UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston Division

Eduardo Ydlibi Tellisseh, Petitioner, v. Markwayne Mullin, *Secretary, U.S. Department of Homeland Security, et al.*, Respondents.	Civil Action No. 4:26-cv-05390

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner Eduardo Ydlibi Tellisseh, by counsel, pursuant to Federal Rule of Civil Procedure 65(a) and (b), respectfully moves this Court for an emergency temporary restraining order and, following expedited briefing, a preliminary injunction: directing Respondents to release him from custody under the conditions of his October 20, 2014 Order of Supervision pending adjudication of his Petition for Writ of Habeas Corpus (Dkt. No. 1)—or, at a minimum, restraining Respondents from removing him from the United States to any country pending adjudication. In support, Petitioner states as follows:

I. Factual Background

1. On November 19, 2013, an Immigration Judge found that Petitioner would more likely than not be tortured if returned to his native Venezuela, ordered him removed, and granted him deferral of removal under the Convention Against Torture. Dkt. No. 1 ¶¶ 1, 17; Dkt. No. 1-1. That grant has never been terminated, and Respondents have never moved to reopen his proceedings to terminate it. Dkt. No. 1 ¶¶ 17, 36.

2. After approximately eleven months of post-order detention during which ICE could not remove him, ICE released Petitioner on an Order of Supervision on October 20, 2014. Dkt. No. 1 ¶ 18; Dkt. No. 1-2. For the next eleven years he complied with every condition of that order—every check-in, continuous employment authorization, no further criminal history. Dkt. No. 1 ¶ 18.

3. On November 25, 2025, ICE arrested Petitioner at his workplace without warrant or notice, provided no notice of revocation of his supervision and no informal interview, and pressed him to sign a notice of removal to Mexico. He refused, telling the officers that he feared removal to Mexico; he did not consent then and does not consent now. Dkt. No. 1 ¶¶ 20–21.

4. On January 25, 2026, officers told Petitioner he was going home. Instead, they drove him overnight to Arizona, denied his requests to call his attorney and family, and—when he refused to board an aircraft the next morning—struck him and physically forced him aboard, triggering a cardiac episode that required his implanted pacemaker to intervene mid-flight. On January 26, 2026, Respondents removed him to Venezuela, the one country his deferral of removal forbade. Dkt. No. 1 ¶¶ 23–24; Dkt. No. 1-3 ¶¶ 10–11. Petitioner has a pacemaker and defibrillator; roughly twenty-five percent of his heart functions on its own. Dkt. No. 1-3 ¶ 12.

5. Petitioner sued in the Western District of Texas to compel his return. Respondents conceded that "[t]he removal to Venezuela was inadvertent because there was a deferral order based on the Convention Against Torture," Dkt. No. 1-4 at 1, and Judge Cardone found that "Respondents concede that Plaintiff was wrongfully removed," announced her intent to order them to facilitate his return "at the earliest reasonable opportunity," Dkt. No. 1-6 at 1–2, and ordered the parties to address whether the Government may detain him upon return and what steps will ensure

his case "is handled as it would have been had he not been improperly sent to Venezuela," Dkt. No. 1-7 at 2 (quoting *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025)).

6. On July 8, 2026, Petitioner returned on the itinerary Respondents arranged, landing at George Bush Intercontinental Airport at approximately 1:55 p.m. Federal immigration officers took him into custody immediately. Dkt. No. 1 ¶¶ 32–34. He filed the Petition the same day, while physically present and detained in this District. Dkt. No. 1.

7. That same day, Petitioner's counsel wrote to ICE articulating Petitioner's fear of persecution and torture in Mexico and in any other third country—including the risk of onward refoulement to Venezuela—and demanding notice of any intended third country, reopening of his immigration proceedings so that his fear-based claim may be presented to an Immigration Judge, and a stay of removal pending that adjudication. Dkt. No. 1 ¶ 35; Dkt. No. 1-8 at 2–3. The letter attached Petitioner's sworn statement of the same date: he fears being "harmed, killed, or immediately sent back to Venezuela" from Mexico or any other country, where he would have no legal status or protection, and he "respectfully request[s] a third country fear screening." Dkt. No. 1-8 at 20–21. And as the letter recorded, ICE had by then informed Petitioner that it plans to remove him to Mexico. Dkt. No. 1-8 at 2. Respondents have not responded. They have served no notice of any third country of removal, conducted no fear screening of any kind, and taken no steps to reopen Petitioner's proceedings. Ex. A, Decl. of James Justice Haynes ("Haynes Decl.") ¶¶ 5–7.

8. Respondents have now transferred Petitioner from Houston to El Paso, Texas—precisely as they foretold: "Plaintiff will likely be returned to ICE custody in El Paso, but ERO will ultimately make a custody decision based on operational needs and bed space availability." Dkt. No. 1-5 at 3; Haynes Decl. ¶ 4. El Paso is the field office that carried out Petitioner's January

removal, and ICE has informed Petitioner that it plans to remove him to Mexico—the same removal it pressed him to accept in 2025. Dkt. No. 1-8 at 2; Dkt. No. 1 ¶¶ 20–21, 33; Haynes Decl. ¶¶ 4, 8.

9. All told, Petitioner has spent approximately thirteen months in post-removal-order detention—more than double the six-month period *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), deems presumptively reasonable—without Respondents ever identifying a lawful means of removing him. Dkt. No. 1 ¶ 37.

II. Legal Standard

10. A temporary restraining order preserves the status quo. *Exhibitors Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 441 F.2d 560, 561 (5th Cir. 1971) (per curiam). The movant must establish "(1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the injunction will not disserve the public interest." *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quoting *Canal Auth. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974)); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The final two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

III. Petitioner Is Likely to Succeed on the Merits.

A. This Court Has Jurisdiction.

11. This Court has jurisdiction. Petitioner does not challenge his removal order or the decision to execute it; he challenges the process due before removal to a country not designated in that order, and the lawfulness of his detention. No provision of 8 U.S.C. § 1252 bars such claims. *Sagastizado Sanchez v. Noem*, 802 F. Supp. 3d 992, 1004–06 (S.D. Tex. 2025) (Saldaña, J.);

Mbaba v. Perez, No. 5:26-CV-00070, 2026 WL 917484, at *5–6 (S.D. Tex. Feb. 13, 2026) (Saldaña, J.); *see Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022); *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000). Claims that "imply the invalidity" of "removal" fall within the "core" of habeas, and "immediate physical release [is not] the only remedy under the federal writ." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam). And because Petitioner filed while detained in this District, jurisdiction attached upon filing; his subsequent transfer to El Paso does not defeat it. *Griffin v. Ebbert*, 751 F.3d 288, 290 (5th Cir. 2014) ("Jurisdiction attached on that initial filing for habeas corpus relief, and it was not destroyed by the transfer of petitioner and accompanying custodial change.").

B. Due Process Bars Petitioner's Third-Country Removal Without Reopened Proceedings or, at Minimum, Immigration Judge Review (First Claim, Dkt. No. 1 ¶¶ 62–66).

12. On the merits, Petitioner's First Claim, Dkt. No. 1 ¶¶ 62–66, is not that any regulation entitles him to a particular interview—his removal order has not been reinstated, and he claims no entitlement under 8 C.F.R. § 208.31. His claim is constitutional: due process forbids Respondents from removing him to Mexico, or any third country, without notice and a meaningful opportunity to seek fear-based protection—through reopened removal proceedings before an Immigration Judge or, at a minimum, Immigration Judge review of any negative third-country fear screening. *Serpas v. Simon*, No. 1:25-CV-02369-AJT-WBP, 2026 WL 1244544, at *7 (E.D. Va. Feb. 3, 2026). ("The fact that Petitioner does not technically satisfy the criteria for mandatory immigration judge review under any of these regulations simply because he is not subject to expedited removal or the reinstatement of a prior removal order does not make the risk of erroneous deprivation any less grave."); *Arenado-Borges v. Bondi*, 2025 WL 3687518, at *6 (W.D. Wash. Dec. 19, 2025) ("[s]imply allowing the petitioner to move to reopen their immigration proceedings

is not enough to satisfy Due Process—the Government must actually reopen proceedings so that the petitioner has a fair and adequate opportunity to be heard.")

13. Judges of this District have so held on materially identical facts. *See, e.g., Sagastizado Sanchez*, 802 F. Supp. 3d at 1008–13 (removal to a third country without, at a minimum, Immigration Judge review of a negative fear determination violates due process); *Mbaba*, 2026 WL 917484, at *10 (petitioner "entitled under due process to adequate notice of any proposed third countries of removal and a meaningful opportunity to raise a fear-based claim through reopening her removal proceeding before an IJ," and the "discretionary nature of a motion to reopen before EOIR is therefore inadequate to protect [the noncitizen's] rights"); *accord Rodriguez Romero v. Ladwig*, No. 25-1106-JWD-EWD, 2026 WL 1146824, at *16 (M.D. La. Apr. 21, 2026) (deGravelles, J.) (prohibiting third-country removal absent notice and reopened proceedings before an immigration judge); *Kassye v. Mullin*, No. 1:26-cv-1648 (RDA/LRV), 2026 WL 1832368, at *6 (E.D. Va. June 24, 2026) (Alston, J.) (collecting decisions of "a number of judges" holding "that, as a matter of procedural due process, aliens are entitled to immigration judge review of a negative fear determination by an immigration officer").

14. So far as Petitioner is aware, the authority runs entirely one way: "numerous courts throughout the country have found that ICE's March 2025 Guidance 'violates due process,'" *Rodriguez Romero*, 2026 WL 1146824, at *13 (quoting *Kumar v. Wamsley*, 2025 WL 3204724, at *5–6 (W.D. Wash. Nov. 17, 2025) (collecting cases)). On the other hand, Petitioner is aware of no court that has considered those third-country procedures and held that they pass constitutional muster. The Supreme Court's unexplained stay of the class-wide injunction in *D.V.D.* is no such holding: it neither approved the procedures nor forecloses individual relief. *Sagastizado Sanchez*, 802 F. Supp. 3d at 1006–08.

15. The *Mathews v. Eldridge* factors confirm the point. Due process is measured by "(1) the private interest that will be affected by the official action, (2) a cost-benefit analysis of the risks of an erroneous deprivation versus the probable value of additional safeguards, and (3) the Government's interest, including the function involved and any fiscal and administrative burdens associated with using different procedural safeguards." *Mbaba*, 2026 WL 917484, at *9 (citing *Dusenbery v. United States*, 534 U.S. 161, 167 (2002), and *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

16. On the first factor, Petitioner's interest is the weightiest the law knows: his life and freedom from torture, in a country where he fears persecution and onward refoulement to Venezuela—an interest of the kind courts uniformly hold sufficient to require procedural protection. *Serpas*, 2026 WL 1244544, at *7 ("Petitioner's private interest to not be removed to a third country where he would face persecution is clearly significant");*Cruz Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2841488, at *6 (D. Md. Oct. 7, 2025); *see J.G.G.*, 604 U.S. at 673; *Sagastizado Sanchez*, 802 F. Supp. 3d at 1011–12.

17. An Immigration Judge has already found him more likely than not to face torture in Venezuela, and given that Petitioner has no immigration status in Mexico, chain refoulement to Venezuela is all but certain. *See* Dkt. No. 1-8 at 20 ("I am scared that I will be in serious danger if I am deported to another country and will quickly be sent to Venezuela rather than given any protection there, putting me at the same risk I have already proven in my prior case that I won in 2013."); Refugees International article "Protection, Not Concession: Mexico's Responsibility to Third Country Nationals Deported by the United States" ("Mexico has not published guidelines for reception of third country nationals or mechanisms to grant them legal status. . . . Deported

Central Americans are frequently detained and returned to their home countries.").[1] Mbaba, 2026 WL 917484, at *9 ("Due process requires the Government to answer whether Ms. Mbaba specifically faces possible torture or persecution in Equatorial Guinea, including whether removal to Equatorial Guinea would result in 'chain refoulement' to her home country of Mauritania.").

18. On the second factor, the risk of erroneous deprivation under Respondents' procedures is intolerably high, and the probable value of the safeguards Petitioner seeks is exactly why the law provides them everywhere else. Respondents' third-country protocol offers, at most, a screening by a single DHS officer, at the more-likely-than-not standard, with no evidentiary hearing, no written record furnished to the noncitizen, and no review. "[A] single review by an asylum officer creates an unacceptably high risk of erroneous deprivation." *Cruz Medina*, 2025 WL 2841488, at *7. By contrast, in the analogous processes the regulations prescribe, the officer must create a written record of the material facts and determination, 8 C.F.R. § 208.31(c), an Immigration Judge reviews that record with the noncitizen heard, 8 C.F.R. § 208.31(g), and the screening standard is a "reasonable possibility"—"as low as a ten percent chance" of persecution, *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011) (quoting *INS v.. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987); *see also Tomas-Ramos v. Garland*, 24 F.4th 973, 982 (4th Cir. 2022). Review by an independent adjudicator who takes testimony and evidence of record is not a formality; it is what the statute's "trier of fact" language contemplates, and what a screening-only process lacks. *Kassye*, 2026 WL 1832368, at *7; *Sagastizado Sanchez*, 802 F. Supp. 3d at 1011–13.

19. On the third factor, the burden on the Government is minimal. What Petitioner seeks—reopened proceedings, or Immigration Judge review of a negative screening—already

[1] *Available at:* https://www.refugeesinternational.org/reports-briefs/protection-not-concession-mexicos-responsibility-to-third-country-nationals-deported-by-the-united-states/ (last visited July 10, 2026).

exists and is used in every analogous circumstance. "[T]he INA already provides for such a process, namely removal proceeding before an IJ in which Petitioner may seek withholding of removal and/or CAT protections. Requiring the Government to follow this process for determining removability that is already in place for third country removals would be minimally burdensome." *Mbaba*, 2026 WL 917484, at *9.

20. The Government has no legitimate interest in removing a man to a country where he would be persecuted or tortured, and any reliance on diplomatic assurances misses the point: "the issue is whether the Government may remove aliens to any third country without allowing them to seek withholding of removal." *Roberts v. Anda-Ybarra*, 2026 WL 1459725, at *9 (W.D. Tex. May 22, 2026) (emphasis omitted); *see Kassye*, 2026 WL 1832368, at *7. Each *Mathews* factor thus points the same way.

21. The statute's own structure confirms that a screening interview by a single DHS officer cannot comply with due process. Section 1231(b)(3)(A) commits the protection determination to the Attorney General—"the Attorney General may not remove an alien to a country if the Attorney General decides" the alien's life or freedom would be threatened—and § 1231(b)(3)(C) directs that "the trier of fact shall determine" whether the alien has carried his burden "in the manner described in clauses (ii) and (iii) of section 1158(b)(1)(B)," which contemplate testimony and "other evidence of record." 8 U.S.C. §§ 1231(b)(3)(A), (C); 1158(b)(1)(B)(ii)–(iii). *Mbaba*, at *9 (S.D. Tex. Feb. 13, 2026) ("the opportunity for a subjective fear screening before USCIS is also inadequate because it fails to provide for the opportunity to have an evidentiary hearing."). Moreover, Immigration judges are the Attorney General's adjudicative delegates and are independent of DHS; asylum officers are not. *See Kassye*, 2026 WL 1832368, at *7 (immigration judges "are employees of the Department of Justice," and "there can

be no trier of fact or evidence of record unless there is some additional process" beyond an officer-level screening); *Selgeka v. Carroll*, 184 F.3d 337, 344, 346 (4th Cir. 1999) ("Unlike asylum officers who are employees of the INS, immigration judges are independent of the INS"; petitioner "entitled to a hearing before an immigration judge").

22. In every analogous fear-screening regime—credible fear in expedited removal, 8 C.F.R. §§ 208.30(g), 1003.42, and reasonable fear for reinstated and administrative orders, 8 C.F.R. §§ 208.31(g), 1208.31(g)—a negative officer-level determination is reviewed by an Immigration Judge. Indeed, "there are no regulations that provide for a circumstance under which USCIS is given the authority to conduct fear-screening interviews without providing for independent review of that screening by an IJ." *Sagastizado Sanchez*, 802 F. Supp. 3d at 1010.

23. Nor may Respondents give Petitioner less process than the law would give him had he broken it. A noncitizen with "established connections in this country" is due more process than "an alien at the threshold of initial entry," *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020)—and Petitioner has two decades of connections, a family, and a protection order. Yet had Petitioner illegally reentered this country—which he did not; he returned on parole the Government itself arranged to remedy its own conceded violation—the regulations would indisputably afford him Immigration Judge review of a negative fear determination following reinstatement. 8 C.F.R. § 1208.31(g). Had he been apprehended at the border on first entry, the same. 8 C.F.R. § 1003.42. As Judge Saldaña explained, the argument that a long-present noncitizen "cannot be entitled to lesser protections now than he would have been upon his initial entry or upon a future commission of felony illegal reentry" "carries significant weight." *Sagastizado Sanchez*, 802 F. Supp. 3d at 1011–12.

24. Petitioner's fear is properly before Respondents. His counsel transmitted it in writing on July 8, 2026, attaching his sworn statement, Dkt. No. 1-8—and counsel's transmission suffices. *Nolasco Renderos v. Baker*, 814 F. Supp. 3d 598, 601 n.1 (D. Md. 2026) ("The Court has previously found that Petitioner's counsel's email constituted Petitioner's expression of fear of removal to Mexico."); *Orellana Quintanilla v. Mullin*, No. 25-cv-02513-LKG, 2026 WL 1481116, at *9 n.3 (D. Md. May 27, 2026) (rejecting the argument that emails from counsel were insufficient to trigger screening obligations).

C. Petitioner's Re-Detention Violated the Revocation Regulations and Due Process (Second Claim, Dkt. No. 1 ¶¶ 67–74).

25. Petitioner's Second Claim, Dkt. No. 1 ¶¶ 67–74, alleges that his re-detention violates the revocation regulations and the *Accardi* doctrine. An order of supervision may be revoked to effectuate removal only where, "on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," 8 C.F.R. § 241.13(i)(2), and upon revocation the noncitizen must be notified of the reasons, and the Service must "conduct an initial informal interview promptly after his . . . return to Service custody," 8 C.F.R. § 241.13(i)(3). The determination must be individualized, it must precede re-detention, and the burden is ICE's. *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023); *Rodriguez Romero v. Ladwig*, No. 25-1106-JWD-EWD, 2026 WL 321437, at *5–6 (M.D. La. Feb. 6, 2026) (deGravelles, J.); *Abuelhawa v. Noem*, 811 F. Supp. 3d 847, 860 (S.D. Tex. 2025) (Eskridge, J.) ("the Government fails to meet its burden where it provides only conclusory statements as to the likelihood of removal").

26. Neither of Petitioner's re-detentions complied. In November 2025, ICE arrested him at his workplace with no notice of revocation, no informal interview, and no individualized changed-circumstances determination, Dkt. No. 1 ¶¶ 20–21—and the ensuing sixty-two days

proved that no lawful removal was reasonably foreseeable, because ICE could not lawfully remove him at all and instead removed him unlawfully, Dkt. No. 1 ¶¶ 24, 37. Now, in July 2026, Respondents have re-detained him again: no notice of the reasons, no informal interview, and no individualized determination that his lawful removal is significantly likely—nor could there be one, with Venezuela barred by the unterminated deferral, Mexico dependent on a consent he has refused, and no third-country process even begun. Haynes Decl. ¶¶ 5–7; *see Garcia-Rivera v. Noem*, No. 1:26-cv-229-MSN-WBP, 2026 WL 1244545 (E.D. Va. Mar. 2, 2026) (Nachmanoff, J.) (deportation officer's bare assertion that ICE was ready to remove the releasee to Mexico could not carry the government's burden); *Villanueva v. Tate*, 801 F. Supp. 3d 689, 699–700 (S.D. Tex. 2025) (Hittner, J.) (absent evidence of a lawful revocation by an authorized official for a permissible reason, re-detention of a supervision releasee denies due process).

D. Removal to Venezuela Is Barred Absent Termination of Petitioner's Deferral of Removal (Fourth Claim, Dkt. No. 1 ¶¶ 81–83).

27. Petitioner's Fourth Claim, Dkt. No. 1 ¶¶ 81–83, is independently straightforward: removal to Venezuela is barred. "DHS may not remove the alien to the country designated in the removal order unless the order of [deferral] is terminated," *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021), and termination requires a motion to reopen and a de novo hearing, 8 C.F.R. § 1208.17(d). Respondents have never sought it—and the risk is anything but hypothetical, because they removed Petitioner to Venezuela once already and have conceded it was unlawful. Dkt. No. 1-4 at 1.

E. Petitioner's Detention Is Unlawful, and Release Is the Proper Remedy (Third and Fifth Claims, Dkt. No. 1 ¶¶ 75–80, 84–88).

28. Petitioner's Third and Fifth Claims, Dkt. No. 1 ¶¶ 75–80, 84–88, establish that his detention itself is unlawful, which supports the release he primarily seeks. The remedy for an

unlawful removal is return "along with restoration of the immigration status [the noncitizen] had upon removal," *Nken*, 556 U.S. at 435—here, release on the Order of Supervision he held for eleven years—and Respondents must ensure his case "is handled as it would have been had he not been improperly sent" abroad, *Abrego Garcia*, 145 S. Ct. at 1018.

29. Detention also fails *Zadvydas*: there is no significant likelihood of lawful removal in the reasonably foreseeable future, because Venezuela is barred by the unterminated deferral, Mexico is barred pending the process described above, nothing shows Mexico would accept him—he does not consent, and "the Mexican government does not accept individuals who do not willingly accept removal to Mexico," *Rea-Hernandez v. Bondi*, No. 2:25-CV-02609-TL, 2026 WL 322874, at *5 (W.D. Wash. Feb. 6, 2026); *accord Lambert v. Warden*, No. EP-26-CV-00427-DB, 2026 WL 926216, at *2 (W.D. Tex. Apr. 6, 2026)—and his cumulative post-order detention already exceeds a year, a clock that does not reset upon re-detention. *Zhu v. Noem*,, 2025 WL 4710076, at *7 (S.D. Tex. Dec. 23, 2025) ([T]he reasoning of Zadvydas explains why the 180-day period—and therefore the presumption of reasonable detention—does not reset simply because a noncitizen is re-detained."); *Abuelhawa*, 811 F. Supp. 3d at 855–56; *Villanueva*, 801 F. Supp. 3d at 702. "If the government is unable to lawfully remove a noncitizen without providing for particular procedural safeguards, then its refusal to provide those procedures can result in indefinite detention." *Mendoza Palacios v. Mullin*, No. 26-cv-648-ABA, 2026 WL 933319, at *4 (D. Md. Apr. 7, 2026) (Abelson, J.).

30. This Court's own decisions confirm the framework. In *Ortega-Aguirre v. Noem*, No. 4:25-CV-04332, 2025 WL 3684697 (S.D. Tex. Oct. 10, 2025), this Court held a detained noncitizen likely to prevail on his due process claim where he had been detained "without any individualized assessment of flight risk or dangerousness," *id.* at *3, and ordered his immediate

release on conditions, together with a restraint on removal, *id.* at *4. Days later, in *Ascencio-Merino v. Dickey*, No. 4:25-CV-04904, 2025 WL 4350766, at *2 (S.D. Tex. Oct. 21, 2025), this Court reached the same result where Respondents "fail[ed] to articulate any meaningful reason" for the detention. Those cases involved pre-order detention under 8 U.S.C. § 1226(a), but the constitutional principle—that civil immigration detention must be justified by an individualized assessment of flight risk or danger—applies a fortiori to Petitioner: his post-order detention has cumulatively exceeded *Zadvydas*'s presumptive period more than twice over; he was twice re-detained without any § 241.13(i) determination; and eleven years of flawless compliance on supervision refute any suggestion of flight risk or danger. Dkt. No. 1 ¶¶ 18, 20–21, 37.

31. Nor could Respondents justify Petitioner's detention on dangerousness grounds. Preventive detention based on dangerousness is upheld "only when limited to specially dangerous individuals and subject to strong procedural protections." *Zadvydas*, 533 U.S. at 691. The regulations supply exactly those protections: 8 C.F.R. § 241.14 authorizes continued detention of a noncitizen whose release would pose a "special danger to the public" only upon a medical and psychiatric examination by a Public Health Service physician, § 241.14(f)(3); a written determination, supported by evidence of a prior crime of violence, a mental condition or personality disorder making future violence likely, and the absence of adequate conditions of release, § 241.14(f)(1); and referral to the Immigration Court for a reasonable-cause hearing and a full merits hearing at which the government must prove special dangerousness by clear and convincing evidence, § 241.14(h), (i)(1). Respondents have never invoked that framework against Petitioner. To the contrary: with full knowledge of his 2010 conviction, ICE determined in 2014 that Petitioner's release posed no danger and no flight risk and released him on supervision, *see* 8 C.F.R. § 241.4(e); Dkt. No. 1 ¶ 18, and in the eleven years since he has incurred no further criminal

history of any kind. Dkt. No. 1 ¶ 18. An old conviction that ICE itself deemed compatible with a decade of supervised release cannot now justify detention that the dangerousness regulations would forbid.

IV. Petitioner Faces Immediate, Irreparable Harm.

32. Removal before this Court can rule would strip the Court of any practical ability to grant relief, and it would expose Petitioner to the persecution, torture, and chain refoulement the process exists to prevent. "Deportation to a country where one's life would be threatened obviously would result in irreparable injury." *Mbaba*, 2026 WL 917484, at *11 (quoting *Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982)); *see Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2841886, at *12 (D. Md. Oct. 7, 2025) (removal to a place where a noncitizen faces "risk of torture, beatings, and even death clearly and unequivocally supports a finding of irreparable harm" (quoting *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 518 (D. Md. 2025))).

33. The threat is imminent. Respondents have moved Petitioner to El Paso—the office that executed his January removal—while his July 8 request for process sits unanswered. Haynes Decl. ¶¶ 4–7. The last time Respondents held him, they moved him overnight and removed him within approximately twenty-four hours, by force. Dkt. No. 1 ¶¶ 23–24. Respondents' own filings show how hard such a removal is to undo: returning Petitioner from Venezuela took months, requiring the filing a lawsuit in Federal Court, a headquarters parole approval, an attaché, a boarding letter, and transit through a third country. Dkt. No. 1-5.

34. Nor is it conjecture that Respondents might remove Petitioner without even the screening their own guidance promises—much less the Immigration Judge review due process requires. That is precisely what they did, months ago, to another noncitizen represented by undersigned counsel's firm. In *Orellana Quintanilla*, counsel asserted the petitioner's fear of

removal to Mexico in writing on September 16, 24, and 25, 2025; USCIS confirmed that ICE had not referred him for any interview; and on the evening of September 25 he moved for a temporary restraining order. "On the morning of September 26, 2025, ICE officers removed the Plaintiff from the United States to Mexico"—without any fear screening, mooting the motion before the court could rule. *Orellana Quintanilla, 2026 WL 1481116,* at *2. Judge Griggsby later held that the removal was "plainly in violation" of the agency's own regulations, *id.* at *8, and ordered Respondents to facilitate his return, *id.* at *10. Petitioner stands today exactly where that petitioner stood on the evening of September 25: in Texas staging custody, his fear asserted in writing, his requests unanswered, and no screening scheduled. The difference is that this Court can rule before the morning flight.

35. Petitioner's ongoing detention is, itself irreparable harm. As this Court has recognized, a noncitizen "is deprived of his liberty interest while in ICE custody," *Ascencio-Merino*, 2025 WL 4350766, at *2 (citing *Zadvydas*, 533 U.S. at 690), and is "irreparably deprived of his liberty while detained," *Ortega-Aguirre*, 2025 WL 3684697, at *3. In the Fifth Circuit, where a constitutional right is "either threatened or in fact being impaired," that conclusion "mandates a finding of irreparable injury." *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Courts considering immigration detention agree. *See, e.g., Lopez v. Doe*, 681 F. Supp. 3d 472, 490 (E.D. Va. 2023) ("[E]ven one day of unlawful detention is a harm recognized by the Constitution."); *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) ("[U]nlawful detention certainly constitutes extreme or very serious injury which is not compensable in damages."); *Morales Sanchez v. Bondi*, 811 F. Supp. 3d 1166, 1178 (C.D. Cal. 2025). Every day Petitioner spends in custody that the regulations and the Constitution do not authorize—custody imposed in place of the supervised release he held for

eleven years—is a day of irreparable constitutional injury, compounded by a cardiac condition his jailers have already met with indifference. Dkt. No. 1 ¶ 22; Dkt. No. 1-3 ¶¶ 7–8, 12.

V. The Balance of Equities and the Public Interest Favor Relief.

36. These factors merge. *Nken*, 556 U.S. at 435. Respondents have no legitimate interest in removing Petitioner without the process the Constitution requires, and there is "generally no public interest in the perpetuation of unlawful agency action." *State v. Biden*, 10 F.4th 538, 560 (5th Cir. 2021) (per curiam). The requested order takes nothing lawful from Respondents: if they wish to remove Petitioner to Mexico, they remain free to provide the required process and prevail in it; if they wish to remove him to Venezuela, they remain free to move to reopen and seek termination before an Immigration Judge. The order restrains only what the law already forbids. And as this Court has held, release on conditions causes "at most, de minimis injury to Respondents." *Ortega-Aguirre*, 2025 WL 3684697, at *3; *accord Ascencio-Merino*, 2025 WL 4350766, at *2–3; *see Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 339 (S.D. Tex. 2020) ("ICE has many other means besides physical detention to monitor noncitizens and ensure that they are present at removal proceedings and at time of removal, such as GPS monitoring and routine check ins.").

VI. No Security Should Be Required, and Rule 65(b)(1) Is Satisfied.

37. The Court should require no bond: Petitioner is indigent, and Respondents face no monetary harm from an order preserving the status quo. Fed. R. Civ. P. 65(c). The specific facts establishing immediate and irreparable injury appear in the Petition, its exhibits, and the attached declaration of counsel. Fed. R. Civ. P. 65(b)(1)(A); Ex. A. Contemporaneously with this filing, counsel is serving this Motion, the Petition, and all exhibits by email on the U.S. Attorney's Office for the Southern District of Texas at USATXS.CivilNotice@usdoj.gov, and is emailing a courtesy

copy to the Case Manager pursuant to the Court's Procedures. Haynes Decl. ¶ 9; Ex. B, Email Notice.

38. Nothing about the combined posture of this application counsels delay. The temporary-restraining-order and preliminary-injunction standards are the same, and in *Mbaba* the court entered a temporary restraining order the day the petition was filed and converted it to a preliminary injunction on full briefing. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) ("[T]he District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief."); *Santiago v. Noem*, No. 3-25-CV-361-KC, 2025 WL 2606118 (W.D. Tex. Sept. 9, 2025) (collecting cases).

WHEREFORE, Petitioner respectfully requests that this Court enter the accompanying Order: (1) immediately directing Respondents, by temporary restraining order, to release Petitioner from custody under the conditions of his October 20, 2014 Order of Supervision pending adjudication—or, at a minimum, restraining Respondents from removing Petitioner from the United States to any country pending adjudication; (2) setting an expedited schedule for Respondents' response and for preliminary-injunction briefing; (3) following that briefing, converting the temporary restraining order into a preliminary injunction granting the same relief pending final adjudication of the Petition; and (4) granting such further relief as justice requires

Respectfully submitted,

/s/ James Justice Haynes
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CERTIFICATE OF SERVICE

I certify that on July 10, 2026, I filed the foregoing, with all attachments, via this Court's CM/ECF system, and served a copy of the Emergency Motion for Temporary Restraining Order and Preliminary Injunction, the proposed Order, the declaration of counsel, and the Petition with its exhibits by electronic mail on the U.S. Attorney's Office for the Southern District of Texas at USATXS.CivilNotice@usdoj.gov, and I emailed a courtesy copy to the Court's Case Manager pursuant to the Court's Procedures.

/s/ James Justice Haynes
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