

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VICTOR ARGENIS REA-
HERNANDEZ,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States, *et al.*,

Respondents.

No. CV25-02609-TL

REPLY IN SUPPORT OF
EMERGENCY MOTION
PREVENTING TRANSFER

Note on Motion Calendar:
January 29, 2026

Petitioner Victor Rea-Hernandez replies in support of his Emergency Motion (Dkt. 16), which was not a motion for a temporary restraining order, but an invocation of the inherent power of the Court to preserve its jurisdiction. *See Alves v. U.S. Dep't of Justice*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5 (W.D. Tex. Sep. 12, 2025) (“[T]his Order is issued under the Court’s inherent authority to preserve and assess its own jurisdiction, not as a TRO, but to the extent a bond may be required, it is waived.”). Although it arose in emergency circumstances, the motion was a reiteration of a request already made, *with* notice and service to Respondents, that the Court take measures to protect its jurisdiction while the habeas petition was pending. *See* Dkt. 1 at 1–2. And it was not a request for “preliminary relief,” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), in the way a motion for a TRO or preliminary injunction seeks to obtain accelerated relief on a request for a permanent injunction. *See Gon v. First State Ins.*, 871 F.2d 863, 865 (9th Cir. 1989) (defining

1 “injunction” to mean “an order that is . . . designed to accord or protect some or all of
2 the substantive relief sought by a complaint in more than temporary fashion. . . . to be
3 contrasted with an order by a court that regulates the conduct of the litigation) (citing 16
4 C. Wright, A. Miller, E. Cooper, & E. Gressman, *Federal Practice & Procedure*:
5 *Jurisdiction* § 3922 at 29 (1977)); *De Beers Consol. Mines v. United States*, 325 U.S.
6 212, 220 (1945) (“A preliminary injunction is always appropriate to grant intermediate
7 relief of the same character as that which may be granted finally.”). Instead, this
8 Emergency Motion sought what the Petition ultimately opposes: retention of Mr. Rea-
9 Hernandez at NWIPC (rather than his release).

10 Even if the Emergency Motion is considered as a TRO, the Federal
11 Respondents’ arguments are not persuasive. First, the purpose of the motion has already
12 been fulfilled and the request is therefore moot. This Court can decide the merits of the
13 petition and dismiss this motion as moot: Mr. Rea-Hernandez should be released
14 immediately under *Zadvydas v. Davis*, 533 U.S. 678 (2001). This legal conclusion is
15 supported by, but not dependent on (*see also* Respondents’ complaint that Mr. Rea-
16 Hernandez does not rely on medical evidence attached to his Petition in his request that
17 the Court maintain jurisdiction over his claims, Dkt. 22 at 7), equitable considerations:
18 Starting Monday, January 26, Mr. Rea-Hernandez was again hospitalized with severe
19 meningitis symptoms and after being released back to NWIPC, was not given the
20 medications he was prescribed at the hospital. *See* Velamour Decl., Ex. 1. He is
21 currently severely ill, may be hospitalized again, and the notion that he is fit to travel,
22 Dkt. 27 at ¶ 8 (NWIPC clinic director stating Mr. Rea-Hernandez is not on medical hold
23 as of January 14, 2026), is not credible today in light of his very recent hospitalization
24 and continuing fever and vomiting. He should be released and hospitalized
25 immediately, if this has not already taken place.
26

Second, Mr. Rea-Hernandez is likely to succeed on the merits of his habeas petition, including his unrelated claim for release, in light of all the evidence coming to light about what the Federal Respondents actually mean when they assert travel documents are not required for Mexico: The Respondents do not intend to *remove* Mr. Rea-Hernandez to Mexico, a term of art under the INA and *Zadvydas*, 533 U.S. at 701, but force or coerce him to cross the border into Mexico without permission, papers, or a way to survive there. Such illegal acts are not removals and do not count toward a “significant likelihood of *removal*” under Supreme Court precedent. *Id.* (emphasis added). And even if Respondents do succeed in bringing him to the border, Mexico will refuse to admit him unless he is willing to go there. The other *Winter* factors are easily met in this case.

The Motion should be granted or dismissed as moot after the petition is granted.

I. ARGUMENT

1. The Motion Is Moot If the Merits Are Decided First.

Because the habeas petition is now fully briefed, the purpose of the motion has been fulfilled. The Court may decide the case before it decides this motion, and the emergency request will be mooted. *See Coke v. Bondi*, No. CV26-71-MLP, 2026 WL 221514, at *5 (W.D. Wash. Jan. 28, 2026); *cf. Hagos v. Noem et al.*, No. 3:26-cv-150-JES-DEB, 2026 WL 202873, at *6 (S.D. Cal. Jan 27, 2026) (“Having granted the petition, the Court DENIES AS MOOT the motion for TRO.”). The Federal Respondents are not prejudiced by the Court having maintained jurisdiction long enough to decide the petition.

2. Because A Request in Habeas to Maintain the Court’s Jurisdiction Does Not Depend on the Merits of the Case, Does Not Request Injunctive Relief That Would Be Made Permanent by a Merits Argument, and May Be Ordered by a Magistrate Judge, It Is Not a Motion for a Temporary Restraining Order under Rule 65(b).

Mr. Rea-Hernandez’s motion did not resemble a TRO because it did not ask for accelerated relief on a claim in his petition. He could not and does not request as one of the grounds of his habeas petition that he not be transferred from the jurisdiction. As Respondents acknowledge, habeas is not the proper forum for contesting a removal order, *see Y.T.D. v. Andrews*, No. 1:25-cv-01100 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025), so a TRO considering whether he is likely to success on the merits of a request not to be removed at all would fail at the first step of the analysis.¹ But temporary relief that arguably should be made permanent was not the nature of Mr. Rea-Hernandez’s request. Rather, the relief was itself supposed to be temporary: preserving the court’s jurisdiction only during the pendency of the petition. *See Alves*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5 (“[T]his Order is issued under the Court’s inherent authority to preserve and assess its own jurisdiction, not as a TRO, but to the extent a bond may be required, it is waived.”).

The Court’s ability to grant this request stems not from Federal Rule of Procedure 65, but its inherent ability to preserve its jurisdiction once the petition is filed. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) (“[T]he District Court ha[s] the power to preserve existing conditions while it . . . determine[s] its own authority to grant injunctive relief.”). *United States v. Shipp*, 203 U.S. 563, 573 (1906) (“The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision

¹ Notably, the Federal Respondents do not argue that the temporary relief of forbidding transfer is not likely to be justified by the merits of a no-transfer ground in the habeas petition. *See* Dkt. 22 at 4–5. Rather, they simply argue the merits of the case, which are arguments for *release*, not retention.

1 either way, and therefore must provide for it.”). Unlike a temporary restraining order,
2 this power does not depend on the merits of the case, *id.*, and in fact seeks the opposite
3 relief: retention rather than release.

4 Thus, the provisional grant of this motion could not be extended by a
5 preliminary or permanent injunction—a preliminary injunction is a request to speed up
6 the ultimate relief, which here is release to a hospital or Petitioner’s home in Utah. *See*
7 *Gon*, 871 F.2d at 865 (defining “injunction” to mean “an order that is . . . designed to
8 accord or protect some or all of the substantive relief sought by a complaint in more
9 than temporary fashion. . . . to be contrasted with an order by a court that regulates the
10 conduct of the litigation) (citing 16 C. Wright, A. Miller, E. Cooper, & E. Gressman,
11 *Federal Practice & Procedure: Jurisdiction* § 3922 at 29 (1977)); *De Beers Consol.*
12 *Mines*, 325 U.S. at 220 (1945) (“A preliminary injunction is always appropriate to grant
13 intermediate relief of the same character as that which may be granted finally.”).
14 Petitioner is not asking here for preliminary relief on his ultimate claim, but an order by
15 a court that regulates the conduct of the litigation. *Cf. Satvir v. Noem, et al.*, No. 1:26-
16 cv-00157-TLN-JDP, 2026 WL 194331, at *1 (E.D. Cal. Jan. 26, 2026) (emphasis
17 added) (“Petitioner challenged the lawfulness of his civil detention through a petition
18 for writ of habeas corpus and a motion for TRO. On January 12, 2026, the Court
19 granted a TRO *ordering Petitioner’s immediate release* from detention. Now the Court
20 determines whether the relief granted in the TRO should continue as a preliminary
21 injunction.”) (citations and footnote omitted).

22 Because the emergency motion was not a motion for a TRO, this Court can grant
23 it without reviewing the *Winter* factors simply based on the Court’s own need to
24 maintain jurisdiction over a pending habeas claim. But even if it is considered as a
25 motion for a TRO, the Court should grant the motion.
26

1 **3. Petitioner Meets the *Winter* Factors.**

2 **A. Petitioner is likely to succeed on the merits of his claim for**
 3 **release.**

4 Petitioner has submitted evidence, including declarations from ICE officers in
 5 other cases and first-person accounts, explaining that Mexico does not accept people
 6 who express unwillingness to go there. Dkt. 1-3; Dkts. 19-1, -2, -3, -4, -5. The
 7 Respondents do not acknowledge or dispute this evidence. Thus, the likely result of the
 8 current removal effort is that Mr. Rea-Hernandez, a medically fragile detainee, will be
 9 transported via land to the Mexico border, will express unwillingness to go to Mexico
 10 as he has consistently maintained, and will be returned to the United States, just as the
 11 declarations describe. The Honorable Michelle L. Peterson came to this conclusion in a
 12 recently decided case:

13 Petitioner asserts removal is not reasonably foreseeable. There is no
 14 dispute that he cannot be removed to Jamaica because he has been granted
 15 deferral of removal. (*See* dkt. # 13 at 13.) Petitioner contends there is no
 16 likelihood of removal to Mexico, the only other country ICE has
 17 identified, because Mexico does not accept non-Mexican deportees who,
 18 like him, are unwilling to go. (Dkt. # 16 at 4-5, 13.) Petitioner provides a
 19 declaration from an ICE officer, filed in another case, stating that Mexico
 20 will not accept deportees against their will. (Ruiz Decl. (dkt. # 10-4), ¶ 7.)
 21 In another declaration, an ICE officer describes an unsuccessful attempt
 22 to remove a deportee to Mexico even though Mexico previously
 23 confirmed its acceptance of the individual. (Parsons Decl. (dkt. # 102), ¶¶
 24 8, 12.) The deportee was driven to the Mexican border but was not
 25 removed because he refused to go willingly. (*Id.*, ¶ 11.) Petitioner also
 26 provides a declaration from a federal defender in San Diego who has
 spoken with “dozens” of deportees who were driven to the Mexican
 border and, after expressing unwillingness to enter Mexico, were returned
 to ICE detention. (Lopez Decl. (dkt. # 10-3), ¶¶ 2-4.) In short, Petitioner
 has shown good reason to believe that there is no significant likelihood of
 removal to Mexico in the reasonably foreseeable future. No other country
 has been identified for removal.

Accordingly, the burden shifts to Respondents to rebut Petitioner's
 showing with evidence. Respondents assert that Petitioner will be
 removed to Mexico, but they do not respond to or acknowledge the

evidence he has provided. (Dkt. # 13 at 12-13.) “Courts in this circuit have regularly refused to find Respondents’ burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 725 (W.D. Wash. 2025). Respondents have not rebutted Petitioner’s evidence, and habeas relief is thus warranted with respect to his indefinite detention claim.

Coke, 2026 WL 221514, at *2–3. Mr. Rea-Hernandez’s *Zadvydas* and third-country removal claims will not be mooted by this effort; it will merely be more difficult for this Court to enforce its jurisdiction and for undersigned counsel (and the Human Rights Center at the UW) to communicate with him.

No travel documents have been produced, and no declaration states their existence. *See* Hammer Decl., Dkt. 24 at 2. In another case, the United States Attorney’s Office is representing that no travel documents are necessary for ground transportation of a detainee to Mexico. *See* Dkt. 19. This strongly implies that Mexico has not given advance acceptance of or promise of status to Mr. Rea-Hernandez and the entire exercise of transporting him to the Mexican border via ground transportation, only to have him returned when he expresses unwillingness, will be fruitless. *See* Gov’t Resp., Dkt. 22 at 4 (arguing that Petitioner’s assertion that Respondents lack travel documents to Mexico is “legally immaterial”).

If it is not fruitless, it will likely be the result of government-sanctioned torture or psychological coercion intended to effect a *self*-deportation and thus not count as a “removal” under *Zadvydas*. The ACLU has written a letter to ICE officials and members of Congress describing the unconstitutional coercion that is used to force people to cross the border into Mexico during the ground transportation operations Federal Respondents allude to. *See* Exs. 2, 3. These punitive methods include:

- beatings;
- “grabb[ing] and crush[ing] [a detainee’s] testicles between [officers’] fingers”;

- 1 • threatening detainees with being sent to jail cells in El Salvador or Africa;
- 2 • threatening detainee with handcuffing him, put a bag over his head, and
- 3 sending him to Mexico; and
- 4 • threatening that detainees would be charged with federal crimes.

5 Ex. 2 at 4–5. Driving a van to the border and instructing detainees to “jump over the
6 wall,” Ex. 2 at 5, is not a “removal” as the term is understood in *Zadvydas* and may be
7 an illegal act on the part of any such jumpers in Mexico. *See* Guestavo Guerra, *Mexico:*
8 *Selected Immigration Law Issues Concerning Unauthorized Aliens* (Law Library of
9 Congress August 2013), [https://tile.loc.gov/storage-services/service/l1/l1glrd/](https://tile.loc.gov/storage-services/service/l1/l1glrd/2019669985/2019669985.pdf)
10 [2019669985/2019669985.pdf](https://tile.loc.gov/storage-services/service/l1/l1glrd/2019669985/2019669985.pdf) [<https://perma.cc/5GMY-8U3D>] (“Mexico’s [2011]
11 Migration Law provides that aliens who enter the country without authorization may be
12 deported and prohibited from entering the country for a period of time determined by
13 Mexico’s National Institute of Migration (part of Mexico’s Department of
14 Governance).”). According to the declarations submitted in this case and gathered by
15 the ACLU, the Federal Respondents are not actually transporting detainees out of the
16 United States; they are merely bringing them to the border and demanding that they
17 self-deport. If beating non-Mexicans until they “jump” into Mexico qualified as a
18 removal, then the existence of “aliens that the Government finds itself unable to
19 remove”—the class to which the holding of *Zadvydas* applies—would be illusory.
20 *Zadvydas*, 533 U.S. at 695. But this sort of conduct does not amount to an orderly
21 “removal” as it understood in the case law, and this Court should not accept
22 Respondents’ assertions that they can effect Mr. Rea-Hernandez’s “removal” through
23 ground transportation to the United States side of the border and unconstitutional
24 coercion to force him to cross to Mexico.

B. Petitioner is likely to suffer irreparable harm in the absence of preliminary relief.

Setting aside the fact that Petitioner does not presently need *preliminary* relief, but merely rather a decision on the merits (*see* mootness argument, *supra* at 3), he would suffer irreparable harm from being transferred from this district. He has constitutional rights that should be heard by this Court rather than allowing the Respondents to attempt to moot the claims by spiriting him away from the district. “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)). He also has ongoing medical crises that NWIPC, with its agreements with local hospitals, is better situated to deal with compared to the sorts of unconstitutional conditions that have developed at border detention centers. *See, e.g.*, ACLU Letter, Ex. 2 at 10–12 (At Ft. Bliss, “‘Vincente’ suffered from extreme headaches for days in a row and repeatedly submitted requests for medical help that were denied after officers told him that the medical area was full. Officers informed Vincente that ‘they will not call the doctor unless someone collapses.’ Vincente also reported that on multiple occasions another young man with heart problems has requested medical assistance before fainting, but has only received attention after actually collapsing. Maria similarly observed that ‘[t]he guards seem to have to see you lying on the floor’ before providing medical attention and that she has ‘seen people lying on the floor before receiving treatment.’ ‘Frank’ has requested care by writing medical requests and handing them to the guards and attempting to use the tablets to submit medical requests as his health conditions worsened, but his written and electronic requests have gone unanswered.”); *see also Hassan v. Bondi*, No. CV25-02444-KKE, Dkt. 19 at ¶ 4 (NWIPC clinical director averring that “[t]he NWIPC is a level 4 facility, meaning that it can provide a higher level of medical care. . . . NWIPC can manage patients with complex medical issues and collaborates with multiple nearby

1 emergency departments that can assist in assessing critical patients and hospitalize
 2 unstable patients. NWIPC also has collaborative agreements with local specialty
 3 services that cover all aspects of medical specialties.”).

4 Contrary to Respondents’ assertions, Dkt. 22 at 6, it is not a contradiction that
 5 release to the community would be better for Mr. Rea-Hernandez’s tenuous state of
 6 health than either NWIPC, a squalid transfer facility at the border, or a dire existence in
 7 Mexico without status or ability to assert his legal right not to be deported to
 8 Venezuela; *and* that NWIPC is better situated to treated his documented health
 9 concerns than either of the latter two situations.

10 **C. The balance of the equities and public interest favors**
 11 **Petitioner.**

12 The Respondents’ position—that the Court should not maintain jurisdiction long
 13 enough to decide Mr. Rea-Hernandez’s position—is hard to countenance. The
 14 Respondents are not remotely prejudiced by being ordered to extend the period that
 15 they have *already* extended beyond the presumptively reasonable six months the
 16 Supreme Court has afforded them to effect Mr. Rea-Hernandez’s removal.

17 “[T]he [government] cannot reasonably assert that it is harmed in any legally
 18 cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*,
 19 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to
 20 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken v.*
 21 *Holder*, 556 U.S. 418, 436 (2009) (describing public interest in preventing noncitizens
 22 “from being wrongfully removed, particularly to countries where they are likely to face
 23 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D.
 24 Wash. 2019) (When the government’s treatment “is inconsistent with federal law, . . .
 25 the balance of hardships and public interest factors weigh in favor of a preliminary
 26 injunction.”).

1 **II. CONCLUSION**

2 In order to facilitate this Court's jurisdiction over the pending petition and to
3 prevent the pointless transfer of a medically fragile detainee, Petitioner requests that he
4 not be transferred out of this jurisdiction while his petition is pending. In the alternative,
5 the Court can decide the merits of the case and hold this motion to be moot.

6 DATED this 29th day of January 2026.

7 Respectfully submitted,

8 *s/ Ann K. Wagner*
9 Assistant Federal Public Defender
10 Attorney for Victor Rea-Hernandez

11 I certify this motion contains 3,229 words in compliance with the Local Civil Rules.
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