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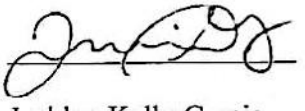
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

YOSVEL MACHIN-ROMERO Petitioner, v. WARDEN, Operator of the ERO El Paso East Montana Camp; MARY DE ANDA-YBARRA, El Paso ICE Field Office Director; TODD LYONS, Acting Director U.S. Customs and Immigration Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, Attorney General of the United States; Respondents.	Case No. 3:26-cv-00322-KC Agency No. [redacted] **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER** *Expedited Hearing Requested*

Petitioner, YOSVEL MACHIN ROMERO, by and through his undersigned counsel, hereby moves for a temporary restraining order enjoining Respondents from violating Petitioner's due process rights and circumventing this Court's jurisdiction by unlawfully removing him to a third country without a meaningful opportunity to be heard on a potential fear-based claim for relief. This motion is based upon Federal Rule of Civil Procedure 65, the incorporated memorandum of points and authorities, and the simultaneously filed Petition for Writ of Habeas Corpus and Exhibits, as well as any further information presented to the Court in connection with this application.

Dated: March 12, 2026

Respectfully submitted,



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INTRODUCTION

1. Petitioner YOSVEL MACHIN ROMERO brings a straight-forward habeas petition seeking relief pursuant to mandatory 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 for withholding of removal. Petitioner is a Cuban national who has been in detention for over 4 months in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) (Government) at El Paso East Montana Camp Detention Facility in El Paso, El Paso County, Texas despite having had a valid ICE Order of Supervision prior to his unlawful arrest by ICE.
2. Petitioner's application for asylum was denied on April 22, 2020 and was subsequently ordered removed on the same date. Notwithstanding the removal order, ICE granted Petitioner an Order of Supervision pursuant to 8 U.S.C. § 1231.
3. The detention and release of noncitizens who are subject to a final order of removal is addressed by 8 U.S.C. § 1231. Under the statute, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). "If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).
4. On February 5, 2026, Petitioner was informed by ICE that it would attempt to remove him to Mexico, and that if he refused, he would be transferred back to "Alligator Alcatraz". Petitioner is not a citizen of and has no connection to Mexico. Petitioner filed

an Emergency Motion For Temporary Restraining Order on the same date and the motion was denied.

5. On February 9, 2026 at approximately 11:00 PM, Petitioner was transferred to the Port Isabel Detention Facility in Los Fresnos, Texas. Petitioner was allowed one phone call. Petitioner was told he is imminently facing deportation to Mexico. Exhibit 11.
6. On February 10, 2026, Petitioner was transferred to the El Valle Detention Center in Raymondville, Texas. Undersigned counsel was notified at 2:22 PM. Petitioner was told by Respondents that he was being transferred with sixteen other detainees so that a bus could take them to Mexico. Petitioner was then transported back to ERO El Paso Camp East Montana, the facility where the proceedings began.
7. On February 20, 2026, this Court issued and Order for a status update, in which Respondents were instructed to respond specifying (1) Whether the Cuban government has agreed to accept Machin-Romero for removal, (2) If not, what obstacles remain to effectuating Machin-Romero's removal, including issuance of travel documents, (3) If Cuba has denied the request, what, if any, concrete steps have been taken to lawfully remove Machin-Romero to a third country, and (4) The anticipated timeline for Machin-Romero's removal from the United States. Docket #8.
8. **On today's date, March 12, 2026, Respondent's cellmate notified Petitioner's spouse that Petitioner was removed from the detention center at 1:00 AM. Undersigned counsel cannot locate Petitioner in her Enforcement and Removal Operations (ERO) portal. Exhibit 1. Petitioner is no longer appearing as being detained at the El Paso Camp East Montana facility where he has been since February 14, 2026.**

9. **Upon information and belief, Counsel fears that Petitioner is being *unlawfully* deported to Mexico or another third country.**

10. Petitioner has asserted a fear-based claim to several countries and would need proper notice and the opportunity to be heard if Respondents plan to deport him to a specific third country imminently.

11. Respondents appear likely to imminently and irreparably violate Petitioner's rights in brazen violation of their statutory, regulatory, and due process obligations. 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—just as Petitioner. successfully did with respect to his home country. *See* Docket No. 3, Exhibit 10 (July 9, 2025 Third Country Removals Memo). This Court should join a host of other recent courts in enjoining Respondents from circumventing the Court's jurisdiction, INS regulations, and due process by removing Petitioner to a third country without mandatory protections. *See, e.g., Vaskanyan v. Janecka,* No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *6 (C.D. Cal. June 25, 2025) (holding "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings").

12. The stakes are real. Petitioner's protected status is likely to subject him to persecution and/or torture in a host of third countries that the Government has solicited to accept non-citizens subject to removal. If Respondents indeed are seeking to remove him to a third country, Petitioner would review upon proper notice of which country and likely assert a fear-based claim and demand a real opportunity to be heard, including by moving to reopen his immigration proceedings if necessary. Petitioner must be given his statutory,

regulatory, and constitutional right to be meaningfully heard on a fear-based claim prior to removal to a third country. Irreparable harm is obvious given the risk of persecution and torture. Moreover, it is well established that depriving a person of their constitutional rights "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

STATEMENT OF FACTS

I. Legal Framework for Fear-Based Claims and Mandatory Obligations in Connection with Third Country removals

13. Non-citizens in immigration removal proceedings may seek three main forms of relief based on a fear of returning to their home country: asylum, withholding of removal, and Convention Against Torture (CAT) relief. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

14. In accord with the fear-based claim legal framework, the Government is obligated to provide non-citizens with mandatory statutory and due process protections prior to removing them to a third country. Since the current administration has taken office, it has been attempting to increase its deportation of non-citizens to third countries by any means necessary—mostly blatantly unlawful ones.

15. On March 23, 2025, a putative nationwide class challenged this government practice in *D.V.D. v. DHS* and obtained a temporary restraining order and later a preliminary injunction for a certified class, blocking third country removals without notice and a

meaningful opportunity to seek CAT protection. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392–93 (D. Mass. Apr.18, 2025). Under the *D.V.D.* injunction, the government was required to provide class members the following:

- Written notice of the third country in a language that the non-citizen can understand to the individual and their attorney, if any,
- An automatic 10-day stay between notice and any actual removal,
- Ability to raise a fear-based claim for CAT protection prior to removal, and:
    - If the noncitizen demonstrates "reasonable fear" of removal to the third country, DHS must move to reopen the noncitizen's immigration proceedings.
    - If the noncitizen does not demonstrate a "reasonable fear" of removal to the third country, DHS must provide a meaningful opportunity, and a minimum of fifteen days, for the noncitizen to seek reopening of their immigration proceedings.

Id.

16. DHS's third-country removal policy pales in comparison to these statutorily and constitutionally necessary protections. On March 30, 2025, DHS issued "Guidance Regarding Third Country Removals" that "clarifie[d] DHS policy regarding the removal of aliens with final orders of removal . . . to countries other than those designated for removal in . . . removal orders (third country removals)." Exhibit 10 (March 30, 2025 Third Country Removals Memo) at 2. If DHS secures acceptance of a non-citizen's deportation to a third country by that country, DHS will inform the detainee of removal to that country, but "Immigration officers will not affirmatively ask whether the alien is

afraid of being removed to that country." *Id.* at 3. If the "alien affirmatively states a fear, USCIS will . . . screen the alien within 24 hours of referral." *Id.* In that scenario, "USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal." *Id.* "If USCIS determines that the alien has not met this standard, the alien will be removed." *Id.*

17. Thereafter, the Government failed to comply with the *D.V.D.* district court's orders at multiple points while the TRO and preliminary injunction were in place. On March 31, 2025, at least six D.V.D. class members were removed from Guantanamo to El Salvador on a Department of Defense plane, in violation of the TRO. *See D.V.D. v. DHS*, No. 1:25-cv-10676- BEM (D. Mass. Apr. 30, 2025), ECF No. 86. On May 7, 2025, the government attempted to deport a flight of class members to Libya without compliance with the preliminary injunction, leading to an emergency TRO motion. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91. On May 20, 2025, while the government was again in the process of removing class members in violation of the preliminary injunction (this time to South Sudan), the plaintiffs moved for another emergency TRO, leading the district court order that the government to retain custody of the class members and provide the preliminary injunction's protections. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 20, 2025), ECF No. 116. On or around June 1, 2025, the Government deported a group of six individuals to third-country South Sudan without affording mandatory protections. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach . . . in clear violation of a court order, it deported six more to South Sudan, a nation the State

Department considers too unsafe for all but its most critical personnel.") On June 23, 2025, the Supreme Court issued a summary order that did not provide reasoning, but granted the Government's request to stay the district court's preliminary injunction *D.V.D. See DHS v. D.V.D.*,

145 S. Ct. 2153 (2025).

18. On May 16, 2025, in another case, the Supreme Court considered the Government's attempt to remove two Venezuelan nationals who are members of a designated foreign terrorist organization on a day's notice. *See A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025). There, the Supreme Court held: "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *Id.*

19. Nevertheless, DHS felt emboldened by the Supreme Court's stay of the injunction in *D.V.D.* and adopted a third country removal policy that clearly runs afoul of mandatory statutory and constitutional protections and the Supreme Court's views in *A. A. R. P.* On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy memo that states some non-citizens will be deported to third countries with ***literally no notice*** whatsoever: "If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures." Ex. 3. Otherwise, ICE's new standard procedure is:

    - serve a notice of removal on the detainee—not their counsel if they have any;

- do not affirmatively ask whether the non-citizen is afraid of being removed to the third country;
- if the non-citizen was "provided reasonable means and opportunity to speak with an attorney," then remove them to the third country in as few as ***6 hours*** after serving the notice of removal;
- if the non-citizen does not affirmatively state a fear of persecution or torture, regardless of whether they had the opportunity to speak to counsel, then remove them in as few as 24 hours after serving the notice of removal;
- if the non-citizen does affirmatively state a fear if removed to the third country, USCIS will screen the non-citizen within 24 hours and unless the non-citizen—again without any mention of counsel—fails to establish they "would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal," remove them as soon as possible;
- only if a non-citizen affirmatively states a fear of removal to a third country and then on less than 24 hours-notice establish they are more likely than not to be persecuted or tortured upon removal will USCIS refer the matter to immigration court for further proceeding, or "[a]lternatively, ICE may choose to designate another country for removal."

Id.

20. Independent of the now-stayed *D.V.D.* injunction, an increasing number of courts across the country have enjoined the Government from effectuating unlawful third-country removals without adhering to mandatory statutory and constitutional protections. *Misirbekov v. Venegas,* No. 1:25-CV-00168, 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1,

2025) (granting TRO barring Government "from transferring, relocating, or removing Petitioner outside the Southern District of Texas without an Order from the Court"); *Vaskanyan*, 2025 WL 2014208, at *6–9 (holding "Petitioner's removal to a third country without due process . . . *is* likely to result in irreparable harm" and enjoining Petitioner's removal to a third country without the same protections mandated in the D.V.D. injunction); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025) (granting TRO enjoining Government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2097979, at *3 (W.D. Wash. July 25, 2025) (same); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025) (granting TRO and preliminary injunction enjoining removal of "Petitioner to a third country without notice and an opportunity to be heard"); *Gomez v. Chestnut*, No. 2:25-CV-00975-GMN-BNW, 2025 WL 1695359, at *4 (D. Nev. June 17, 2025) (ordering Government "shall provide 72-hours' notice to Petitioner's counsel before it is the Government's intent to remove Petitioner out of the country").

II. Petitioner's Immigration and Custody Status

21. Petitioner YOSVEL MACHIN ROMERO is a Cuban citizen. He is not a citizen of any country besides Cuba, nor does he have ties to any other country.

22. Petitioner suffered repeated persecution and torture in Cuba on the basis of his protected status in connection with political expression and social group membership. He fled Cuba out of fear for his life.

23. Petitioner entered the United States without inspection on April 25, 2019. Petitioner was issued a Form I-862, Notice to Appear, and charged as subject to removal under 8 U.S.C.

§ 1182(a)(6)(A)(i). Docket #1 Exhibit 1: Notice to Appear. Respondents commenced removal proceedings pursuant 8 U.S.C. § 1229a against the Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights. *Id.*

24. Petitioner timely applied for asylum before the Conroe Immigration Court. The Petitioner complied with the Immigration Court by attending all preliminary and final hearings pursuant to his asylum application. Petitioner's asylum application was denied on April 22, 2020, and was then ordered removed. A motion to reopen was denied on December 18, 2025.

25. Petitioner was subject to a valid ICE Order of Supervision prior to his arrest by ICE. The detention and release of noncitizens who are subject to a final order of removal is addressed by 8 U.S.C. § 1231. Under the statute, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). "If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

26. Petitioner has a currently pending form I-130, Petition for Alien Relative, before the U.S. Citizenship and Immigration Services (USCIS).

27. Petitioner was re-detained and his Order of Supervision was revoked without cause by Respondents on November 4, 2025 during a routine ICE appointment.

28. On February 5, 2026, Petitioner was informed by ICE that it would attempt to remove him to Mexico, and that if he refused, he would be transferred back to "Alligator Alcatraz". Petitioner is not a citizen of and has no connection to Mexico. An Emergency

Motion for a Temporary Restraining Order was filed and denied later that same day. Docket #4, 5.

29. On February 9, 2026 at approximately 11:00 PM, Petitioner was transferred to the Port Isabel Detention Facility in Los Fresnos, Texas. Petitioner was allowed one phone call. Petitioner was told he is imminently facing deportation to Mexico.

30. On today's date February 10, 2026, Petitioner was transferred to the El Valle Detention Center in Raymondville, Texas. Undersigned counsel was notified at 2:22 PM. Petitioner was told by Respondents that he was being transferred with sixteen other detainees so that a bus could take them to Mexico. He was then transferred back to ERO El Paso Camp East Montana, the facility where these proceedings began.

31. On February 20, 2026, this Court issued and Order for a status update, in which Respondents were instructed to respond specifying (1) Whether the Cuban government has agreed to accept Machin-Romero for removal, (2) If not, what obstacles remain to effectuating Machin-Romero's removal, including issuance of travel documents, (3) If Cuba has denied the request, what, if any, concrete steps have been taken to lawfully remove Machin-Romero to a third country, and (4) The anticipated timeline for Machin-Romero's removal from the United States. Docket #8.

32. On today's date, March 12, 2026, Respondent's cellmate notified Petitioner's spouse that Petitioner was removed from the detention center at 1:00 AM. Undersigned counsel cannot locate Petitioner in her Enforcement and Removal Operations (ERO) portal. Exhibit 1. Petitioner is no longer appearing as being detained at the El Paso Camp East Montana facility where he has been since February 14, 2026.

33. Upon information and belief, Counsel fears that Petitioner is being *unlawfully* deported to Mexico or another third country.

III. Petitioner Has Expressed a Credible Fear of Removal to the Third Country Respondents Have Identified

34. Upon information and belief, it appears Respondents are preparing to remove Petitioner to a third country without providing a meaningful opportunity to be heard on his fear-based claims. Respondents have not yet provided any meaningful notice—and no notice to counsel, so it is difficult for Petitioner to explain the basis for his fear-based claim as to a specific country. Nevertheless, it is obvious that Petitioner's protected status could subject him to persecution and torture in any number of third countries. *See, e.g., D.V.D.*, 778 F.Supp.3d at 388.

35. The United States Department of State issues Country Reports on Human Rights Practices for various countries. These Country Reports could illustrate part of the basis for Petitioner's hypothetical fear-based protection claims. If Respondents provide notice of a particular third country they seek to remove Petitioner to, Petitioner's counsel will evaluate and supplement the record with Petitioner's basis for a fear-based claim if applicable.

36. Further, based on the statements and actions of countries that have recently accepted third country removals from the United States, Petitioner would likely succeed on the claim that these countries would repatriate him to Cuba where he would face torture and/or persecution, in violation of U.S. and international refugee law.

LEGAL STANDARD

37. Petitioner is entitled to a temporary restraining order (TRO) if he establishes "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1004 (S.D. Tex. 2025) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The Fifth Circuit has adopted a "sliding scale" approach, "which takes into account the intensity of each in a given calculus." *Mock v. Garland*, 75 F.4th 563, 587 (5th Cir. 2023) (quoting *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 180 (5th Cir. 1975)). Thus, "[t]he purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits." *Texas v. United States*, 328 F. Supp. 3d 662, 709 (S.D. Tex. 2018) (citing *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974)). "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579, 137 S.Ct. 2080, 198 L.Ed.2d 643 (2017) (citing *Winter*, 555 U.S. at 20, 24).

ARGUMENT

I. Petitioner is Likely to Succeed on the Merits

38. It is black letter law that a "noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Sagastizado v. Noem,* 802 F. Supp. 3d 992, 1009 (S.D. Tex. 2025) (quoting *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) in turn citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)). *See also Najjar*, 630 Fed.

App'x. 724 ("In the context of country of removal designations, last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country.") In practice, the "guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (ordering the same for non-citizen petitioner and holding ICE "has an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting" them). This is because "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings." *Vaskanyan*, 2025 WL 2014208, at *6 (citing *D.V.D.*, 778F.Supp.3d). Further, "[w]hile the Executive Branch has the authority to determine procedures to implement its policy of third country removal in the absence of a congressional mandate, those procedures must nevertheless comply with the minimum constitutional requirements of due process. " *Sagastizado*, 802 F. Supp. 3d at 1010.

39. While the Fifth Circuit decisions above clearly evince Petitioner's likelihood of success on the merits, a full constitutional analysis further illustrates his likelihood of success. To "establish a procedural due process violation, the plaintiff must identify a protected liberty or property interest and allege that the defendants, acting under color of state law, deprived [him] of that interest without constitutionally adequate process." *D.V.D.*, 778 F.Supp.3d at 387 (cleaned up). The "basic purport of the constitutional requirement is that, before a significant deprivation of liberty or property takes place at the state's hands, the affected individual must be forewarned and afforded an opportunity to be heard 'at a meaningful time and in a meaningful manner." *Id.* (cleaned up).

40. Relevant here, "Congress clearly established the right to deferral or withholding of removal based on a legitimate fear-based claim." *Id; see also 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"). Moreover, "'[i]t is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). This means "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." *Id.* To be sure, "there can be no disagreement that the same constitutional guarantees apply to withholding-only relief." *D.V.D.*, 778 F.Supp.3d at 387.

41. An increasingly large host of courts in this Circuit and across the country have found the Government's "policy or practice of executing third-country removals" fail to "provid[e] notice and a meaningful opportunity to present fear-based claims, and that such policy or practice constitutes a deprivation of procedural due process." *Id.* at 387–89 ("The Court finds it likely that Defendants have applied and will continue to apply the alleged policy of removing aliens to third countries without notice and an opportunity to be heard on fear-based claims—in other words, without due process.")

42. The Government's March 30, 2025 and July 9, 2025 policy memoranda are clear evidence of Respondents' intent to unlawfully effectuate a third country removal, just as they have done with many others already. ICE's new standard procedure for third-country removals is to not ask a non-citizen whether they are afraid of being removed to a

specific third country. Docket #3, Exhibit 10. If the non-citizen is provided a "reasonable means and opportunity to speak with an attorney," then they may be removed within as few as 6 hours after notice of removal. *Id.* If they cannot speak to an attorney, they may be removed in as few as 24 hours. *Id.* If the non-citizen affirmatively states a fear of removal, USCIS is to screen them within 24 hours and unless the non-citizen—again without any mention of counsel—fails to establish they "would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal," remove them as soon as possible. *Id.*

43. Here, Petitioner was informed by ICE that it would attempt to remove him to Mexico, and that if he refused, he would be transferred back to "Alligator Alcatraz" on February 5, 2026.

44. On February 9, 2026 at approximately 11:00 PM, Petitioner was transferred to the Port Isabel Detention Facility in Los Fresnos, Texas. Petitioner was allowed one phone call. Petitioner was told he is imminently facing deportation to Mexico. Exhibit 11.

45. On February 10, 2026, Petitioner was transferred to the El Valle Detention Center in Raymondville, Texas. Undersigned counsel was notified at 2:22 PM. Petitioner was told by Respondents that he was being transferred with sixteen other detainees so that a bus could take them to Mexico. He was then transported back to ERO El Paso Camp East Montana on February 14, 2026, the facility where these proceedings began.

46. On February 20, 2026, this Court issued and Order for a status update, in which Respondents were instructed to respond specifying (1) Whether the Cuban government has agreed to accept Machin-Romero for removal, (2) If not, what obstacles remain to effectuating Machin-Romero's removal, including issuance of travel documents, (3) If

Cuba has denied the request, what, if any, concrete steps have been taken to lawfully remove Machin-Romero to a third country, and (4) The anticipated timeline for Machin-Romero's removal from the United States. Docket #8.

47. **On today's date, March 12, 2026, Respondent's cellmate notified Petitioner's spouse that Petitioner was removed from the detention center at 1:00 AM. Undersigned counsel cannot locate Petitioner in her Enforcement and Removal Operations (ERO) portal. Exhibit 1. Petitioner is no longer appearing as being detained at the El Paso Camp East Montana facility where he has been since February 14, 2026.**

48. Upon information and belief, Counsel fears that Petitioner is being *unlawfully* deported to Mexico or another third country.

49. Petitioner is not a citizen of and has no connection to Mexico.

50. Accordingly, Respondents' actions here and their general policy guidance "violate[]

51. both INS regulations and the constitutional right to due process," as enumerated by the Ninth Circuit and sister district courts. *Andriasian*, 180 F.3d at 1041 ("last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *see also Najjar*, 630 Fed. App'x. 724 (similar); *Aden*, 409 F. Supp. 3d at 1010; *Vaskanyan*, 2025 WL 2014208, at *6.

52. This Court should join its peers in finding that Respondents' third country removal process is unlawful. *D.V.D.*, 778 F.Supp.3d at 392–93 (granting preliminary injunction and mandating due process protections as discussed above and requested herein); *Pablo Pablo v. Lyons*, No. EP-25-CV-00566-DCG, 2025 WL 3684305, at *4 (W.D. Tex. Dec. 5, 2025) (granting preliminary injunction and finding that "preliminary relief is necessary to restore the status quo and to preserve Pablo Pablo's access to due process in accordance

with the Constitution and relevant immigration statutes"); *Vaskanyan*, 2025 WL 2014208, at *6–9 (holding "Petitioner's removal to a third country without due process . . . *is* likely to result in irreparable harm" and enjoining Petitioner's removal to a third country without the same protections mandated in the D.V.D. injunction); *J.R.*, 2025 WL 1810210, at *4 (granting TRO enjoining Government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Nguyen*, 2025 WL 2097979, at *3 (same); *Phan*, 2025 WL 1993735, at *7 (enjoining third country removal "without notice and an opportunity to be heard"); *Misirbekov*, 2025 WL 2201470, at *2 (prohibiting "transferring, relocating, or removing Petitioner outside the Southern District of Texas without an Order from the Court"); *Gomez*, 2025 WL 695359, at *4.

53. Taken together, Petitioner easily meets his burden of demonstrating a likelihood of success on the merits of his due process and INA violation claims, or at least, serious questions going to the merits. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

II. Absent Immediate Relief, Petitioner will Suffer Irreparable Harm

54. Respondents appear likely to imminently remove Petitioner to a third country without providing Petitioner mandatory statutory and constitutional protections. *See* Exhibit 10. (explaining DHS's July 9, 2025 Third Country Removal policy memorandum setting forth *standard* procedure is to remove non-citizens to third countries in as few as 24 hours without due process protections). Therefore, significant irreparable harm is obviously imminent. *Melendres*, 695 F.3d at 1002 ("the deprivation of constitutional rights 'unquestionably constitutes irreparable injury'"). As the *D.V.D.* District Court explained, the irreparable harm resulting from third country removal without sufficient

opportunity to apply for fear-based protection "is clear and simple: persecution, torture, and death. It is hard to imagine harm more irreparable." *D.V.D.*, 778 F.Supp.3d at 391. The Supreme Court similarly held in a more unfavorable fact pattern involving detainees who are members of a designated foreign terrorist organization that "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *A. A. R. P.*, 145 S. Ct. at 1368. Accordingly, an increasingly long list of courts in this district and throughout the country have held "removal to a third country without due process . . . *is* likely to result in irreparable harm" and issued TROs enjoining such removals. *Vaskanyan*, 2025 WL 2014208, at *6 (enjoining removal without protections mandated in the *D.V.D.* injunction). *Supra* p. 13 (discussing *J.R.*, 2025 WL 1810210, at *4; *Nguyen*, 2025 WL 2097979, at *3; *Phan*, 2025 WL 1993735, at *7; *Misirbekov*, 2025 WL 2201470, at *2; *Gomez*, 2025 WL 1695359, at *4). This Court should likewise enjoin Respondents from subjecting Petitioner to irreparable harm and stripping the Court of its jurisdiction[1] via an unlawful third-country removal.

III. The Public Interest and Equities Favor Granting Relief

[1] The All Writs Act authorizes courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). In the immigration context, courts have recently invoked the All Writs Act to preserve their jurisdiction over constitutional challenges to lightning-fast deportations. *See, e.g., A.A.R.P.*, 145 S. Ct. at 1369 (noting that the Court "had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter," by ordering their continued presence in the United States until further order of the Court (citing 28 U.S.C. § 1651(a))); *Garcia v. Noem*, No. 8:25-CV-00951-PX, 2025 WL 2062203, at *6–10 (D. Md. July 23, 2025) (enjoining third-country removal proceedings in order to preserve jurisdiction pursuant to the All Writs Act); *Ozturk v. Trump*, 2025 WL 1145250, at *23 (D. Vt. Apr. 18, 2025) (ordering return of detainee from Louisiana to Vermont), stay and mandamus denied sub nom., *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025); *Perez v. Noem*, 2025 U.S. Dist. Lexis 113509, at *4–5 (S.D.N.Y. June 13, 2025) (enjoining detainee's transfer outside New York and New Jersey absent further court order).

55. The balance of the equities and the public interest strongly favor granting Petitioner's requested relief. These two "merge where, as is the case here, the government is the opposing party." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). At its core, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citation omitted). In cases implicating removal, "there is a public interest in preventing [non-citizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken*, 556 U.S. at 436; *see also Vaskanyan*, 2025 WL 2014208, at *8 (holding and quoting same). In response, the 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). For example, the *D.V.D.* Court "found it likely that these [third-country] deportations have or will be wrongfully executed … [and] that these circumstances countervail the public's normal and meaningful 'interest in prompt execution.'" 2025 WL 1142968, at *23. To boot, Petitioner's "likelihood of success on the merits [further] lightens [Respondents'] stated interests." *Id.*

56. Moreover, in "comparison to the persecution Petitioner would face, Respondent would suffer little to no harm if Petitioner's Motion were granted." *Misirbekov*, 2025 WL 2201470, at *2. In other words, a "TRO would impose little to no prejudice on the Government, which is free at any time to execute the removal order by" *lawfully* removing Petitioner. *J.R.*, 2025 WL1810210, at *4.

IV. If Necessary, an *Ex* Parte TRO Is Appropriate

57. Petitioner's undersigned counsel have taken efforts to ensure Respondents are on notice of Petitioner's motion for temporary restraining order, petition for writ of habeas corpus, and other filings. Petitioner's counsel are filing this and Petitioner's related submissions electronically in the Western District of Texas, which effectuates service on the U.S. Attorney's Office. Further, Petitioner's counsel emailed copies of Petitioner's file-ready submissions to the U.S Attorney's Office at the address of lacy.mcandrew@usdoj.gov (Lacy McAndrew) and mary.kruger@usdoj.gov (Mary F. Kruger) In that email communication, Petitioner's counsel explained that they will request the Court set a hearing for as soon as practicably possible. Therefore, Petitioner has provided Respondents with "actual" and "[a]ppropriate notice."

58. Nevertheless, given the exigent circumstances, the Court should issue an *ex parte* TRO upon movant's showing that "immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard." Fed. R. Civ. P. 65(b)(1). Petitioner "has met those requirements by demonstrating through specific facts in the supporting declarations that immediate and irreparable injury would result before full briefing could occur." *J.R.*, 2025 WL1810210, at *4 (holding *ex parte* TRO is appropriate and necessary because of potential for third-country removal "with minimal notice"). The Court should issue the requested TRO expeditiously even if it finds Petitioner has "raised serious questions going to the merits," as opposed to likelihood of success, so long as he establishes "imminent threat of severe, irreparable harm." *Nguyen*, 2025 WL 2097979, at *3 (citing *A.A.R.P.*, 145 S. Ct. at 1369). Such an extraordinary measure is also necessary to ensure preservation of the "Court's jurisdiction." *Id.* (citing *A.A.R.P.*, 145 S. Ct. at

1369). Since Respondents appear determined to unlawfully remove Petitioner to a third country, an *ex parte* TRO is more than appropriate here.

V. No Security Is Appropriate for an Indigent Petitioner

59. Although Federal Rule of Civil Procedure 65(c) can require a security for a temporary restraining order, under the Fifth Circuit's interpretation of Rule 65(c), "the amount of security required by the rule is a matter within the discretion of the trial court. Thus, the court 'may elect to require no security at all.'" *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981) (quoting *Corrigan Dispatch Co. v. Casaguzman*, F. A., 569 F.2d 300, 303 (5th Cir. 1978)). No security is appropriate where there is no quantifiable harm to the restrained party and where the order is in the public interest. *Save Our Sonoran, Inc v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005); *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). District courts routinely exercise this discretion to require no security in cases brought by indigent or incarcerated people. *See, e.g., Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (ruling that "the district court did not violate Rule 65(c) by failing to" require a security bond); *Vaskanyan*, 2025 WL 2014208, at *8; *Diaz*, 2025 WL 1676854, at *3. Due to his prolonged detention, Petitioner is indigent. Accordingly, the Court should not require him to post security.

CONCLUSION

Petitioner respectfully requests this Court grant his Emergency Motion for a Temporary Restraining Order. In doing so, the Court should: enjoin Respondents from removing Petitioner from this District and from removing Petitioner via a third-country deportation

without providing him and his counsel meaningful notice and opportunity to assert a fear-based claim:

(1) a minimum of ten (10) days to raise a fear-based claim for protection prior to removal;

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

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

Respectfully submitted,

DATE: 03/12/2026

Jacklyn Kelly Garcia
Casa de León, PLLC
Bar No. 24119484
Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, I hereby certify that on March 12, 2026, this was filed in the Western District of Texas, which effectuates service on the U.S. Attorney's Office.

Respectfully submitted,

DATE: 03/12/2026

Jacklyn Kelly Garcia
Casa de León, PLLC
Bar No. 24119484
Attorney for Petitioner

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

YOSVEL MACHN-IROMERO Petitioner, v. WARDEN, Operator of the ERO El Paso East Montana Camp; MARY DE ANDA-YBARRA, El Paso ICE Field Office Director; TODD LYONS, Acting Director U.S. Customs and Immigration Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, Attorney General of the United States; Respondents.	Case No. 3:26-cv-00322-KC Agency No. [redacted] **[PROPOSED] ORDER GRANTING PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER** *Expedited Hearing Requested*

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

1. Petitioner is likely to succeed on the merits of his claims.
2. Petitioner is likely to suffer irreparable harm in the absence of a temporary restraining order, the balance of equities tips in his favor, and a temporary restraining order is in the public interest.

Therefore, Petitioner YOSVEL MACHIN ROMERO'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 (10) days to raise a fear-based claim for protection prior to removal;
    b. moving to reopen Petitioner's removal proceedings if Petitioner demonstrates reasonable fear of removal to the third country;
    c. providing Petitioner a meaningful opportunity, and a minimum of fifteen (15) days for Petitioner to seek reopening of his immigration proceedings if Petitioner is not found to have demonstrated a reasonable fear of removal to the third country.
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 _____, 2026. Petitioner is to file a reply in support no later than _____, 2026. Petitioner's Motion for Preliminary Injunction shall be heard on _____, 2026 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 (2) days' notice or such shorter notice as the Court may allow. See FRCP 65(b).

Dated: _____, 2026

Time and Hour: _____ AM/PM

_____

United States District Court Judge

EXHIBIT 1

⚠ No valid currentDetentionLocationId found in encounters.

Information

Your client is not currently in an ICE detention facility; you will be unable to schedule any legal visits for subjects that currently do not have a current location.

Close

Schedule a Legal Visit

Important Notice:

Only selected detention facilities that are participating in the ERO eFile Scheduling application will be available for scheduling a visit. Please visit **ice.gov/eroefile** for more information.

* **Client A-Number:**

[redacted]

* **Country of Birth:**

Cuba

☐ **I don't know the A-Number**

Next

Information

Your client is not currently in an ICE detention facility; you will be unable to schedule any legal visits for subjects that currently do not have a current location.

Official Website of the Department of Homeland Security

Report

Main Menu

Search Results: 0

Your search has returned zero (0) matching records. Please re-check the search terms you entered to ensure they are correct and try your query again. Please remember the system does not provide information for detainees under the age of 18.

If you conducted a name-based search, please remember that only exact matches to the name you entered will be returned. You may want to try searching any name or spelling variants used by the detainee.

If you conducted an A-Number search you may want to try conducting a name-based search instead.

If you are unable to find the detainee using the Online Detainee Locator System, please contact your local field office.

For more information on the Missing Migrant Program please visit link.

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