TODD M. LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement;

PAMELA BONDI, in her official capacity as Attorney General of the United States;

WARDEN OF ERO EL PASO EAST MONTANA FACILITY; and MARY DE ANDA DE YBARRA, in her capacity as El Paso Field Office Director, US Immigration and Customs Enforcement

Respondents.

Case No. 3:26-cv-00336-LS

**MOTION AND MEMORANDUM OF
LAW IN SUPPORT FOR EX PARTE
TEMPORARY RESTRAINING
ORDER AND EMERGENCY
PRELIMINARY INJUNCTION**

**EXPEDITED HANDLING
REQUESTED**

Petitioner At Chandee ("Mr. Chandee") moves this Court for a Temporary Restraining Order under Rule 65(b) of the Fed. R. Civ. P. to preserve the status quo and prevent his imminent and unlawful removal from the United States. The issuance of the TRO is necessary to preserve the status quo, this Court's jurisdiction and prevent irreparable harm to the Petitioner. Granny Goose Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423, 439 (1974)

Mr. Chandee is currently being detained at the Camp East Montana facility in El Paso, Texas, pursuant to a deportation order that was finalized over thirty years ago on August 15, 1995. For the past three decades, Mr. Chandee has lived in the community under an Order of

Supervision (“OSUP”), complying with all reporting requirements and establishing deep roots and reliance interests in this country. Now, in an abrupt shift of policy, Respondents seek to execute an order that is not only antiquated but demonstrably unlawful under clearly established Supreme Court precedent.

Emergency injunctive relief is necessary from this Court as on information and belief, Respondents are planning a large flight to Laos imminently (either this coming weekend, or by the end of the month of February). Should Mr. Chandee be removed to Laos, he would not only suffer irreparable harm, but this Court would be divested of its jurisdiction to review his claims as the Court’s jurisdiction is based on habeas relief, and the Respondents have, even in the face of court orders, refused to return those they deport.¹ A temporary restraining order is the only effective means for this Court to preserve the status quo, while it decides on the Petitioner’s petition.

TROs may be issued to prevent removal from the country and are governed by the framework as set by Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); J.A.V. v. Trump, 780 F. Supp. 3d 705, 708 (S.D. Tex. 2025). Incidentally, because 8 U.S.C. § 1152(f)(2) was entered into the statute after 1995, and its language only covers “final orders under this section” without any claim to retroactivity, it does not apply. Section 309(c)(1) of IIRIRA provides that the amendments (of which 1252(f)(2) was one of) “shall not apply” to proceedings pending before April 1, 1997. Finally, because 8 U.S.C. § 1252(f)(2) imposes new burdens, such as a higher burden of proof, it cannot be described as purely procedural. Alternatively, even were

¹ Raymond, Nate, “Trump Administration Won’t Let Student Deported to Honduras Return.” *Reuters* (February 6, 2026), <https://www.reuters.com/world/us/trump-administration-wont-let-student-deported-honduras-return-2026-02-07>.

it to apply retroactively, a TRO in this case meets the requirements of 8 U.S.C. § 1252(f)(2) because execution of an invalid order of deportation is prohibited by law.

Petitioner's underlying claim to prevent removal rests on an untested claim of jurisdiction that asserts that the jurisdiction stripping provision of 8 U.S.C. § 1252(a)(5) does not apply to his deportation order from thirty years ago. To allow this Court to fully evaluate the merits of this assertion of jurisdiction, the Court may issue a TRO while it decides the jurisdictional claim. U.S. v. United Mine Workers of America, 330 U.S. 258 (1947) (the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction); Jones v. Belhaven College, 98 Fed.Appx. 283 (5th Cir. 2004).

As explained at length in Petitioner's Amended Petition for Habeas Corpus, this Court has the authority to review his underlying deportation order because it falls outside the jurisdiction-stripping provisions of the REAL ID Act by the statute's plain language. (Amended Petition 16-18, 45-64.) Because the REAL ID Act was never intended to retroactively strip district courts of habeas jurisdiction over pre-IIRIRA orders of deportation, Mr. Chandee's right to judicial review under 28 U.S.C. § 2241 remains intact from the former statute at 8 U.S.C. § 1105a(a)(10)(1994 ed.). (Amended Petition ¶¶45-64.) Petitioner's claim that this Court has jurisdiction is not frivolous and thus supports the Court's ability to issue a TRO while it decides the jurisdictional issue.

I. Mr. Chandee Can Demonstrate a Likelihood of Success on the Merits.

If the Court were to assume jurisdiction of the removal order, then Mr. Chandee can demonstrate a strong likelihood of success on the merits. Ruiz v. Estelle, 650 F.2d 555, 565 (5th

Cir. 1981) ("a substantial case on the merits [and] serious legal question[s]," sufficient to warrant temporary restraining relief under the Nken standard).

There is little doubt that his 1995 Order of Deportation is fundamentally invalid under clearly established Supreme Court precedent, and executing this unlawful order—particularly after thirty years and after the law has definitively established the order's invalidity—would constitute a "gross miscarriage of justice" in violation of due process.

It is incontrovertible that his order of deportation is invalid because his conviction for second degree assault cannot support a firearms offense charge under 8 U.S.C. § 1252(a)(2)(C). (Amended Petition 30-37.) While at the time of his deportation hearings there may have been uncertainty over how to distinguish elements versus means, that uncertainty has been decisively resolved in Petitioner's favor, culminating in the Supreme Court practically using his statute of conviction as a hypothetical to illustrate the difference. Mathis v. United States, 579 U.S. 500, 509 (2013). There is little question that if courts were confronted with the petitioner's conviction today, they would find the statute overbroad and not a firearms conviction. (See Exhibit 17.)

Even though Mr. Chandee was afforded judicial review of his deportation order in 1995, the decades-long delay in executing the order exposes its defects and makes the execution of the order itself a violation of due process. The execution of a defective and clearly invalid order of removal would be a gross miscarriage of justice. Matter of Farinas, 12 I. & N. Dec. 467 (BIA 1967) (an order that could not withstand judicial scrutiny at the time of execution warrants collateral review under the gross miscarriage of justice standard.)

II. Mr. Chandee Faces Irreparable Injury Absent the TRO.

The petitioner must show that "irreparable injury is likely in the absence of an injunction." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). Irreparable harm is

harm for which there is no adequate remedy at law. See, e.g., Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C., 710 F.3d 579, 585 (5th Cir. 2013); Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014).

Courts have recognized that wrongful removal, denial of work authorization, and family separation may cause irreparable harm in the immigration context. See, e.g., A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025) (removal without opportunity to be heard prior to removal); Ariz. Dream Act Coal., 757 F.3d at 1068 (loss of opportunity to pursue chosen profession); Nat'l TPS All. v. Noem, 150 F.4th 1000, 1025-26 (9th Cir. 2025) (wrongful removal, family separation, and loss of jobs, educational opportunities, driver's licenses, healthcare, financial support of elderly parents); Doe #1 v. Trump, 957 F.3d 1050, 1061 (9th Cir. 2020) (prolonged separation from family members); cf. Moore v. East Cleveland, 431 U.S. 494, 503–04, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (explaining that “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition”); Rodriguez v. Robbins, 715 F.3d 1127, 1144-45 (9th Cir. 2013) (deprivation of constitutional rights through detention).

A. Mr. Chandee Has a Significant Reliance Interest in Remaining in the United States.

Mr. Chandee has almost no recollection of his early childhood in Laos because he arrived in the United States as a refugee at only six years old. He has lived in the United States for over 45 years—the United States is the only home and culture he has ever known. (Decl. of Toon Chandee, Ex. 19.) Although Mr. Chandee's father became a naturalized citizen in 1987,² he could

² His father naturalized when he was only thirteen, which if the current INA 320 had been passed at the time, or found to be retroactive, he would qualify as a citizen. He would also qualify as a U.S. citizen had his father been given custody of him after his parents divorced when he was sixteen.

not pursue naturalization given his status as a minor. (Father's Cert. of Nat., Ex. 27; Ex. 20.) He did not obtain citizenship through the former INA 321, as his father did not retain custody of him after divorcing Mr. Chandee's mother.

After he was ordered removed to Laos in 1995, Mr. Chandee was told by Respondents his removal to Laos could not be effectuated by the government, and he would remain free from immigration detention so long as he complied with his OSUP. (Decl. of Tina Feb. 8, Ex. 20; Ex. 19.) Trusting implicit assurances that his removal to Laos was nearly impossible, Mr. Chandee obtained a college education, built a stable family-life and long-standing career as a public servant, remained completely law-abiding, and complied with all conditions of his release.

Forcibly removing Mr. Chandee to Laos would completely upend the comfort and financial security he has achieved for himself and his family over the past 30 years. He earned a degree in engineering drafting while in prison, and after working as a cook for a couple years to regain stability following his incarceration, he put his engineering education to good use. (College Records, Ex. 26). He worked as a drafter at Faith Engineering for two years, then was hired by the City of Minneapolis in 1999, where he remains employed as an Engineer Technician to this day. (Ex. 20). Mr. Chandee's only child, Alexander Xayasounethone, was born in 2001 and is a United States citizen. (Alexander Xayasounethone Birth Cert., Ex. 7.) Alex admires his father as a positive role model and is currently serving overseas as a member of the Air Force. (Decl. Alexander Xayasounethone, Ex. 22; Ex. 10). Being removed to Laos while his son has been stationed in Germany would be emotionally devastating for the entire family. (Ex. 20). Mr. Chandee has been married to Tina Huynh-Chandee since 2015 and is her primary financial provider. (Ex. 21) He has also been serving as her primary caretaker while she recovers from a recent surgery. (*Id.*) In addition, his income supports Tina's elderly mother. (*Id.*) Mr. Chandee's

removal to Laos would deprive them of the emotional and financial support that he provides. Mr. Chandee and his wife live with Lucy Huynh, Tina's sister, and Lucy's two children. He is especially close with his young niece and nephew and highly involved in their lives. (Ex. 10.) Mr. Chandee also serves as an "uncle-like figure" to the three children of a family friend, taking them on outdoor activities during family trips. (*Id.*)

When Mr. Chandee is not working or spending as much time with his family as possible, he regularly volunteers in his community. (*Id.*) After observing verbal de-escalation courses, he developed a friendship with the instructor and has since served as a volunteer role model in the course for the past ten years (*Id.*). With his brother, Toon Chandee, Mr. Chandee donated food and prepared lunch for over 50 volunteers on a day of service to restore a dilapidated home with the organization Hearts and Hammers. (Decl. of Scott Halverson, Ex. 24). He also invests time in his community by participating in a union. Mr. Chandee is a model community member—he is family-oriented, dependable, hardworking, and eager to help those around him. (Ex. 10; Ex. 20.)

Mr. Chandee's meaningful involvement in the lives of so many people underscores his reasonable belief that removal to Laos would not occur so long as he remained law-abiding and complied with the conditions of his release. The Supreme Court has previously recognized a reliance interest when noncitizens have "embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance" on an immigration benefit program. Dep't of Homeland Sec. v. Regents of the Univ. of California, 140 S. Ct. 1891, 1914 (2020). In Texas v. United States, the court recognized "the immense reliance interests that DACA has created" and the program's "profound significance to recipients and many others in the [now-twelve] years since its adoption." 126 F.4th 392, 422 (5th Cir. 2025); see also Nat'l TPS All. v. Noem, 150 F.4th 1000, 1025 (9th Cir. 2025) ("[T]erminating Venezuelan TPS was likely

to ‘inflict irreparable harm on hundreds of thousands of persons whose lives, families, and livelihoods will be severely disrupted.’”). Similar to the benefits that were conferred to DACA and TPS program recipients, the near impossibility of Mr. Chandee’s removal to Laos and his three decades on supervised release without any issue has created a profound reliance interest for him and his family. The sudden revocation of those benefits, which Mr. Chandee reasonably relied upon, inflicts irreparable harm. Nat’l TPS All. v. Noem, 150 F.4th at 1025.

B. Mr. Chandee Will Suffer Irreparable Harm If Removed to Laos.

Mr. Chandee’s removal to Laos would effectively result in his permanent banishment from the United States. If removed to Laos now, Mr. Chandee has no foreseeable way of returning to the United States to live alongside his family ever again. As of June 4, 2025, the United States has instituted a travel ban for Laos, suspending all immigration and non-immigrant travel from Laos to the United States.³ This policy bars Mr. Chandee from simply travelling to the United States to visit his family members, his friends, his home, and his community—even for short periods of time. See Lehman v. United States, 353 U.S. 685, 691 (1957) (Black, J., concurring) (“To banish [a noncitizen] from home, family, and adopted country is punishment of the most drastic kind.”).

Courts hold that “family separations and the resulting emotional harm can constitute irreparable hardship for purposes of a preliminary injunction.” Young v. Trump, 506 F. Supp. 3d 921, 939 (N.D. Cal. 2020). Courts also acknowledge that family separation caused by removal is “particularly complicated” for “mixed-status families,” where the removed individual’s children are United States citizens. Nat’l TPS All. v. Noem, 773 F. Supp. 3d 807, 836 (N.D. Cal. 2025),

³ “The entry into the United States of nationals of Laos as immigrants and as nonimmigrants is hereby fully suspended.” Proclamation No. 10998, 90 Fed. Reg. 59717 (Dec. 16, 2025).

aff'd, 150 F.4th 1000 (9th Cir. 2025). Mr. Chandee's son and his wife are United States citizens, and they have no connection to Laos. Tina and Alex are highly unlikely to relocate to Laos with Mr. Chandee for many reasons: they cannot abandon family members who depend on them, they cannot leave behind the only country and culture they know, and in Alex's case—abandon his budding career in the military. Nor would Laos accept them, especially as Mr. Chandee himself has no claim to citizenship or nationality and does not speak the language. If removed to Laos, Mr. Chandee will inevitably lose valuable time and daily companionship with his wife, miss critical moments in his son's adulthood, like marriage and possible grandchildren, and be unable to see his niece and nephew grow up. See Nat'l TPS All. v. Noem, 150 F.4th 1000, 1026 (9th Cir. 2025) (“[T]ime—in the United States, with their families, and with immigration status—is valuable to [noncitizens], and the loss of it can be irreparable.”).

Along with the emotional pain of family separation, Mr. Chandee's removal would disrupt the financial support he provides to Tina and her mother. Without his steady income, their quality of life—and Lucy and her children's quality of life as members of the Chandee household—is likely to be significantly disrupted. Courts recognize that removal of the “breadwinner” of a family from the United States, and the resulting financial instability of the family, is an irreparable harm to the removed noncitizen and their dependent family members. De Jesus Martinez v. Nielsen, 341 F. Supp. 3d 400, 408 (D.N.J. 2018). As stated by Tina: “My husband is the primary provider in our household. If he were deported, our family would go from two incomes to one...It would be financially overwhelming for me to maintain our household, send money to Laos to support him, and continue caring for my mother on my salary alone.” (Ex. 20.)

Upon his arrival in Laos, Mr. Chandee would most likely be detained at a government facility until his release could be sponsored by family members, relatives, or another willing individual.⁴ Mr. Chandee's American family members cannot afford to sponsor his release and neither he nor his family members know anyone in Laos, so finding a local sponsor would be "extremely difficult." (Ex. 20.) Mr. Chandee's family suspects he would be forced to remain in detention for at least a few months until they could pay to sponsor him or find a local sponsor. (Ex. 19, Ex. 29 at 6.) This uncertain detention will almost certainly cause emotional distress and may impair Mr. Chandee's ability to access the daily medication he needs to manage his diabetes and high cholesterol. (Ex. 29 at ¶11.) Access to healthcare in Laos is extremely limited for deportees. Public healthcare facilities exist but are often of poor quality, under-resourced, and overcrowded.⁵ Healthcare is not free, and many deportees lack the financial means to pay for medical care.⁶ Deportees with chronic conditions such as diabetes, asthma, heart disease, or mental health issues struggle to obtain necessary medications and treatment.⁷ Moreover, "[a] loss of liberty . . . is perhaps the best example of irreparable harm." Matacua v. Frank, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018).

Compounding these difficulties is the fact that Laotian law declares that people who have left the country for more than seven years forfeit their Lao citizenship and nationality. (Ex. 4, Ex. 29 5.) If removed to Laos, Mr. Chandee would be considered an "apatrid" or a stateless person without citizenship in any country. (*Id.*) Without legal status under Laotian law, the ability to speak the language, or any understanding of cultural norms, Mr. Chandee is not a competitive applicant for employment. Apatrides are "effectively treated as stateless persons... This stateless

⁴ FAQs & Resources, *Roots Laos*, <https://rootslaos.org/resources>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

status severely limits their ability to live freely and independently in Laos. (Exhibit 29 at ¶5.) The practical effect is that deportees exist in a legal limbo, unable to exercise fundamental rights such as property ownership, business ownership or unrestricted freedom of movement.” (*Id.*) He would almost certainly face immense barriers to navigating the healthcare system, obtaining medication to treat his diabetes, and accessing any government welfare programs that exist. He has absolutely no support system in Laos, and his family would be unable to provide financial support to aid his adjustment to living in the country. (Ex. 23; Ex. 28, Ex. 29 11.)

Even once he is released from government custody, Mr. Chandee will face numerous obstacles as he tries to navigate living in Laos—a country he has not lived in since he was a small child over four decades ago. Mr. Chandee knows nobody in the country, does not speak fluent Lao, and has no understanding of Laotian culture. (Decl. of Eddie Chandee, Ex. 23; Ex. 20.) Further, since Mr. Chandee and his family left Laos in 1980, the government, economy, and population have experienced massive changes under the control of the Lao People's Revolutionary Party, including adoption of an entirely new Constitution.⁸ Therefore, anything his parents may have told him about Laotian society, rights, and customs will not be meaningful. His complete unfamiliarity with modern Laotian society significantly hampers his ability to secure housing, seek employment, and obtain adequate healthcare to manage his diabetes and high cholesterol. (Ex. 29 §10.) The risk that Mr. Chandee will be unable to safely treat his diabetes is significant and potentially life threatening—the Department of State warns that “[m]edical facilities and services in Laos are extremely limited and may not meet basic international standards.”⁹ Courts have held that removal to countries without basic healthcare services can

⁸ Laos Country Report 2024, BTI Transformation Index, <https://bti-project.org/en/reports/country-report/LAO>.

⁹ Laos International Travel Information, U.S. Dept. of State, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Laos.html>.

cause irreparable harm. Nat'l TPS All. v. Noem, 150 F.4th 1000, 1025 (9th Cir. 2025). Laos experienced an acute economic downturn due to the Covid-19 pandemic, which has further strained their healthcare system.¹⁰

Moreover, Mr. Chandee's lack of Lao fluency and Laotian education credentials will impede his ability to secure skilled employment that is substantially similar to the technical drafting work he performs now. Courts hold that a “diminished” or lost opportunity to pursue one’s chosen profession is an irreparable harm. Arizona Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014). 82.5 percent of employment in Laos is informal, which increases the difficulty of locating job opportunities and results in low wages, instability, limited career advancement, and poor working conditions.¹¹ Laos is currently in the midst of an economic crisis—approximately one sixth of the Lao workforce is unemployed.¹² Economic shocks stemming from recent global conflicts like the Russian invasion of Ukraine have increased the price of food, fuel, and imported goods in the country.¹³

The potential for adverse treatment as a stateless person, prolonged detention upon arrival in Laos, discrimination, and loss of freedom in other contexts could amount to persecution. (Ex. 29 at 7, 8, 14, 15). Haile v. Holder, 591 F.3d 572 (7th Cir. 2010) (finding per se persecution in denationalization), Stserba v. Holder, 646 F.3d 964 (6th Cir. 2011) (finding denationalization as a severe sanction where if done on ethnicity is persecution per se.) And yet, because the Immigration Judge and the Board of Immigration Appeals found Mr. Chandee’s crime a

¹⁰ Laos Country Report 2024.

¹¹ Laos’ Labor Market Challenges and Opportunities: What Investors Should Consider, ASEAN Briefing, <https://www.aseanbriefing.com/news/laos-labor-market-challenges-and-opportunities-what-investors-should-consider/>.

¹² 2022 Country Reports on Human Rights Practices: Laos, U.S. Dept. of State, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/laos/>.

¹³ Laos Country Report 2024.

particularly serious one, he is unable to avail himself of the protections against persecution from Withholding of Removal under 8 U.S.C. § 1231(b)(3).

C. Removal Itself Constitutes an Irreparable Harm to Mr. Chandee

Normally, the harms resulting from deportation are not considered by federal *district* courts, because 8 U.S.C. § 1252(a)(5) and (b)(9) strip federal courts of jurisdiction to review challenges to an order of removal and issue stays of removal. These provisions—enacted under the REAL ID Act of 2005—eliminated habeas corpus review of removal orders by district courts. 8 U.S.C. § 1252(a)(5) (“[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter.”). However, this motion primarily argues that the jurisdiction stripping of the Real ID Act of 2005 does not retroactively apply to Mr. Chandee because his final order of removal was issued in 1995. *Supra*. Because this Court has jurisdiction to evaluate the legality of his removal via his habeas petition, it should also weigh the irreparable harm that stems from the unlawfulness of his removal under the framework to grant a stay of removal.

To prevail on a motion to stay an removal order under *Nken v. Holder*, a noncitizen must demonstrate: (1) a “strong showing” that they are likely to succeed on the merits of the underlying petition for review, (2) that they will be irreparably injured if the stay is not granted, (3) that the issuance of the stay will not substantially injure DHS, and (4) that the issuance of the stay will not harm the public interest. 556 U.S. 418 (2009). Along with the likelihood of success on the merits, the irreparable injury inquiry is one of “the most critical” factors in adjudicating stay applications. *Nken*, 556 U.S. at 433. Under the *Nken* analysis, “[w]rongful removal is a relevant factor in the irreparable harm analysis.” *Nat’l TPS All. v. Noem*, 150 F.4th 1000, 1025

(9th Cir. 2025); see also *Nken v. Holder*, 556 U.S. 418, 435–36 (2009) (holding that although the fact of removal is not sufficient by itself to demonstrate irreparable harm, “there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm”).

Courts generally hold that removal does not amount to irreparable harm *per se* because of the underlying assumption that a removed noncitizen “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.” *Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 1761 (2009). But removal does inflict irreparable harm when removal would “effectively prevent” the noncitizen from continuing to pursue judicial review of their case. *See Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (“[A] noncitizen must show that there is a reason specific to his or her case... that removal would inflict irreparable harm—for example, that removal would effectively prevent her from pursuing her petition for review, or that, even if she prevails, she could not be afforded effective relief.”).

The presumption that removal is not an irreparable harm has been overcome when a noncitizen loses the ability to continue litigating a habeas petition following their removal. These cases hinge on the fact that a habeas corpus petition generally becomes moot once the individual has been physically removed from the United States. *See e.g., D.A.M. v. Barr*, 474 F. Supp. 3d 45, 67 (D.D.C. 2020) (“[P]etitioners obviously could not challenge the legality of the conditions of their deportation... *after* they have been removed. Even if they could, the Court would not be able to afford them effective relief. Petitioners have, therefore, demonstrated irreparable harm in that regard.”). The risk that “once expelled from the United States and outside the jurisdiction of the Court” the Plaintiff’s harm will “no longer be remediable” is recognized as an irreparable

harm. P.J.E.S. by & through Escobar Francisco v. Wolf, 502 F. Supp. 3d 492, 545 (D.D.C. 2020); see e.g., D.A.M. v. Barr, 474 F. Supp. 3d 45, 67 (D.D.C. 2020); Doe v. Mattis, 928 F.3d 1, 22 (D.C. Cir. 2019); Tefel v. Reno, 972 F. Supp. 608, 619 (S.D. Fla. 1997). In Doe v. Mattis, the court acknowledged that an irreparable injury would occur “[o]nce transfer is effectuated,” because Doe “‘would be entirely in [Country B’s] custody,’ without any continuing oversight by—or recourse to—the United States.” 928 F.3d 1, 22 (D.C. Cir. 2019).

Here, removing Mr. Chandee to Laos would completely prevent him from continuing to litigate his claims that his detention and order of removal are unlawful. Mr. Chandee has filed a habeas petition in the Western District of Texas to challenge the legality of his detention and, in the amended petition, to challenge the legality of his removal. Removal itself would be an irreparable harm to Mr. Chandee because it would preclude him from continuing to seek meaningful judicial review of his order of removal. Doe v. Mattis, 928 F.3d 1, 22–23 (D.C. Cir. 2019) (“transfer to a foreign country’s custody necessarily ends U.S. custody... the transfer itself is a harm that cannot be remedied”).

The need for judicial review is especially pertinent in this case, because since his arrest on January 24, 2026, Mr. Chandee still has had no opportunity to be heard regarding the revocation of his OSUP. See Tefel v. Reno, 972 F. Supp. 608, 619 (S.D. Fla. 1997) (“Plaintiffs...would suffer irreparable harm if they are deported to their native countries after having been denied an opportunity to have a hearing on their claims...”). Even more specifically, irreparable harm occurs when a petitioner raises “colorable constitutional issues” but loses the ability to adjudicate those constitutional claims because of removal. Mariscal v. Reno, CV 98-992 BB/WWD, 1998 WL 36030159, at *3 (D.N.M. Nov. 10, 1998). In Mariscal v. Reno, the court acknowledged that it would lose jurisdiction to review a habeas petition alleging due

process violations if the government deported Mariscal. The court cautioned that upon removal, Mariscal “would suffer irreparable injury should there be merit to his claims.” *Id.* at *3.. Like Mariscal, Mr. Chandee’s habeas petition alleges due process violations by ICE. See also A. A. R. P. v. Trump, 605 U.S. 91, 94 (2025) (“We have long held that ‘no person shall be’ removed from the United States ‘without opportunity, at some time, to be heard.’”) (quoting The Japanese Immigrant Case, 189 U.S. 86, 101 (1903)).

III. The Public Interest is Served by a Granting this TRO

The final two Winter factors for injunctive relief—the balance of hardships and public interest—“merge when the Government is the opposing party.” Nken v. Holder, 556 U.S. 418, 435 (2009). Here, the balance of hardships overwhelmingly favors Mr. Chandee, who faces irreparable injury in the form of 1) ongoing violation of his statutory and constitutional due process rights, and 2) wrongful removal to Laos if his deportation is not temporarily enjoined.

First, this TRO will undoubtedly serve the public interest because defendants have no legitimate interest in depriving individuals of their liberty without affording them due process required by law and the Constitution. “[W]here a plaintiff alleges constitutional violations, the balance of hardships tips decidedly in the plaintiff’s favor despite arguments that granting a preliminary injunction would cause financial or administrative burdens on the Government. Sajous v. Decker, 18-CV-2447 (AJN), 2018 WL 2357266, at *13 (S.D.N.Y. May 23, 2018) (citing Mitchell v. Cuomo, 748 F.2d 804, 808 (2d Cir. 1984)). The Department of Homeland Security, through the Office of Immigration and Customs Enforcement, has demonstrated a pattern of detaining individuals on supervised release without a statutory basis or procedural due process—in flagrant violation of their own regulations and the Constitution.

Over the course of Operation Metro Surge, Respondent's incentives for ignoring the regulations and arresting those on OSUP are relatively clear. Those on supervised release, like Petitioner, tend to have a criminal record—which triggered their order of removal—and are easy targets for the Administration to claim that they are removing the “worst of the worst.” Moreover, as with Petitioner, those on OSUP have their address listed and are easily discoverable by ICE. Regardless of the goals of Operation Metro Surge, the merits of Mr. Chandee's detention and order of removal, or the financial or administrative burdens of following 8 C.F.R. § 241.13(i), Respondents cannot arbitrarily ignore their own regulations and constitutional rights in order to effectuate removals faster. See United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also Morton v. Ruiz, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”); Lopez v. Heckler, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.”).

Allowing Respondents to do an end-round of the regulations by merely pointing to an increase of deportations to a country would render the requirements of 8 C.F.R. § 241.13(i) a nullity and allow the Respondents to rewrite their regulations while subverting the requirements of the Administrative Procedures Act. The government cannot be allowed to belatedly rationalize Mr. Chandee's detention by requesting travel documents only after his arrest, when there were no changed circumstances at the time of his arrest other than ICE's own policy to increase arrest and removal rates. See e.g., Chaudhry v. Barr, 219CV00682TLNDMC, 2019 WL

2009307, at *4 (E.D. Cal. May 7, 2019) (“because the ‘prompt execution’ of Mr. Chaudry's removal may pose due process concerns, the Court finds the public interest is better served by temporarily staying that execution to ensure all constitutional safeguards are met). Mr. Chandee’s immediate release, and a prohibition on utilizing detention to obtain travel documents *ex post facto* arrest, is absolutely necessary to end these rampant due process violations.

Petitioner is moving on an emergency basis because of the simple reality that the fact of his continued detention does increase the likelihood that he will be removed to Laos. Importantly, this TRO does not assert that the Respondent has established a “SLRFF”, rather it highlights the simple truth that the United States has successfully pressured Laos into accepting more people with removal orders, specifically those who are detained and have been detained for prolonged periods of time. In many such cases, it is reasonable to infer that Laos would not have taken these individuals but for their detention. This circumstance is why Petitioner seeks emergency relief: for it would be unlawful to permit Petitioner’s unlawful detention to effectuate Respondent’s policy priority of removing “criminal aliens.” The immediate release of Mr. Chandee is necessary to hold federal agencies accountable to their own regulations and the Constitution, and to prevent both ongoing irreparable harm to Mr. Chandee personally. See Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”) (citation modified); Sajous v. Decker, 18-CV-2447 (AJN), 2018 WL 2357266, at *13 (S.D.N.Y. May 23, 2018) (“The public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.”); Louisiana v. Biden, 55 F.4th 1017, 1035 (5th Cir. 2022) (there is “no public interest in the perpetuation of unlawful agency action”).

Second, executing a wrongful order of removal does not serve the public interest. The Supreme Court has recognized that “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, 129 S. Ct. 1749, 1762 (2009). The Fifth Circuit similarly recognizes “the public interest in having the immigration laws applied correctly and evenhandedly.” Tesfamichael v. Gonzales, 411 F.3d 169, 178 (5th Cir. 2005). In fact, courts have held that the execution of a removal order lacking a valid legal basis constitutes “a gross miscarriage of justice.” Vega-Anguiano v. Barr, 982 F.3d 542, 549 (9th Cir. 2019); Robledo-Gonzales v. Ashcroft, 342 F.3d 667, 682 n.13 (7th Cir. 2003) (finding a gross miscarriage of justice when “the individual should not have been deported based on the law as it existed at the time of the original deportation”). When execution of a removal order rises to the level of a miscarriage of justice, it cannot be in the public interest.

Lastly, courts have found that a temporary delay in removal does not harm the government or interfere with the public interest when the noncitizen has been living on supervised release for decades. Torres-Jurado v. Biden, 19 CIV. 3595 (AT), 2023 WL 7130898, at *5 (S.D.N.Y. Oct. 29, 2023) (“The brief delay caused by a temporary stay here does not interfere with the public interest when Plaintiff has been allowed to live in the United States for eighteen years without Defendants executing the final removal order...but ensures that ICE has properly complied with the laws and the Constitution in seeking to remove Plaintiff....”). Avoiding the rushed enforcement of immigration laws for the sake of effectuating removal as quickly as possible is also in the public interest. You, Xiu Qing v. Nielsen, 321 F. Supp. 3d 451, 469 (S.D.N.Y. 2018) (holding that “there is a public interest in maintaining families together” and “[t]he public interest in executing removal orders is outweighed where, as here, Petitioner is

a law-abiding person, a resident in this country for eighteen years, a husband to a citizen wife, and a father to citizen children”). M.M.M. on Behalf of J.M.A. v. Sessions, 347 F. Supp. 3d 526, 537 (S.D. Cal. 2018) (“hasty removal...at the expense of an ordered process provided by law would be antithetical to the public interest”).

For the foregoing reasons, Petitioner requests that this Court

- 1) Enjoin the Respondents from removing him from the United States for 14 days and until this Court is able to hold a hearing on the merits of claims,
- 2) Order his immediate release from detention.

Respectfully submitted,

DATED: February 12, 2026

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