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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

16 Jonny Alexander Escobar,
17 Petitioner,

18 vs.

19 CHRISTOPHER CHESTNUT, Warden,
20 California City Correctional Facility, et al.,
21 Respondents.

Case No. 1:25-cv-01801-DJC-EFB

Hon. Judge Daniel J. Calabretta

**PETITIONER'S REPLY IN SUPPORT
OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

Petitioner Jonny Alexander Escobar (“Mr. Escobar” or “Petitioner”) seeks relief pursuant to statutory, regulatory, and due process protections in connection with imminent removal to a third country without any meaningful opportunity to assert a fear-based claim. Respondents have not provided any evidence rebutting Mr. Escobar’s evidentiary showing on the written record that Respondents sought to remove him to third-country without any meaningful notice—and zero notice to counsel—or an opportunity to be heard on a fear-based claim prior to removal to a third country. Therefore, it is uncontested that Respondents violated Mr. Escobar’s rights under the Immigration and Nationality Act (“INA”), related regulations under the Convention Against Torture (“CAT”), and the Due Process Clause.

There is no jurisdictional bar to this Court’s adjudication of Mr. Escobar’s claims, as he does not seek review of his underlying CAT grant, but rather seeks to enforce his rights under statutory and constitutional due process requirements. Additionally, the Supreme Court’s summary order and subsequent clarification in *DHS v. D.V.D.*, does not preclude this Court from granting injunctive relief as Mr. Escobar is unable to obtain relief under the *D.V.D.* injunction and Mr. Escobar’s claims go beyond what was litigated in *D.V.D.* No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025). Finally, as courts in this district have rejected near identical arguments made by Respondents on these exact issues time and time again, Mr. Escobar is likely to succeed on the merits of his claim. See *A.A.M v. Andrews*, No. 1:25-CV-01514-DC-DMC (HC), 2025 WL 3485219 (E.D. Cal. Dec. 4, 2025).

II. ARGUMENT

A. This Court has Jurisdiction over Mr. Escobar's Claims

There is no jurisdictional bar to this Court’s review of Mr. Escobar’s claims. Mr. Escobar brings this TRO and underlying habeas petition based on Respondents’ violation of the INA, the Convention Against Torture (“CAT”), its implementing regulations, and his procedural due process rights under the Fifth Amendment of the Constitution. See generally Emergency Mot. TRO, Dkt. 2. Mr. Escobar’s claims are ripe as the record is currently unrefuted that Respondents

1 attempted to unlawfully remove him to a third country the week of December 10, 2025 and could
2 do so again at any time. *See generally* Dkt. 2, and Decl. of Sarah Houston, Dkt. 1-5; *compare to*
3 Decl. of Deportation Officer Marbello Pano, Dkt. 13-1.

4 Respondents contend that review of Mr. Escobar's claims are precluded under 8 U.S.C. §
5 1252(a)(4) and § 1252(b)(9). However, 8 U.S.C. § 1252(a)(4) sets out jurisdiction for appeals of
6 CAT claims, and 8 U.S.C. § 1252(b)(9) goes to the review of an underlying immigration order. At
7 the outset, Mr. Escobar is not asking this Court to review his underlying CAT grant or removal
8 order. *See generally* Dkt. 2. Therefore, 8 U.S.C. § 1252(a)(4) and § 1252(b)(9) are inapplicable.
9 *See also Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (holding that to resolve
10 petitioner's habeas claims, including his claim that DHS's attempts to remove him to Somalia
11 "outside of removal proceedings" violated due process, "the Court does not need to review the
12 removal order").

13 Respondents then turn to 8 U.S.C. § 1252(g), which limits jurisdiction for claims "arising
14 from the decision of action by the Attorney General to commence proceedings, adjudicate cases,
15 or execute removal orders." Once again, Mr. Escobar is not challenging the government's
16 discretionary decision to execute a removal order. Rather, he challenges the government's actions
17 to remove him to a third country without the required lawful process under the due process clause
18 of the Constitution and the applicable statutes and regulations.¹ 8 U.S.C. § 1252(g) does not strip
19 the Court of jurisdiction. Courts in this district have consistently found that 1252(g) does not apply
20 to cases challenging third country removals. *See e.g., A.A.M., v. Andrews*, No. 1:25-CV-01514-
21 DC-DMC (HC), 2025 WL 3485219, at *8 (E.D. Cal. Dec. 4, 2025) (finding "[w]hile this court
22 does not have jurisdiction to review the Immigration Judge's final removal order," it "has
23 jurisdiction to review the issues raised by his habeas petition and the pending motion for a
24

25 ¹ In any case, the Supreme Court has held that a TRO blocking removal is proper: "this Court may
26 properly issue temporary injunctive relief to the putative class in order to preserve our jurisdiction
27 . . . A. A. R. P. and W. M. M. assert that they are at imminent risk of being classified as alien
28 enemies and removed from the United States, but the record does not indicate that they have
received any formal notice of removal . . . class members, are entitled to constitutionally adequate
notice prior to any removal." *A. A. R. P.*, 145 S. Ct. at 1369.

temporary restraining order”); *Y.T.D. v. Andrews*, No. 1:25-cv-01100-JLT-SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sep. 18, 2025) (concluding the court “has habeas jurisdiction over the issues raised here, namely the lawfulness of his continued detention and the process required in relation to third country removal,” notwithstanding § 1252(g)) (citing *Jennings v. Rodriguez*, 583 U.S. 282, 294 (2018)); *Ortega v. Kaiser*, No. 25-cv-05269-JST, 2025 WL 2243616, at *3 (N.D. Cal. Aug. 6, 2025) (holding that § 1252 did not apply because petitioner “does not challenge the execution of the final removal order entered against him, which provided for his removal *only to El Salvador* and deferred his removal there in light of his [Convention Against Torture] claim” rather he “challenges his potential detention or removal to a country *other* than El Salvador, for which there currently exists no final removal order.”); *Aden*, 409 F. Supp. 3d 998 (“Petitioner does not challenge the [Immigration Judge (“IJ”)]’s determination that he is removable or claim any deficiency in the removal order itself. Rather, he challenges DHS’s attempts, *outside* of removal proceedings, to designate Somalia without reopening its proceeding so that an IJ could make the designation in the first instance and/or determine whether petitioner’s life or freedom would be threatened in that country.”); *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *13 (D. Colo. Aug. 8, 2025) (same). This Court should join them in holding the same.

Finally, in a last-ditch effort by Respondents, they attempt to characterize Mr. Escobar’s claims as unripe, calling his concerns “theoretical”. Dkt. 13 at 5. Mr. Escobar’s claims are ripe. Nowhere in Respondents’ exhibits or briefing do they dispute Ms. Houston’s testimony that ICE attempted to remove Mr. Escobar to a third country last week. *See generally* Dkt. 13-1. Respondents, furthermore, concede that no written notice was given to Mr. Escobar prior to this attempted removal. *Id.* at ¶ 16. The record before this Court, therefore, unequivocally shows that Mr. Escobar was being primed for removal to a third country, without notice of any kind, in violation of his due process rights. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (explaining that individuals who “face persecution or other mistreatment in the country designated” as their place of removal “have a number of available remedies,” by statute, regulation, and under international

law, to “ensur[e] their humane treatment”); *see also Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025) (“notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs.”)

B. Mr. Escobar's Claims are not Precluded by the Supreme Court

Respondents next claim that the relief Mr. Escobar seeks is precluded by the Supreme Court’s stay of the preliminary injunction in *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392–93 (D. Mass. Apr.18, 2025). *See* Dkt. 13 at 7; *see also DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025). At the outset, the relief Mr. Escobar seeks in this instant action goes beyond that which is litigated in *D.V.D.* *See generally* Dkt. 2. Second, the Supreme Courts’ stay of the TRO order in *DHS v. D.V.D.* prevents Mr. Escobar from obtaining relief through that action.

First, Mr. Escobar brings claims for relief that goes beyond those brought in the *D.V.D.* complaint. *D.V.D. v. DHS*, No. 1:25-cv-10676 (D. Mass. March 23, 2025). Namely, Mr. Escobar’s petition challenges July 9 memorandum (and by incorporation the March 30 memorandum) as unlawful on its face and in how it has (or rather has not) been applied to him. *See* Dkt. 2 at 5, 12. This claim could not be raised in the complaint in the *D.V.D.* litigation because DHS issued both memoranda after the district court in *D.V.D.* issued its TRO on March 28, 2025. *See D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 942948 (D. Mass. Mar. 28, 2025), *appeal dismissed*, No. 25-1311, 2025 WL 2720812 (1st Cir. June 30, 2025); *see also* March 30, 2025, Third Country Removals Memorandum, Dkt. 1-10.

Second, Mr. Escobar cannot obtain injunctive relief through that litigation because the Supreme Court has stayed the preliminary injunction in *D.V.D.* *See Dep’t of Homeland Sec. v. D.V.D.*, --- U.S. ---, 145 S. Ct. 2153 (2025). Where DHS has indicated its intent to remove Mr. Escobar imminently, Mr. Escobar would likely be unlawfully deported to a third country before any further decision in *D.V.D.* grants him relief, leading to irreparable harm.² *See e.g., Vaskanyan*,

² Multiple district courts have explicitly found that the notice requirements in the *D.V.D.* injunction are an appropriate means to avoid irreparable harm faced by a petitioner facing third country removal. *See A.A.M.*, 2025 WL 3485219, at *6 (collecting cases). At least one court has

2025 WL 2014208, at *6–7; *Y.T.D.*, 2025 WL 2675760, at *8–12; *A.A.M.*, 2025 WL 3485219, at *6–7, 10.

C. Mr. Escobar is Likely to Succeed in His Claims

Mr. Escobar is likely to succeed in his claims that his removal to a third country without notice or an opportunity to present a fear of torture runs afoul of his procedural due process protections under the Fifth Amendment of the Constitution, the CAT, and its implementing regulations.

Respondents claim “[n]either the Immigration and Nationality Act, the legislation implementing the Convention Against Torture, nor any other statute or regulation prescribes a particular process for Convention Against Torture claims vis-à-vis third-country removals.” Dkt. 13 at 5. But this logic is backwards. “While DHS has the authority to remove a noncitizen to a country not identified in the final removal order, there is no statute or regulation providing a specific procedure to effectuate such a third country removal.” *Ramos Mendoza, v. Lyons*, No. 1:25-CV-01650-DC-SCR (HC), 2025 WL 3514126, at *4 (E.D. Cal. Dec. 8, 2025) (citing *Aden*, 409 F. Supp. 3d at 1009). On the other hand, numerous courts have found that “a specific carve-out in the [INA] prohibits removal to countries where the noncitizen would face persecution or torture . . . Relatedly, Congress codified protections enshrined in the Convention Against Torture. . . prohibiting any person from being removed to a country where they would be tortured.” *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *6 (C.D. Cal. June 25, 2025) (citing 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. § 208.16-18, 1208.16-18). The CAT regulations implementing FARRA, furthermore, make clear that individualized CAT protections are mandatory. *See, e.g.*, 8 C.F.R. § 1208.16(c) (discussing IJs’ individualized assessment of applicants’ CAT claims); 8 C.F.R. § 1208.17 (same, as well as individualized notice to individuals with CAT protection). Indeed, as recently as December 4, 2025, a court in this

ordered that the petitioner receive a hearing in front of an immigration judge before removal to a third country. *Id.* at *11.

1 district rejected a near identical argument made by Respondents. *A.A.M.*, 2025 WL 3485219, at
2 *8. This Court should do the same.

3 Third country removals must also comport with due process. *See Aden*, 409 F. Supp. 3d at
4 1009. At a minimum, “adequate due-process protections require notice and an opportunity to be
5 heard. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (holding that “[t]he fundamental
6 requisite of due process of law is the opportunity to be heard,” which includes “timely and adequate
7 notice.”) (quotations omitted); *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)
8 (holding that due process requires “at a minimum . . . that deprivation of life, liberty or property
9 by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the
10 case”). Under established jurisprudence the March 30 Memo, which fails to provide written notice
11 or an adequate opportunity to be heard, is insufficient to protect Mr. Escobar’s due process and
12 statutory rights. *See* Dkt. 1-10.

13 Next Respondents make a sweeping claim that the March 30 memo is sufficient because
14 Mr. Escobar is not entitled to full due process protection because of his immigration status. Dkt.
15 13 at 6. “‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in
16 the context of removal proceedings.” *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025) (*citing Reno*
17 *v. Flores*, 507 U.S. 292, 306 (1993)). Courts in this district have found that the “Due Process
18 Clause applies to noncitizens in the country in connection with removal proceedings, even if their
19 presence is unlawful or temporary.” *A.A.M.*, 2025 WL 3485219, at *7 (citing *Zadvydas*, 533 U.S.
20 at 693; *Andriasian v. Immigr. and Naturalization Servs.*, 180 F.3d 1033, 1041 (9th Cir. 1999)
21 (“Failing to notify individuals who are subject to deportation that they have the right to apply for
22 asylum in the United States and for withholding of deportation to the country to which they will
23 be deported violates both INS regulations and the constitutional right to due process.”)).
24 Respondents’ reliance on *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-141 (2020)
25 is equally unavailing as courts have already found that, unlike the expedited removal processes
26 cited in *Thuraissigiam*, the March 30 memo provides insufficient review in accordance with due
27 process. *See A.M.*, 2025 WL 3485219, at *8.

1 Respondents claim not only that the March 30 memo is sufficient but that “there is no
2 evidence in this case that immigration authorities will fail to follow the procedures outlined in their
3 own guidance.” Dkt. 13. at 6. They already have. The March 30 memo requires that where an
4 “alien affirmatively states a fear, USCIS will . . . screen the alien within 24 hours of referral.” Dkt.
5 1-10 at 3. Mr. Escobar was approached by Deportation Officers on the morning of December 10,
6 2025, and told that he was to be removed to Mexico. Dkt. 1-5 at ¶ 8. Mr. Escobar immediately
7 expressed an affirmative fear of removal to Mexico. *Id.* Later that day, when Deportation Officers
8 said they would be removing him to one of six countries in Africa, South Sudan, Ghana, Libya,
9 Uganda, Equatorial Guinea, and Rwanda, Mr. Escobar again affirmatively expressed his fear of
10 torture. *Id.* at ¶ 10. It has been well over 24 hours, and on information and belief, there is no
11 indication that Mr. Escobar has received a screening from USCIS as required by the March 30
12 memo.³ Additionally, the July 9, 2025, DHS Memo would apply to any removals to third countries
13 without “diplomatic assurances”. July 9, 2025, Third Country Removals Memo, Dkt, 1-9 at 1.⁴ It
14 is unclear whether the U.S. government has received diplomatic assurances from either South
15 Sudan or Libya, thus if Respondents sought to remove Mr. Escobar to either of those countries
16 they must have served him with written notice, which they admit has not been completed. *Id.*; *See*
17 Dkt. 13-1 at ¶ 16.

18 Respondents attempt to muddy the waters by claiming that Mr. Escobar had the opportunity
19 to present his fear-based claims during his removal proceedings. Dkt. 13 at 5-6. This is a complete
20 misreading of the record. Mr. Escobar’s removal proceedings and subsequent CAT grant dealt
21 only with his fear of return to his home country – El Salvador. *See* Order of IJ Granting CAT. Dkt.
22 1-3. At no point did DHS designate any other country for removal during his proceedings. *See*
23 Dkt. 13-1 at ¶ 14. For Respondents to now suggest that Mr. Escobar was afforded the opportunity
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25 ³ Counsel has not been able to speak with Mr. Escobar since the morning of December 11, 2025,
26 due to pervasive attorney access issues at California City. *See Gomez Ruiz, et al. v. ICE*, No.
27 3:25-cv-09757 (N.D. Cal. Nov. 12, 2025). However, DO Pano’s declaration, which was signed
28 on December 16, 2025, says nothing of a USCIS fear screening. *See generally* Dkt 13-1.

⁴ In their Opposition, Respondents fail to address the July 9, 2025, Third Country Removals
Memo at all. *See generally* Dkt 13.

1 to raise fear-based claims of removal to a third country that had not yet been brought by the
2 government is patently absurd. In fact, it was only after Mr. Escobar's appeal period had concluded
3 that Respondents informed him of a third country removal. See Dkt. 13-1 at ¶ 15.⁵

4 **D. Mr. Escobar Succeeds on the Remaining *Winters* Factors**

5 Finally, Respondents fail to address the other TRO factors, including that Mr. Escobar is
6 likely to "suffer irreparable harm in the absence of preliminary relief, (3) that the balance of
7 equities tip in [his] favor, and (4) that the public interest favors an injunction." *Wells Fargo & Co.*
8 *v. ABD Ins. & Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014) (citing *Winter v. Nat. Res.*
9 *Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Mr. Escobar will suffer irreparable harm if he is
10 deprived of his constitutional right to due process. See *Melendres v. Arpaio*, 695 F.3d 990, 1002
11 (9th Cir. 2012) (finding that deprivation of a constitutional right "unquestionably constitutes
12 irreparable injury."). When the government is the opposing party, the balance of the equities and
13 public interest analyses merge. See *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th
14 Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). In cases such as the one at hand,
15 "implicating removal, 'there is a public interest in preventing [noncitizens] from being wrongfully
16 removed, particularly to countries where they are likely to face substantial harm.'" *Nguyen v.*
17 *Scott*, 796 F. Supp. 3d 703, 739 (W.D. Wash. 2025) (citing *Nken*, 556 U.S. at 436). Thus, the
18 remaining *Winters* factors weight in favor of granting Mr. Escobar injunctive relief.

19 **III. CONCLUSION**

20 Mr. Escobar respectfully requests this Court grant his Emergency Motion for a Temporary
21 Restraining Order.

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25 ⁵ Respondents also mischaracterize the government's obligation as to Mr. Escobar's CAT grant,
26 claiming that Respondents "must remove" Mr. Escobar to another country. Dkt. 13 at 2. Not so.
27 Respondents certainly have the authority to release Mr. Escobar on an Order of Supervision. See
generally 8 C.F.R. § 241.

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2 Dated: December 17, 2025

Respectfully Submitted,

/s/ Lya Ferreyra

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Lya Ferreyra

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Attorney for Petitioner

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