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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**

11 Leandro XAVIER OLIVEIRA,

12 *Petitioner,*

13 v.

14 SERGIO ALBARRAN, Field Office Director
15 of the San Francisco Field Office of U.S.
16 Immigration and Customs Enforcement;
17 TODD M. LYONS, Acting Director of U.S.
18 Immigration and Customs Enforcement;
19 KRISTI NOEM, Secretary of the U.S.
20 Department of Homeland Security; PAMELA
21 BONDI, Attorney General of the United
22 States; and RON MURRAY, Warden, Mesa
23 Verde ICE Processing Center,

24 *Respondents.*

Case No.: 25-1222

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

IMMIGRATION HABEAS CASE

1 Petitioner Leandro Xavier Oliveira, by and through his undersigned counsel, hereby
2 moves for a temporary restraining order enjoining Respondents from violating Petitioner's due
3 process rights and circumventing this Court's jurisdiction by unlawfully removing him from this
4 judicial district and/or this state without a meaningful opportunity to be heard on a potential
5 claim for relief. This motion is based upon Federal Rule of Civil Procedure 65, Local Rule 65,
6 the incorporated memorandum of points and authorities, and the simultaneously filed Petition for
7 Writ of Habeas Corpus and Exhibits, including counsel's declaration, as well as any further
8 information presented to the Court in connection with this application.
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11 Respectfully submitted,

12 Date: December 5, 2025

13 /s/ Sara Silvia Rosell

14 Sara Silvia Rosell, Attorney at Law

15 *Attorney for Petitioner*
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INTRODUCTION

1. Petitioner, Leandro Xavier Oliveira ("Petitioner")  brings a straight-forward habeas petition seeking relief pursuant to mandatory statutory, regulatory, and due process protections in connection with the potential for removal to another jurisdiction or state without any meaningful opportunity to assert a claim for asylum.

2. Petitioner is an asylum seeker from Brazil who entered the U.S. without inspection and was detained, interviewed, then released on parole on January 14, 2025. He was placed in removal proceedings and has an asylum application pending. He has no criminal record and his parole was last extended through next March.

3. Petitioner has been in detention for one day and is presently in the custody of the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") ("Government") at the Mesa Verde ICE Processing Facility in Kern County, California.

4. Petitioner now faces an imminent risk of removal or out of state transfer. Respondents have not informed Petitioner if or when they plan to move him to another facility, or remove him from the U.S. However, ICE is notorious for unannounced transfers of detainees out of state and out of contact with counsel and family, or simply removing detainees to random third countries without notice, therefore Petitioner files this motion. On July 9, 2025, DHS adopted a policy memorandum stating that it would remove non-citizens to third countries with only 24 hours or less notice and no meaningful opportunity to assert a fear-based claim of removal to another country.

5. Upon information and belief, Respondents may remove Petitioner to a third country or relocate him to another judicial district or state without providing a meaningful opportunity to be heard on his claim for relief or his fear-based claims. Petitioner has a very strong case to receive fear-based protection (i.e., asylum, withholding of removal or CAT protection) to his country of origin, as well as any certain third countries. Respondents have

1 not yet provided any notice – and no notice to counsel – so it is difficult for Petitioner to
2 explain the basis for his fear-based claim as to a specific country.

3 6. Ninth Circuit precedent is clear: “Failing to notify individuals who are subject to
4 deportation that they have the right to apply for asylum in the United States and for
5 withholding of deportation to the country to which they will be deported violates both INS
6 regulations and the constitutional right to due process.” *Andriasian v. I.N.S.*, 180 F. 3d 1033,
7 1041 (9th Cir. 1999) (finding that “last minute” designation of alternative country without
8 meaningful opportunity to apply for protection “violate[s] a basic tenet of constitutional due
9 process”). This court should join a host of other recent courts in enjoining Respondents from
10 circumventing the Court’s jurisdiction, INS regulations and due process by removing
11 Petitioner to a third country without mandatory protections.

12 7. Petitioner must be given his statutory, regulatory and constitutional right to be
13 meaningfully heard on a claim for relief prior to removal to a third country, or relocation to
14 another judicial district or state. Irreparable harm is obvious given the risk of persecution,
15 adverse health consequences, and loss of liberty rights. It “is well established that the
16 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”
17 *Melendres v. Arpaio*, 695 F.3d 990, 1022 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S.
18 347, 373 (1976)). And “it is always in the public interest to prevent the violation of a party’s
19 constitutional rights.” *Id.* (internal citation omitted).

20 8. Petitioner also faces serious mental health concerns. He experienced severe past
21 trauma stemming from his kidnapping, detention, and torture in Brazil. [REDACTED]

22 [REDACTED] After fleeing Brazil, Petitioner was also the victim of forced detention and [REDACTED]

23 [REDACTED] His sudden re-detention yesterday was a destabilizing
24 psychological event that counsel witnessed in person, as Petitioner broke down in a
25 trembling panic and cried out for her as he was taken down the hall. Counsel, having had
26 extensive experience with immigrant survivors of extreme forms of violence throughout her
27 career, is gravely concerned about Petitioner’s psychological well-being.

STATEMENT OF FACTS

9. Petitioner is a black bisexual Brazilian man and survivor of brutal [REDACTED] [REDACTED] torture when he was kidnapped and imprisoned by corrupt government officials in Brazil. Though he escaped, his boyfriend did not and was killed. Then Petitioner fell in to the hands of drug lords in Mexico, who subjected him to [REDACTED] Once he got away, he entered the U.S. without inspection desperate to find safety.

10. When the U.S. border officials found Respondent in Rio Grande, Texas, they detained him, conducted a credible fear interview to assess the strength of a possible asylum claim, and deemed him eligible for release on parole to pursue asylum before the non-detained immigration court. Petitioner was supposed to have his first immigration court hearing in October but it was canceled and reset to December 2027. In the meantime, Petitioner has consistently complied with all of his Immigration & Customs Enforcement ("ICE") mandated reporting requirements under the Intensive Supervision Appearance Program ("ISAP").

11. After establishing a nearly year-long track record of diligently reporting to ICE, Petitioner was blindsided yesterday when he was detained during a last minute ICE check-in on December 4, 2025. Counsel accompanied Petitioner and witnessed the performative re-detention interview firsthand. It was clear to counsel that the decision to re-detain Petitioner was made prior to the start of the interview, as there was a detention order printed and placed on the desk when the interviewing officer entered the room. When the interviewing officer started asking Petitioner questions in English, counsel had to push for a Portuguese interpreter to be provided. Despite presenting substantial evidence in favor of Petitioner's continued terms of release, the ICE officer vaguely insisted that Petitioner had committed multiple reporting violations. Once counsel pressed for more specifics, it became increasingly apparent that ICE was creating reasons to justify a change in circumstances.

12. Specifically, counsel asked the interviewing officer to articulate the exact dates and nature of each of the alleged violations. The officer was unable to comply at first,

1 explaining she did not know and had to find out. She left the room for several minutes and
2 upon return, provided questionable information about the number of and seriousness of the
3 alleged violations. At first, the officer said there were three violations. When she said one of
4 the violations was having arrived late to the December 4th check-in, counsel respectfully
5 interrupted and pointed out that Petitioner — not to mention dozens of others — arrived in
6 the early seven o'clock hour and formed a line outside the building awaiting the guards to
7 grant them permission to enter. In fact, Petitioner was at the front of the line and was among
8 the first to be admitted into the building.

9 13. The officer then said she would disregard that one, but insisted there were
10 nevertheless two other violations. Counsel again had to press for specifics, at which point it
11 was determined that Petitioner reported back one day late after he was authorized to travel
12 outside his ISAP's geographical map. Through the interpreter, Petitioner explained that he
13 messaged his ICE officer explaining he arrived the next day. As this was in August and no
14 concerns were raised, Petitioner resumed regular reporting as usual.

15 14. The second alleged violation took place when, as the interviewing officer claimed,
16 Petitioner missed an in-person appointment set for September 23rd that he was apparently
17 told he had to attend. Petitioner, who had been relying on the ICE reporting application on
18 his cell phone, was genuinely confused. The interviewing officer provided no documentary
19 evidence for Petitioner to inspect as proof of this in-person appointment. The officer also
20 dismissed counsel's objections that Petitioner was properly notified of the appointment
21 given that he does not speak English. After Petitioner's detention, counsel found a March
22 parole document, written only in English, which had a reporting date of September 23rd
23 tucked into the bottom of a certificate of service box at the end of the parole document just
24 under the serving ICE officer's signature. This does not, on its face, reasonably constitute
25 proper notice to a non-English speaker, let alone anybody unfamiliar with the complex legal
26 intricacies involved in ICE's various on-app and off-app reporting requirements.

27 15. Prior to his detention, Petitioner had been complying with the terms of his
28 reporting requirements in good faith. Petitioner was unaware that ICE considered him to

1 have two minor reporting violations in August and September. Given that ICE allowed him
 2 to remain nonretained for months thereafter, and at one point even making the conscious
 3 decision to place him on an ankle monitor in lieu of re-detention, it was unreasonable for
 4 ICE to now decide that these alleged violations were serious enough to justify a flight risk
 5 determination. These two alleged violations were the only reason the interviewing officer
 6 articulated to be the reason for Petitioner's re-detention, and there was no explanation as to
 7 why these flight risk concerns were consciously disregarded for months, not to mention
 8 resolved by the decision to place him on an ankle monitor.

9 16. Upon information and belief, at the time of filing Petitioner remains detained at
 10 the Mesa Verde ICE Processing Facility located at 425 Golden State Avenue, Bakersfield,
 11 CA 93301. As he was previously unable to work lawfully due to a lack of a work
 12 authorization document, Petitioner has relied entirely on the financial and emotional support
 13 of his partner and close friends. His unwarranted re-detention has thrust his partner and
 14 friends into dire financial straights as they must now collect funds and take on the costs of
 15 retaining counsel for this federal lawsuit in addition to Petitioner's ongoing removal defense
 16 before the immigration court.

17 LEGAL STANDARD

18
 19 17. Petitioner is entitled to a temporary restraining order (TRO) if he establishes: "(1)
 20 a likelihood of success on the merits, (2) that [he] will likely suffer irreparable harm in the
 21 absence of preliminary relief, (3) that the balance of equities tip in [his] favor, and (4) that
 22 the public interest favors an injunction." *Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.*,
 23 758 F.3d 1069, 1071 (9th Cir.) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
 24 (2008)). The Ninth Circuit has adopted a "sliding scale" approach wherein "the elements of
 25 the preliminary injunction test are balanced, so that a stronger showing of one element may
 26 offset a weaker showing of another." *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir.
 27 2012) (per curiam) (citations omitted). Thus, a temporary restraining order may be issued
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1 where “serious questions going to the merits [are] raised and the balance of hardships tips
2 sharply in [plaintiff’s] favor.” *All for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
3 Cir. 2011). To succeed under the “serious question” test, Petitioner must show that he is
4 likely to suffer irreparable injury and that an injunction is in the public’s interest. *Id.* at 1132.

5 6 ARGUMENT

7 8 **A. Petitioner is Likely to Succeed on the Merits.**

9
10 18. Petitioner must be provided with a meaningful opportunity to apply for protection
11 prior to removal to a third country. The Ninth Circuit held that “[f]ailing to notify
12 individuals who are subject to deportation that they have the right to apply for asylum in the
13 United States and for withholding of deportation to the country to which they will be
14 deported violates both Immigration & Nationality Act regulations and the constitutional
15 right to due process. *Andriasian*, supra, 180 F.3d at 1041 (finding that “last minute”
16 designation of alternative country without meaningful opportunity to apply for protection
17 “violate[s] a basic tenet of constitutional due process). Petitioner may have a pending
18 asylum application for fear of harm and torture if returned to Brazil, but he has *not* been
19 given any meaningful opportunity to apply for protection from harm if he is sent to a third
20 country.

21 19. While the decisions above clearly evince Petitioner’s likelihood of success on the
22 merits, a full constitutional analysis further illustrates his likelihood of success. To
23 “establish a procedural due process violation, the plaintiff must identify a protected liberty
24 or property interest and allege that the defendants, acting under color of state law, deprived
25 [him] of that interest without constitutionally adequate process. *D.V.D. v. DHS*, 778 F. Supp.
26 3d 355, 387 (D. Mass. Apr. 18, 2025). It is well established that the Fifth Amendment
27 entitles aliens to due process of law in the context of removal proceedings. *Trump v. J.G.G.*,
28 145 S. Ct. 1003, 1006 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). This means

1 “notice must be afforded within a reasonable time and in such a manner as will allow them
2 to actually seek habeas relief in the proper venue before such removal occurs.” *Id.*

3 20. This Court should find that the Respondent’s third country removal process is
4 unlawful. *D.V.D.*, 778 F.Supp.3d at 392-93 (granting preliminary injunction and mandating
5 due process protections as discussed above and requested herein); *J.R.*, 2025 WL 1810210,
6 at *4 (granting TRO enjoining Government from removing petitioner to “any third country
7 in the world absent prior approval from this Court”); *Misirbekov*, 2025 WL 2201470, at *2
8 (prohibiting “transferring, relocating, or removing Petitioner outside the Southern District of
9 Texas without an Order from the Court”).

10
11 **B. Without Immediate Relief, Petitioner will Suffer Irreparable Harm.**

12 21. There is a very real threat that Petitioner may be removed to a third country
13 without being provided mandatory statutory and constitutional protections, which will result
14 in irreparable harm. *See* DHS’ July 9, 2025 Third Country Removal policy memorandum
15 setting forth the standard procedure to remove non-citizens to third countries in as few as 24
16 hours without due process protections. Therefore, significant irreparable harm is possible.
17 *Melendres*, 695 F.3d at 1002 (“the deprivation of constitutional rights ‘unquestionably
18 constitutes irreparable injury’”). If Petitioner is removed from this judicial district or this
19 state, Petitioner will suffer irreparable harm in that he will lose contact with his attorney and
20 his family, both of whom support him, legally and emotionally, here in California.

21 22. The All Writs Act authorizes courts to “issue all writs necessary or appropriate in
22 aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28
23 USC § 1641(a). In the immigration context, courts have recently invoked this act to preserve
24 their jurisdiction over constitutional challenges to speedy deportations. *See, e.g., A.A.R.P.*,
25 145 S. Ct. at 1369 (noting that the Court “had the power to issue injunctive relief to prevent
26 irreparable harm to the applicants and to preserve our jurisdiction over the matter,” by
27 ordering their continued presence in the United States until further order of the Court; *Perez*
28

1 v. *Noem*, 2025 U.S. Dist. Lexis 113509, *4-5 (SDNY June 13, 2025) (enjoining detainee's
2 transfer outside New York and New Jersey absent further court order).

3
4 **C. The Public Interest and Equities Favor Granting Relief.**

5
6 32. The balance of the equities and the public interest strongly favor granting
7 Petitioner's requested relief. At its core, "it is always in the public interest to prevent the
8 violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
9 2012) (internal citation omitted).

10 33. Moreover, a TRO would impose little to no prejudice on the Government, which
11 is free at any time to execute a removal order by lawfully removing Petitioner, with proper notice
12 and due process.

13
14 **D. If Necessary, an *Ex Parte* Temporary Restraining Order is Appropriate.**

15
16 34. Petitioner's counsel has taken efforts to ensure Respondents are on notice of
17 Petitioner's motion for temporary restraining order, petition for writ of habeas corpus, and other
18 filings. Petitioner's counsel is filing this and the related submissions electronically in the Eastern
19 District of California, which effectuates service on the U.S. Attorney's Office. Further,
20 Petitioner's counsel emailed copies of these submissions to the U.S. Attorney's Office at the
21 address: edward.olsen@usdoj.gov (Edward Olsen, Chief of Civil Division). In that email
22 message, Petitioner's counsel explained that she will request the Court set a hearing for as soon
23 as possible. Therefore, Petitioner has provided Respondents with "actual" and "[a]ppropriate
24 notice" pursuant to LR 231(a).

25 35. Nevertheless, given the exigent circumstances, the Court should issue an *ex parte*
26 TRO upon movant's showing that "immediate and irreparable injury, loss, or damage will result
27 to the movant before the adverse party can be heard." Fed. R. Civ. P. 65(b)(1). Petitioner "has
28 met those requirements by demonstrating through specific facts in the supporting declaration that

1 immediate and irreparable injury would result before full briefing could occur.” *J.R.*, 2025 WL
2 1810210, at *4 (holding ex parte TRO is appropriate and necessary because of potential for third
3 country removal “with minimal notice”). The Court should issue the requested TRO
4 expeditiously even if it finds Petitioner has “raised serious questions going to the merits,” as
5 opposed to likelihood of success, so long as he establishes “imminent threat of severe,
6 irreparable harm.” *Nguyen*, 2025 WL 2097979, at *3. Such an extraordinary measure is also
7 necessary to ensure preservation of the Court’s jurisdiction.

8
9 **E. No Security is Necessary for an Indigent Petitioner**

10
11 36. Although Federal Rule of Civil Procedure 65(c) can require security for a
12 temporary restraining order, a district court “has discretion as to the amount of security required,
13 if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). No security is appropriate
14 where there is no quantifiable harm to the restrained party and where the order is in the public
15 interest. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005). District courts
16 routinely exercise this discretion to require no security in cases brought by indigent or
17 incarcerated people. *See, e.g., Vaskanyan*, 2025 WL 2014208, at *8. Due to his detention and
18 previous lack of work authorization, Petitioner is indigent. Accordingly, the Court should not
19 require him to post security.

20
21 **CONCLUSION**

22 Petitioner requests that the Court grant his Emergency Motion for a Temporary
23 Restraining Order. In doing so, the Court should: enjoin Respondents from removing Petitioner
24 from this district, from this state, and from removing Petitioner via a third-country deportation
25 without providing him and his counsel meaningful notice and opportunity to assert a fear-based
26 claim or defense:

- 27 1) A minimum of ten days to raise a fear-based claim for protection prior to removal; and
28

- 2) A minimum of five days to present a defense to any claims of removability;
- 3) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Date: December 5, 2025

/s/ Sara Silvia Rosell
Sara Silvia Rosell, Attorney at Law

Attorney for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am his attorney. As
Petitioner's attorney, I hereby verify that the statements made in the attached Motion for
Temporary Restraining Order are true and correct to the best of my knowledge.

Signed on December 5, 2025 at Concord, California.

Date: December 5, 2025

/s/ Sara Silvia Rosell
Sara Silvia Rosell, Attorney at Law

Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and L.R. 65-1, I hereby certify that on 11/10/25, this was filed in the Eastern District of California, which effectuates service on the U.S. Attorney's Office.

Date: December 5, 2025

/s/ Sara Silvia Rosell
Sara Silvia Rosell, Attorney at Law
Attorney for Petitioner

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2
3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
5 **FRESNO DIVISION**

6 Leandro XAVIER OLIVEIRA,

7 *Petitioner,*

8 v.

9 SERGIO ALBARRAN, Field Office Director
10 of the San Francisco Field Office of U.S.
11 Immigration and Customs Enforcement;
12 TODD M. LYONS, Acting Director of U.S.
13 Immigration and Customs Enforcement;
14 KRISTI NOEM, Secretary of the U.S.
15 Department of Homeland Security; PAMELA
16 BONDI, Attorney General of the United
17 States; and RON MURRAY, Warden, Mesa
18 Verde ICE Processing Center,

19 *Respondents.*

Case No.: 25-1222

**[PROPOSED] ORDER GRANTING
PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING
ORDER**

20 Upon review of Petitioner's Emergency Motion for Temporary Restraining Order,
21
22 Petition for Writ of Habeas Corpus, all supporting affidavits and exhibits, and any response filed
23
24 by Respondents, the Court HEREBY FINDS:

- 25 1. Petitioner is likely to succeed on the merits of his claims.
- 26 2. Petitioner is likely to suffer irreparable harm in the absence of a temporary restraining
27 order, the balance of equities tips in his favor, and a temporary restraining order is in the
28 public interest.
3. Therefore, Petitioner's emergency Motion for Temporary Restraining Order is

GRANTED. THE COURT HEREBY ORDERS THAT:

1. Respondents are prohibited from removing Petitioner from this District absent express order of this Court.
2. Respondents are further prohibited from removing Petitioner via a third-country deportation without providing him and his counsel with meaningful notice and opportunity to assert a fear-based claim by:
 - a. Providing a minimum of ten days to raise a fear-based claim for protection prior to removal;
 - b. Providing a minimum of five days to present a defense to any claims of removability.
3. No security shall be required.
4. Petitioner's motion for Temporary Restraining Order shall also be considered a Motion for Preliminary Injunction. Respondents are to file any opposition no later than _____, 2025. Petitioner is to file a reply in support no later than _____, 2025. Petitioner's Motion for Preliminary Injunction shall be heard on _____, 2025 at _____ AM/PM [via video conference].
5. [If *ex parte*] Respondents may apply for the Court to modify or dissolve this temporary restraining order on two days' notice or such shorter notice as the Court may allow. See LR 231 and FRCP 65(b).

Dated: _____, 2025

Time and Hour: _____ AM/PM

United States District Court Judge