

1 HEATHER E. WILLIAMS, #122664
2 Federal Defender
3 CAROLYN WIGGIN, #182732
4 Assistant Federal Defender
5 801 I Street, 3rd Floor
6 Sacramento, CA 95814
7 Tel: (916) 498-5700
8 Fax: (916) 498-5710

9
10 Attorney for Petitioner
11 NELSON MAYOR MARTINEZ

12
13 **UNITED STATES DISTRICT COURT FOR THE**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 NELSON MAYOR MARTINEZ,

16 Plaintiff,

17 vs.

18 WARDEN OF THE GOLDEN STATE
19 ANNEX, *ET AL.*,

20 Respondents.

Case No.: 1:25-cv-01633-EFB

MOTION FOR TRO (00415018.DOCX;1)

21
22
23
24
25
26
27 **MOTION FOR TRO (00415018.DOCX;1)**

1 On November 24, 2025, Mr. Martinez filed a petition for a writ of habeas corpus under
2 28 U.S.C. § 2241. In the petition, Mr. Martinez asserts that continued detention by immigration
3 officials violates the Fifth Amendment's Due Process Clause and 8 U.S.C. § 1231 as interpreted
4 by *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Mr. Martinez also asserts that there is a risk of
5 unconstitutionally punitive deportation to a third country and also of deportation without the due
6 process required by Ninth Circuit precedent. Because Mr. Martinez is almost certain to prevail
7 on these claims, he respectfully asks the Court (a) to order Petitioner's immediate release from
8 custody while this case is litigated, (b) to bar Respondents from removing Petitioner to any third
9 country because Respondents' third country removal program is punitive, and (c) to bar
10 Respondents from removing Petitioner to a third country without notice and meaningful
11 opportunity to respond in compliance with the statute and due process in reopened removal
12 proceedings.

13 The reasons in support of this Motion are set forth in the accompanying Memorandum of
14 Points and Authorities. This Motion is based on the petition Mr. Martinez filed on November 24,
15 2025, and all filings in his case.

16 Respectfully submitted this 12th day of December, 2025

17
18 /s/ Carolyn Wiggin
19 CAROLYN WIGGIN
Assistant Federal Defender

20 Attorney for Petitioner
21 NELSON MAYOR MARTINEZ
22
23
24
25
26
27

I. MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

Petitioner Nelson Mayor Martinez (“Mr. Martinez”) brings this motion for temporary restraining order and preliminary injunction to order Respondents to immediately release him from custody under and order of supervision and to prevent the Department of Homeland Security (“DHS”) and its Immigration and Customs Enforcement (“ICE”) division from deporting him to a third country—of which he is not a citizen or national—without due process of law.

B. STATEMENT OF THE FACTS AND CASE

1. Entry Into United States and Release Under Supervision

Mr. Martinez was born in Cuba and entered the United States in or about May, 1980. ECF 8, p. 2. In August of 1999, Mr. Martinez was put in removal proceedings, and in September, 1999, he was ordered removed to Cuba. ECF 8, pp. 2-3. On December 3, 1999, federal immigration authorities determined Mr. Martinez met the standards in the Cuban Review Plan for release and Mr. Martinez was released. ECF 8-1, p. 3.

2. September 2025 Arrest and Efforts to Remove Mr. Martinez

On September 10, 2025, ICE served Mr. Martinez a warrant of removal and notice of custody redetermination. Mr. Martinez was remanded into ICE custody. Cuba denied ICE’s request to remove Petitioner to Cuba. ECF 8-1, p. 3

On October 20, 2025, ICE served Petitioner notice of third country removal. On October 22, 2025, Petitioner was transferred to the Florence Detention Center for removal to Mexico. On October 24, 2025, Mr. Martinez claimed fear of removal to Mexico. He was returned to the Golden State Annex. ECF 8-1, p. 3.

On November 7, 2025, an asylum officer interviewed Mr. Martinez to assess the fear claim. The Asylum Officer found that Mr. Martinez did not prove it was more likely than not he would be tortured in Mexico. After the negative fear finding, ICE has resumed the process of trying to remove Mr. Martinez to Mexico. ECF 8-1, p. 3.

3. Mr. Martinez's Habeas Corpus Petition

On November 24, 2025, Mr. Martinez filed a pro se petition for a writ of habeas corpus. ECF 1. He asserted the following grounds for relief:

Ground One: Petitioner's Continued Detention in Immigration Custody Violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution Because There Is No Significant Likelihood that Petitioner Will Be Removed in the Reasonably Foreseeable Future.

Ground Two: ICE detainee, Petitioner is subject to ICE's current procedures regarding removal of persons to third countries, which violates the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture, Implementing Regulations, and the Administrative Procedure Act.

Ground Three: Punitive Third-Country Banishment would Violate the Fifth and Eighth Amendments.

On December 2, 2025, Respondents filed an Opposition to Mr. Martinez's petition in which they argued that although he has been detained by ICE for more than six months since he was ordered removed he is not in indefinite detention because a third country may someday accept him, so his removal might happen someday. ECF 8, pp. 4-5. Respondents did not even attempt to respond to Mr. Martinez's second and third claims regarding removal to a third country.

On December 10, 2025, this Court issued an order appointing counsel and providing:

In order to ensure this court's jurisdiction to resolve the pending § 2241 petition, respondents shall not transfer petitioner to another detention center outside of this judicial district, pending further order of the court. See 28 U.S.C. § 1651(a) (establishing the All Writs Act which empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions...."); see also *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (emphasizing that federal courts have the power to "to preserve the court's jurisdiction or maintain the status quo by injunction pending review of an agency's action").

ECF 14.

On December 11, 2025, Respondents filed a Response to this Court's order stating that on December 6-8, 2025, Mr. Martinez was booked out of Golden State Annex, and on December 8, 2025, he was booked into the Florence Service Processing Facility in Florence, Arizona. ECF 15, p. 2. ICE continues in its efforts to remove Mr. Martinez to Mexico. ECF 15, p. 2.

II. ARGUMENT

A. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner satisfies both standards.

B. MR. MARTINEZ IS LIKELY TO SUCCEED ON HIS CLAIM THAT RESPONDENTS MUST GIVE HIM NOTICE AND AN ADEQUATE OPPORTUNITY TO APPLY FOR FEAR-BASED RELIEF BEFORE THEY CAN DEPORT HIM TO A THIRD COUNTRY

ICE is attempting to remove Mr. Martinez to Mexico without providing him with the process to which he is entitled. ICE’s current procedures for removal of detainees to third countries, described in Section I(B) of Mr. Martinez’s petition (ECF 1), and as it is being applied to Mr. Martinez now, violates the Fifth Amendment, the INA, the CAT, and implementing regulations, all of which mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third country in reopened removal proceedings. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in reopened removal proceedings. Respondents’ policy for third-country removals violates all of these laws because it directs ICE agents to remove individuals to third countries without any notice or process at all where diplomatic assurances are received and, where no diplomatic assurances are received, to

1 provide flagrantly insufficient notice (6–24 hours) and opportunity to respond, in violation of the
2 statute, regulations, and Fifth Amendment.

3 Respondents’ current third country removal procedure, which Respondent is applying to Mr.
4 Martinez now, is inconsistent with Ninth Circuit precedent regarding due process protections
5 with respect to removal to third country, as described in Section V(C) of Mr. Martinez’s petition
6 (ECF 1). *G.A.A. v. Chestnut*, No. 1:25-CV-01102-EPG-HC, 2025 WL 3251316, at *7 (E.D. Cal.
7 Nov. 21, 2025); *Nguyen*, 2025 WL 2419288, at *18–19 (W.D. Wash. Aug. 21, 2025); ICE’s
8 current procedures fail to give an ICE detainee sufficient notice and a meaningful opportunity to
9 present asylum and withholding of removal claims regarding the third country to which ICE
10 seeks to send the detainee. *Ibid.*; *see also*, *Y.T.D. v. Andrews*, 2025 WL 2675760, at *13 (E.D.
11 Cal. Sept. 18, 2025 (permanently enjoining Respondent from removing petitioner to third
12 country without “(a) Providing him and his counsel with written notice in a language the
13 Petitioner can understand. (b) Following notice, Petitioner must be given a meaningful
14 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to
15 removal. (c) If Petitioner demonstrates ‘reasonable fear’ of removal to the third country,
16 Defendants must move to reopen his immigration proceedings. (d) If the non-citizen is not found
17 to have demonstrated a ‘reasonable fear’ of removal to the third country, Defendants must
18 provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek
19 reopening of his immigration proceedings.”).

20 Prior to any third-country removal, Mr. Martinez must be provided with constitutionally
21 and statutorily compliant notice and an opportunity to respond and contest that removal if it
22 gives rise to a fear of persecution or torture in that country in reopened removal proceedings. *See*
23 *Nguyen*, 2025 WL 2419288, at *29 (granting preliminary injunction against “removing Petitioner
24 to a country other than [home country] without notice and a meaningful opportunity to be heard
25 in reopened removal proceedings with a hearing before an immigration judge”).
26
27

C. MR. MARTINEZ IS LIKELY TO SUCCEED IN HIS CLAIM THAT HIS CONTINUED DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

Mr. Martinez has been detained for more than six months since his removal order became final. ECF 8, pp. 4-5. Cuba has refused to accept Mr. Martinez for removal, and there is no known date that Mr. Martinez will be removed. Mr. Martinez's current detention exceeds the "presumptively reasonable" period outlined in *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Mr. Martinez is therefore entitled to immediate release under an order of supervision.

D. MR. MARTINEZ WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

In the absence of a temporary restraining order, Mr. Martinez will suffer irreparable harm.

Illegal confinement is a quintessentially irreparable harm. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (citing 11A Charles Alan Wright, et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). "Unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

As the *Nguyen* court stated in granting a preliminary injunction under *Zadvydas*:

The Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to immigration detention." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025) (citing *Hernandez*, 872 F.3d at 995) ("For example ... subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained."). "In the absence of an injunction, harms such as these will continue to occur needlessly on a daily basis." *Hernandez*, 872 F.3d at 995. 2025 WL 2419288, at *25.

1 Here, the irreparable harm to Mr. Martinez is severe. Absent relief, Petitioner will
2 remain detained in an indefinite and prolonged state, denied his liberty, removed from his
3 livelihood, separated from and unable to provide critical care and support to his medically
4 vulnerable child and his elderly parents, and removed from his family and community where he
5 belongs.

6 Further, without injunctive relief Mr. Martinez will suffer irreparable harm in the form of
7 DHS' continued efforts to deport him to a third country without notice and an opportunity to be
8 heard. As explained *supra*, DHS is trying to deport Mr. Martinez to Mexico, a third country of
9 which he is not a citizen or national and which was not identified in his order of removal.

10 Mr. Martinez has never had an opportunity to present his fear-based claim to a neutral
11 judge at an evidentiary hearing. Attempted deportation without due process "is irreparable harm,
12 plain and simple." *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at
13 *7 (C.D. Cal. June 25, 2025) (finding that attempted deportation a third country without adequate
14 notice and an opportunity to be heard is irreparable harm weighing in favor of granting TRO).

15 **E. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST**
16 **FAVOR GRANTING THE TEMPORARY RESTRAINING ORDER**

17 The final two factors merge when the government is the opposing party. As the district
18 court found in *Y.T.D.*:

19 [I]t is always in the public interest to prevent the violation of a party's constitutional
20 rights...In cases implicating removal, there is a public interest in preventing [noncitizens]
21 from being wrongfully removed, particularly to countries where they are likely to face
22 substantial harm. Although there is a countervailing public interest in prompt execution
23 of removal orders, it is well-established that our system does not permit agencies to act
24 unlawfully even in pursuit of desirable ends...Thus, these factors weigh strongly in favor
25 of issuing a TRO [to provide additional procedural protections prior to third country
26 removal].

27 *Y.T.D.*, 2025 WL 2675760, at *12 (internal citation marks and quotations omitted for clarity); *see*
also *Nguyen*, 2025 WL 2419288, at *28.

Here, as in *Y.T.D.*, the Court should find that the balance of the equities and public
interest weigh in favor of granting Mr. Martinez additional procedural protections against third
country removal.

III. CONCLUSION

For all the above reasons, this Court should find that Mr. Martinez warrants the entry of a temporary restraining order and a preliminary injunction ordering that. Mr. Martinez asks that his Court:

(a) Order Respondents to immediately release Petitioner from custody;
(b) Order Respondents are PERMANENTLY ENJOINED AND RESTRAINED from effectuating Petitioner's third country removal unless Respondents adhere to the following procedures:

1. Provide Petitioner and his counsel a minimum of ten (10) days to raise a fear-based claim for protection prior to removal;

2. If Petitioner demonstrates reasonable fear of removal to the third country, Respondents must move to reopen Petitioner's removal proceedings;

3. If Petitioner is not found to have demonstrated a reasonable fear of removal to the third country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15) days for Petitioner to seek reopening of his immigration proceedings.

(c) Order that Respondents may not remove Petitioner to any third country because Respondents' third-country removal program seeks to impose unconstitutional punishment on its subjects, including imprisonment and other forms of harm; and

(d) Order all other relief that the Court deems just and proper.

Dated: December 12, 2025

Respectfully submitted,

/s/ Carolyn Wiggin

CAROLYN WIGGIN

Assistant Federal Defender

Attorney for Petitioner

NELSON MAYOR MARTINEZ