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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Santos Maradiaga-Villalta,

Petitioner,

v.

Kristopher Kline, et al.

Respondents.

No. CV-25-0351-PHX-SMB

**PETITIONER'S REPLY TO
GOVERNMENT RESPONSE
REGARDING APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE REGARDING
PRELIMINARY INJUNCTION**

(Expedited Ruling Requested)

Petitioner, Santos Maradiaga-Villalta, by and through counsel, hereby replies to the Response to Petitioner's Motion for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction. In his motion, he requested that the court (1) enjoin his removal to Mexico until an asylum officer and immigration judge adjudicate his fear claim; (2) order Respondents to provide him with meaningful notice in advance of removal to any other third country; and (3) enjoin his removal to any other third country

1 until he has had adequate notice and opportunity to contest removal from that country if
2 he has a fear of return. Doc. 13 at pp. 2.

3 Both the Petitioner and Respondents agree that, because he has filed a fear claim to
4 Mexico, he cannot be removed to Mexico until that claim is adjudicated, and his first
5 request is now satisfied. Doc. 16 at pp. 2, 4. The government asserts that Mr. Maradiaga-
6 Villalta is not likely to prevail on his argument that notice is required before a third
7 country removal and that, even if he were, the Court lacks jurisdiction to consider his
8 claims. Doc. 16 at pp. 2-3. However, the government refuses to concede that they must
9 comply with the basic due process right of notice before executing removal to any other
10 third country. This leaves Mr. Maradiaga-Villalta vulnerable to swift removal to one of
11 the other many third countries accepting U.S. deportees, and without notice he has no way
12 of availing himself of the process for asserting a fear claim. For the following reasons,
13 Mr. Maradiaga-Villalta renews his request for an order requiring meaningful notice to any
14 other third country and enjoining removal until it is provided to ensure that his basic due
15 process rights are protected.

16 MEMORANDUM OF POINTS AND AUTHORITIES

17 **1. Mr. Maradiaga Villalta is likely to prevail on the merits of his claim because**
18 **notice of a proposed third country of removal is a fundamental component of**
19 **due process and courts around the nation have required it prior to third**
20 **country removals.**

21 Respondents do not dispute that now that Mr. Maradiaga-Villalta has filed a fear
22 claim to Mexico, he cannot be removed to that country until the claim is adjudicated. Doc.
23 16 at pp. 2, 4 (“Petitioner will not be removed pending resolution of his fear claim.”).
24 However, they overlook the circular conundrum that precipitated the instant motion and
25 still requires this Court’s intervention: without notice of plans to remove him to any other
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1 third country, Maradiaga-Villalta cannot avail himself of his statutory right to seek
2 protection and assert that he would face persecution or torture in that country. In short,
3 without meaningful notice, the statute's protection is meaningless. Nowhere in the
4 government's response do they establish that they previously provided Mr. Maradiaga-
5 Villalta with notice of his imminent removal to Mexico or an assurance that they would
6 provide him with meaningful notice in the future of removal to another country.

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8 In fact, Mr. Maradiaga-Villalta did not receive notice of ICE's plan to remove him
9 to Mexico directly from ICE: counsel found out about Respondent's plan to deport Mr.
10 Maradiaga-Villalta to Mexico purely by accident. See TRO Exh. 2, Declaration of
11 Gregory Fay. Respondents' response brief is silent on the issue of notice required before a
12 third-country removal because, while they concede he has a right to pursue a fear claim,
13 they render that right meaningless by failing to concede that they must actually provide
14 him with meaningful notice of proposed third country removals.

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16 Even though Mr. Maradiaga-Villalta has filed a fear claim to Mexico and his
17 removal to that country is paused, lack of notice can still cause Mr. Maradiaga-Villalta
18 irreparable harm: ICE has recently increased third country removals not only to Mexico,
19 but also Costa Rica, and Panama.¹ Third-country detainees removed to Panama have been
20 transferred to a remote jungle camp where they report "looks like a zoo" because of its
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25 ¹ María Verza and Megan Janetsky, *The US lines up Latin American cooperation for*
26 *migrant deportations*, Associated Press (Feb. 26, 2025)
27 [https://apnews.com/article/deportees-migrants-trump-latin-america-mexico-panama-](https://apnews.com/article/deportees-migrants-trump-latin-america-mexico-panama-27320f15ad6c316f242eae53e45f19c8)
28 [27320f15ad6c316f242eae53e45f19c8](https://apnews.com/article/deportees-migrants-trump-latin-america-mexico-panama-27320f15ad6c316f242eae53e45f19c8); Julie Turkewitz, Hamed Aleaziz, Farnaz
Fassihi and Annie Correal, *As Trump 'Exports' Deportees, Hundreds Are Trapped in*
Panama Hotel, New York Times (Feb. 18, 2025)
[https://www.nytimes.com/2025/02/18/world/americas/trump-migrant-deportation-](https://www.nytimes.com/2025/02/18/world/americas/trump-migrant-deportation-panama.html)
[panama.html](https://www.nytimes.com/2025/02/18/world/americas/trump-migrant-deportation-panama.html)

1 “fenced cages.”² The U.S. government has new agreements in place with Guatemala³
 2 and El Salvador, with the latter country offering to imprison removed detainees.⁴ Mr.
 3 Maradiaga-Villalta’s removal to Mexico has been stayed for the moment. However,
 4 without intervention from this Court, ICE can remove Mr. Maradiaga-Villalta to another
 5 third country without any meaningful notice, just as they tried to do to Mexico, and
 6 fundamentally nullify his ability to claim fear to that country, just as they did to Mexico.
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8 This loophole fundamentally undercuts U.S. law and due process and Mr.
 9 Maradiaga-Villalta is likely to prevail on his argument that notice is required. Under U.S.
 10 law, Mr. Maradiaga-Villalta cannot be removed to a third country where he faces a risk of
 11 persecution or torture. 8 U.S.C. § 1231(b)(3). But there is no way for Mr. Maradiaga-
 12 Villalta to avail himself of his right to seek protection from third countries without
 13 meaningful notice and an opportunity to claim fear without intervention from this Court
 14 requiring meaningful notice and an opportunity to contest removal.
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16 ICE’s authority to remove a noncitizen is contingent on compliance with 8 U.S.C.
 17 §§ 1231(b)(1) and (2) (the designation statutes), 8 U.S.C. § 1231(b)(3) (withholding
 18 statute), the Convention Against Torture, the Due Process Clause of the Fifth
 19 Amendment, and applicable immigration regulations and case law. Under these
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 23 ² Julie Turkewitz, Farnaz Fassihi, Hamed Aleaziz and Annie Correal, Migrants, *Deported*
 24 *to Panama Under Trump Plan, Detained in Remote Jungle Camp*, New York Times (Feb.
 25 19, 2025) <https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html>

26 ³ Matthew Lee, *Guatemala gives Rubio a second deportation deal for migrants being sent*
 27 *home from the US*, Associated Press (Feb 5, 2025) <https://apnews.com/article/rubio-guatemala-trump-immigration-migrants-3cae5b616e1535e480e4f68c2641868c>.

28 ⁴ Matthew Lee, *Rubio says El Salvador offers to accept deportees from US of any*
nationality, including Americans, Associated Press (Feb 5, 2025)
<https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>.

1 authorities, both individually and collectively, ICE cannot deport an individual to a
2 country where they likely will be persecuted or tortured. And ICE cannot know whether
3 an individual likely would be persecuted or tortured in a certain country unless they
4 provide the individual with notice of ICE's intention to deport them to that country and an
5 opportunity to present a protection claim.
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7 To comply with the INA, implementing regulations, Due Process, CAT
8 obligations, and/or Ninth Circuit case law, if ICE intends to deport a noncitizen to a
9 country that is not designated by an IJ on a removal order, it must notify the noncitizen of
10 its intention and of the individual's right to pursue a protection-based claim. When ICE
11 seeks to remove an individual to a country that is not designated on an IJ removal order,
12 ICE is bound by the plain language in those statutes which makes any such removal
13 "[s]ubject to [8 U.S.C. § 1231(b)(3)]." 8 U.S.C. § 1231(b)(3)(A) itself further commands
14 that "[ICE] *may not remove* a [noncitizen] to a country if [an IJ] determines the
15 [noncitizen's] life or freedom would be threatened." (Emphasis added.) The statute's plain
16 language requires that the individual have their fear-based claim adjudicated prior to
17 removal. Accordingly, if an individual expresses a fear of a country to which ICE had not
18 previously intended to remove them, ICE must file, or jointly file, a motion to reopen
19 removal proceedings for an IJ or the BIA to decide the individual's fear-based claim. *See*
20 8 U.S.C. § 1229a(c)(7) (motion to reopen); 8 C.F.R. §§ 1003.2(c); 1003.23(b)(3). And in
21 order to be able to file such a motion or claim fear before USCIS, the individual must
22 have meaningful notice.
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27 Due process also requires notice of all potential countries of removal and an
28 opportunity to pursue a protection claim prior to deportation. *See Andriasian v. INS*, 180

1 F.3d 1033, 1041 (9th Cir. 1999) (“Failing to notify individuals who are subject to
2 deportation that they have the right to apply for asylum in the United States and for
3 withholding of deportation to the country to which they will be deported violates both INS
4 regulations and the constitutional right to due process.”); *see also Protsenko v. U.S. Att’y*
5 *Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (stating that failure to give “proper notice of
6 a potential country of deportation” and a subsequent order of removal to that country
7 constituted a violation of due process); *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1998)
8 (finding the failure to provide notice of and hearing on deportation to third country was a
9 “fundamental failure of due process”); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D.
10 Wash. 2019) (holding that “[a] noncitizen must be given sufficient notice of a country of
11 deportation that, given his capacities and circumstances, he would have a reasonable
12 opportunity to raise and pursue his claim for withholding of deportation.”). Thus, Mr.
13 Maradiaga-Villalta is likely to prevail on the merits of his claim that due process requires
14 notice of proposed third countries of removal.
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20 **2. This Court has jurisdiction to require notice of third countries of removal**
21 **and enjoin removal to third countries of removal when notice has not been**
22 **provided.**

23 Respondent relies solely on *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) to
24 argue that the Court lacks jurisdiction to grant the TRO. This argument fails because the
25 purpose, circumstances, and claims presented in *Rauda* are entirely distinct from the
26 instant case. The lawsuit and subsequent temporary restraining order filed in *Rauda*
27 sought “to prevent the government from removing [Mr. Rauda] from the United States”
28 while he was waiting for the Board of Immigration Appeals’ adjudication of his then-

1 pending motion to reopen. *Id.* at 775. Specifically, Mr. Rauda argued that if ICE executed
2 the order, it would violate his statutory right *to file* a motion to reopen. *Id.* at 776-77
3 (emphasis added). The Court rejected that contention, finding that because Mr. Rauda had
4 already filed the motion (and could seek judicial review of any denial), his challenge
5 related to *when*—not whether—ICE could lawfully execute a removal order. *Id.* at 777-78.

7 There are significant differences between *Rauda* and this case. In *Rauda*, the
8 purpose of the lawsuit was to stop the execution of the removal order. Mr. Maradiaga-
9 Villalta does not claim that ICE lacks authority to execute the final removal to Honduras:
10 he is a citizen of that country and has a final order of removal to Honduras. *See* Doc. 3,
11 First Amended Petition at ¶¶ 32-36. However, he asserts that ICE must comply with
12 nondiscretionary duties required to be fulfilled *prior to* execution of a third country of
13 removal: specifically, the right to meaningful notice of ICE’s plan to remove him to that
14 country.
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17 Critically, in *Rauda*, ICE had discretion as to when to execute the final removal
18 order and the BIA had discretion to decide when to adjudicate the motion. Here, Mr.
19 Maradiaga-Villalta is not suing to stop execution of his removal order and his claims are
20 not predicated on any agency discretion. In fact, the opposite is true. He asserts that ICE
21 must provide the procedural protections that are mandated before he can be deported to a
22 third country.
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24 Moreover, the statutory structure and purpose behind § 1252(g), identified by
25 *Rauda* does not undercut the validity of Mr. Maradiaga-Villalta’s claims. These cases rely
26 on legislative history, including H.R. Rep. No. 109-72, at 174-75 (2005) (Conf. Rep.)
27 showing that the enactment of § 1252(g) was part of a Congressional effort to concentrate
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1 judicial review over removal orders in the court of appeals. *See Rauda*, 55 F.4th at 777;
2 *Nken v. Holder*, 556 U.S. 418, 424 (2009); *Ching v. Mayorkas*, 725 F.3d 1149, 1154 (9th
3 Cir. 2013); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016). Mr. Maradiaga-
4 Villalta does not wish to reopen his final removal order. He merely asks the Court to
5 confirm that due process requires adequate notice and an opportunity to voice a fear claim
6 so that he cannot be removed to a country where he faces a risk of torture and persecution.
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8 **3. Mr. Maradiaga Villalta Respectfully Requests that this Court Grant the**
9 **Temporary Restraining Order**

10 ICE has already shown its willingness to remove Mr. Maradiaga-Villalta to a third
11 country without meaningful notice. The government does not dispute that removal to a
12 country where Mr. Maradiaga-Villalta would suffer persecution or torture is undeniably
13 irreparable harm. Given the government's past actions, without this Court's intervention,
14 there is a significant risk that they will do the same thing again. There is a simple solution:
15 a requirement that the government must provide Mr. Maradiaga-Villalta and counsel with
16 notice of any proposed third country and an opportunity to assert a fear claim. Therefore,
17 Mr. Maradiaga asks for an order requiring 14 days written notice to Petitioner and
18 Counsel of any proposed third country of removal and an injunction that Mr. Maradiaga-
19 Villalta cannot be removed to any other third country without meaningful notice and an
20 opportunity to voice a fear claim to that country.
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1 Dated: February 28, 2025

2 Respectfully submitted,

3 /s/ Gregory Fay

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CERTIFICATE OF SERVICE

I hereby certify that on the date below, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing on all CM/ECF registrants.

I hereby certify that on the date below, I served the attached document by first class mail on both Judge Susan Brnovich and Magistrate Judge Alison Bachus, United States District Court of Arizona, 401 West Washington Street, Phoenix, Arizona 85003-2118.

I further certify that on the date below, I served the attached document by first class mail on the following persons not registered in the CM/ECF system:

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s/ Laura Belous
February 28, 2025
Laura Belous