UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

J.P.P., Plaintiff, v. U.S. DEPARTMENT OF HOMELAND SECURITY; Kristi NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; Pamela BONDI, U.S. Attorney General, in her official capacity; and Dawn CEJA, Warden, Aurora Contract Detention Facility, in her official capacity. Defendants.	Case No. 25-cv-1048

PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff is currently in immigration custody in Aurora, Colorado. Plaintiff is at imminent risk of deportation to a third country—a country other than the county of removal designated and identified in writing in his prior immigration proceedings—without being provided any notice or an opportunity to apply for protection from removal to that country as required by the Immigration and Nationality Act (INA), the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), the Due Process Clause of the Fifth Amendment, and the United States' treaty obligations. As detailed below, Plaintiff has reason to believe he may be placed on a deportation flight to the Salvadoran CECOT prison as soon as this morning, April 2, 2025. He seeks immediate injunctive relief to protect him from imminent harm caused by Defendants' willful violation of controlling law and submits in support the Declaration of Emma Mclean-

Riggs, attached as Exhibit A.

Subparagraphs 1231(b)(1) and (b)(2) of Title 8 authorize Defendants to remove noncitizens with final removal orders to a third country if a noncitizen cannot be removed to the designated country (usually their country of origin) or alternatively designated country (usually a country of citizenship or where they hold status). However, § 1231(b)(3) expressly mandates that "[n]otwithstanding paragraphs (1) and (2)," DHS may not remove noncitizens to any country if their "life or freedom would be threatened in that country" on the basis of a protected ground. Similarly, the statute and regulations implementing the United States' obligations under the Convention Against Torture (CAT), separately instruct that Defendants may not remove a noncitizen to a country where they are likely to be tortured. Yet, under increasing pressure to fulfill President Trump's campaign promises to deport record numbers of noncitizens, that is precisely what Defendants are doing: Defendants have resorted to violating noncitizens' clear statutory rights to apply for protection from removal to countries where they face persecution or torture. Defendants' actions also violate Plaintiff's constitutional right to due process.

Defendants have been in longstanding violation of their obligation to create a system to provide notice and an opportunity to apply for protection before deporting noncitizens to a third country. That failure has now been dramatically magnified with devastating results because of an avalanche of pressure from the current administration to deport record numbers of noncitizens. For these reasons, Plaintiff asks this Court to provide immediate relief, enjoining Defendants from removing Plaintiff to a third country, unless and until he and his counsel have first been provided written notice and a meaningful opportunity to have an immigration judge

(IJ) review any application for protection.

BACKGROUND

An IJ must provide sufficient notice and opportunity to apply for protection from a designated country to individuals who fear persecution or torture if deported. 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1). These forms of protection include asylum, *see* 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(A), which generally protects against deportation to an individual's country of origin *and* any other country absent certain exceptions. *See generally id.* § 1158(c)(2); 8 C.F.R § 208.24. Individuals determined to be ineligible for asylum are generally entitled to apply for withholding of removal, a mandatory form of protection preventing deportation to the country or countries where the IJ finds that the individual is more than likely to be persecuted. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 208.16. Those who are ineligible for both asylum *and* withholding under § 1231(b)(3)(A) remain entitled to seek CAT protection, a mandatory protection against deportation to a country where the IJ finds that the individual is likely to be tortured. *See* FARRA, Pub. L. No. 105-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681 (1998) (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17; 28 C.F.R. § 200.1. An IJ may only terminate CAT protection based on evidence that the person will no longer face torture and doing so requires DHS and the IJ to follow procedures, including a new hearing and notice. *See* 8 C.F.R. § 1208.17(d)(1), (d)(2).

The statutory process for designating countries to which noncitizens may be removed includes processes for noncitizens "arriv[ing] at the United States" and for all other

noncitizens. 8 U.S.C. § 1231(b)(1), (b)(2).[1] The processes set forth how to designate countries and alternative countries to which the groups may be removed. *Id*. Critically, both processes have a specific carve-out prohibiting deportation to countries where the noncitizen faces persecution or torture:

> **Notwithstanding paragraphs [b](1) and [b](2)**, the Attorney General **may not remove** [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1231(b)(3)(A) (emphasis added). Similarly, under FARRA, codifying the United States' obligations under CAT, a noncitizen may not be removed to any country where they would be tortured. *See* 28 C.F.R. § 200.1; 8 C.F.R. 1208.17(a).

ARGUMENT

The purpose of emergency injunctive relief is to preserve the status quo and the relative positions of the parties until a trial on the merits can be held. *See DTC Energy Grp., Inc. v. Hirschfeld*, 912 F.3d, 1263, 1269 (10th Cir. 2018); *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258–59 (10th Cir. 2005). To obtain temporary and preliminary injunctive relief, Plaintiff must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an

[1] References to the Attorney General in § 1231(b) refer to the DHS Secretary for functions related to carrying out a removal order and to the Attorney General (delegated to IJs and Board of Immigration Appeals) for functions related to designations and decisions about fear-based claims. 6 U.S.C. § 557; *see also* 8 C.F.R. §§ 1208.16, 1208.17, 1208.31,1240.10(f), 1240.12(d).

injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Greater Yellowstone Coal. v. Flowers,* 321 F.3d 1250, 1255 (10th Cir.2003) (quoting *Fed. Lands Legal Consortium ex rel. Robart Estate v. United States*, 195 F.3d 1190, 1194 (10th Cir.1999)). All factors are satisfied here. Further, because Plaintiff seeks a preliminary injunction in order to preserve the status quo, preliminary injunctive relief in this case "does not require defendants to do something that they were not doing during the last uncontested period." *Evans v. Fogarty*, 44 Fed.Appx. at 928 (10th Cir. 2002). The standard for relief under 5 U.S.C. § 705 is the same as that required for a temporary restraining order (TRO) or preliminary injunction (PI). *See, e.g.*, *Colorado v. EPA*, 989 F.3d 874, 883 (10th Cir. 2021).

I. Plaintiff Satisfies the Requirements for a TRO and PI.

A. Plaintiff is likely to succeed on the merits of his claims.

Plaintiff is likely to prevail on his challenge to Defendants' policy or practice of deporting, or seeking to deport, noncitizens like him to a *third* country—a country *never* designated or identified for removal by an IJ—without first providing them with notice or opportunity to contest removal on the basis that they have a fear of persecution, torture, or even death if deported to that third country. Indeed, the U.S. District Court for the District of Massachusetts has already enjoined Defendants' practice. *D.V.D. v. U.S. Dep't of Homeland Sec'y*, 25-10676-BEM (D. Mass. Mar. 28, 2025) (order granting temporary restraining order).[2]

[2] The government has filed a notice of appeal in *D.V.D.,* challenging the TRO, and seeks to stay the effect of that order, including by challenging the validity of the nationwide scope of the injunction. For this reason, among others, it is critical that this Court exercise its jurisdiction and

First, DHS's policy or practice of failing to afford meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country violates INA, FARRA, the Due Process Clause, and the United States' treaty obligations. Indeed, the Office of the Solicitor General recognized these legal obligations when it informed the Supreme Court that DHS will not deport noncitizens to a third country until after the individual receives meaningful notice and the opportunity to assert a fear-based claim against removal to that third country. *See* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

Critically, both 8 U.S.C. § 1231(b)(1) and (b)(2), which provide Defendants with authority to remove noncitizens to alternate or third countries, expressly prohibit removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled "Restriction on removal to a country where [noncitizen's] life or freedom would be threatened," mandates that "[n]otwithstanding paragraphs (1) and (2)," DHS may not remove noncitizens to any country if their "life or freedom would be threatened in that country."[3]

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provide the requested injunction here to Plaintiff.

[3] In *Jama v. ICE*, the Supreme Court addressed the designation procedure under 8 U.S.C. § 1231(b)(2). 543 U.S. 335, 338-41 (2005). Critically, the Court stated that noncitizens who "face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); relief under an international agreement prohibiting torture, *see* 8 C.F.R. §§

Similarly, FARRA, codified as Note to 8 U.S.C. § 1231, mandates that Defendants cannot remove Plaintiffs to a country where they are likely to be tortured. *See also* 8 C.F.R. § 1208.16(c); 8 C.F.R. § 1208.17(a); 28 C.F.R. § 200.1. Like statutory withholding, CAT withholding and deferral of removal are mandatory. *See* 8 C.F.R. §§ 1208.16(c) (withholding under CAT), 1208.17(a) (deferral of removal under CAT). The regulations provide that DHS can deport persons granted CAT deferral to a third country "at any time" provided it is a "country *where he or she is not likely to be tortured*." 8 C.F.R. § 1208.17(b)(2) (emphasis added).

Notably, CAT protection may be terminated based on evidence that the person will no longer face torture, but only if DHS moves for a new hearing with evidence "relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing." 8 C.F.R. § 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice "of the time, place, and date of the termination hearing," and must inform the noncitizen of the right to "supplement the information in his or her initial [CAT] application . . . within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail)." 8 C.F.R. § 1208.17(d)(2). Thus, the noncitizen receives both notice and an opportunity to document their protection claim.

Contrary to the statute and the regulations, Defendants fail to afford any protections with respect to those granted either withholding under 8 U.S.C. § 1231(b) or CAT subject to

208.16(c)(4), 208.17(a). . . ." *Id*. at 348.

third country removal. This is true even though, pursuant to § 1231(b)(3)(A), courts have held repeatedly that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938-39 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005). Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol"); see also United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 ("Furthermore, the person at risk [of torture] should

never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.").

These protections are also fundamental under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019). Similarly, a "last minute" IJ designation during removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

Concerningly, DHS knows how to provide notice and an opportunity to present a fear-based claim but fails to do so. Not only did it do so in the CAT regulations discussed above, but DHS and its predecessor agency have gone so far as to draft forms providing these protections and then elected not to publish them.[4] But Defendants have failed to implement a mechanism to

[4] The draft forms fell short of providing meaningful protections because they placed the burden on noncitizens to file a motion to reopen without ensuring a viable opportunity to do so, especially given that many noncitizens are unrepresented and detained when these situations arise and do not have capacity to do so. Notice is only meaningful if it is presented sufficiently in advance to stop deportation, is in a language the person understands, and stays removal for a sufficient time to permit the filing of the motion. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation."); *id*. at 1010 (holding that merely

ensure that removal proceedings are reopened to allow DHS to designate a new country of removal and allow an IJ to adjudicate any fear-based claim.[5]

As a matter of policy or practice, DHS violates this statutory, regulatory, and due process framework by depriving Plaintiffs of any notice or opportunity to present a fear-based claim prior to deportation to a third country. DHS had no written policy to provide, or guarantee provision of, either of these protections, until March 30, 2025.[6] DHS did not produce any policy in response to the FOIA request and subsequent litigation for such a policy in *Nat.'l*

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giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances").

[5] DHS and Justice Department regulations promulgated to implement § 1231(b) do not afford these protections; they *assume* noncitizens "will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [§ 1231(b)(1) or (b)(2)]" and state *only* that where DHS seeks to deport a person to a nondesignated country, DHS would *join* motions to reopen "[i]n appropriate circumstances," which DHS does not define. *See* Dkt. 1 ¶42 (quoting 70 Fed. Reg. 661, 671 (Jan. 5, 2005)).

[6] On March 30, 2025, after the Complaint in *D.V.D.* outlined the above-described complete absence of a written policy to provide, or guarantee provision of, either notice or opportunity to apply for protection, and on the same day as DHS sent another plane of people to El Salvador and CECOT, DHS released a memorandum titled "Guidance Regarding Third Country Removals." As described in the Complaint, the Guidance is not in compliance with DHS's own regulations or the fundamental protections of the Due Process Clause.

Immigr. Litigation Alliance v. ICE, No. 1:22-cv-11331-IT (D. Mass filed Aug. 17, 2022). In litigation involving a plaintiff who was removed to a third country after being granted withholding of removal to Cuba, DHS has admitted it had no policy to provide notice or an opportunity to apply for protection regarding removal to a third country. *See Ibarra-Perez v. United States*, No. 2:22-cv-01100-DWL-CDB (D. Ariz. filed Jun. 29, 2022).DHS's first absence of a policy and then completely inadequate policy is true despite DHS's nondiscretionary duty to provide these protections.[7]

B. Plaintiff will suffer irreparable harm absent emergency injunctive relief.

Defendants' failure to provide meaningful notice and opportunity to present a fear-based claim before deporting Plaintiff to a third country will cause irreparable harm. Indeed, "[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012). But here, if Plaintiff is deported to a third country without process, the ensuing harms will be especially acute and unlikely to be subject to correction after the fact.

First, the Department of Homeland Security's actions in recent weeks, including since entry of the Temporary Restraining Order in *D.V.D.*, and conduct at the Aurora Detention

[7] DHS has, in a small number of cases over the years, moved to reopen removal proceedings to designate a new country of removal and allow a noncitizen to pursue a fear-based claim, further demonstrating that Defendants are aware of what should be done to provide a meaningful opportunity to seek protection prior to removal to a third country.

Facility in particular, strongly suggest Plaintiff is likely to be imminently placed on a flight to a Salvadoran prison where he faces risk of physical harm and torture, loss of personal liberties, and permanent isolation from his family, lawyers, and community.

The Department of Homeland Security has undertaken increasingly chaotic and violent processes for removing Venezuelans. Most starkly, the government has flown plane loads of Venezuelan men to El Salvador and handed them over to Salvadoran authorities who have incarcerated them at a Salvadoran prison, the Center for Terrorism Confinement known as CECOT, notorious for torturous human rights conditions.[8] CECOT is a mega-prison, built to confine 40,000 people, in cells that hold 65 to 75 people each.[9] Amnesty International has collected testimony from those incarcerated in El Salvador's prisons, including CECOT, that described "hellish" conditions throughout the country, including lack of food and water, lack of medical care, and cruel, degrading, inhumane treatment sometimes amounting to torture.[10]

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[8] *See, e.g.*, Laura Romero & Peter Charalambous, *El Salvador prison holding alleged Venezuelan gang members has been criticized for alleged abuses*, ABC News (Mar. 26, 2025), https://abcnews.go.com/US/elsalvador-prison -holding-alleged-venezuelan-gang-members/story?id=120178927.

[9] Associated Press, *What to know about CECOT, El Salvador's mega-prison for gang members*, NPR (Mar. 17, 2025), https://www.npr.org/2025/03/17/g-s1-54206/el-salvador-mega-prison-cecot.

[10] *Unlawful Expulsions to El Salvador Endanger Lives Amid Ongoing State of Emergency* (March 25, 2025), https://www.amnesty.org/en/latest/news/2025/03/unlawful-expulsions-to-el-

Connectas, an El Salvadorian outlet, reported that people are crammed into cells, sharing metal bunks with no mattresses, under fluorescent lights that are on twenty-four hours a day.[11] CECOT's Warden refused to answer journalists' questions about how many people are kept inside each cell and said only "where there's room for 10, there's room for 20 or 100." There is no visitation of any kind at CECOT, and the Warden boasted that "no foreign organizations or NGOs come here." NPR reported that CECOT prisoners are never allowed outdoors. They are permitted only thirty minutes a day to walk through an indoor hallway, with their hands and feet shackled.[12] According to NPR, El Salvador's Justice Minister stated that those held at CECOT "would never return to their communities."

The Venezuelans deported to El Salvador on March 15, 2025, and subsequently imprisoned at CECOT received no notice they were being sent to El Salvador, even as they were being loaded onto the planes. The Department – without producing any evidence in support – alleges the men it thus removed to CECOT were members of the Tren de Aragua gang.[13] The Department has made similar allegations about those apprehended in the raid

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salvador-endanger-lives-amid-ongoing-state-of-emergency/

[11]Lissette Lemus, *Inside CECOT, The Prison that Nobody Leaves*, Connectas (last visited April 2, 2025), https://www.connectas.org/inside-cecot-the-prison-that-nobody-leaves-el-salvador/

[12]Associated Press, *What to know about CECOT, El Salvador's mega-prison for gang members*, NPR (Mar. 17, 2025), https://www.npr.org/2025/03/17/g-s1-54206/el-salvador-mega-prison-cecot.

[13] *See, e.g.*, Chase Woodruff, *ICE agents conduct operations in multiple Denver, Aurora*

conducted at Cedar Run on Feb. 5 – where Plaintiff was detained. As a factual matter, many of them turned out to have no gang affiliation at all. The Guardian reported that one young man was a gay makeup artist.[14] The government insisted his two crown tattoos, symbolic of his hometown in Venezuela, made him a dangerous gang member and justified his disappearance into CECOT. Another young man that the government removed and then disappeared into CECOT, based apparently on his tattoos, was devoted to his autistic younger brother, and had a tattoo of the autism awareness ribbon with his brother's name underneath it.[15] He also had two others, both of words: "brothers" and "family."

Although J.P.P. has never been gang affiliated, and, as far as he and his counsel are

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locations, Colorado Newsline (Feb. 5, 2025), https://coloradonewsline.com/2025/02/05/ice-operations-denver-aurora/ ("A separate post from ICE's Denver field office . . . said was targeting '100+ members of the violent Venezuelan gang Tren de Aragua.'")

[14] Tom Phillips and Clavel Rangel, '*He is not a gang member': outrage as US deports makeup artist to El Salvador prison for crown tattoos*, Guardian (Apr. 1, 2025), https://www.theguardian.com/us-news/2025/apr/01/its-a-tradition-outrage-in-venezuela-as-us-deports-makeup-artist-for-religious-tattoos

[15]Tom Phillips and Clavel Rangel, *'Deported because of his tattoos': has the US targeted Venezuelans for their body art?*, Guardian (Mar. 20, 2025), https://www.theguardian.com/us-news/2025/mar/20/deported-because-of-his-tattoos-has-the-us-targeted-venezuelans-for-their-body-art.

aware, has never been accused of being gang-affiliated,[16] he has reason to believe he is currently suspected of such affiliation. J.P.P.'s counsel attempted to visit him in the late afternoon of April 1, 2025. She was kept waiting for several hours, but was eventually admitted because ICE "could not deny a legal visit." J.P.P. was escorted to their meeting in handcuffs, a guard on each side. This was a marked change. Before, he had always been unshackled and unescorted, in a unit of average security. One of the guards escorting him on April 1, 2025 made a comment to his counsel about her visiting a "gang member."

Plaintiff's recent experiences at the Aurora Contract Detention Facility have further grounded his fear that he will be the victim of the Department's next scheme to remove Venezuelan men alleged to have gang ties to El Salvador or elsewhere. On April 1, 2025, Plaintiff was woken up at 3am and taken into a room in the detention facility he had never been in before, with about fifteen other people. They were told that they were scheduled to be on a "deportation flight" but there was no room. Fearing a deportation to El Salvador, undersigned counsel Elizabeth Jordan informed ICE that she believed Plaintiff to be covered by the temporary restraining order issued in *D.V.D.* Officers only responded that Plaintiff would not be moved "today" [April 1, 2025]. They did not say when he would be moved or to where. Plaintiff was then taken to a disciplinary unit, known in the facility as "the hole," with the other

[16] Plaintiff has yet to see any such evidence, in violation of his rights under the INA and the Fifth Amendment to confront the evidence against him. INA § 240(b)(4)(B); *see Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674 (9th Cir. 2005).

people he had been held with that morning. Plaintiff noticed that all of the people were wearing different colored uniforms, indicating that they had come from different security levels. He was told that he would be taken somewhere "tomorrow" [i.e, today, April 2, 2025]. He was not told where. ICE subsequently verbally confirmed that Plaintiff will be "transferred and staged for removal," but again, declined to say to what country.

Placing Plaintiff on a flight to El Salvador, where he is likely to be held *incommunicado*, will interfere with his right to seek protection, to consult with counsel, and to communicate with his family and larger community. Before being detained in the terrifying raid at Cedar Run, Plaintiff lived with his wife and two stepdaughters. If he is sent to CECOT, he will have no communication of any kind with his family; it is a point of pride for the Warden at CECOT that no family contact is permitted. Plaintiff's wife and his two young stepdaughters depended on him to be able to pay rent and for other necessities. In detention in Aurora, Plaintiff had some capacity to work and earn money to contribute to his family. At CECOT, there is no employment (or rehabilitative programming or recreational programming of any kind) for prisoners. Additionally, administrators at CECOT, and the President of El Salvador, President Nayib Bukele, openly state that people who go to CECOT will never leave.[17] If sent to CECOT, Plaintiff will be forever lost to his family, as a husband, a father,

[17]Laura Romero and Peter Charalambous, *El Salvador prison holding alleged Venezuelan gang members has been criticized for alleged abuses*, ABC (Mar. 26, 2025), https://abcnews.go.com/US/el-salvador-prison-holding-alleged-venezuelan-gang-members/story?id=120178927.

and a breadwinner. No matter what happens in Plaintiff's immigration case, he would not suffer that kind of disappearance. In addition, Defendants repeatedly have declined to provide crucial information to undersigned counsel regarding noncitizens, including Plaintiff, facing third country deportation. Attorneys may only learn where their clients have been deported, if at all, by seeing them in the video propaganda produced by the Salvadorian government.

In addition to all of the above, the need to preserve the status quo and order that Plaintiff not be deported without notice and process is especially urgent given that the government has taken the position that federal courts are without jurisdiction to order that someone wrongfully removed to CECOT be returned to the United States.[18] If this Court does not act to prevent a manifest injustice, there will be little hope of turning back the clock.

C. The Balance of Hardships and Public Interest Weigh Heavily in Plaintiffs' Favor.

The final two factors for a PI—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. "[W]hen [a] plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue." 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.2. Indeed, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012). Here, Plaintiff faces additional weighty hardships:

[18]Ali Watkins and Alan Feuer, *U.S. Says Deportation of Maryland Man Was an 'Administrative Error,'* N.Y. Times (Apr. 1, 2025), https://www.nytimes.com/2025/04/01/us/politics/maryland-man-deportation-error-el-salvador.html.

deprivation of statutory rights to protection, removal to a country where he may face persecution, torture or even death, and loss of contact with his family and counsel.

Defendants, by contrast, face minimal hardship: the administrative costs associated with providing notice and an opportunity to Plaintiff to contest deportation to a third country based on fear and, only if removal is contested, the need to litigate. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). What is more, Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice . . . ." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors").

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court grant temporary injunctive relief enjoining Defendants from effecting his removal to a third country without first providing written notice and an opportunity to apply for statutory withholding and CAT protection before an IJ.

Respectfully submitted,

s/Emma Mclean-Riggs
Emma Mclean-Riggs
Anna I. Kurtz
Sara R. Neel
American Civil Liberties Union Foundation of Colorado
303 E. 17th Avenue
Denver, CO 80203
(720) 402-3114
emcleanriggs@aclu-co.org

Elizabeth Jordan
Immigration Law & Policy Clinic
University of Denver Sturm College of Law
2255 East Evans Avenue, Suite 335
Denver, CO 80210
(303) 871-6368
elizabeth.jordan@du.edu

Attorneys for Plaintiff

Date: April 2, 2025

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2025, I electronically filed the foregoing **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** with the Clerk of the Court using the CM/ECF system, and that in accordance with Fed. R. Civ. P. 5, all counsel of record shall be served electronically through such filing.

/s/ Mia Bailey

Mia Bailey