

HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM PANTOJA,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; CAMMILLA
WAMSLEY, Seattle Field Office
Director, United States Citizenship and
Immigration Services; BRUCE SCOTT,
Warden of Immigration Detention
Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

No. CV25-2440-JLR

MOTION FOR TEMPORARY
RESTRAINING ORDER

Note on Motion Calendar:
December 18, 2025

Expedited Hearing Requested

Oral Argument Requested

I. INTRODUCTION

On December 2, 2025, Petitioner William Pantoja, a Cuban national, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. In the petition, he asserts that his continued ICE detention since May 27, 2025, violates the Fifth Amendment's Due Process Clause and 8 U.S.C. § 1231 as interpreted by *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). A final order of removal was entered on January 13, 2011. ICE thus far has failed to remove Petitioner to Cuba, and Petitioner argues that because Cuba will not accept him it is not reasonably foreseeable that he will ever be removed to Cuba. Petitioner also claimed that there is a due process risk of unconstitutionally punitive

1 deportation to a third country, specifically removal to Mexico, and the risk of
2 deportation without the due process required by Ninth Circuit precedent.

3 On December 17, 2025, Petitioner learned that ICE was actively seeking to
4 remove Petitioner to Mexico within 48 hours. Exhibit 1. Because of the real and
5 imminent risk of punitive deportation to a third country in violation of his constitutional
6 and statutory rights, Petitioner moves this Court for a temporary restraining order
7 (TRO) barring any third-country removal without notice and an opportunity to be heard
8 in reopened removal proceedings while this habeas proceeding is pending and for an
9 order requiring his immediate release from custody.

10 **II. STATEMENT OF FACTS**

11 The facts of this case are set out in greater detail in the § 2241 petition filed at
12 Dkt. 1. In short, Mr. Pantoja is a Cuban national who was ordered removed on
13 January 13, 2011. After spending a period of time in immigration custody following the
14 order of removal, he was released on supervision because Cuba would not accept him.
15 On May 27, 2025, he was arrested by ICE during his annual check and has remained in
16 ICE custody since that date. Despite his refusals to be removed to Mexico, a country he
17 is neither from nor has any ties to, ICE states it is preparing to remove Mr. Pantoja to
18 Mexico within 48 hours of its December 17, 2025, notice to counsel.

19 In this Court's Order for Briefing Schedule, Respondent was ordered not to
20 remove Petitioner from the United States or transfer Petitioner to another facility
21 without providing Petitioner's counsel with at least 48 hours' notice of the removal or
22 transfer. Dkt. 5. Notice to counsel was provided on December 17, 2025, at 11:35 a.m.
23 Exhibit 1.

24 In his § 2241 petition, Petitioner asserted several reasons why his continued
25 detention violates due process. First, Petitioner argued that it is not reasonably
26 foreseeable that Cuba would accept him notwithstanding the order of removal entered

1 in January of 2011. Second, Petitioner argued that his continued detention violates his
2 procedural due process rights absent a hearing that he is either a flight risk or a danger
3 to the community—a hearing which he has not been afforded. Third, Petitioner argued
4 that he has a regulatory right under the Code of Federal Regulations not to be re-
5 detained absent notice, an opportunity to be heard, and findings that the regulatory
6 standards for re-detention have been met—a proceeding he has not been afforded.
7 Fourth, Petitioner argued that his re-detention also violates substantive due process in
8 addition to procedural due process—both constitutional guarantees under the Fifth
9 Amendment. Fifth, Petitioner argued that removal to Mexico, a country he is neither
10 from nor has any ties to, would violate his due process rights absent evidence that he
11 was afforded an opportunity to petition for asylum, seek withholding of removal under
12 the Convention Against Torture, or petition for other relief prior to being removed to
13 any country other than Cuba. Moreover, at this stage, Respondents have not shown that
14 Mexico will accept Petitioner given his unwillingness to accept Mexico as the
15 designated third country for removal.

16 In addition, Respondents have not shown that they have afforded Petitioner the
17 opportunity to claim fear of persecution or torture or continued indefinite detention
18 should he be removed to Mexico. *See* 8 U.S.C. § 1231(b)(3)(A) (notwithstanding any of
19 these procedures, the statute prohibits removal to a third country where a person may be
20 persecuted or tortured, a form of protection known as withholding of removal). *See*
21 *also* 8 C.F.R. §§ 208.16, 1208.16 (The government “may not remove a [noncitizen] to a
22 country if the Attorney General decides that the [noncitizen’s] life or freedom would be
23 threatened in that country because of the [noncitizen’s] race, religion, nationality,
24 membership in a particular social group, or political opinion.”). Among other citations
25 of authority referenced in Petitioner’s brief that protect him against removal to third
26 countries without due process, Respondents have not provided any evidence that these

1 statutes and regulations have been satisfied. Instead, Petitioner has received only 48
2 hours' notice of his removal to a country that will likely not accept him and a to which
3 he has no ties or connections.

4 Finally, Petitioner argued that removal to a third country, including Mexico,
5 would amount to punitive banishment. Relatedly, the very fact that Petitioner is
6 currently detained, presumably because Respondents believe he is a flight risk and a
7 danger to the community, likely means that Petitioner will continue to be detained in
8 Mexico without due process. As addressed in the § 2241 petition, that would amount to
9 continued indefinite punishment. Accordingly, failure to grant a temporary restraining
10 order will deprive this Court of jurisdiction and prevent it from addressing Petitioner's
11 several serious due process arguments.

12 **III. LEGAL STANDARD**

13 To obtain a TRO, a plaintiff "must establish that he is likely to succeed on the
14 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
15 that the balance of equities tips in his favor, and that an injunction is in the public
16 interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l*
17 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839–40 & n.7 (9th Cir. 2001) (noting
18 that a TRO and preliminary injunction involve "substantially identical" analysis). In
19 this Circuit, courts employ "an alternative 'serious question' standard, also known as
20 the 'sliding scale' variant of the *Winter* standard." *Frailhat v. U.S. Immigr. & Customs*
21 *Enf't*, 16 F.4th 613, 635 (9th Cir. 2021) (citation omitted). Under this approach, the four
22 *Winter* elements are "balanced, so that a stronger showing of one element may offset a
23 weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
24 (9th Cir. 2011). A TRO may be granted where there are "'serious questions going to the
25 merits' and a hardship balance . . . tips sharply toward the plaintiff," and so long as the
26 other *Winter* factors are met. *Id.* at 1132.

IV. ARGUMENT

This Court should issue a temporary restraining order because “immediate and irreparable injury . . . or damage” is occurring and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Respondents have detained Petitioner Pantoja in violation of his due process and statutory rights and threaten to remove him to a third country without adhering to constitutional and statutory procedural protections and in violation of bedrock law prohibiting the government from imposing punitive measures on noncitizens ordered removed. This Court should order Petitioner Pantoja’s release and enjoin removal to a third country where he may be imprisoned or harmed and absent legally required protections.

A. Petitioner Is Likely to Succeed on the Merits of His Claims.

1. Petitioner is likely to succeed on the merits of his claim that his detention is unconstitutional and unlawful.

Petitioner Pantoja is likely to succeed on the merits of his claim that his re-detention violates the Due Process Clause, 8 U.S.C. § 1231(a), and governing regulations.

The INA provides that after a removal order becomes final, the government “shall remove the alien from the [U.S.] within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). This 90-day period is often referred to as the initial removal period and, during it, the government “shall detain the alien.” *Id.* § 1231(a)(2). In some circumstances, federal immigration authorities can continue to detain an alien beyond the initial removal period. Specifically, § 1231(a)(6) allows the government to detain certain enumerated classes of immigrants—including those ordered removed due to criminal convictions—for more than 90 days. *Id.* § 1231(a)(6).

The Supreme Court, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), rejected the government’s position that § 1231(a)(6) permitted indefinite detention following the initial removal period. It held that “[a] statute permitting indefinite detention of an alien

1 would raise a serious constitutional problem” because it would become punitive. *Id.*
 2 at 690. “[G]overnment detention violates [the Fifth Amendment’s Due Process Clause]
 3 unless the detention is ordered in a criminal proceeding with adequate procedural
 4 protections.” *Id.* The Court held that § 1231(a)(6) “implicitly limits an alien’s detention
 5 to a period reasonably necessary to bring about that alien’s removal.” *Id.* at 679. Thus,
 6 “once removal is no longer reasonably foreseeable, continued detention is no longer
 7 authorized by [§ 1231(a)(6)].” *Id.* at 699. “[F]or the sake of uniform administration in
 8 the federal courts,” the Court found that post-removal detention was “presumptively
 9 reasonable” for the first six months. *Id.* at 700–01.

10 After that “presumptively reasonable” six-month period ends, once the
 11 noncitizen “provides good reason to believe that there is no significant likelihood of
 12 removal in the reasonably foreseeable future, the Government must respond with
 13 evidence sufficient to rebut that showing. And for detention to remain reasonable, as the
 14 period of prior post-removal confinement grows, what counts as the ‘reasonably
 15 foreseeable future’ conversely would have to shrink.” *Id.* at 701.

16 Petitioner Pantoja has been detained continuously since May 27, 2025, because
 17 Cuba will not cooperate with the removal process. It is not reasonably foreseeable that
 18 he will be deported to Cuba, and he has neither ties nor travel documents secured to any
 19 other country.

20 **2. Petitioner is likely to succeed on the merits of his claim that he**
 21 **is entitled to legally required procedures prior to any**
 22 **nonpunitive third-country removal.**

23 Petitioner Pantoja is likely to succeed on the merits of his claim that he may not
 24 be removed to a third country absent Respondents following the legally required
 25 multistep procedures set out in 8 U.S.C. § 1231(b) and required by due process.

26 As of this filing, there is no evidence in the record that Respondents have
 followed any of the legally required procedures set forth under the United States Code

1 and the Code of Federal Regulations before removing Petitioner to Mexico.
2 Specifically, ensuring that the removal would not violate the Convention Against
3 Torture or any other rules and regulations that would support withholding of removal
4 following a full and fair hearing afforded to Petitioner.

5 Moreover, to remove Petitioner to a third country, the statute requires that the
6 Attorney General—here, an immigration judge—first determine that the designated
7 third country “will accept [Petitioner] into that country.” *Id.* § 1231(b)(2)(E)(vii); *see*
8 *Himri v. Ashcroft*, 378 F.3d 932, 939 n.4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii)
9 “indisputably requires the Attorney General to prove that the proposed country of
10 removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enft*, 543
11 U.S. 335, 344 (2005). It is the immigration judge, not DHS, that the statute authorizes
12 to designate a third country for removal. 8 U.S.C. § 1231(b)(2)(E)(vii) (“the Attorney
13 General shall remove the alien to . . .”); *see also* 8 C.F.R. § 1240.10(f) (in removal
14 proceedings the immigration judge “shall . . . identify for the record a country, or
15 countries in the alternative, to which the alien’s removal may be made”). Here, to
16 remove Petitioner to a third country would require Respondents to move to reopen
17 Petitioner’s removal proceedings to ask an immigration judge to designate a third
18 country under the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648,
19 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be
20 designated, “the agency must provide [the noncitizen] with notice and an opportunity to
21 reopen his case for full adjudication of his claim of withholding of removal from” the
22 third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019)
23 (finding that removal proceedings “shall be reopened and a hearing shall be held before
24 the immigration judge so that petitioner may apply for relief from removal” as to a
25 country not designated in prior proceedings). Adherence to that process also ensures
26 Petitioner’s statutory right to claim protection in immigration court against removal to a

1 third country where he may be persecuted or tortured, a form of protection known as
2 withholding of removal, 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16,
3 1208.16, as well as his right to claim deferral of removal under the Convention Against
4 Torture (“CAT”). *See* 28 C.F.R. § 200.1 (“A removal order . . . shall not be executed in
5 circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17–18, 1208.17–
6 1208.18.

7 Of course, the statutory framework is entirely meaningless without meaningful
8 notice of a third-country removal and an opportunity to respond that comports with
9 Fifth Amendment due process. *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153,
10 2163 (2025) (Sotomayor, J., dissenting) (“[t]he Fifth Amendment unambiguously
11 guarantees that right” to notice of a third country removal so that a noncitizen “learn[s]
12 about it in time to seek an immigration judge’s review”). Notice cannot be “last minute”
13 because that would deprive an individual of a meaningful opportunity to apply for fear-
14 based protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).
15 Individuals must have time to prepare and present relevant arguments and evidence and
16 to seek reopening of their removal case. “[W]ritten notice of the country being
17 designated” is required and “the statutory basis for the designation, i.e., the applicable
18 subsection of § 1231(b)(2),” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also*
19 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at
20 *1 (D. Mass. May 21, 2025) (“All removals to third countries, i.e., removal to a country
21 other than the country or countries designated during immigration proceedings as the
22 country of removal on the non-citizen’s order of removal, must be preceded by written
23 notice to both the non-citizen and the non-citizen’s counsel in a language the non-
24 citizen can understand.” (internal citation omitted)); *Andriasian*, 180 F.3d at 1041 (due
25 process requires notice to the noncitizen of the right to apply for asylum and
26 withholding to the country where they will be removed).

1 Due process also demands that the government “ask the noncitizen whether he or
 2 she fears persecution or harm upon removal to the designated country and memorialize
 3 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
 4 necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a
 5 dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.

6 Respondents’ third-country removal program skips over these statutory and
 7 constitutional procedural protections. According to ICE’s July 9, 2025, guidance,
 8 individuals can be removed to third countries “without the need for further procedures,”
 9 so long as “the [U.S.] has received diplomatic assurances.” ICE, *Third Country*
 10 *Removals Following the Supreme Court’s Order in Department of Homeland Security*
 11 *v. D.V.D., No. 24A1153 (U.S. June 23, 2025) (July 9, 2025).*¹ Petitioner is likely to
 12 succeed on the merits of his claim on this fact alone, because the policy instructs
 13 officers to violate the statutory and constitutional requirements. The same is true of the
 14 minimal procedures ICE offers when no diplomatic assurances are present. The policy
 15 provides no meaningful notice (6–24 hours), instructs officers not to ask about fear, and
 16 provides no actual opportunity to see counsel and prepare a fear-based claim (6–24
 17 hours), let alone reopen removal proceedings. In sum, it directs ICE officers to violate
 18 the rights of those whom they seek to subject to the third-country removal program.

19 Several courts have recently granted individual TROs against removal to third
 20 countries without due process under similar circumstances. *See generally Baltodano v.*
 21 *Bondi*, No. CV25-1958 RSL-MLP, Dkt. 14 (Oct. 23, 2025); *J.R. v. Bostock*, No. CV25-
 22 01161-JNW, 2025 WL 1810210 (W.D. Wash. June 30, 2025) (immediately enjoining
 23 removal to “Cuba, Libya, or any third country in the world absent prior approval from
 24 this Court”); *Phan v. Beccerra*, No. CV25-1757-DC-JDP, 2025 WL 1993735, at *7

25
 26 ¹ <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf>
 [https://perma.cc/L9Y2-6CYX].

(E.D. Cal. July 16, 2025) (enjoining Respondents from “re-detaining or removing Petitioner to a third country without notice and an opportunity to be heard”); *Hoac v. Becerra*, No. CV25-1740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025) (same); *Vaskanyan v. Janecka*, No. CV25-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*, No. CV25-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

Accordingly, Petitioner is likely to succeed on the merits of the claims presented in his petition.

3. Petitioner is likely to succeed on the merits of his claim that the Constitution prohibits punitive third-country removals.

Petitioner Pantoja is likely to succeed on the merits of his claim that the Constitution prohibits him from being subjected to Respondents’ punitive third-country removal program. The prohibition against imposing punitive measures on an individual subject to a final order of removal is as old as immigration law. *Wong Wing v. United States*, 163 U.S. 228 (1896). In *Wong Wing*, the Supreme Court struck down a provision of the Chinese Exclusion Act that imposed one year of imprisonment at hard labor as an immigration sanction before their deportation. *Id.* at 237. The Court drew a distinction between “deportation,” which it described as a sanction for failure to comply with the legal requirements of residency in the U.S. that may be imposed by executive authorities, and “punishment,” which may not. *Id.* at 236–37. The Court held that the government could not attach a punishment to deportation—here, imprisonment—without criminal charges, a judicial trial, and the concomitant protections of the Fifth, Sixth, and Eighth Amendments. *Id.*

The government’s third-country removal program defies 130 years of constitutional immigration law between civil penalty and infamous punishment. *See, e.g., Zadvydas*, 533 U.S. at 694. Respondents’ third-country removal program is

1 designed to punish those it deports by subjecting them to imprisonment upon their
2 arrival in the receiving countries. Respondents' program is not simply about removing
3 individuals to third countries. It is about removing them to be imprisoned upon arrival
4 and paying countries to carry out said imprisonment; selecting countries and overseas
5 prisons (like CECOT and Guantanamo) notorious for cruelty, torture, lawlessness, and
6 other human rights abuses; and broadcasting these third-country removals across public
7 media platforms to demonize the deportees and strike extreme fear in the immigrant
8 community so that people self-deport. This program is about punitive banishment.
9 Several courts in this district have already issued permanent injunctions against this
10 administration's practice of punitive third-country removals. *See Abubaka v. Bondi*,
11 No. CV25-1889-RSL, 2025 WL 3204369, at *7–8 (W.D. Wash. Nov. 17, 2025) (ruling
12 in petitioner's favor on merits as to both due process and punitive nature of third-
13 country removal); *Hieu Tri Nguyen v. Bondi*, No. CV25-02024-TL, 2025 WL 3534168,
14 at *10 (W.D. Wash. Dec. 10, 2025) (same); *Baltodano v. Bondi*, No. CV25-1958-RSL,
15 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4 2025) (quoting *Hambarsonpour v.*
16 *Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *1, 4–5 (W.D. Wash. Nov. 21,
17 2025) (ordering government "not to remove petitioner to any third country where he is
18 likely to face imprisonment or harm"). This Court should hold that he is likely to
19 succeed on the merits of this claim as well.

20 To determine whether a given sanction constitutes punishment, courts look to
21 intent. If the government's intent is to punish, "that is the end of the inquiry." *Am. Civ.*
22 *Liberties Union of Nevada v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith*
23 *v. Doe*, 538 U.S. 84, 92 (2003)). Here, the government's own statements show intent to
24 deport individuals, particularly those with criminal convictions, into situations of
25 forever confinement or substantial harm.

1 When the government's intent to punish is unclear, courts move to the second
2 step of the inquiry to determine whether the practices are "so punitive either in purpose
3 or effect as to negate the [government's] intention to deem it civil." *Id.* (quoting *Smith*,
4 538 U.S. at 92). To determine punitive purpose or effect, courts often turn to the factors
5 laid out in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963). *See also*
6 *Hudson v. United States*, 522 U.S. 93, 99 (1997) ("the factors listed in *Kennedy v.*
7 *Mendoza-Martinez* . . . provide useful guideposts"). Those factors are: "[w]hether the
8 sanction involves an affirmative disability or restraint, whether it has historically been
9 regarded as a punishment, whether it comes into play only on a finding of scienter,
10 whether its operation will promote the traditional aims of punishment—retribution and
11 deterrence, whether the behavior to which it applies is already a crime, whether an
12 alternative purpose to which it may rationally be connected is assignable for it, and
13 whether it appears excessive in relation to the alternative purpose assigned." *Mendoza-*
14 *Martinez*, 372 U.S. at 168–69 (footnotes omitted).

15 Under these factors, the government's third-country removal program
16 undeniably constitutes punishment, as each factor is met. For example, under the first
17 factor, the government's practices of deporting people only to have them imprisoned or
18 subjected to other forms of physical harm is an "affirmative disability or restraint." The
19 "paradigmatic affirmative disability" is the "punishment of imprisonment." *Smith*, 538
20 U.S. at 100. Moreover, under this factor, "we inquire how the effects of the [sanction]
21 are felt by those subject to it. If the disability or restraint is minor and indirect, its
22 effects are unlikely to be punitive." *Id.* at 99–100. There can be no question that being
23 deported to a country to be imprisoned or experience other extreme harm will be felt as
24 a significant and direct disability or restraint.

25 The second factor is also satisfied. "[D]evices of banishment and exile have
26 throughout history been used as punishment." *Mendoza-Martinez*, 372 U.S. at 168 n.23.

1 In 1791, the year the Bill of Rights was ratified, deportation was exclusively used and
2 understood as punishment. *Fong Yue Ting v. United States*, 149 U.S. 698, 740–41
3 (1893) (Brewer, J. dissenting) (citing President James Madison); *see id.* at 740 (“[I]t
4 needs no citation of authorities to support the proposition that deportation is
5 punishment. Everyone knows that to be forcibly taken away from home and family and
6 friends and business and property, and sent across the ocean to a distant land, is
7 punishment, and that oftentimes most severe and cruel.”). Banishment as a form of
8 punishment dates to ancient times and was used on citizens and noncitizens alike. Peter
9 L. Markowitz, *Deportation is Different*, 13 U. Pa. J. Const. L. 1299, 1308–09 (2011)
10 (tracing the use of banishment from medieval England through colonial America).

11 The fourth factor—whether it promotes the traditional aims of punishment,
12 retribution and deterrence—is also satisfied. The government’s own statements make
13 clear that its goals are retribution and deterrence to encourage people to leave the
14 country on their own. As DHS Secretary Kristi Noem stated, “President Trump and I
15 have a clear message to criminal illegal aliens: LEAVE NOW. If you do not leave, we
16 will hunt you down, arrest you, and you could end up in this El Salvadorian prison.”
17 The Supreme Court has made clear that such “general deterrence” justifications are
18 impermissible absent criminal process. *See Kansas v. Crane*, 534 U.S. 407, 412 (2002)
19 (warning that civil detention may not “become a ‘mechanism for retribution or general
20 deterrence’—functions properly those of criminal law, not civil commitment” (quoting
21 *Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J., concurring))).

22 The program satisfies the third, fifth, sixth, and seventh factors too because
23 Respondents have designed this program specifically for those being deported for
24 criminal convictions, there is no logical nonpunitive rationale for deporting people into
25 dangerous conditions of imprisonment or other harm, and the program is designed to be
26

1 patently excessive in relation to the purpose of simply removing people from the
2 country.

3 **B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.**

4 “It is well established that the deprivation of constitutional rights
5 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990,
6 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the
7 “alleged deprivation of a constitutional right is involved, most courts hold that no
8 further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
9 989, 1001–02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
10 *Practice and Procedure* § 2948.1 (2d ed. 2004)). “Unlawful detention certainly
11 constitutes ‘extreme or very serious’ damage, and that damage is not compensable in
12 damages.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

13 Here, the irreparable harm to Petitioner is severe. He has already been
14 unreasonably deprived of months of his life in prolonged immigration detention
15 following an order of removal issued in January of 2011. Absent relief, Petitioner will
16 remain detained in an indefinite and prolonged state, be denied his liberty, and be
17 removed from his family and community where he belongs.

18 **C. The Balance of Hardships and Public Interest Weighs Heavily in**
19 **Petitioner’s Favor.**

20 The final two factors for a preliminary injunction—the balance of hardships and
21 public interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
22 556 U.S. 418, 435 (2009). “[T]he balance of hardships tips decidedly in plaintiffs’
23 favor” when “[f]aced with such a conflict between financial concerns and preventable
24 human suffering.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d
25 1432, 1437 (9th Cir. 1983)). Here, the balance of hardships tips in Petitioner’s favor.
26 Petitioner faces weighty hardships: deprivation of his liberty and removal to a third

country where he is likely to suffer imprisonment or other serious harm. “[T]he [government] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens “from being wrongfully removed, particularly to countries where they are likely to face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (When the government’s treatment “is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction.”). Accordingly, the balance of hardships and the public interest overwhelmingly favor emergency relief to ensure Petitioner’s freedom and prevent unlawful third-country removal.

D. The All Writs Act Confers Broad Power to Preserve the Integrity of Court Proceedings.

Besides qualifying for a TRO under the Federal Rules, this is a textbook case for use of the All Writs Act (“AWA”), which provides courts with a powerful tool to “maintain the status quo by injunction pending review of an agency’s action through the prescribed statutory channels.” *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (citation omitted); 28 U.S.C. § 1651(a); *California v. M&P Inv.*, 46 F. App’x 876, 878 (9th Cir. 2002) (unpublished) (finding AWA should be broadly construed to “achieve all rational ends of law” (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942))).

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully asks the Court to grant the TRO and: (a) to order Petitioner’s immediate release from custody while this case is litigated; (b) to bar Respondents from removing Petitioner to any third country because Respondents’ third-country removal program is punitive; and (c) to bar Respondents

1 from removing Petitioner to a third country without notice and meaningful opportunity
2 to respond in compliance with the statute and due process in reopened removal
3 proceedings.

4 DATED this 18th day of December 2025.

5 Respectfully submitted,

6
7 *s/ Jesse Cantor*
8 Assistant Federal Public Defender
9 Attorney for William Pantoja

10 **CERTIFICATE OF SERVICE**

11 I certify this motion complies with the page limits specified in LCR 65(b)(2).

12 I further certify I have served a copy of this motion on Assistant United States
13 Attorneys Michelle Lambert at michelle.lambert@usdoj.gov and Rebecca Cohen at
14 rebecca.cohen@usdoj.gov at the time of filing pursuant to LCR 65(b)(1). I have also
15 contacted the U.S. District Clerk's Office at (206) 370-8400 to alert them of this
16 emergency filing and have informed the chambers of the Honorable James L. Robart.
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