Nicole Alicia Gorney (SBN 340478)
ngorney@vidaslegal.org
VIDAS
418 B Street, First Floor
Santa Rosa, CA 95401

Pro Bono Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OTIS NICHOLAS FFRIEND

Petitioner,

vs.

SERGIO ALBARRAN, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Acting Attorney General of the United States, acting in their official capacities,

Respondents.

Case No.: 3:26-cv-03942-WHO

PETITIONER'S TRAVERSE IN REPLY TO RESPONDENTS' MOTION FOR RECONSIDERATION AND IN SUPPORT OF TRO AND PRELIMINARY INJUNCTION

INTRODUCTION

On May 1, 2026, Petitioner filed a petition for writ of habeas corpus and motion for temporary restraining order ("TRO") after being arrested and detained by Respondents. On May 2, 2026, the Court granted the TRO to preserve the status quo pending further briefing and a hearing on this matter.

On May 8, 2026, Respondents filed a motion for reconsideration on the motion for TRO. The Court has scheduled a hearing on the TRO and the motion for reconsideration on May 14, 2026. The Court has ordered replies by May 12, 2026. Below is Petitioner's response to Respondents' motion.

Likelihood to Prevail on the Merits

Respondents moved for the dissolvment of the TRO based on their belief that Petitioner is unlikely to prevail on the merits of his claim. However, many District Courts have already found that challenges to the government's policy on third-country removals are "likely to succeed on the merits." *Baltodano v. Bondi*, 2025 WL 2987766, at *2 (citing Nguyen, 2025 WL 2419288 at *19; ZR., 2025 WL 1810210, at *3; *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569, at *4 (W.D. Wash. Sept. 5, 2025); and *Phaymany v. Northwest Immigration and Customs Enforcement Processing Center*, 2:25-cv-00854-RAJ-MLP (W.D. Wash. Sept. 25, 2025), Dkt. 22 at *5); cf Aden, 409 F. Supp. 3d at 1009-11 (declaring "[a] noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation" and ordering that noncitizen be permitted to apply for asylum, withholding of removal, and CAT protection before the immigration court prior to third-country removal). More recently, *see A.A.M., Petitioner, v. TONYA ANDREWS*, 2026 WL 1266280, at *2 (E.D.Cal., 2026), where petition for writ of habeas corpus was granted and the government was

enjoined from removing Petitioner via a third-country deportation without providing him meaningful notice and opportunity to assert a fear-based claim for relief from removal.

Because of the various recently decided cases similar to the instant case, Petitioner is likely to prevail on the merits of his claim.

Jurisdiction

Additionally, Respondents argue in their motion for reconsideration that the Court lacks jurisdiction over Petitioner's claim. They claim 8 U.S.C. § 1252(g) bars district courts of "jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order." Dkt. No. 8, 4 at 15.

But the government's § 1252(g) argument is unavailing. Courts have habeas jurisdiction to consider challenges to the lawfulness of immigration-related detention. Section 1252(g) applies narrowly to only three discrete actions that the Attorney General may take: the decision or action to commence proceedings, adjudicate cases, or execute removal orders. The Supreme Court has "previously rejected as 'implausible' the Government's suggestion that §1252(g) covers 'all claims arising from deportation proceedings' or imposes "a general jurisdictional limitation." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).)

Here, Petitioner's claim arises from ICE's decision to arrest and detain Petitioner without notice. Petitioner is not contesting his prior removal order, but ICE's claim that they can detain and remove Petitioner to a third-country without the opportunity to apply for protection from removal to the proposed third-country. Because Petitioner was arrested without proper notice, and his claim relates to a Fifth Amendment due process violation, this Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the

Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

The Foreign Affairs Reform And Restructuring Act

Respondents also claim that the Court lacks jurisdiction pursuant to the Foreign Affairs Reform and Restructuring Act. Respondents claim that Petitioner's claim is related to Respondents' application of a "CAT policy" and strips the Court of jurisdiction. Dkt. No. 8, 8 at 2-13. Further, Respondents claim that to the extent Petitioner's claims are reviewable, they are reviewable only in a petition for review. However, a petition for review would not be appropriate here because of the third-country context. During Petitioner's removal proceedings, neither the Immigration Judge nor DHS offered St. Kitts as a proposed country for removal. *See* order of Immigration Judge. If Petitioner were to file a petition for review, it would be based on the removal order, with Jamaica as the ordered county of removal. Petitioner has no means to petition for review of the removal to St. Kitts because it was never designated as a country for removal during his removal proceedings. The government concedes that a petition for review is the proper recourse to "attack the judicially final removal order" (Dkt. No. 8, page 3 at 14), but it does not reference the fact that removal to St. Kitts was not addressed in Petitioner's final removal order. *See* Order of Immigration Judge.

Petitioner Has a 5th Amendment Right to Due Process

Respondents incorrectly claim that Respondents' actions do not constitute a due process violation and that unadmitted aliens such as Petitioner do not have a right to more process than Congress provides (Dkt. No. 8 at 9).

However, "the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *Hernandez*, 872 F.3d at 981. The Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are "admitted"

under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007). *DHS v. Thuraissigiam* does not hold differently. See 591 U.S. 103 (2020). That case concerned due process rights related to determinations of eligibility for admission into the United States, not revocation of liberty interests. See also Jaraba Oliveros v. Kaiser, No. 25-cv-07117-BLF, at *7–8 (N.D. Cal. Sept. 18, 2025) (accepting Respondents' request at the preliminary injunction hearing to consider the applicability of Thuraissigiam and finding it does not apply); *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) ("The Court stands unconvinced that the Supreme Court's decision in *Thuraissigiam* requires dismissal of Plaintiffs' due process claim.").

District Courts have found in similar cases that "under the Due Process Clause of the Fifth Amendment, noncitizens are entitled to reasonable notice of the country to which they will be removed and an opportunity to present claims for various forms of protection from removal. *See Kumar v. Wamsley,* 817 F.Supp.3d 1059 (W.D.Wash., 2025) (Petition for writ of habeas corpus granted after DHS proposed removal of a gay man who was granted withholding of removal to a third-country without notice and opportunity to seek fear-based protection):

> "Recognizing the gravity of the interests at stake, courts in this district have concluded that due process requires the Government to give a noncitizen "sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025) (quoting Aden v. Nielsen, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)). This requirement flows directly from Ninth Circuit precedent holding that failure "to notify individuals who are subject to deportation that they have the right to apply ... for withholding of deportation to the country to which they will be deported violates ... the constitutional right to due process." Andriasian v. I.N.S., 180 F.3d 1033, 1041 (9th Cir. 1999) (citing Kossov v. I.N.S., 132 F.3d 405, 408–09 (7th Cir. 1998)). In other words, "last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country." Nguyen, 2025 WL 2419288, at *18. (quoting Najjar v. Lynch, 630 Fed. App'x 724 (9th Cir. 2016))." *Id.*

If Petitioner here were afforded such an opportunity, as required by the Fifth Amendment, he would pursue fear-based protection from removal to St. Kitts based upon fear of torture on account of [redacted]

As Respondents concede, "Petitioner's removal to his home country of Jamaica was withheld because the Immigration Judge granted him protection under the Convention Against Torture". *See* Dkt. No. 8, 2 at 5. "Last minute designation" of a country of removal violates a basic tenet of constitutional due process." *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). This is exactly what the Respondents are proposing here. Respondents claim that execution of a removal order to a previously undesignated country for removal does not violate Petitioner's due process rights (Dkt. No. 8, 7 at 2), when it has been upheld by numerous District Courts that the Fifth Amendment requires due process before a third-country removal.

Diplomatic Assurances

Respondents claim that because St. Kitt has given diplomatic assurances, Petitioner has no right to an additional opportunity to raise a fear claim. Further, they claim that the State Department has determined that those assurances are credible. Dkt. No. 8 at 8. However, Respondents have not submitted to this Court any such evidence of either the diplomatic assurances received or evidence of the State Department's findings. The only evidence submitted was a declaration and copy of DHS' Guidance Regarding Third Country Removals. On February 25, 2026, U.S. District Court Judge Brian E. Murphy of the U.S. District Court of Massachusetts declared that DHS's third-country removal policy, as embodied in DHS's March 30, 2025,

[1] https://www.theadvocatesforhumanrights.org/International_Submissions/A/Index?id=631

memorandum (and referenced in the government's motion), is unlawful and set aside the policy. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass. Feb. 25, 2026). On March 16, 2026, the U.S. Court of Appeals for the First Circuit granted the government's motion to stay the district court's order pending appeal. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 26-1212 (1st Cir. March 16, 2026). Though the decision has been stayed by the First Circuit, this decision is still persuasive authority. When there is limited controlling precedent during the litigation of an issue, it is appropriate for the Court to turn to persuasive authority when ruling on an issue. *See Moonin v. Tice, 868 F.3d 853, 866 (9th Cir. 2017)* and *Jones v. Williams*, 791 F.3d 1023, 1034 (9th Cir. 2015).

Other recent third-country deportees have ended up in deplorable conditions such as being held in converted shipping containers or prisons where they were tortured[2]. There have also been reports of third-country deportees facing immediate pressure to return to their country of origin upon arrival to the third-country[3].

As Respondents have not included any evidence of diplomatic assurances specific to Petitioner, or evidence of a third-country removal policy that has been ruled as lawful, Respondents' arguments fail.

Additionally, Respondents claim that Petitioner has "no right to an additional opportunity to raise a fear claim" Dkt. No. 8 at 10, line 5. This implies that Petitioner has already raised and been denied such a claim based on fear of removal to St. Kitts. However, Petitioner has had no such opportunity, as St. Kitts was not a country designated for removal during his removal

---

[2] https://www.npr.org/2025/06/06/g-s1-71039/migrants-djibouti-ice-shipping-container & https://equality.house.gov/media-center/in-the-news/andry-jose-hernandez-romero-tells-his-story-horrific-prison-abuse-out

[3] https://www.aljazeera.com/news/2026/4/22/south-american-migrants-deported-to-drc-say-facing-pressure-to-return-home

proceedings and he has not been afforded the opportunity to present a claim of fear of being removed to St. Kitts.

Harm in the Absence of Relief

Respondents claim they will face irreparable harm from Petitioner's proposed relief. Dkt. No. 8 at 12, line 1. However, they do not specify how being forced to comply with due process requirements would cause irreparable harm and also specifically what that irreparable harm would be. On the contrary, Petitioner's irreparable harm is clear: he would be removed to a third-country where he may be subjected to torture without an opportunity to present a claim of fear. Petitioner has always complied with required ICE check-in appointments and there's no reason to believe that he would cease compliance. The government cites that they have " a weighty interest in removing Petitioner. As the Supreme Court has emphasized, "[t]here is always a public interest in prompt execution of removal orders." *Nken*, 556 U.S. at 436." Dkt. No. 8 at 12, lines 10-13. Petitioner's removal order is dated November 13, 2024, over seventeen months ago. After almost two years since the Judge's order, the government can hardly describe the proposed third-country removal as prompt. Especially since it would come at the cost of depriving Petitioner of his due process rights, and cause Petitioner clear irreparable harm, the government's motion to dissolve the TRO should be denied.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court 1) deny Respondents' motion to dissolve the TRO; 2) grant a Preliminary Injunction until the habeas proceedings have concluded; 3) enjoin Respondents from redetaining Petitioner unless he is afforded a pre-deprivation hearing before a neutral decisionmaker where the Government bears the burden of proving by clear and convincing evidence that changed circumstance render him a

danger to the community or a flight risk and 4) enjoin Respondents from removing Petitioner to any country not designated on his order of removal unless he has been afforded proper due process.

DATED: May 12, 2026

By: /s/ Nicole A. Gorney

Nicole Alicia Gorney
VIDAS Legal
418 B Street, First Floor
Santa Rosa, CA 95401
Telephone: (707) 523-1740
Email: ngorney@vidaslegal.org

Pro Bono Attorney for Petitioner