

Magistrate Judge Grady J Leupold

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE, WASHINGTON

MASSERAY SIBY,

Petitioner,

v.

DREW BOSTOCK, *ET AL.*

Respondents.

CASE NO.: 2:26-cv-00993-GJL

PETITIONER'S REPLY TO FEDERAL
RESPONDENTS' OPPOSITION TO
MOTION FOR TEMPORARY
RESTRAINING ORDER AND STAY OF
REMOVAL

Noted for Consideration:
March 30, 2026

I. Introduction

Federal Respondents make several claims and arguments in their opposition to Plaintiff's motion for a temporary restraining order (TRO) and stay of removal that lack both factual and legal support. Their jurisdictional arguments fail to address well-established exceptions to the general district of confinement and immediate custodian rules applicable in habeas cases. Respondents are also incorrect in their contention that 28 U.S.C. § 2241 bars jurisdiction. On multiple grounds, Petitioner's claims fall outside Section 1252(g). This Court

PETITIONER'S REPLY

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1 has subject matter jurisdiction to review Yang's claims. *Zadvydas v. Davis*, 533 U.S. 678, 688
2 (2001).

3 Petitioner Masseray Siby is entitled to his requested injunctive relief under both the
4 *Winter* and sliding scale tests. He is likely to succeed on the merits and has raised serious
5 questions regarding his claims, including 1) whether his prolonged detention violates due
6 process, 2) whether Respondents' have failed to establish their ability to remove him to
7 Mauritania in the foreseeable future given their failure to obtain travel documents for Mr. Siby,
8 3) whether Respondents' detained him without constitutionally adequate notice or hearing; his
9 prolonged detention, and whether Respondents are trying to remove him to a third country
10 without affording meaningful opportunity to seek fear based protections from removal.

11 While Petitioner's requested injunctive relief imposes little to no burden on
12 Respondents, without it, Mr. Siby will potentially face life-changing and irreparable harm.

13 **II. Legal Standard**

14 To grant a Temporary Restraining Order, the petitioner must meet one of two tests.
15 Under the more recent *Winter* test, petitioner must prove as follows:

- 16 [1] that he is likely to succeed on the merits,
17 [2] that he is likely to suffer irreparable harm in the absence of
18 preliminary relief,
19 [3] that the balance of equities tips in his favor, and
20 [4] that an injunction is in the public interest.

21 Alternatively, pursuant to the "sliding scale test", the petitioner must prove "serious
questions going to the merits" and "a hardship balance that tips sharply toward the petitioner."
Alliance For The Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter*

1 test, the petitioner must also show a likelihood of irreparable injury and that the injunction is in
2 the public interest. “Under this approach, the elements of the preliminary injunction test are
3 balanced, so that a stronger showing of one element may offset a weaker showing of another”
4 and a petitioner is entitled to a TRO if he has raised “serious questions going to the merits ...
5 and the balance of hardships tips sharply in [his] favor.” *Alliance For The Wild Rockies*, 632
6 F.3d at 1131. (quoting *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813
7 (9th Cir. 2003)).

8 **III. Argument**

9 **A. This Court should assume jurisdiction over this action pursuant to *Ex Parte Endo* 10 **and the unknown custodian rule.****

11 Title 28, Section 2241 provides district courts with authority to grant relief “within their
12 respective jurisdictions.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (quoting 28 U.S.C.
13 § 2241(a)). As a general matter, “a habeas petition seeking to challenge present physical
14 custody should be filed ‘in the district of confinement’ and ‘the proper respondent to a habeas
15 petition is ‘the person who has custody over [the petitioner].’” *Id.* at 426; *see Kanai v. McHugh*,
16 639 F.3d 251, 255 (4th Cir. 2011) (“When a petitioner is physically detained ... the ‘district of
17 confinement’ necessarily is the location of both the habeas petitioner and the immediate
18 custodian”). The custodian is generally “the person with the ability to produce the prisoner's
19 body before the habeas court”. *Padilla*, 542 U.S. at 434.

20 However, the default district of confinement and immediate custodian rules are not
21 absolute; the Supreme Court has recognized that when an individual is “held in an undisclosed

1 location by an unknown custodian, it is impossible to apply the immediate custodian and district
2 of confinement rules.” *Id.*, 542 U.S. at 450 n.18; see *Ex parte Endo*, 323 U.S. 283, 306–07
3 (1944) (“The statute upon which the jurisdiction of the District Court in habeas corpus
4 proceedings rests... gives it power ‘to grant writs of habeas corpus for the purpose of an inquiry
5 into the cause of restraint of liberty.’ That objective may in no way be impaired or defeated by
6 the removal of the prisoner from the territorial jurisdiction of the District Court. That end may
7 be served and the decree of the court made effective if a respondent who has custody of the
8 prisoner is within reach of the court’s process even though the prisoner has been removed from
9 the district since the suit was begun.”) The *Endo* court clarified that the focus of the writ of
10 habeas corpus is on the respondent, not the prisoner, because it is through the respondent that
11 the court is able to secure the petitioner’s freedom. *Id.* Here, though the warden of NWIPC may
12 no longer have the power to set Mr. Siby free, the other named Respondents certainly do, a fact
13 they have not disputed. Dkt. 12. As recognized by this district court, “*Endo* controls and the
14 Government fails to submit evidence to demonstrate the Court lacks jurisdiction under *Endo*,
15 i.e., that no other official remains within this court’s jurisdiction with legal authority to
16 effectuate petitioner’s release.” *Singh v. United States Immigr. & Customs Enft Field Off. Dir.*,
17 No. 2:24-CV-00705-RSL-TLF, 2025 WL 746295, at *8 (W.D. Wash. Feb. 14, 2025), *report*
18 *and recommendation adopted*, No. 2:24-CV-00705-RSL-TLF, 2025 WL 745629 (W.D. Wash.
19 Mar. 7, 2025). Accordingly, this court has jurisdiction over this action under *Endo* and its
20 progeny because there is no evidence that the other named respondents are outside this court’s
21 jurisdiction. *Id.*; *Palma v. Holder*, No. C14-1306-JCC, 2014 WL 7240668, at *1 (W.D. Wash.

Dec. 19, 2014); *Ali v. Ashcroft*, No. C02-2304P, 2002 WL 35650202, at *3 (W.D. Wash. Dec. 10, 2002).

Other district courts have characterized this principle announced by *Endo* “unknown-custodian exception” provides that, “if the government moves a detainee from a district and their attorney cannot discover their location with reasonable inquiry, the attorney may file a habeas petition in the detainee's last-known location against their ultimate custodian.” *Suri v. Trump*, 2025 WL 1806692 (4th Cir. July 1, 2025).at *4. *See, e.g., United States v. Moussaoui*, 382 F.3d 453, 465 (4th Cir. 2004) (where the immediate custodian is unknown, it is proper to serve the petitioner's ultimate custodian). *Darwich v. Kemerling*, No. 3:25-CV-876-MOC, 2025 WL 3653340, at *4 (W.D.N.C. Dec. 17, 2025).¹

Respondents rely on the general rule that jurisdiction attached at the time of filing a habeas petition, urging without authority that since Petitioner was no longer in Washington State, or in “Washington airspace”, that he was outside of the Western District of Washington and therefore this Court does not have jurisdiction over this petition. Dkt. 12, page 5. Yet, they do not allege, and there is no indication that any other district had jurisdiction at the time of

¹ Though the Ninth Circuit case addressing this issue was subsequently withdrawn, the court’s reasoning regarding the statutory custodian requirement for habeas corpus remain instructive (finding such requirement to be “sufficiently flexible to permit the naming of respondents who are not immediate physical custodians if practicality, efficiency, and the interests of justice so demand.” *Armentero v. I.N.S.*, 340 F.3d 1058, 1068 (9th Cir. 2003), *reh'g granted, opinion withdrawn*, 382 F.3d 1153 (9th Cir. 2004), *opinion after grant of reh'g*, 412 F.3d 1088 (9th Cir. 2005). Though that case was discussing the need for flexibility in naming custodians in a context where immigrants were frequently being moved around between various local jails and other places of detention, such a situation is clearly analogous to the recent practices of ICE to transfer detainees to different jurisdictions, apparently at times to avoid habeas jurisdiction. It is also in accordance with the recognition of the unknown custodian rule adopted by other jurisdictions.

1 filing when Petitioner was allegedly mid-flight to Arizona. Dkt. 12. Moreover, the only proof
 2 submitted by Respondents in support of their assertion that Mr. Siby was already in flight at the
 3 time of filing is a declaration by an ICE officer. See Dkt. 10, 12. Such evidence is insufficient to
 4 base a determination in these proceedings. *Rubin ex rel. NLRB v. Vista Del Sol Health Servs.,*
 5 *Inc.* at 1100-01. The ICE officer's declaration and Respondents' opposition also fail to address
 6 the issue of Petitioners' lack of travel documents, or how after two decades of being unable to
 7 remove Petitioner, ICE suddenly has the ability to do so. Dkt. 10, 12.

8 Under the current administration, ICE has become an agency widely reported of lying
 9 under oath, disobeying established law and judicial orders, and otherwise flouting the law to
 10 achieve its dubious ends of deporting and detaining as many foreign nationals as possible, as
 11 quickly as possible. See *Clarke v. Nassau County Correctional Center*, No. 2:25-cv-06773-
 12 GRB, 2025 WL 3674471, (E.D.N.Y. Dec. 18, 2025; [https://themainemonitor.org/judges-
 13 admonish-ice-falsehoods-violating-court-orders/](https://themainemonitor.org/judges-admonish-ice-falsehoods-violating-court-orders/) Accordingly, without corroborating evidence,
 14 the officer's declaration is not credible and should be accorded little, if any evidentiary weight.
 15 Respondents failed to provide documentation including the flight manifest showing Mr. Siby's
 16 actual time of departure and arrival on the date in question, despite previously warranting they
 17 would do so. See Exhibit Dkt. 9, page 2; Exhibit A.

18 Even if Respondents' allegations that Mr. Siby's flight was no longer in Washington
 19 airspace at the time his petition was filed are true, Respondents do not cite to any legal authority
 20 requiring him to be in Washington airspace for jurisdiction to attach. Dkt. 12. This standard is
 21 untenable for obvious reasons. It would deprive petitioners like Mr. Siby of being able to file a

1 habeas *in any district* while in flight or other interjurisdictional travel while a petitioner's
2 whereabouts are not reasonably discoverable by counsel. See Dkt. 7. The logical extension of
3 Respondents' argument is that Petitioner should have filed in some other district. They do not
4 indicate where (perhaps the district below whatever airspace he was flying over, but that would
5 be absurd when he may have never set foot in the fly-over district).

6 The affidavits and exhibits filed by counsel in support of this motion establish the efforts
7 to determine Petitioner's location for purposes of filing a habeas petition. Dkt. 7, Exhibits A and
8 B. When Mr. Siby's location could not be definitively determined, counsel took the only action
9 they could: to file in the district of Petitioner's most recently known detention. Dkt. 1, 7. Under
10 these circumstances, the court should apply the unknown custodian exception to conclude that
11 this district has jurisdiction over this action. *Suri v. Trump* at *4.

12 **B. Petitioner has properly verified his Petition.**

13 Petitioner's habeas claim included a verification on page twelve of the initial habeas
14 claim. This verification was signed by Petitioner's attorney, which is allowable under 28
15 U.S.C. § 2242, which provides that a petition must be verified "by the person for whose relief it
16 is intended or by someone acting in his behalf." Dkt. 1, page 12; see also Dkt. 14, page 33.

17 The verification, signed by Petitioner's attorney, included in the initial habeas filing,
18 explains, "Petitioner has not verified himself because I am unable to locate his
19 whereabouts,". *Id.* The practice of allowing verifications to be signed by someone acting on
20 behalf of a petitioner has long been an allowed practice, especially in instances where the
21 petitioner is unable to verify on their own behalf. *See; Warren v. Cardwell*, 621 F.2d 319, 321

1 n.1 (9th Cir. 1980) (finding inaccessibility when the prisoner “could not sign and verify the
2 petition because the prison was ‘locked down.’”)

3 Additionally, the included verification is proper as it complied with the Local Civil Rule
4 100(e). Local Civil Rule 100(e) requires a proper verification, filed by someone acting on
5 behalf of the Petitioner to “*state he or she knows the facts set forth therein, or if upon*
6 *information and belief, the sources of his or her information shall be stated.*” The verification
7 signed by Petitioner’s counsel provides, “I verify the facts contained in the Petition for Writ of
8 Habeas Corpus, upon information and belief, having reviewed the relevant records and
9 pleadings.” Dkt. 1, page 12. This verification is compliant with the requirement to “knows the
10 facts set forth therein” by using the language “I verify the facts contained in the Petition”. It is
11 also compliant with identifying the sources of information, through the language “having
12 reviewed the relevant records and pleadings.” Petitioner also verified his amended petition on
13 the same bases. Dkt. 14.

14 Accordingly, Respondents’ arguments regarding alleged failures of the Petitioner’s
15 verifications do not present an accurate or sufficient basis for the Court to dismiss the Petition.

16 **C. This Court Has Jurisdiction to Stay the Removal Order**

17 As noted by the Respondents, the purpose of preliminary injunctive relief is to preserve
18 the status quo pending final judgment, rather than to obtain a preliminary adjudication on the
19 merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).
20 Preserving the status quo is precisely what Petitioner requests in his motion which includes,
21 among other temporary relief, a stay of deportation pending these proceedings. Dkt. 6.

1 28 U.S.C. § 2241’s jurisdictional bar has no bearing on this court’s jurisdiction over
2 Petitioner’s motion for injunctive relief for at least three important reasons. As an initial
3 matter, because Mr. Siby has invoked its habeas and federal question jurisdiction, the Court
4 could provide equitable relief on those claims if Petitioner meets the standard for the requested
5 temporary relief including a stay of removal. Dkt. 1, 14. *See Roman v. Wolf*, 977 F.3d 935,
6 941–42 (9th Cir. 2020); *Castillo Rivas v. Bondi*, No. C26-0134-KKE, 2026 WL 295705, at *4
7 (W.D. Wash. Feb. 4, 2026); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 732 (W.D. Wash.
8 2025). Section 1252(g) does not “prevent the district court from exercising jurisdiction over
9 plaintiff’s due process claims.” *Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998). The
10 Supreme Court has interpreted Section 1252(g) narrowly, limiting it to only “three discrete
11 actions”: the “‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute
12 removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)
13 (“AADC”) (quoting 8 U.S.C. § 1252(g)) (emphasis in original). The Ninth Circuit has
14 specifically instructed that challenges to the right to meaningful notice and an opportunity to
15 present a fear-based claim before removal fall outside Section 1252(g). *Ibarra-Perez v. United*
16 *States*, 154 F.4th 989, 996–97 (9th Cir. 2025) (finding that purely legal challenges to last
17 minute removal without the opportunity to present a fear-based claim fall outside Section
18 1252(g)).

19 Mr. Siby raises several constitutional claims in challenging his removal. Dkt. 1, 14. He
20 does not contend that ICE is forbidden from removing him from this country per se, rather that
21 he has a right to have his constitutional claims decided by this court before he is removed. *Id.*,

1 *Yang v. Scott, et. al.*, 2:26-cv-00469-JNW, 2026 WL 632661 at *4 (W.D. Wash. Feb. 25,
2 2026). In his amended petition, Mr. Siby has raised several due process and constitutional
3 arguments beyond his initial claim that his prolonged detention violates his fifth Amendment
4 due process rights. Dkt. 1, 14.

5 Next, even without these additional claims, the exact issue of whether Section 1252(g)
6 bars jurisdiction over Petitioner's request for a temporary stay of removal has already been
7 decided by this court. ("Many courts—including this one—have held that challenges to the
8 length of detention or the revocation of supervised release fall outside Section 1252(g) because
9 they do not implicate one of the statute's three enumerated actions.") The unlawful length of
10 his detention is precisely what Petitioner challenged in his initial petition. Dkt. 1; Dkt. 14.

11 Lastly, with no proof of where he was born, Mr. Siby is de facto stateless. Under such
12 circumstances, Respondents must affirmatively prove that a proposed alternate country of
13 removal will accept the applicant. 8 U.S.C. § 1231(b)(2)(E)(vii); *El Himri v. Ashcroft*, 378
14 F.3d 932, 939–40 (9th Cir. 2004).

15 This court accordingly may preserve the status quo, by staying Mr. Siby's deportation
16 pending a decision on the merits of these habeas proceedings, without implicating the 28
17 U.S.C. § 2241 jurisdictional bar.

18 **D. Petitioner Has Demonstrated a Likelihood of Success on the Merits.**

19 Mr. Siby is likely to succeed on the merits of his *Zadvydas* prolonged detention claim
20 and other claims. Regarding the prolonged detention claim, Mr. Siby has been detained for
21 well over the threshold six months and has good reason to believe that the government cannot

1 deport his to Mauritania despite its supposed plan to do so, because attempts to obtain travel
2 documents from Mauritania for Mr. Siby have repeatedly been unsuccessful. Dkt. 14, ¶¶3, 26,
3 29. Where a receiving country declines to issue documentation despite repeated requests,
4 removal is not merely delayed, it is functionally impossible. Courts routinely recognize that
5 such circumstances satisfy *Zadvydas*. See *Zadvydas*, 533 U.S. at 690 (noting that removal
6 becomes a “remote possibility” where no country will accept the individual).

7 Additionally, Respondents have failed to provide evidence to rebut Mr. Siby’s showing
8 that removal to Mauritania is not reasonably foreseeable. Dkt. 10, 12. They told Mr. Siby that
9 “it doesn’t matter” that they don’t have Mauritanian travel documents for him, and therefore
10 he cannot be deported to Mauritania for the same reasons deportation efforts have failed over
11 the past twenty years. Dkt. 6, 7, 14, 15, Ex. D. Several district courts have found that the
12 government’s bare assertion that they are preparing to deport a foreign national fails to
13 establish reasonably foreseeable removal. “Pursuing removal,” does not make it foreseeable
14 under *Zadvydas*. *Rea-Hernandez v. Bondi*, 2026 WL 322874, at *5 (W.D. Wash. Feb. 6, 2026);
15 *See, e.g., Tran v. Noem*, No. 1:25-cv-01523-TLN-CKD, 2025 WL 3268491, at *3 (E.D. Cal.
16 Nov. 24, 2025) (assertion that government was “actively working on obtaining a travel
17 document for Petitioner to Vietnam” was insufficient to show removal was reasonably
18 foreseeable); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D.
19 Cal. July 16, 2025) (“Respondents’ intent to complete a travel document request for Petitioner
20 does not make it significantly likely he will be removed in the foreseeable future”);
21 *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *2-*3 (W.D. Wash.

1 Nov. 21, 2025) (holding that a government argument that it was "actively working to
 2 effectuate his removal to France" was insufficient to render petitioner's removal reasonably
 3 foreseeable in the absence of travel documents).

4 Petitioner is also likely to succeed on the merits of his claims concerning ICE's violation
 5 of Mr. Siby's due process rights by revoking his OSUP and detaining him without providing the
 6 requisite pre-deprivation notice and a hearing. Dkt. 15, ¶¶4, 27,44 et. seq.; *Yang*, 2:26-cv-
 7 00469-JNW, 2026 WL 632661 at *3 (W.D. Wash. Mar. 3, 2026). (Finding that due process
 8 requires pre-deprivation notice and a hearing before revoking a non-citizen's order of
 9 supervision and re-detaining them, citing several WDWA and other district court cases.) *See*
 10 *e.g. Ledesma Gonzalez v. Bostock*, Case No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at
 11 *7 (W.D. Wash. Oct. 7, 2025); *Vo v. Scott*, No. 2:26-CV-00135-JNW, 2026 WL 445046 *4
 12 (W.D. Wash. Feb. 17, 2026); *Aslan v. Wamsley et al.*, Case No. 2:25-cv-02698-JNW, 2026 WL
 13 238675, at *3 (citing *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025)).

14 Though Petitioner believes he is likely to succeed on the merits of his other claims as
 15 well, for the sake of brevity, this briefing does not specifically address his additional claims.

16 **E. Petitioner Has Demonstrated Irreparable Harm.**

17 **1. Respondents have attempted to remove Petitioner in violation of the 18 Provisional orders of this Court.**

19 Petitioner notes that Respondents have already violated this court's provisional orders
 20 prohibiting them from moving Mr. Siby. Already, On March 29, 2026, at 10am, Respondents
 21 attempted to remove petitioner by putting him on a plane which he was pulled off of prior to
 departure. See Dkt. 15, Ex. A. This occurred even though AUSA Morris had provided ICE with

1 copies of the provisionally granted TRO staying removal on Friday, March 27th. See Dkt. 15,
2 Ex. D. Apparently, ICE does not believe they are subject to this court's jurisdiction. Without
3 injunctive relief that clarifies this point, Petitioner is likely to suffer irreparable harm that this
4 court cannot cure by being removed prior to having his claims decided by this court.

5 **2. Removal to Mauritania, a country that does not recognize Petitioner as a**
6 **citizen, causes irreparable harm.**

7 Respondents' assertion that removal would "end" Petitioner's harm misstates both the
8 facts and the law. Petitioner faces concrete, individualized, and severe harm upon removal that
9 far exceeds the "ordinary burdens of removal" contemplated in *Nken v. Holder* 556 U.S. 418
10 (2009) and its progeny: Petitioner has no verifiable nationality, and the Mauritanian embassy
11 has repeatedly refused to issue travel documents because it cannot confirm his citizenship.
12 Accordingly, removal would not constitute lawful repatriation but rather a forcible transfer to a
13 country that has not agreed to receive him, placing him at immediate risk of detention, rejection,
14 or expulsion upon arrival. Courts recognize that such circumstances constitute irreparable harm
15 because they expose an individual to legal limbo, detention, and deprivation of basic rights in a
16 foreign country. See *Nken v. Holder*, 556 U.S. at 435 (irreparable harm exists where removal
17 would subject a petitioner to consequences that cannot be undone). Petitioner faces uniquely
18 severe harms: removal without proof of citizenship, without legal status in any country, and
19 without Mauritania's recognition of his citizenship. See Dkt. 15, Ex. C.

20 Without identity or nationality documents, Petitioner is likely to be treated as an
21 undocumented foreign national upon arrival and subject to immigration detention or expulsion

1 proceedings in Mauritania or a third country. See
2 [https://www.reuters.com/article/world/mauritani-ians-who-sought-refuge-in-us-face-deportation-](https://www.reuters.com/article/world/mauritani-ians-who-sought-refuge-in-us-face-deportation-then-jail-idUSKBN1OG1D9/)
3 [then-jail-idUSKBN1OG1D9/](https://www.reuters.com/article/world/mauritani-ians-who-sought-refuge-in-us-face-deportation-then-jail-idUSKBN1OG1D9/). This is not speculation, but the predictable consequence of being
4 delivered to a country that has already refused to recognize him. Dkt. 14, ¶¶26, 29; Dkt. 15, ¶¶6-
5 8, Ex. 16. Petitioner is further vulnerable to being denied recognition due to his black skin based
6 on documented discrimination and mistreatment of black Mauritians. According to Human
7 Rights Watch, Mauritania expelled up to 50,000 black citizens after clashes with Senegal over
8 border land in 1989, forcing them to surrender ID cards and nationality documents². The Ninth
9 Circuit has made clear that irreparable harm exists where removal exposes a petitioner to a
10 substantial risk of detention or legal jeopardy that cannot later be remedied. See *Leiva-Perez v.*
11 *Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (recognizing that irreparable harm includes non-
12 speculative risks flowing from removal).

13 Respondents' argument improperly assumes that removal necessarily alleviates harm
14 because it ends detention. Dkt. 12. That is incorrect as a matter of law. The Supreme Court has
15 emphasized that the relevant inquiry is not whether detention ends, but whether removal itself
16 will cause irreparable injury that cannot later be undone. *Nken v. Holder*, 556 U.S. at 435. Once
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19 ² Human Rights Watch/Africa. *Mauritania's Campaign of Terror: State-Sponsored*
20 *Repression of Black Africans*. Human Rights Watch, April 8, 1994. ISBN: 1-56432-133-9.
21 Library of Congress Catalog Card Number: 94-75822. Printed in the United States of
America; Human Rights Watch. *Mauritania: Years of Migration Control Abuses*.
2025. <https://www.hrw.org/news/2025/08/27/mauritania-years-of-migration-control-abuses>

1 Mr. Siby is removed into a country that does not recognize him, the resulting harms, such as
2 detention, expulsion, or indefinite statelessness, cannot be remedied by this Court.

3 **3. This Court Should Prevent Respondents from Deporting Petitioner to A**
4 **Third Country**

5 This court should further stay Respondents from deporting Petitioner to a third country.
6 Petitioner's removal to a third country is no more lawful or feasible than removal to Mauritania,
7 and it presents the same, if not greater, constitutional and statutory concerns. Under 8 U.S.C. §
8 1231(b), the Government may remove a noncitizen to an alternative country only where that
9 country is willing to accept the individual. The statute does not authorize the United States to
10 deposit a person into a foreign country without its consent or legal basis for admission. Here,
11 Respondents have identified no third country that has agreed to accept Petitioner, nor have they
12 produced any evidence that such acceptance is likely. Dkt. 10, 12. Even if Respondent were to
13 produce such country, courts in this district have already held that ICE's current third country
14 removal policy "contravenes Ninth Circuit law," *Baltodano v. Bondi*, No. C25-1958-RSL, 2025
15 WL 3484769, (W.D. Wash. Dec. 4, 2025), at *6 (quoting *Nguyen v. Scott*, 796 F.Supp.3d 703,
16 728 (W.D. Wash. 2025)).

17 Moreover, removal to an unidentified third country would violate fundamental due
18 process because it deprives Petitioner of any meaningful opportunity to contest the legality and
19 consequences of that removal. The Ninth Circuit has emphasized that noncitizens must be
20 afforded notice and an opportunity to be heard regarding the country of removal, particularly
21 where removal may expose them to detention, rejection, or other serious harms. See, e.g., *Kaur*
v. Ashcroft 388 F.3d 734, 737–38 (9th Cir. 2004) (recognizing due process protections in

1 removal proceedings). Here, Petitioner has received no notice of any specific third country, no
2 information about its willingness to accept him, and no opportunity to challenge the risks he
3 would face there. Dkt. 14, ¶28.

4 Petitioner raises serious questions about whether his constitutional rights have been
5 violated. When the “alleged deprivation of a constitutional right is involved, most courts hold
6 that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
7 989, 1001–02 (9th Cir. 2005). Courts in this district have held that the government's practice of
8 third-country removal is punitive as a matter of policy and thus violates due process under
9 *Wong Wing v. United States*, 163 U.S. 228, 236-38 (1896), and *Zadvydas*, 533 U.S. at 693-94.
10 *Abubaka v. Bondi*, No. CV25-1889RSL, 2025 WL 3204369, at *6 (W.D. Wash. Nov. 17, 2025),
11 at *8; *Nguyen v. Scott*, 796 F.Supp.3d 703, 728 (W.D. Wash. 2025)),; *Hambarsonpour v. Bondi*,
12 No. CV25-1802-RSM, 2025 WL 3251155, (W.D. Wash. Nov. 21, 2025), at *1, *4-5; *Baltodano*
13 *v. Bondi*, No. C25-1958-RSL, 2025 WL 3484769, (W.D. Wash. Dec. 4, 2025), at *10. These
14 courts have particularly taken note of the descriptions of punitive treatment that deviate from
15 the government's promises in individual cases before the court. *See, e.g., Rivera-Trigueros v.*
16 *Bondi*, No. 24-3764, 2025 WL 1189561, at *2 (9th Cir. Apr. 24, 2025) (finding individual had
17 shown that, if detained in El Salvador, he would “confront a prison environment in which
18 torture is pervasive” and that “the squalid conditions in Salvadoran prisons-which include
19 extreme overcrowding, inadequate sanitation, and a lack of food-are deliberately inflicted by
20 government officials as a form of punishment.”) (citation omitted); *Abrego Garcia v. Noem*, 777

1 F. Terrorism Confinement Center ('CECOT') in El Salvador, a notorious supermax prison
2 known for widespread human rights violations.").

3 Removal to a third country would expose Petitioner to the same irreparable harms
4 identified above, if not more severe ones, by placing him in a country with which he has no ties,
5 no legal status, and no recognized identity. Without proof of citizenship or lawful admission,
6 Petitioner is likely to be treated as an undocumented foreign national and subjected to detention,
7 removal, or refoulement. These are not generalized or speculative harms; they are the
8 predictable consequences of transferring a stateless individual to a country that has not agreed to
9 receive him. Accordingly, Petitioner satisfies this element of the *Winter* test.

10 **F. The Balance of Equities and Public Interest Weigh In Favor of Relief.**

11 The final two *Winter* factors merge when the Government is a party. *Padilla v. Immigr.*
12 *& Customs Enf't*, 953 F.3d 1134, 1141 (9th Cir. 2020). These factors also tip sharply in
13 Petitioner's favor. While the public interest in the enforcement of immigration laws and the
14 prompt execution of removal orders, the TRO imposes little to no burden on Respondents (they
15 allege none). Dkt. 12.

16 On the other hand, absent a TRO, Mr. Siby will potentially face life-altering and
17 irreparable harm. Removing persons to locations where they have no identity documents or
18 permission to work contributes to vulnerability to human trafficking and slavery, thus both the
19 balance of equities and the public interest weighs in favor of relief. The 2025 Trafficking in
20 Person's report continues to list Mauritania as a Tier 2 country for human trafficking, finding
21 inadequate prevention of trafficking in persons, including heredity slavery and migrant

1 smuggling. See, U.S. Department of State. Trafficking in Persons Report: 2025. Washington,
2 D.C.: Department of State, 2025. Accordingly, Petitioner risks unlawful removal to a third
3 country, while Respondents suffer no hardship by being prevented from following their
4 unlawful deportation practices.

5 ICE has already defied this court's interim Orders by transporting Mr. Siby from the
6 detention center where he was detained at the time those orders were entered to an unknown
7 location. See Dkt. 11, 13, 15, Ex. A and B. Thus, the public interest would affirmatively be
8 served by preventing Respondents' further unlawful acts.

9 **G. Petitioner is entitled to a TRO under the sliding scale test.**

10 Petitioner alternatively meets the "sliding scale" test, which requires the petitioner to
11 prove "serious questions going to the merits" and "a hardship balance that tips sharply toward
12 the petitioner" to establish entitlement to a TRO. *Alliance For The Wild Rockies v. Cottrell*,
13 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the petitioner must also show a
14 likelihood of irreparable injury and that the injunction is in the public interest. "Under this
15 approach, the elements of the preliminary injunction test are balanced, so that a stronger
16 showing of one element may offset a weaker showing of another." *Alliance For The Wild*
17 *Rockies*, 632 F.3d at 1131. Petitioner has already established serious questions on the merits of
18 his claims. See *Section III.D, supra*. And the hardship balance tips sharply towards Mr. Siby.
19 See *Section III.F, supra*.

20 **IV. Conclusion**

1 For the reasons set forth herein, this Court should assume jurisdiction over this matter
2 and grant Petitioner's Motion for a Temporary Restraining Order, which includes enjoining
3 Respondents from executing Petitioner's removal order. Petitioner has established entitlement
4 to such relief under both the *Winter* and sliding scale tests and such relief is necessary and
5 proper to preserve the status quo during these proceedings. There is very little harm to
6 Respondents if the court grants the requested relief. Respondents permitted Petitioner to live
7 and work in the United States for nearly twenty years after a final order of removal was initiated
8 against him, and have alleged no change in circumstances to indicate harm would follow if this
9 Court grants the TRO.

10 Accordingly, Petitioner's Motion for Temporary Restraining Order should be granted.

11 Respectfully Submitted and Dated: March 30, 2026
12

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V. CERTIFICATE

I certify that this memorandum contains 5061 words (excluding the caption, signature block, and certificate), in compliance with the Local Civil Rules.

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