UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

T.A., *Petitioner*, - against – **Jessica SAGE**, in her official capacity as Warden of FCI Lewisburg; **David O'NEILL**, in his official capacity as Acting Field Office Director, Philadelphia Field Office, U.S. Immigration and Customs Enforcement; **Todd M. LYONS**, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; **Kristi NOEM**, in her official capacity as Secretary of the U.S. Department of Homeland Security; and **Pam BONDI**, in her official capacity as Attorney General of the United States; *Respondents*.	No.

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION, AND ORDER TO SHOW CAUSE

PRELIMINARY STATEMENT

T.A. is a 35-year-old citizen of Jamaica who has resided in the United States since he was a child. At age 11, T.A.'s family sent him away from Jamaica due to fears of persecution in connection with [redacted] T.A. was granted withholding of removal by an immigration judge on May 23, 2025 based on the judge's finding that T.A. would likely face persecution if forced to return to Jamaica. This grant is final as the parties did not appeal.

1. Despite an immigration judge granting T.A. immigration relief in the form of withholding of removal to Jamaica in May of 2025, On February 4, 2026, the Department of Homeland Security ("DHS") informed T.A. that it intends to remove him to Mexico, a country that the immigration judge ("IJ") did not designate as either the country of removal or an alternative country of removal. *See* **Ex. B, ICE Emails at 3; Ex. C, Notice of Removal to Mexico.**[1] Although T.A. fears he will be persecuted and tortured if deported to Mexico, an IJ has never adjudicated T.A.'s fear-based claims to Mexico. On the afternoon of February 6, 2026, in communications with the government, counsel for T.A. sought assurance that he would not be removed prior to being provided the fear interview that was going to be rescheduled. The government acknowledged that there was not a lawful way to remove him prior to providing the fear interview, but stated that they could not guarantee this as it would depend on whether ICE followed the proper procedures. This imminent threat of removing T.A.'s to a country where he may face torture or death demand immediate action.

[1] Exhibits attached to Petition at ECF No. 1.

ARGUMENT

Because of the immediate threat to T.A.'s life and safety, the Court must act expeditiously to issue a temporary restraining order or preliminary injunction enjoining Respondents from removing him to a third country during the pendency of his habeas petition. Such emergent relief is proper because T.A. is likely to succeed on the merits of his underlying claims for habeas relief, he faces irreparable physical injury and ongoing constitutional harm, and the balance of interests weighs in favor of temporary restraints.

Finally, the Court should order Respondents to show cause as to why T.A.'s Petition should not be granted. Removal to Mexico, or any other third country, without a full and fair opportunity to present a fear-based claim would violate Petitioner's statutory, regulatory, and due process rights, and the United States' commitment to non-refoulement under international law. Providing a swift remedy to such unlawful government conduct is precisely the function of the Great Writ. Unreasonable delays vitiate that purpose. Consistent with Congress's intent, as expressed in 28 U.S.C. § 2243, that district courts expeditiously resolve habeas petitions, this Court should take steps to ensure a prompt disposition of T.A.'s petition.

I. This Court has authority to enjoin removal of Petitioner

The All Writs Act and the Court's inherent equitable powers provide this Court ample authority to issue this modest relief to maintain the status quo. The All Writs Act ("AWA") provides federal courts with a powerful tool to preserve the integrity of their jurisdiction to adjudicate claims before them. *See* 28 U.S.C. § 1651(a) (authorizing federal courts to "issue all writs necessary or appropriate *in aid of* their respective jurisdictions and agreeable to the usages and principles of law"). The Act encompasses a federal court's power to "maintain the status quo by injunction pending review of an agency's action." *F.T.C. v. Dean Foods Co.*, 384 U.S. 597,

604 (1966), and courts have found that the Act should be broadly construed to "achieve all rational ends of law," *California v. M&P Investments*, 46 F. App'x 876, 878 (9th Cir. 2002) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)).

Courts around the country have cited this authority to prevent the removal of noncitizens. *See, e.g.*, *M.K. v. Joyce*, No. 25-CV-1935 (JMF), 2025 WL 750599, at *1 (S.D.N.Y. Mar. 10, 2025) (citing cases) ("To preserve the Court's jurisdiction pending a ruling on the petition, Petitioner shall not be removed from the United States unless and until the Court orders otherwise."); *see also, e.g.*, *Du v. United States Dep't of Homeland Sec.*, No. 25-CV-0644 (OAW), 2025 WL 1317944, at *1 (D. Conn. Apr. 24, 2025) ("[A] a federal court may temporarily enjoin immigration authorities from deporting individuals if it preserves the court's jurisdiction over a case or cases."); *L.S.M. v. Genalo et al.*, 1:26-cv-00942-JAV, ECF No. 4, Order to Answer (S.D.N.Y. Feb. 4, 2026) ("[T]o preserve the Court's jurisdiction pending a ruling on the Petition, Petitioner shall not be removed from the United States absent further order of this Court."); *Kuprashvili v. Flanagan*, No. 25-cv-5268, 2025 WL 2382059 (S.D.N.Y. June 30, 2025) (collecting cases staying removal to maintain the status quo); *J.G.I. v. Genalo*, 1:26-cv-00581-AMD, Order to Show Cause (E.D.N.Y. Feb. 3, 2026) (ordering response to habeas petition and that to "preserve the Court's jurisdiction pending a ruling on the petition, the petitioner shall not be removed from the United States unless and until the Court orders otherwise).

Whereas a traditional TRO requires a party to state a claim, an injunction based on the AWA requires only that a party identify a threat to the integrity of an ongoing or prospective proceeding, or of a past order or judgment. *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359

(5th Cir. 1978) (court may enjoin "conduct which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion").

Enjoining T.A.'s removal is thus not only well within the power of the Court, but necessary to maintain the status quo and provide Mr. A. with full access to the relief he seeks.

I. The Court should enjoin Respondents from removing T.A. during the pendency of this petition in order to preserve the status quo and the Court's ability to consider the Petition.

A preliminary injunction is appropriate where the movant demonstrates (1) that a delay in adjudication is more likely than not to cause irreparable damage to the petitioner and (2) a likelihood of success on the merits of the petition and if considerations of (3) "the possibility of harm to other interested persons" and (4) the "public interest" weigh in favor of a grant. *Reilly v. City of Harrisburg*, 858 F.3d 173, 176, 179 (3d. Cir. 2017) (quoting *Del. River Port Auth. v. Transamerican Trailer Transp.*, Inc., 501 F.2d. 917, 919–920 (3d. Cir. 1974)). Consideration of a request for a temporary restraining order weighs the same factors. *See, e.g., Am. Tel. and Tel. Co. v. Winback and Conserve Program, Inc.*, 42 F.3d. 1421 (3d. 1994); *Lozano v. City of Hazleton*, 459 F. Supp. 2d 332, 335 (M.D. Penn. 2006). Risk of irreparable harm, and likelihood of success on the merits are threshold matters. *Reilly*, 858 F.3d at 179. Once they are proven, the court balances all four factors to determine whether to grant immediate relief. *Id.*

a. T.A.'s imminent unlawful third country removal creates a clear risk of irreparable harm, including the ongoing violation of his constitutional rights and ongoing harm to his safety and life.

"Irreparable injury" sufficient to justify emergent relief requires a showing of "significant risk that he or she will experience harm that cannot adequately be compensated." *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484–85 (3d. Cir. 2000). The central question is whether the threatened harm is such that it "cannot be redressed by a legal or an equitable remedy following

a trial." *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). An ongoing constitutional violation is a per se form of irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Indeed, where the movant establishes a *prima facie* constitutional claim, very likely "the other requirements for a preliminary injunction are satisfied." *Stilp v. Contino*, 613 F.3d 405, 409 (3d Cir. 2010). Courts in this circuit have applied this principle in preliminarily enjoining constitutional violations. *See GJJM Enterprises, LLC, v. City of Atlantic City*, 293 F. Supp. 3d. 509, 520–21 (D.N.J. 2017).

Here, T.A. is at imminent risk of being removed to Mexico, a country where he fears he will be persecuted or tortured. T.A. fears he will be persecuted and tortured if deported to Mexico based on [redacted] Further, T.A. fears that Mexico will simply remove him back to Jamaica–a country that the United States has already ordered he cannot return to because of the likelihood of persecution and death. An IJ has never adjudicated T.A.'s fear-based claims to Mexico.

Despite T.A.'s fears that he will be persecuted and tortured if deported to Mexico, an IJ has never adjudicated T.A.'s fear-based claims to Mexico. He has already moved to reopen his immigration proceedings to be able to seek protection from removal to Mexico. That motion remains outstanding.

Although his fear interview is to be rescheduled in the next few days, the Government has not provided any assurances that they would not deport him before his interview. On the afternoon of February 6, 2026, in communications with the government, counsel for T.A. sought assurance that he would not be removed prior to being provided the fear interview that was going to be rescheduled. The government acknowledged that there was not a lawful way to remove him prior to providing the fear interview, but stated that they could not guarantee this as it would depend on whether ICE followed the proper procedures.

Accordingly, absent immediate intervention from this Court, T.A. will experience irreparable injury if he is removed to Mexico or any other third country where he may similarly face persecution or torture.

b. T.A. is likely to succeed on the merits of his Petition

A litigant seeking a temporary restraining order or a preliminary injunction need not prove his case as a prerequisite nor show that his success is assured. *Oburn v. Shapp*, 521 F.2d 142, 148 (3d Cir. 1975). Instead, a party need only demonstrate a "[p]rima facie case showing a reasonable probability that it will prevail." *Id.*; *see also Reilly*, 858 F.3d at 179 (preliminary equitable relief requires a showing "significantly better than negligible" but not "more likely than not"). Moreover, "where factors of irreparable harm, interests of third parties and public considerations strongly favor the moving party, an injunction might be appropriate 'even though plaintiffs did not demonstrate as strong a likelihood of ultimate success as would generally be required.'" *In re Arthur Treacher's Franchisee Litigation*, 689 F.2d 1137, 1147 (3d Cir. 1982) (quoting *Constr. Ass'n of W. Pa. v. Kreps*, 573 F.2d 811, 815 (3d Cir. 1978)); *see also Reilly*, 858 F.3d at 179 ("[T]he more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief." (quoting *Hoosier Energy*

Rural Elec. Coop., Inc. v. John Hancock Life Ins. Co., 582 F.3d 721, 725 (7th Cir. 2009)). This is so because the adjudicating court's goal is "to minimize the probable harm to legally protected interests" during the pendency of litigation. *Kreps*, 573 F.2d at 815. Here, the strong merits of T.A.'s claims easily meet the requisite standard.

First, any imminent removal to a third country without notice or opportunity to respond would be in violation of the Immigration and Nationality Act ("INA") and the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"). The INA and the Foreign Affairs Reform and Restructuring Act of 1998 codify the principle of non-refoulement, guaranteeing noncitizens the non-discretionary protections of withholding of removal and withholding under the CAT, both of which prevent noncitizen from being removed to a country where they fear torture or persecution. *See* 8 U.S.C. § 1231(3)(A) (withholding of removal); Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States"); *see also Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (U.S., 2013) ("the Attorney General has no discretion to deny [withholding of removal or deferral of removal under the CAT] to a noncitizen who establishes his eligibility"). Noncitizens facing third country removal have the right to seek fear-based protections such as withholding of removal and deferral of removal under CAT. *See D.V.D.*, 778 F. Supp. 3d at 367 (D. Mass.); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025).

ICE, under its current procedures, removes noncitizens to third countries without any notice to that noncitizen or their counsel if that third country has provided diplomatic assurances to the United States that received noncitizens will not be persecuted or tortured. *See* July 9 Guidance. A court may only question the constitutionality of these assurances, not their substance, if they are endorsed by the Executive. *See D.V.D.*, 778 F. Supp. 3d at 390. When effectuating a third country removal to a country that has not provided such assurances, ICE's procedures allow for as little six hours' notice before the removal. *Id.*

If Petitioner is removed to a third country under these procedures, he will be denied sufficient opportunity to communicate with counsel and prepare an application for protection under CAT or withholding of removal. Such summary removal constitutes an unlawful deprivation of Petitioner's statutory right to apply for fear-based protection against removal to the third country.

Second, any imminent removal to a third country without notice or opportunity to respond would be in violation of procedural due process. Noncitizens with a final order of removal have due process rights under the Fifth Amendment. *See Zadvydas*, 533 U.S. at 693 ("this Court has held that the Due Process Clause protects [a noncitizen] subject to a final order of deportation") (citing *Wong Wing*, 163 U.S. at 238 (1986)); *Black*, 103 F.4th at 143 (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). In the context of removal, procedural due process requires that noncitizens receive notice "within a reasonable time and in such a manner as will allow them to actually seek... relief in the proper venue before such removal occurs." *See Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Even if relevant statutes did not require notice and the meaningful opportunity to apply for fear-based protection for removal, such process is constitutionally required. *See Mathews*, 424 U.S. 319 at 332; *Zhu*, 2025 WL 2452352 at *9 n.4

("Courts in this Circuit apply the three-factor balancing test set forth in [*Mathews*] in determining the adequacy of process in the civil immigration context") (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir, 2020)).

If ICE follows its current procedures in effectuating Petitioner's removal to a third country, it will likely remove him either without notice or with only twenty-four hours' notice prior to removal. *See* Pet. ¶¶ 25–26. Such short notice is insufficient time for someone to contact counsel and prepare an application for withholding of removal or protection pursuant to CAT. These procedures deny Petitioner the meaningful opportunity to challenge the decision to remove him to a third country. They are a clear violation of his due process rights.

Third, any imminent removal to a third country without notice or opportunity to respond would be in violation of substantive due process. Under the Due Process Clause, the government may not impose punishment without "an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (collecting cases). The Supreme Court has long held that noncitizens subject to final orders of removal are subject to the guarantees of the Due Process Clause. *See Zadvydas*, 533 U.S. at 693. Moreover, the Due Process Clause prohibits the federal government from imposing punishment as part of its effectuation of noncitizen removal. *Wong Wing v. United States*, 163 U.S. 228, 237 (finding that Congress cannot add punishment to immigration detention or deportation without a prior adjudication of guilt).

The Trump Administration has expanded the use of third country removals in an explicit attempt to punish noncitizens and deter immigration. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *24 (W.D. Wash. Aug. 21, 2025) (citing official video of President Trump stating "[I]f illegal aliens choose to remain in America, they're remaining illegally and they will face severe consequences. Illegal aliens who stay in America face *punishments*, including

significant jail time, enormous financial penalties, confiscation of all property, garnishment of all wages, imprisonment and incarceration, and sudden deportation in a place and manner solely of our discretion.") (emphasis added). The court in *Nguyen* found that the petitioner was likely to succeed on his claim "that ICE's practice of removing noncitizens to countries where they face imprisonment violates the Constitution's prohibition on 'punitive' third country removal." *Id.* at 23.

By subjecting Petitioner to unconstitutionally punitive third country removal practices, Respondents violate his rights under the Due Process Clause.

c. The risk of harm to other interested parties if T.A. is released is minimal compared to the risk of harm should his detention drag on indefinitely.

When a fundamental right, like T.A.'s, is at stake, it weighs heavily against any burden on the opposing party. *See, e.g.*, *Reilly v. City of Harrisburg*, 336 F.3d 451, 472 (M.D. Pa. 2018), aff'd, 790 F. App'x. 468 (3d. Cir. 2019), cert requested ("It goes without saying, however, that a deprivation of a constitutional right is contrary to the public interest and the harm to others (e.g. neighborhood residents, Planned Parenthood employees, and clinic patients), although substantial, does not outweigh such a denial."). This is particularly so where, as here, the burden on other interested parties is merely administrative. *See United States v. Berks County, Pa.*, 250 F. Supp. 2d 525, 541 (E.D. Pa. 2003) (finding that minimal administrative expenses were "far outweighed by the fundamental right at issue"). Here, the removal of T.A. to a country where he fears he would be persecuted or tortured places his safety and ultimately his life at risk.

The risk of harm to Respondents is vastly outweighed by the ongoing harm and risk of additional imminent harm to T.A. As discussed above, T.A. seeks to avoid the irreparable harm that he will suffer if he is removed a third country where he will be persecuted or tortured in violation of his constitutional and statutory rights. This harm to him greatly outweighs any harm

that the government may suffer because of staying his removal during the pendency of this Petition. The harm to the government if his removal is stayed is purely fiscal or administrative. As such, the harm to the government in releasing T.A. is minimal at best.

Here, the balance clearly tips in favor of T.A., whose life and liberty weigh much more heavily than any burden on Respondents.

d. The public interest favors a stay of T.A.'s removal

"If a plaintiff proves 'both' a likelihood of success on the merits and irreparable injury, it 'almost always will be the case' that the public interest favors preliminary relief." *Issa v. School Dist. of Lancaster*, 847 F.3d 121, 143 (3d Cir. 2017) (quoting *Winback & Conserve Program, Inc.*, 42 F.3d at 1427 n.8). Here, T.A. has made a clear showing that he is likely to succeed on the merits of the claims in his habeas petition and that he will suffer irreparable harm absent the issuance of a temporary restraining order. Moreover, "[i]n the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights." *Council of Alternative Pol. Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997); *see also Planned Parenthood of N.Y.C., Inc. v. U.S. Dep't of Health & Human Servs.*, 337 F. Supp. 3d 308, 343 (S.D.N.Y. 2018) ("It is evident that '[t]here is generally no public interest in the perpetuation of unlawful agency action.'") (*quoting League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)).

No public interest is served by permitting the government to remove vulnerable individuals, like T.A.., who is at heightened risk of severe harm or death, without affording him procedural safeguards. The public interest thus lies in preventing Respondents from further violating his rights. *See Osorio–Martinez v. Att'y Gen.*, 893 F.3d 153, 179 (3d. Cir. 2018) ("[I]t is squarely in the public interest to enable individuals to partake of statutory and constitutional

rights and meaningful judicial review[.]") The public has an interest in preserving the right to petition for habeas review to remedy unlawful executive action as long as there is no detriment to the public. *See Kanivets v. Riley*, 268 F. Supp. 2d 460, 469 (E.D. Pa. Oct. 3, 2003) (citing *INS v. St. Cyr*, 533 U.S. 289 (2001)).

This Court should therefore find that the balance of equities and public interest weigh in favor of granting T.A.'s motion.

II. To prevent irreparable legal and bodily injury to T.A., the Court should issue an order to show cause requiring Respondent to answer this claim on an expedited basis.

In light of the ongoing and imminent risk to T.A.'s health and safety in Respondents' custody and the ongoing deprivation of his right to procedural and substantive due process, and statutory protections, the Court should follow the strict procedural deadlines of section 2243. Accordingly, the Court should forthwith issue a writ of habeas corpus or an order to show cause and order Respondents to make a return within three days. *See* 28 U.S.C. § 2243. In the alternative, the Court should issue an order to show cause and order Respondents to expeditiously file a return.

An order to show cause is appropriate in this case because any other procedure will cause T.A. further irreparable legal and bodily injury. The Government has provided no assurances that it would not seek to remove him to Mexico before his reasonable fear interview. Swift judicial intervention to prevent such harms is the very reason that the writ of habeas corpus exists and enjoys such reverence in American jurisprudence. *See Fay v. Noia*, 372 U.S. 391, 399–400 (1963). Only issuance of an order to show cause will fulfill the Great Writ's promise in this case.

CONCLUSION

For the foregoing reasons, T.A. respectfully moves this Court to

(1) Issue a temporary restraining order or preliminary injunction enjoining Respondents from removing him to a third country during the pendency of his habeas petition; and

(2) Order Respondents to show cause why Petitioner's Verified Petition should not be expeditiously granted; and

(3) Grant Petitioner such other, further and additional relief as the Court deems just and appropriate.

Brooklyn, NY

February 6, 2025

Respectfully submitted,

/s/ Erica Rodarte

Erica Rodarte (PA Bar No. 332762) *
Brooklyn Defender Services
177 Livingston Street, 7th Fl
Brooklyn, NY 11201
T: (718) 254-0700 ext. 288
E: erodarte@bds.org

** Application for admission pending*

cc: Brian D. Miller, Assistant United States Attorney M.D. Pa. (by email)