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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Omid Delkash,

Petitioner,

v.

Kristi Noem, Secretary of the Department  
of Homeland Security; et. al,

Respondents.

Case No.: 2:25-cv-04638

**MOTION FOR PRELIMINARY  
INJUNCTION**

Filed pursuant to FRCP 65

**MOTION FOR PRELIMINARY INJUNCTION**

Undersigned counsel files this motion for preliminary injunction (PI) on behalf of the Petitioner Omid Delkash (Mr. Delkash) because he was detained, 24 years after winning his withholding of removal petition, in excess of Immigration and Customs Enforcement's (ICE) constitutional, statutory, and regulatory authority. On June 24, 2025, the Petitioner was detained while picking up lunch on his lunch break. Mr. Delkash was told that he was being arrested because they had a "warrant for [him] because [he is] from Iran." The Petitioner was forcefully

1 detained despite him not resisting arrest. He was then transferred to 34 Civic  
2 Center Drive in Santa Ana. An officer who wore a windbreaker with the new  
3 “Williams” on it told the petitioner that he would be removed to South Sudan. The  
4 Petitioner asked why he was being removed to South Sudan because he is a veteran  
5 who was honorably discharged. After Mr. Delkash proved he is an honorably  
6 discharged veteran, he was transferred to 300 N. Los Angeles St., where he was  
7 kept in a cell, approximately 10’ x 20’ with 40-50 other men. He was detained in  
8 deplorable conditions for four days and on the fifth day, he was transferred to  
9 Adelanto. During that time, he spoke with a detention officer in Farsi, but was  
10 given no information about why he was detained by ICE.  
11

12 On July 3, 2025, Mr. Delkash’s immigration attorney, Douglas Jalaie  
13 received an email from Deportation Officer Jenson, informing him that (1) ICE  
14 had not secured a travel document for Mr. Delkash; (2) it had not begun the  
15 process; and (3) they did not give him an opportunity to challenge removal to a  
16 third country because the third country had not been identified. Mr. Jalaie had an  
17 additional conversation with the Petitioner’s detention officer and she did not  
18 know why the Petitioner is detained. Throughout this entire process, no one from  
19 immigration has explained why or the authority it utilized to detain Mr. Delkash  
20 without an opportunity to challenge this detention. The preliminary injunction  
21 must be granted because, at a minimum, the government has not provided *any*  
22 *reason* much less a lawful reason, for detaining Mr. Delkash.  
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1 Date: 7/16/25  
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Respectfully submitted,

/s/ Andres Ortiz

Andres Ortiz, Esq.  
Andres Ortiz Law  
Attorney for the Petitioner

## **TABLE OF CONTENTS**

<b>I. <u>Introduction</u></b>	1
<b>II. <u>Jurisdiction and Venue</u></b>	2
<b>III. <u>Factual Background</u></b>	2
<b>IV. <u>Analysis</u></b>	7
<b>A. The Petitioner is likely to win on the merits of his application</b>	8
1. Detention claims	8
2. Third country removal claim	13
<b>B. The Petitioner will face irreparable harm</b>	15
1. Mr. Delkash's unlawful detention is causing him irreparable harm	15
2. Mr. Delkash will suffer irreparable harm if removed without due process	16
<b>C. The final two factors favor the Petitioner</b>	16
1. Unlawful detention	17
2. Third Country Removal	17
<b>V. <u>Conclusion</u></b>	18

## TABLE OF AUTHORITIES

### **Cases**

<i>Alabama Ass’n of Realtors v. HHS</i> , 594 U.S. 758, 766 (2021).....	16
<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127, 1134-35 (9th Cir. 2011) .	8
<i>Boumediene v. Bush</i> , 553 U.S. 723, 744 (2008).....	8
<i>Ceesay v. Kurzdorfer</i> , -- F.Supp.3d--, No. 25-CV-267-LJV, 2025 WL 1284720 (W.D.N.Y. May 2, 2025 .....	12, 13
<i>Chhoeun v. Marin</i> , 306 F. Supp. 3d 1147, 1162 (C.D. Cal. 2018).....	15
<i>Cole v. Holder</i> , 659 F.3d 762, 771 (9th Cir. 2011) .....	14
<i>D.V.D. v. U.S. Dep’t. of Homeland Security</i> , 1:25-cv-10676-BEM.....	17
<i>D.V.D. v. U.S. Dep’t. of Homeland Security</i> , 1:25-cv-10676-BEM *44 (D. Mass., April 24, 2025.....	16
<i>Doe v. Barr</i> , 479 F. Supp. 3d 20, 27 (S.D.N.Y. 2020).....	9
<i>Huisha-Huisha v. Mayorkas</i> , 27 F.4th 718, 734 (D.C. Cir. 2022) .....	16
<i>Jane Doe 1 v. Nielsen</i> , 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) .....	11
<i>Johnson v. Guzman Chavez</i> , 594 U.S. 523, 527-529 (2021).....	8, 9, 12
<i>Morton v. Ruiz</i> , 415 U.S. 199, 235, (1974).....	11
<i>Nken v. Holder</i> , 556 U.S. 418, 435 (2009).....	16
<i>Noem v. Abrego Garcia</i> , -- U.S. --, 145 S.Ct. 1017, 1019 (2025).....	10
<i>Preminger v. Principi</i> , 422 F.3d 815, 826 (9th Cir. 2005).....	17
<i>United States v. Caceres</i> , 440 U.S. 741, 759 (1979).....	10
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555. U.S. 7, 20 (2008) .....	7
<i>Zepeda v. INS</i> , 753 F.2d 719, 727 (9th Cir. 1983) .....	17

**Statutes**

8 U.S.C. § 1226(a).....	8, 9, 12
8 U.S.C. § 1231(a)(1)(B)(i).....	9
8 U.S.C. § 1231(a).....	7, 8, 9, 10
8 U.S.C. § 1231(a)(2).....	7, 8, 9
8 U.S.C. § 1231(a)(6).....	8
8 U.S.C. § 1231(a)(3)(D).....	10
8 U.S.C. § 1231(f)(1).....	12
28 U.S.C. § 1391(e).....	2
28 U.S.C. § 1651.....	2
28 U.S.C. § 82.....	2
28 U.S.C. § 2201.....	2
28 U.S.C. § 2241.....	2

**Rules**

Local Civil Rule 83-8.2.....	2
Rule 65, Fed.R.Civ.P.....	15, 16

**Regulations**

8 C.F.R. § 1208.18(c)(1).....	11
8 C.F.R. § 241.13(i).....	10
8 C.F.R. § 241.4(l).....	9, 10
8 C.F.R. § 241.5(a).....	8, 9, 10, 13

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

1. The Petitioner, Omid Delkash (Mr. Delkash) is a citizen of Iran who was born in Tehran, Iran in 1971. His family fled Iran in 1977, due to increasing tensions. Mr. Delkash and his family eventually settled in California. They applied for and received asylum. Eventually, Mr. Delkash enlisted in the U.S. Military and he became a medic. The Petitioner received an honorable discharge. However, the ethnic/racial discrimination the endured during his service had a lasting effect that haunted the noncitizen long after his honorable discharge. He was arrested several times and eventually placed in removal proceedings where he won withholding of removal. He was released later that day and never put on an order of supervision. The Petitioner lived another 24 years before he was redetained by ICE.

2. Mr. Delkash was redetained on June 24, 2025. To date, he has not been given a reason for his detention. ICE has yet to provide a rationale or authority that permits redetention under these circumstances. To the extent the government believes it is justified in detaining Mr. Delkash, it has not been communicated to him. He was not placed on an order of supervision; thus, the government could not officially revoke his supervision. Additionally, *assuming arguendo*, the government seeks to remove the Petitioner to a third country, it has not established *why it is necessary* to detain him without any process. Furthermore, even if it is presumed that ICE seeks removal to a third country, it has not informed Mr. Delkash to which country it hopes remove him. In failing to do so, he is without an opportunity to provide a country-specific explanation of his fear of being removed to that country. ICE has taken the position that, under certain circumstances, it will not provide the petitioner notice or an opportunity to

1 articulate an individualized fear of removal to a specific third country.

2 Consequently, extraordinary intervention is necessary.

3 **II. JURISDICTION AND VENUE**

4 3. This Court has jurisdiction under 28 U.S.C. §§ 2241 et seq.; the Declaratory  
5 Judgment Act, 28 U.S.C. §§ 2201 et seq.; the All Writs Act, 28 U.S.C. § 1651; and  
6 the Fifth Amendment to the United States Constitution. At the time the original  
7 petition was filed, this Court had jurisdiction because Mr. Delkash was detained in  
8 Los Angeles, California within the territorial jurisdiction of the Court. *See* 28  
9 U.S.C. § 82 (“[Los Angeles, California] constitutes one judicial district.”). Mr.  
10 Delkash remains in the Central District of California even after his transfer to  
11 Adelanto, California.

12 4. Venue under 28 U.S.C. § 1391(e) and Local Civil Rule 83-8.2 because a  
13 substantial part of the events or omissions giving rise to the claims set forth herein  
14 occurred in this district.

15 **III. FACTUAL BACKGROUND**

16  
17 5. The Petitioner was born on March 21, 1971, in Tehran, Iran, to Mohammed  
18 and Mina Delkash. *See* Exhibit 1- Declaration of the Petitioner ¶ 1 and Exhibit 2-  
19 Notice to Appear and Withholding Grant. In 1977, Mr. Delkash’s family left Iran  
20 due to increasing tensions at the Tehran embassy. *See* Exhibit 1 ¶ 1. The family  
21 initially intended to return once the in Iran situation stabilized; however, they  
22 remained in the United States, first residing in New York for six months before  
23 relocating to Anaheim, California, where they applied for asylum. *Id.* ¶ 1. His  
24 application for adjustment of status was approved in October, 1989. *See* Exhibit 3-  
25 I-485 Approval.

26  
27 6. The Petitioner attended public school in California and graduated high  
28 school in 1989. *See* Exhibit 1 ¶ 2. During his high school years, his mother was  
diagnosed with breast cancer, and his parents later separated. *Id.* ¶ 2. Following



1 graduation, the Petitioner lived with his father and worked in room service at the  
2 Four Seasons Hotel in Newport Beach. *Id.* ¶ 2. Motivated by a desire to prove  
3 himself and support his family, he enlisted in the U.S. military. *Id.* ¶ 2-3.

4 7. He completed basic training at Fort Knox, Kentucky, where he experienced  
5 racial harassment, hazing, and physical assaults. *See* Exhibit 1 ¶ 4. Specifically,  
6 other servicemembers called him “terrorist” and “sand nigger.” *Id.* ¶ 4. He was  
7 also beaten in the middle of the night with socks filled with padlocks by his  
8 bunkmates. *Id.* ¶ 4. The Petitioner, who was an excellent marksman, had to  
9 remain in basic training an extra month because other servicemembers tampered  
10 with his scope, throwing off his aim and causing him more hardship. *Id.* ¶ 4. These  
11 incidents caused lasting trauma, including persistent nightmares and sleep  
12 disturbances. *Id.* ¶ 4.

13 8. After basic training, the Petitioner was sent to Fort Sam Houston in San  
14 Antonio, Texas, for medical training, where he excelled and graduated at the top of  
15 his class. *See* Exhibit 1 ¶ 5. He served as a medic in the Army Reserves in  
16 Corona, California, for four years, followed by four years in the Inactive Ready  
17 Reserve. *Id.* ¶ 5. His primary role was to treat injuries that occurred on the base.  
18 *Id.* ¶ 6. During this period, he lived with his reunited family in Newport Beach.  
19 *Id.* ¶ 6. Mr. Delkash was honorably discharged from his military service. *See*  
20 Exhibit 1 ¶ 6 and Exhibit 4- Proof of Honorable Discharge.

21 9. Following his military service, the Petitioner entered the auto insurance  
22 industry, where he was introduced to drugs by coworkers. *See* Exhibit 1 ¶ 8. This  
23 led to addiction and involvement in criminal activity, resulting in several  
24 convictions. *Id.* ¶ 8. During this time, he was diagnosed with a gambling disorder  
25 and a dysthymic disorder (now known as a persistent depressive disorder or PDD).  
26 *See* Exhibit 1- ¶ 8 and Exhibit 5- Mental Health Evaluation Dated 04/27/98). *See*  
27 Exhibit 1 ¶ 8. He underwent rehabilitation at Shick Shadel in Long Beach for 45  
28 days and remained clean for 18 months. *Id.* ¶ 8. Despite relapsing, he later

### **Motion for Preliminary Injunction**

1 reestablished himself and started a family. *Id.* ¶ 8. At some point, the Petitioner  
2 was also diagnosed with Post-Traumatic Stress Disorder (PTSD). *Id.* ¶ 8.

3 10. After being released from criminal custody around 2000, the Petitioner was  
4 detained by immigration authorities and placed in removal proceedings. *See*  
5 Exhibit 1 ¶ 9 and Exhibit 2. His application for withholding of removal to Iran was  
6 granted, and he was released from custody. *See* Exhibit 1 ¶ 9. Mr. Delkash was  
7 released without being placed on an order of supervision. *Id.* ¶ 9. And he was not  
8 required to periodically check-in with ICE for the past 24 years. *Id.* ¶ 9-10. Other  
9 than applying for naturalization through an N600 application and renewing his  
10 work permit, Mr. Delkash had no interactions with any immigration officials until  
11 June, 2025. *Id.* ¶ 9-11.

12 11. On June 24, 2025, while leaving his workplace for lunch in Santa Ana,  
13 California, the Petitioner was surrounded by four unmarked Ford Explorer SUVs  
14 with flashing lights. *See* Exhibit 1. ¶ 11. Armed officers, whose faces were  
15 concealed and who failed to identify themselves, pointed firearms at him and  
16 ordered him out of the vehicle. *Id.* ¶ 11. While attempting to contact his son via his  
17 car's phone, the officers threatened to break his window. *Id.* ¶ 12. He complied by  
18 exiting the vehicle. *Id.* ¶ 12.

19 12. The officers informed him that a federal warrant had been issued “because  
20 you are from Iran.” *See* Exhibit 1 ¶ 12. When he asked for further explanation, he  
21 was told it would be provided later. *Id.* ¶ 12. He was handcuffed tightly, resulting  
22 in injury to his wrists, and slammed against the vehicle, causing his dental implant  
23 to fall out. *Id.* ¶ 12. The officers refused to assist the Petitioner in recovering the  
24 dental implant. *Id.* ¶ 12.

25 13. The Petitioner was transported to the federal building in Santa Ana and later  
26 transferred to a holding cell. *See* Exhibit 1 ¶ 13. During questioning, an officer  
27 doubted the Petitioner’s military service until he retrieved the DD-214 discharge  
28 form from the Petitioner’s phone. *Id.* ¶ 13. The Petitioner was then transported to

**Motion for Preliminary Injunction**

1 300 N. Los Angeles Street in Los Angeles and placed in a crowded holding cell for  
2 four nights. *Id.* ¶ 14. Mr. Delkash reports that he was placed in a holding cell that  
3 is approximately 10' x 20' with approximately 40-50 other men. *Id.* ¶ 14. He was  
4 forced to sleep on the floor and subject unsanitary conditions. *Id.* ¶ 14.

5 Specifically, he said there is one toilet for all 40-50 men to use and the toilet was  
6 leaking urine and feces. *Id.* ¶ 14. All of the detainees were forced to use the toilet  
7 without any privacy. *Id.* ¶ 14. The detainees were forced to sleep on the same  
8 concrete floor as the overflowing toilet. *Id.* ¶ 14. During the Petitioner's time in  
9 300 N. Los Angeles Street, no one would tell him why he was detained. *Id.* ¶ 14.

10 14. After Mr. Delkash was transferred to 300 N. Los Angeles Street, the family  
11 hired Douglas Jalaie (Mr. Jalaie) to assist the Petitioner. *See* Exhibit 6-  
12 Declaration from Counsel Douglas Jalaie ¶ 5. It is Mr. Jalaie's opinion that it is  
13 rare for a withholding of removal, unlike a Convention Against Torture (CAT)  
14 recipient to be placed on an order of supervision. *Id.* ¶ 3-4. As such, Mr. Jalaie  
15 shared in Mr. Delkash's family's confusion about why the Petitioner was detained.  
16 *Id.* ¶ 5. Mr. Jalaie visited Mr. Delkash when he was detained at 300 North Los  
17 Angeles Street and he learned about the deplorable conditions and the Petitioner's  
18 lack of access to medical care. *Id.* ¶ 5. The Petitioner's immigration counsel  
19 emailed the ICE Outreach and provided his G-28 Entry of Attorney Appearance  
20 and asked about Mr. Delkash's detention. *Id.* ¶ 6 and Exhibit 7- Email to ICE  
21 Outreach. By sending this email, Mr. Jalaie followed the proper protocols to  
22 establish a right to communicate with the appropriate deportation officer.  
23 However, ICE did not respond to the email. *See* Exhibit 6 ¶ 6.

24 15. On the sixth day, Mr. Delkash was transferred to the GEO center in  
25 Adelanto, California. *See* Exhibits 1 and Exhibit 8- ICE Detainee Locator Printout  
26 (dated 7/9/25). After his sixth day in custody, Mr. Delkash was able to take a  
27 shower and he received a bunk. *See* Exhibit 1 ¶ 15. The Petitioner is unable to  
28 sleep. *Id.* ¶ 15. He was prescribed Ambien due to his PTSD diagnosis stemming

### **Motion for Preliminary Injunction**

1 from his traumatic military experiences. *Id.* ¶ 15. To date, the Petitioner has not  
2 received medical treatment to address his medical and mental health needs. *Id.* ¶  
3 15. He had been unable to access adequate medical care, receive his prescribed  
4 Ambien, or obtain his missing dental implant, resulting in further health  
5 complications. *Id.* ¶ 15.

6 16. Since being transferred to Adelanto, the Petitioner has not been told why he  
7 is detained. *See* Exhibit 1 ¶ 16. This uncertainty, in combination with Mr.  
8 Delkash's unmet physical care and unaddressed mental health complications is  
9 resulting in further problems. *Id.* ¶ 16. Mr. Delkash fears being removed to an  
10 unknown country without *any* notice or ability to explain a fear of being forcefully  
11 expelled to an unknown land. *Id.* ¶ 16-17.

12 17. Likewise, since Mr. Delkash was transferred to Adelanto, Mr. Jalaie has  
13 been equally unsuccessful in ascertaining why his client was detained. *See* Exhibit  
14 6 ¶ 7. On July 3, Mr. Jalaie emailed an Adelanto-specific email address and asked  
15 "*inter alia* whether ICE has travel documents for the Petitioner's removal and  
16 whether it has received diplomatic assurances that Respondent will not be  
17 persecuted in the country of removal?" *Id.* and Exhibit 9- Email Exchange with  
18 Officer C. Jenson. An officer C. Jenson responded "[Mr. Delkash] has not yet  
19 been presented with the documents for acquisition of a travel document for third  
20 country removal, as your client was granted withholding to Iran. This will take  
21 place in the coming days." *Id.* As of the date of filing this TRO, no  
22 documentation has been provided to Mr. Delkash or his counsel to facilitate  
23 removal to a third country. *See* Exhibit 6 ¶ 7. On July 7, Mr. Jalaie spoke with  
24 Officer Palacios, who is Mr. Delkash's assigned deportation officer. *Id.* ¶ 8.  
25 Officer Palacios was unable to tell Mr. Jalaie why his client was detained. *Id.* ¶ 8.

26 18. On July 15, 2025, Mr. Jalaie emailed the Adelanto-specific email address  
27 and asked why his client was detained. *See* Exhibit 10- Email from Douglas Jalaie  
28 to Adelanto-Specific Email. In sum, Mr. Delkash has been detained since June 24,

### **Motion for Preliminary Injunction**

1 2025. Despite several attempts by his attorney, ICE has not provided a basis for  
2 detaining him, nor has it initiated the documentation to secure a travel document to  
3 a third country.

4 19. Under all available accounts, Mr. Delkash is being held in Adelanto, against  
5 his will for an unknown reason. ICE has failed to articulate a reason or a process  
6 that was followed, which it is detaining Mr. Delkash. Given the government's  
7 position that it can summarily remove a noncitizen to a third country without  
8 notice or process and because the government has provided no information about  
9 why Mr. Delkash has been detained, there is a very real risk that the Petitioner will  
10 (1) be detained indefinitely or (2) be removed without any due process. Both are  
11 blatantly unconstitutional and deserving of this court's usage of its authority to  
12 grant the PI. It appears that the Petitioner is not the only Persian noncitizen who  
13 has been detained with little justification or facts supporting the detention since the  
14 United States Government bombed the Iranian nuclear facilities. *See* Kim  
15 Chandler, Claire Rush, and Elliot Spagat, *After decades in the US, Iranians*  
16 *arrested in Trump's deportation drive* (AP News Jun. 28, 2025) (last accessed at  
17 [https://apnews.com/article/iran-immigration-arrests-us-trump-deportations-](https://apnews.com/article/iran-immigration-arrests-us-trump-deportations-9a4136657bda3a277125738807848368)  
18 [9a4136657bda3a277125738807848368](https://apnews.com/article/iran-immigration-arrests-us-trump-deportations-9a4136657bda3a277125738807848368) on Jul. 15, 2025).

#### 19 **IV. ANALYSIS**

20 20. A preliminary injunction or TRO is appropriate if a plaintiff can show  
21 that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer  
22 irreparable harm in the absence of preliminary relief"; (3) "the balance of equities  
23 tips in [his] favor"; and (4) "an injunction is in the public interest." *Winter v. Nat.*  
24 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding  
25 scale" approach, a TRO or preliminary injunction is appropriate when, "a plaintiff  
26 demonstrates . . . that serious questions going to the merits were raised and the  
27 balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild*  
28



1 *Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation  
2 omitted).

3 **A. The Petitioner is Likely to Win on the Merits of His Application**

4 **1. Detention Claims**

5 21. In considering the first factor, Mr. Delkash is likely to win on the merits of  
6 his habeas petition on his first two claims that he was unlawfully detained. In this  
7 case, ICE has neither provided the Petitioner nor Mr. Jalaie the basis for Mr.  
8 Delkash's arrest and detention. The guiding principle in these cases dates back to  
9 this country's founding. "Every person restrained of his liberty is entitled to an  
10 inquiry into the lawfulness of such restraint, and to a removal thereof if unlawful."  
11 Resolution of the New York Ratifying Convention (July 26, 1788), in 1 *id.* at 328  
12 as cited in *Boumediene v. Bush*, 553 U.S. 723, 744 (2008), judgment entered, No.  
13 07A1011, 2008 WL 11579668 (U.S. June 19, 2008).

14 22. After reviewing the Court's denial of the petition for a temporary restraining  
15 order, it is important to clarify some of the court's observations that underpinned  
16 its conclusion. Before doing so, it is important to fully explain the pre-removal  
17 and post-removal detention schemes, so all parties are beginning at the appropriate  
18 starting point. As discussed in *Johnson v. Guzman Chavez*, there are two periods  
19 where the noncitizen may be detained. *Johnson v. Guzman Chavez*, 594 U.S. 523,  
20 527-529 (2021). The first period occurs after the noncitizen is arrested *on*  
21 *suspicion of being removable* and the noncitizen is not initially released from ICE  
22 custody. *Id.* at 527. If the noncitizen is not issued a bond, the noncitizen may  
23 apply for a custody redetermination (bond) before the immigration judge. *Id.* In  
24 that case, the noncitizen is being held to pursuant to 8 U.S.C. § 1226(a).<sup>1</sup> *Id.* The  
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<sup>1</sup> Or possibly 8 C.F.R. § 1226(c), the difference is irrelevant here.

1 Supreme Court was clear that this section of the Act covers *only* pre-removal  
2 detention:

3           Section 1226 provides that “an alien may be arrested and  
4           detained pending a decision on whether the alien is to be  
5           removed from the United States.” § 1226(a). Section 1231, by  
6           contrast, authorizes detention “when an alien is ordered  
7           removed” and enters the “removal period,” which begins on  
8           “[t]he date the order of removal becomes administratively final.”  
9           §§ 1231(a)(1)(A)–(B), (2).

10       23. *Id.* at 534. Thus, once a removal order is issued, 8 U.S.C. § 1226(a) no  
11       longer applies.

12       24. The second, as explained in the petition for TRO and confirmed by the  
13       Supreme Court, a noncitizen is subject to detention at two points *after* the removal  
14       becomes administratively final. *Johnson*, 594 U.S. at 528. Detention is *mandatory*  
15       during the initial removal period. *Id.* However, if the noncitizen is removed  
16       detention *may* be extended under certain circumstances. *Id.* at 528-529. The  
17       Supreme Court confirmed that there is an implicit constitutional limitation to  
18       continued post-removal detention. *Id.* at 529. The regulations, and filing a habeas  
19       petition are avenues for seeking release *after* the presumptively lawful six-month  
20       removal period. Finally, the Court observed “[i]f no exception applies, an alien  
21       who is not removed within the 90-day removal period will be released subject to  
22       supervision. *Id.* (citing to 8 U. S. C. § 1231(a)(3); *see also* 8 C.F.R. § 241.5).  
23       Indeed, using the phrase *will be released* indicates that conditions of release are  
24       *mandatory*. *Id.* and *see also Doe v. Barr*, 479 F. Supp. 3d 20, 27 (S.D.N.Y. 2020)  
25       (“8 C.F.R. § 241.5, which *mandates the agency to impose orders of supervision* on  
26       aliens released according to [8 C.F.R. § 241.4].” (emphasis added)).

27       25. Once the noncitizen is released pursuant to the order of supervision, the  
28       order *shall* include the specific conditions of release. 8 C.F.R. § 241.5. An order of  
supervision is necessary because it explains the conditions of release and the

**Motion for Preliminary Injunction**

1 consequences for failing to comply with the rules set forth by the agency and the  
2 procedure to revoke supervision if the noncitizen fails to comply. *See* 8 C.F.R. §  
3 241.4(l) as cited in *Noem v. Abrego Garcia*, -- U.S. --, 145 S.Ct. 1017, 1019 (2025)  
4 (SOTOMAYOR, J. statement on the disposition); *see also* .

5 26. Turning back to the ultimate question, “[e]very person restrained of his  
6 liberty is entitled to an inquiry into the lawfulness of such restraint”; the Petitioner  
7 has not been provided a basis for his detention and thus, he requires this Court’s  
8 intervention. The Petitioner’s 90-day removal period began when both parties  
9 waived appeal after the immigration judge granted withholding of removal. *See* 8  
10 U.S.C. § 1231 (a)(1)(B)(i). At that point, he was subject to mandatory detention  
11 under 8 U.S.C. § 1231(a)(2). *Prieto-Romero v. Clark*, 534 F.3d 1053,1059 (9th  
12 Cir. 2008). However, he was released immediately, and *also* unlike the regulations  
13 and the Act, Mr. Delkash was not placed under an order of supervision pursuant to  
14 8 C.F.R. § 241.5(a). It is undisputed that the *mandatory* 90-day removal period has  
15 passed, by approximately 24 years. It is also undisputed that the government opted  
16 *not* to detain the Petitioner past the 90-day removal period. As Mr. Jalaie opined,  
17 this practice was not uncommon for noncitizens from recalcitrant countries. *See*  
18 Exhibit 6 ¶ 3-4.

19 27. By failing to place Mr. Delkash on an order of supervision, ICE necessarily  
20 failed to explain any conditions or expectations of him after being released. *See* 8  
21 C.F.R. § 241.4(j)(1) *and* 8 C.F.R. § 241.5(a). By failing to release the noncitizen  
22 pursuant to the Act and its accompanying regulations, ICE has failed to provide  
23 any meaningful notice for its authority to redetain Mr. Delkash nor has it provided  
24 a rubric by which he shall be evaluated. More importantly, the Petitioner is  
25 unaware of any authority that permits the government to detain a person for  
26 violating an order of supervision that was never issued.

27 28. It is well-settled that the agency must follow its regulations. *See United*  
28 *States v. Caceres*, 440 U.S. 741, 759 (1979) (“This Court has consistently

### **Motion for Preliminary Injunction**



1 demanded governmental compliance with regulations designed to safeguard  
2 individual interests even when the rules were not mandated by the Constitution or  
3 federal statute.”) and *Morton v. Ruiz*, 415 U.S. 199, 235, (1974) (“Where the rights  
4 of individuals are affected, it is incumbent upon agencies to follow their own  
5 procedures.”). “An agency such as DHS can therefore be bound by its own  
6 procedures when they (1) prescribe substantive rules-not interpretive rules, general  
7 statements of policy or rules of agency organization, procedure or practice; and (2)  
8 conform to certain procedural requirements.” *Jane Doe 1 v. Nielsen*, 357 F. Supp.  
9 3d 972, 1000 (N.D. Cal. 2018).

10 29. In this case, 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5(a) are mandatory  
11 rules that provide vital information to the noncitizen including “obey[ing]  
12 reasonable written restrictions on the alien’s conduct or activities that the Attorney  
13 General prescribes for the alien.” See 8 U.S.C. § 1231(a)(3)(D). Without providing  
14 any written notice about why the government is releasing him, the standards he  
15 will be judged, and the consequences of failing to comply with these mandatory  
16 terms of release, the Petitioner’s right to procedural due process is violated. To  
17 date, neither the Petitioner nor his attorney have been informed of the reason(s) for  
18 his redetention. One can only speculate the reason the Petitioner has been  
19 detained. Undoubtedly, this conduct runs afoul to the underlying principle that a  
20 “[e]very person restrained of his liberty is entitled to an inquiry into the lawfulness  
21 of such restraint.” Surely, ICE’s conduct does not comply with the Fifth  
22 Amendment to the Constitution and does not comply with the post-removal release  
23 scheme that it did not follow.<sup>2</sup>  
24

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28 <sup>2</sup> At this point, no party has argued that the government’s failure to issue an OSUP  
was an excusable due process violation under

1 30. For example, had the government followed the law and placed Mr. Delkash  
2 on an order of supervision, there would be a scheme that would give him notice of  
3 why his supervision was being revoked, would let him know who and under what  
4 authority his supervision was being revoked, and would give him an opportunity to  
5 explain why the supervision should not be revoked. *See* 8 C.F.R. § 241.4(l) and 8  
6 C.F.R. § 241.13(i) *as discussed in See Ceesay v. Kurzdorfer*, -- F.Supp.3d--, No. 25-  
7 CV-267-LJV, 2025 WL 1284720 (W.D.N.Y. May 2, 2025). Both Mr. Delkash and  
8 Mr. Jalaie have stated that the Petitioner has been afforded none of these  
9 procedural rights prior to his detention that he would have been afforded had ICE  
10 done properly released Mr. Delkash on an order of supervision.

12 31. The Petitioner also seeks to gently remind the Court of the structure of pre-  
13 and post-removal detention as articulated in *Johnson*. *See generally* Dckt. 6. First,  
14 the Court observed that the “Government retains the ability to arrest and detain  
15 pursuant to a warrant pending decisions on removal, *see* 8 U.S.C. § 1226(a).” *See*  
16 Dckt. 6 p. 3. However, the Petitioner is unaware of any authority that supports this  
17 position in light of *Johnson*. Mr. Delkash has already been issued a removal order  
18 when he was granted withholding of removal. *See* Exhibit 2. The Petitioner is  
19 unaware of any authority that permits a *new* Notice to Appear (NTA) after  
20 withholding of removal was granted. Hypothetically, if the government wanted to  
21 revoke his withholding status, to properly do so, ICE must file a motion to reopen.  
22 *See* 8 C.F.R. § 208.24(f) *and* 8 C.F.R. § 1208.24(f). To date, there is no evidence  
23 that was done here. More importantly, it appears there is no lawful authority to file  
24 a NTA under these facts. And, to date, neither Mr. Delkash nor his representative  
25 have been served a motion to reopen the original proceedings nor was the matter  
26 reopened by an immigration judge. Thus, the Petitioner does not believe 8 U.S.C.  
27 § 1226(a) applies in this case.  
28

### **Motion for Preliminary Injunction**

1 32. Second, the Court observed that the “[g]overnment also retains discretion to  
2 revoke release and return the noncitizen to custody on a number of grounds, most  
3 of which depend on what the reasons are for the release in the first place. *See, e.g.,*  
4 8 C.F.R. §§ 241.13(i)(2), 241.4(l).” *See* Dckt. 6 p. 3. The Petitioner does not  
5 dispute this. However, as of filing this motion, the Petitioner has *not* been placed  
6 on an order of supervision. Thus, any argument that he is now subjected to  
7 redetention based on conduct that would have violated the OSUP that he was never  
8 issued surely violates the most basic principles of due process. Because “[e]very  
9 person restrained of his liberty is entitled to an inquiry into the lawfulness of such  
10 restraint,” and the government has not established the lawfulness of the detention,  
11 Mr. Delkash is entitled “to a removal [from the detention] if unlawful.” To hold  
12 otherwise would mean that ICE could hold a noncitizen accountable despite failing  
13 to provide necessary information by which he would be judged. Perhaps more  
14 galling is the fact that identifying the conditions of the OSUP are *mandatory*. *See* 8  
15 C.F.R. § 241.5(a).

17 33. Given this blatant violation of Mr. Delkash’s constitutional, statutory, and  
18 regulatory rights, at a minimum, immediate release is necessary to maintain the  
19 status quo while further litigation is pending. Indeed, the *Cesay* held that ICE’s  
20 failure to follow its regulatory obligations when revoking an order of supervision is  
21 grounds for immediate release. *Id.* at \*21. The same standard should be applied  
22 here and this court must find a substantial likelihood Mr. Delkash will succeed on  
23 the merits of this claim.

## 24 **2. Third Country Removal Claim**

25 34. The Petitioner also seeks temporary relief from removal to a third country  
26 without ensuring a measure of due process. ICE has recently taken the position  
27 that it may not provide any individualized notice to the Petitioner or an opportunity  
28 to respond before he is removed to a third country. *See* Noem, Kristi, Guidance

## **Motion for Preliminary Injunction**

1 Regarding Third Country Removals, DHS (Mar. 30, 2025) (available at  
2 [https://lawprofessors.typepad.com/files/2025.03.30\\_dhs\\_guidance\\_regarding\\_third\\_c](https://lawprofessors.typepad.com/files/2025.03.30_dhs_guidance_regarding_third_c)  
3 [ountry\\_removals.pdf](https://lawprofessors.typepad.com/files/2025.03.30_dhs_guidance_regarding_third_c) (last accessed 7/10/25). Specifically, ICE has taken the position  
4 that it does not need to provide *any notice* to the noncitizen if ICE and the State  
5 Department believe a third country's assurances that the noncitizen will not be  
6 tortured. *Id.* 1-2. Alternatively, if ICE or the State Department does not believe the  
7 assurances that the noncitizen will not be tortured, they will inform, *but not*  
8 *guarantee* an opportunity to seek an individualized fear review.

9 35. Under these guidelines, neither ICE nor the State Department articulate how  
10 these "assurances" could cover every possible reason a person might seek protection  
11 under the Convention Against Torture. Similarly, if the noncitizen is being removed  
12 to a country where the government has doubts about the non-torture assurances, the  
13 ICE agents will not ask the noncitizens if they fear being removed to the third  
14 country. Essentially, ICE is forcing the noncitizen to assert a right he may not know  
15 that he has.

16 36. When addressing the blanket assurances, they blatantly violate the applicable  
17 regulations, "The Secretary of State may forward to the Attorney General assurances  
18 that the Secretary has obtained from the government of a specific country that *an*  
19 *alien* would not be tortured there if *the* alien were removed to that country." *See* 8  
20 C.F.R. § 1208.18(c)(1) (emphases added). It is also doubtful that these blanket  
21 assurances would cover non-state actors. Thus, it is possible that despite the  
22 "assurances" from the foreign government that the noncitizen will not be tortured,  
23 these assurances may do nothing to protect against non-state actors. *See e.g. Cole v.*  
24 *Holder*, 659 F.3d 762, 771 (9th Cir. 2011) ("Acquiescence by government officials  
25 requires only that they were aware of the torture but remained willfully blind to it, or  
26 simply stood by because of their inability or unwillingness to oppose it." (quotation  
27 marks and citations omitted)). Similarly, there is no guarantee that the noncitizen  
28

### **Motion for Preliminary Injunction**

1 will be screened for his/her fear of return to a third country. There is no straight-  
2 faced argument this conduct complies with due process and thus, there is a likelihood  
3 of success on the merits for the third cause of action as well.

4 **B. The Petitioner Will Face Irreparable Harm**

5 37. In considering the second factor, “[i]t is well established that the deprivation  
6 of constitutional rights unquestionably constitutes irreparable injury.” *Chhoeun v.*  
7 *Marin*, 306 F. Supp. 3d 1147, 1162 (C.D. Cal. 2018) (citation omitted). By  
8 violating Mr. Delkash’s constitutional rights, he is suffering an irreparable injury.  
9 Further, the Petitioner is suffering specific harms related to his specific causes of  
10 action.  
11

12 **1. Mr. Delkash’s unlawful detention is causing him irreparable harm**

13 38. The Act requires ICE to provide adequate care for the detainee’s physical  
14 and mental condition. *See* 8 U.S.C. § 1231(f)(1). This would include adequate  
15 medical, dental, and mental health treatment while detained.

16 39. Mr. Delkash is a veteran. During his basic training at Fort Knox, he was  
17 subject to hazing and racial discrimination that have caused him long-term mental  
18 disabilities. He currently suffers from PTSD and PDD; because of this he has been  
19 prescribed Ambien to help him sleep. The deplorable conditions at 300 North Los  
20 Angeles Street and the unavailability of medical treatment are exacerbating his  
21 mental health conditions. By not receiving his prescription medication he cannot  
22 sleep. He lost a crown and has not gotten dental treatment. He complained of  
23 losing feeling in two of his fingers, yet he has not seen a doctor. Further detention  
24 is only serving to further trigger Mr. Delkash’s mental health issues and denial of  
25 medical treatment only further exacerbate his worsening physical state. Aside  
26 from the obvious constitutional harms, Mr. Delkash’s detention is causing  
27 irreparable harm to his body and his mental health.  
28

**Motion for Preliminary Injunction**

**process**

64).

### C. The Final Two Factors Favor the Petitioner

of removal orders.” *Id.*

these two factors have a slightly different analysis for each factor.

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**1. Unlawful detention**

43. When considering the government's interest in detaining Mr. Delkash without and process, the balance of equities and the public's interest in the lawful administration of immigration laws is significant. Because the government's re-detention of Mr. Delkash is illegal under controlling statutory and constitutional authority, it "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Likewise, it is in the public interest to prevent the further deprivation of Mr. Delkash liberty in violation of due process of law because the incorrect application of controlling law can never be in the public interest. The public has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). Moreover, the public has an interest in accurate determinations in all legal proceedings, including the decision of whether to detain individuals who are on an order of supervision. The public is also served by avoiding excessive expense on detention and ensuring that the government does not expend its resources to detain individuals unnecessarily.

**2. Third Country Removal**

44. When considering whether the balance of equities tips in the Petitioner's favor and it is in the public's interest to prevent a removal without due process. *D.V.D.* found "it likely that these deportations have or will be wrongfully executed and that there has at least been no opportunity for Plaintiffs to demonstrate the substantial harms they might face." *D.V.D. v. U.S. Dep't. of Homeland Security*, 1:25-cv-10676-BEM \*45. And for this reason, the final two factors supported the Petitioners' stance.

**Motion for Preliminary Injunction**

1 **V. CONCLUSION**

2 For the foregoing reasons, this Court should hold that Mr. Delkash is likely  
3 to succeed on the merits of his pending Petition for Writ of Habeas Corpus, that  
4 he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
5 balance of equities tips in his favor, and that the requested restraining order is in  
6 the public interest. Specifically, Mr. Delkash requests this Court to enter the  
7 following findings and orders:  
8

9 A) That Mr. Delkash's redetention violated the Fifth Amendment to the  
10 Constitution, the INA, and its applicable regulations;

11 B) That a preliminary injunction is necessary to ensure that Respondents do not  
12 continue to violate Delkash's constitutional rights;

13 C) That Mr. Delkash be released forthwith;

14  
15 D) That Mr. Delkash cannot be redetained unless and until he receives adequate  
16 notice and a hearing to determine the legality of his re-detention;

17  
18 E) That, if Mr. Delkash is to be removed to a third country, that he be informed  
19 of ICE's intention to do so and that he receives an individualized opportunity  
20 to challenge removal through a reasonable fear interview;

21 F) That, under the particular circumstances of this case, it is proper to waive the  
22 requirement that Mr. Delkash give an amount of security in connection with  
23 the issuance of an injunctive order;

24 G) That Mr. Delkash is entitled to an award of attorney's fees under the Equal  
25 Access to Justice Act (EAJA), 28 U.S.C. § 2412; and/or

26 H) That this Court grant any other relief it deems necessary and proper.

27 ///

28 ///



1 DATED: July 15, 2025  
2 Long Beach, California

3  
4 Respectfully submitted,

5 /s/ Andres Ortiz  
6 Andres Ortiz, Esq.  
7 Andres Ortiz Law  
8 Attorney for the Petitioner  
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**Motion for Preliminary Injunction**

**VERIFICATION**

I, Andres Ortiz, hereby declare under penalty of perjury of the laws of the State of California and the United States that the facts alleged in the foregoing *Motion for Preliminary Injunction* are to the best of my knowledge true and correct.

Executed on this 15th day of July, 2025 in Long Beach, CA.

By: s/Andres Ortiz  
Andres Ortiz, Esq.  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing *Motion for Preliminary Injunction* in *Omid Delkash v. Noem et. al*, with the Clerk of the Court for the Central District of California by using the appellate CM/ECF July 15, 2025, for filing and transmittal of Notice of Electronic Filing

**/s/ Andres Ortiz**  
Andres Ortiz, Esq.  
Attorney for Petitioner

Motion for Preliminary Injunction