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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HAZVINEYI GRACE MUTSEYEKWA,

Petitioner,

vs.

SERGIO ALBARRAN, *et al.*,

Respondents.

Case No.: 3:26-cv-08468-JSC

PETITIONER'S REPLY IN SUPPORT OF PRELIMINARY INJUNCTION

A. This Court Has Jurisdiction Over Petitioner's Claim

Respondents argue in their Response 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 at 6. However, such a jurisdictional argument sweeps far more than §1252(g) permits.

Courts have habeas jurisdiction to consider challenges to the lawfulness of immigration-related detention. Section 1252(g) applies narrowly to only three "discrete" actions enumerated in the statute 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 claims are precisely the kind of narrower, process-based challenge that *Reno* Court distinguished from the three "discrete" categories.

First, Respondents themselves concede that § 1252(g) "does not prevent the district court from exercising jurisdiction over the plaintiffs' due process claims." *Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998). Dkt. No. 8 at 6-7. That concession alone should end the jurisdictional inquiry. Petitioner is not asking this Court to review the Attorney General's discretionary decision to commence proceedings, adjudicate the removal case, or execute the order. Petitioner's claims arise from ICE's decision to arrest and detain Petitioner without notice or due process. Petitioner is not contesting her prior removal order, but whether ICE afforded the notice and "initial informal interview" that 8 C.F.R. §241.4(l) requires before OSUP revocation. A

claim that the agency failed to follow its own binding procedural regulations before detaining and removing Petitioner is analytically distinct from a challenge to the underlying removal order itself, and *Ibarra-Perez* confirms the Ninth Circuit continues to permit district courts to hear claims collateral to the removal decision even post-*Reno*. 154 F.4th 989, 996-97 (9th Cir. 2025). *See Ibarra-Perez v. USA*, No. 24-631 (9th Cir. 2025).

Second, because Petitioner was arrested without proper notice, and her 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.

B. Petitioner Is Likely To Succeed On The Merits Of Her Claim

Respondents moved for the dismissal of Petitioner's habeas petition based on their belief that Petitioner is unlikely to prevail on the merits of her 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 the 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 and *see Ffriend v. Albarran*, 2026 WL 1915726, at *10 (N.D.Cal., 2026), where the preliminary injunction was granted on the same grounds as *A.A.M.*

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

i) ICE's Compliance with the Regulations Governing Petitioner's Re-Detention

Respondents' compliance argument rests entirely on the DO Declaration and accompanying exhibits. Dkt. No. 8 at 7-8. This is a one-sided factual argument made by the Respondents that Petitioner has had no opportunity to verify or cross-examine. Moreover, the regulations require more than a bare notification. § 241.4(l)(3) requires notice of the *specific* reasons for revocation and a "prompt" initial informal interview affording a genuine opportunity to respond. Respondents claim that the Petitioner was notified that the "reason for revocation was that ICE was going to remove her to Cameroon". Dkt. No. 8 at 9. That kind of purported "notice of reason" is deficient. Intending to remove is a statement of an *intended action*- it does not qualify as a "specific reason" intended by the Regulations. Specifically, it doesn't tell which of the four grounds enumerated in 8 CFR § 241.4(1) - (i) the purposes of release have been served; (ii) the alien violated a condition of release; (iii) it is appropriate to enforce a removal order or commence removal proceedings; or (iv) the alien's conduct or other circumstances indicate release is no longer appropriate- applied to Petitioner's circumstances.

Furthermore, Respondent's own interview Record undercuts their compliance argument. Rather than showing Petitioner was informed of specific reasons for revocation and given a

meaningful opportunity to respond, the interview document itself records Petitioner's response as confusion about the basis of revocation: "I do not understand why I should be removed now [..]". Dkt. No. 8-2, Exhibit 9 at 25. This is Respondent's own contemporaneous record of what occurred during the interview they now cite as proof of compliance. An interview at which the alien affirmatively states she does not understand the reason for revocation is not evidence that adequate notice of "the reasons for revocation" was provided, as § 241.4(l)(3) requires.

ii) Right to Due Process

The *Artega-Martinez* decision cited by the Government held only that § 1231(a)(6) doesn't itself *require* a bond hearing with the government bearing a clear-and-convincing burden. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022). It did not disturb *Zadvydas v. Davis*, 533 U.S. 678 (2001), which remains good law and holds that § 1231(a)(6) contains an implicit "reasonable time" limitation on detention, enforceable through habeas, once removal is no longer significantly likely in the reasonably foreseeable future. Here, Petitioner is not seeking a bond hearing with the government having the burden of proof, she is only challenging the *procedural validity* of the OSUP revocation itself under § 241.4(l) and the due process notice requirements for third-country removal.

Similarly, 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 10.

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.*

"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 at 2), when it has been upheld by numerous District Courts that the Fifth Amendment requires due process before a third-country removal.

Respondents' assertion that *Mathews v. Eldridge*, 424 U.S. 319 (1976) factors weigh in their favor are also misplaced. Dkt. No. 8 at 11-12. First, Respondents claim that Petitioner has diminished liberty interest due to being placed in OSUP- but supervised release is a form of liberty the Supreme Court has held retains constitutional weight. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). That fact that Petitioner *knew* she was removable says nothing about whether she was on notice of the specific grounds for revocation or the specific third country of removal, which are the actual notice failures at issue here. Second, the risk of erroneous deprivation of liberty here isn't about the validity of the final removal order; it's about whether Respondents followed the specific procedures required before revoking her OSUP and before designating a third country for her removal. Here, the interview records show that Petitioner did not understand why she was being removed- and although §1231(a)(6) authorizes detention to effectuate removal, it does not excuse failure to comply with regulatory procedures governing how that detention and removal must be carried out. Third, the government's interest in efficient removal is legitimate but does not outweigh Petitioner's liberty and safety interests here, particularly where the additional process required imposes no new administrative burden. *Cf. Kumar v. Wamsley*, 817 F. Supp. 3d 1059 (W.D. Wash. 2025) (granting habeas relief for third-country removal without notice or opportunity to raise fear-based protection).

iii) ICE's Authority to Remove Petitioner to Cameroon

Respondents cite *Jama v. ICE*, 543 U.S. 335, 338-39 (2005), for the proposition that DHS has authority to remove non-citizens to a hierarchy of countries. Dkt. No. 8 at 5. However, this

does not excuse DHS from establishing, on this record, that it actually followed that hierarchy rather than selecting Cameroon by discretion untethered to the statutory sequence. Here, the Government has failed to show whether DHS actually determined, on this record, that the categories preceding Cameroon under § 1231(b)(2)(E)(i)-(vi) did not apply before designating Cameroon. Neither § 241.15 nor *Jama* relieves DHS of that sequential showing, and Respondents offer no record evidence.

iv) Diplomatic Assurances

Respondents claim that the U.S. Department of State ("DOS") has given diplomatic assurances for Cameroon. Dkt. No. 8 at 2. 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. Dkt. No. 8-1 at 2. 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, 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[1]. 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[2].

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.

v) DHS's Third-Country Guidance

Respondents' reliance on the Third-Country guidance being "currently in effect" mistakes a stay of judgment for a ruling on the merits. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 821 F. Supp. 3d 102, 118 (D. Mass. 2026), *appeal docketed,* No. 26-1212 (1st Cir. Feb. 28, 2026). The District Court found the underlying policy unlawful and set it aside; the First Circuit's stay pending appeal merely preserves the status quo during litigation. This procedural posture does not validate the policy, and Respondents cite no authority holding that a stayed injunction converts a district court's merits finding of unlawfulness into evidence of compliance with due process.

C. Irreparable Harm Without Immediate Injunctive Relief

Respondents' argument misdirects the Court's attention to a peripheral medication issue while ignoring the actual harm Petitioner faces: removal itself. Once executed, removal to Cameroon forecloses any meaningful relief this Court could later grant- such as a compliant revocation interview, proper notice, or a fair opportunity to raise fear-based-claim. Courts have

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[1] 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

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

long recognized that wrongful removal pending resolution of a live legal claim constitutes irreparable harm precisely because it is, as a practical matter, irreversible. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

D. Balance of Equities and Public Interest

Respondents' public-interest argument is entirely conditioned on Petitioner having failed to show likelihood of success- a premise Petitioner disputes in the preceding sections. Similarly, the delay concern in *Guillermo M.R.* is inapposite- Petitioner seeks a compliant interview and adequate notice, not a full pre-deprivation bond hearing, so the "months-long delay" concern Respondents raise doesn't apply to the narrower relief actually requested here.

E. Jurisdiction to Enjoin Petitioner's Removal

Respondents' jurisdictional bars apply to challenges to the removal order itself- not to Petitioner's claim that Respondents violated their own regulations and due process rights in revoking her OSUP and designating a third country. As discussed above, *Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998), confirms § 1252(g) does not strip jurisdiction over due process claims, and *Ibarra-Perez v. United States*, 154 F.4th 989, 996–97 (9th Cir. 2025), confirms district courts retain jurisdiction over claims collateral to the removal decision. On transfer, the discretion recognized in *Comm. of Cent. Am. Refugees* cited by the Respondents (Dkt. No. 8 at 18) to choose among detention facilities is not unlimited discretion to transfer a non-citizen. Transferring the Petitioner outside the Northern District during active litigation of her due process claims would pose irreparable harm to her ability to litigate her claims regarding OSUP revocation, and her ability to present any fear-based claim she may have.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court 1) grant a Preliminary Injunction until the habeas proceedings have concluded; 2) enjoin Respondents from redetaining Petitioner unless she 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 her a danger to the community or a flight risk such that she must be detained; 3) enjoin Respondents from removing Petitioner from the United States or transferring her out of the Northern District of California to preserve this Court's jurisdiction during the pendency of her habeas proceeding and; 4) enjoin Respondents from removing Petitioner to any country not designated on her order of removal unless she has been afforded notice and an opportunity to pursue fear-based protection from removal to the third country.

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