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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 Leonel Navarrete Hernandez,) CASE NO.: 2:25-cv-05376-FWS-AGR
14)
15 Petitioner-Plaintiff,)
16)
17 v.) PETITIONER'S REPLY TO RESPONDENTS'
18) OPPOSITION TO PETITIONER'S *EX PARTE*
19) APPLICATION FOR A TEMPORARY
20 Todd Lyons, Acting Director) RESTRAINING ORDER
21 Immigration and Customs)
22 Enforcement;)
23 and)
24)
25 Ernesto Santacruz, Jr.,)
26 Los Angeles Field Office)
27 Acting Director, Immigration)
28 and Customs Enforcement,)
Enforcement and Removal)
Operations, and)
Respondents-Defendants.)
_____)

1 Respondents' opposition to Petitioner's Application for a Temporary
2 Restraining Order ("TRO") rests on erroneous assertions that the risk of Petitioner's
3 removal from the country is low and that Petitioner's unlawful deprivation of
4 liberty can be addressed by a bond hearing before an immigration judge ("IJ")
5 where the outcome can summarily and unilaterally be stayed by Respondents. In
6 doing so, Respondents do not address Petitioner's evidence showing Petitioner is
7 likely to succeed on the merits and suffer irreparable harm; Respondents instead
8 offered Salvadoran warrants that have been determined by an IJ to have been
9 falsified. (*See* Pet'r TRO Exhibits, Dkt. 4.2, Exhibit B.)

10 Respondents' contentions that Petitioner's application to stay removal is not
11 ripe (Resp't Opp., Dkt. 13, p. 4), and Petitioner is not likely to suffer irreparable
12 harm (*Id.* at 4-5), are not supported by the record. Although Respondents
13 acknowledge that Petitioner does not have a final administrative order of removal,
14 Respondents' conduct indicates that Petitioner is being prepared for removal from
15 the United States and could be wrongfully removed in the absence of an order
16 enjoining his removal. Petitioner was abruptly and arbitrarily arrested after two-
17 and one-half years of being free on bond, and after the IJ granted his application for
18 withholding of removal to El Salvador under the Convention Against Torture
19 ("CAT"). (*See* Pet'r TRO Exhibits, Dkt. 4.2, Exhibits A, B.) When Petitioner told
20 the ICE agents arresting him that he had a judge's order, they responded that it
21 didn't matter and only the President's Orders mattered. (*Id.*, Exhibit D.)

22 Respondents contend their interest in detaining Petitioner is because Petitioner is
23 wanted for serious crimes in his home country. (Resp't Opp., Dkt. 13, pp. 4-5.) In
24 support of that interest, Respondents have provided evidence of the same falsified
25 warrants that formed the very basis for Petitioner's grant of CAT withholding of
26 removal to El Salvador and that were known to Respondents for the entirety of
27 Petitioner's proceedings while he was free on bond. (*Id.*, Exhibit A and B, pp 1-
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1 17.) Respondents do not address the IJ's determination that Petitioner proved by a
2 preponderance of the evidence that the warrants are false. (See Pet'r TRO Exhibits,
3 Dkt 4.2, Exhibit B, pp. 8-9.) Additionally, upon information and belief,
4 Respondents are detaining Petitioner at the El Paso Removal Coordination Unit
5 ("RCU") which is a "staging center." The RCU coordinates removal operations
6 from the United States. (See *DHS / ICE Fiscal Year 2011 Overview-Congressional*
7 *Justification* at p. 64, available at
8 [https://www.ice.gov/doclib/foia/secure_communities/fy2011overviewcongressional](https://www.ice.gov/doclib/foia/secure_communities/fy2011overviewcongressional_justification.pdf)
9 [justification.pdf](https://www.ice.gov/doclib/foia/secure_communities/fy2011overviewcongressional_justification.pdf) (accessed on June 17, 2025).) The foregoing evidence establishes
10 that Petitioner is at a significant risk of removal to El Salvador or a third country.

11 This case is not unlike the case of Kilmar Armando Abrego Garcia who was
12 removed from the United States to El Salvador's Center for Terrorism Confinement
13 although the IJ had granted Abrego Garcia withholding of removal to El Salvador.
14 See *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025). The Government
15 acknowledged that Abrego Garcia was "subject to a withholding order forbidding
16 his removal to El Salvador, and that the removal to El Salvador was therefore
17 illegal." *Id.* Despite this acknowledgment, the Government removed Abrego
18 Garcia to El Salvador and until recently refused to return Abrego Garcia to the
19 United States stating that he was a member of the MS-13 gang. *Id.* The
20 Government also erroneously removed a man, O.G.C., who was granted
21 withholding of removal from Guatemala to Mexico where O.G.C. was then sent to
22 Guatemala by Mexican authorities. See *D.V.D. v. U.S. Dep't of Homeland Sec.*, No.
23 CV 25-10676-BEM, 2025 WL 1487238, at *1 (D. Mass. May 23, 2025). In both
24 Abrego Garcia's and O.C.G.'s cases, the Government admitted error in removing
25 the men from the United States. *Noem v. Abrego Garcia*, 145 S. Ct. at 1018;
26 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
27 1487238, at *2.
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1 Respondents' acknowledgement that Petitioner does not have a final
2 administrative removal order is not a compelling reason to conclude that the issue
3 of Petitioner's removal from the United States is not ripe given the evidence of
4 Petitioner's circumstances and the Government's wrongful removals in similar
5 cases without due process. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-
6 10676-BEM, 2025 WL 1487238, at *5 (finding O.C.G.'s removal lacked due
7 process); *see Noem v. Abrego Garcia*, 145 S. Ct. at 1019 (finding that the
8 Government violated its obligation "to provide Abrego Garcia with 'due process of
9 law,' including notice and an opportunity to be heard, in any future proceedings"
10 (citing *Reno v. Flores*, 113 S.Ct. 1439 (1993))).

11 Respondents erroneously assert that Petitioner is not likely to succeed on the
12 merits of his application seeking release from detention because Respondents have
13 the authority under 8 U.S.C. §1226(b) to revoke bond at any time. (Resp't Opp,
14 Dkt 13, p. 4.) There is a significant limitation on this statutory authority: "where a
15 previous bond determination has been made by an immigration judge, no change
16 should be made by a District Director absent a change of circumstance." *Saravia v.*
17 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for*
18 *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (citing *Matter of Sugay*, 17 L. & N.
19 Dec. 637, 640 (BIA 1981)). In *Matter of Sugay*, the BIA determined that the
20 change in material circumstances that included Sugay's criminal conviction record
21 and the IJ's denial of his only application for relief made the likelihood that Sugay
22 would abscond "far greater" than at the time of his first bond redetermination. 17 L.
23 & N. Dec at 638. In contrast, in the instant case, the IJ granted Petitioner's
24 application for CAT withholding of removal reducing the likelihood that Petitioner
25 would abscond.

26 Significantly, Respondents' ability to re-detain Petitioner "is always
27 constrained by the requirements of due process." *Ortega v. Bonnar*, 415 F. Supp. 3d
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1 963, 969 (N.D. Cal. 2019) (citing *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
2 Cir. 2017). That is because “[f]reedom from imprisonment—from government
3 custody, detention, or other forms of physical restraint—lies at the heart of the
4 liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678,
5 690 (2001). Petitioner has developed significant liberty interests over the past two-
6 and one-half years in remaining out of custody on bond as would someone in
7 “preparole, parole, or probation” who is generally entitled to notice and a pre-
8 deprivation hearing. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal.
9 2019) (internal citations omitted). See, e.g. *Young v. Harper*, 520 U.S. 143, 148
10 (1997) (holding that summarily sending a parolee back to prison, even if the state
11 had discretion, violated due process where parolee had an interest in his continuing
12 liberty: “[he] kept his own residence; he sought, obtained, and maintained a job;
13 and he lived a life generally free of the incidents of imprisonment.”)

14 Respondents assert Petitioner is not likely to suffer irreparable harm and the
15 risk of the erroneous deprivation of liberty under the *Mathews v. Eldridge*, 424 U.S.
16 319, 335 (1976), test is low because Petitioner can request a bond hearing before an
17 IJ. First, the summary revocation of bond at any time, for seemingly no reason, and
18 without notice to Petitioner’s counsel under 8 U.S.C. §1226(b) renders the
19 likelihood of the erroneous deprivation of liberty extremely high. Second, the
20 potential for a bond hearing before an IJ does not remedy the daily and ongoing
21 violation of Petitioner’s constitutional rights under the Fourth Amendment and
22 Fifth Amendment’s Due Process Clause. Third, Petitioner was relocated from Los
23 Angeles to Texas, away from his family and attorneys, and for all purposes has
24 been held incommunicado without access to his attorneys for five days and
25 counting. (Pet’r Renewed TRO Exhibit, Dkt., 9.2, Exhibit F.) These circumstances
26 severely frustrate Petitioner’s ability to request and have a meaningful bond
27 hearing. Fourth, even if Petitioner had the ability to request bond and successfully
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1 obtained bond in a hearing before an IJ, Respondents have the unilateral ability to
2 block his release on that bond for a prolonged period of time under 8 C.F.R.
3 § 1003.19(i)(2) regardless of any bond order issued by an IJ. Pursuant to 8 C.F.R.
4 § 1003.19(i)(2), Respondents need only file a form (Form EOIR-43 - Notice of
5 Service Intent to Appeal Custody Redetermination) and a notice of appeal to the
6 BIA to trigger the automatic stay of bond “in any case in which DHS has
7 determined that an alien should not be released or has set a bond of \$10,000 or
8 more” to block Petitioner’s release on bond. 8 C.F.R. § 1003.19(i)(2). In this case,
9 Petitioner was free on a \$10,000 bond when Respondents arrested and revoked his
10 bond. (Pet’r TRO Exhibits, Dkt. 4.2, Exhibit A.) Given Respondents’ re-detention
11 of Petitioner, it is almost certain Respondents would invoke the stay of Petitioner’s
12 release on a new bond, and it is all but assured that Petitioner’s liberty would
13 continue to be erroneously deprived.

14 Finally, Respondents contend that under *Matthews v. Eldridge* 424 U.S. 319,
15 335 (1976), and *Nken v. Holder*, 556 U.S. 418, 433 (2009), Respondents have an
16 interest in detaining Petitioner because he is wanted in connection with allegations
17 of serious crimes committed in his home country of El Salvador. Respondents do
18 not address the IJ’s determination in the IJ’s decision granting CAT withholding of
19 removal that Respondent proved by preponderance of the evidence that he had not
20 committed these offenses. (See Pet’r TRO Exhibits, Dkt 4.2, Exhibit B, pp. 8-9.)
21 The IJ determined that Petitioner testified credibly, was not in El Salvador at the
22 time the crimes are alleged to have been committed, and expert evidence
23 established the warrants are likely falsified because El Salvador has issued falsified
24 Interpol Red Notices and arrest warrants in the past. (*Id.*) The IJ concluded that
25 Petitioner had been tortured in the past by the government of El Salvador and was
26 more likely than not to be imprisoned and tortured by the government of El
27 Salvador in the future. (*Id.*) Accordingly, Respondents have no interest in
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1 detaining Petitioner on the basis of falsified arrest warrants or to return him to El
2 Salvador to be imprisoned and tortured.

3 Petitioner has established he is likely to succeed on the merits and will suffer
4 irreparable harm if removed without due process, and by the continued and ongoing
5 deprivation of his liberty in violation of his constitutional rights and the
6 Administrative Procedure Act if Petitioner's application is not granted.

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8 Dated: June 17, 2025

Respectfully submitted,

9 s/ Jean Reisz
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 17, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing by e-mail to counsel of record.

s/ Jean Reisz

Jean Reisz

Counsel for Petitioner