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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS DAVID GARCIA-AYALA,

Petitioner,

vs.

TONYA ANDREWS, WARDEN OF GOLDEN STATE ANNEX DETENTION CENTER;
MOISES BECERRA, FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT;
ALEXANDER PHAM, ASSISTANT FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT;
KRISTI NOEM, SECRETARY OF DEPARTMENT OF HOMELAND SECURITY;
AND PAMELA BONDI, UNITED STATES ATTORNEY GENERAL,

Respondents.

Case No. 2:25-cv-02070-DJC-JDP

BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

The Petitioner, Luis Garcia-Ayala, a native and citizen of El Salvador, was released from custody of the Department of Homeland Security (DHS) on or about February 7, 2023, pending a final decision on his application for asylum and asylum-related relief. For the past 28 months, he has been in perfect compliance with the terms and conditions of his release. He has committed no criminal offense; he has reported to the Immigration and Customs Enforcement (ICE) at every

required check-in and appeared at every required immigration court hearing; he has a valid work authorization document, and he has been working to help support his U.S. citizen family members. Nevertheless, on June 25, 2025, when Petitioner appeared at a required check-in, ICE took him into custody without explanation. Mr. Garcia-Ayala maintains that continuing to hold him in detention violates the governing statute, regulations, and Due Process. He seeks a temporary restraining order requiring the Respondents to release him immediately pending further consideration of his claims by this Court.[1]

FACTUAL BACKGROUND

Starting in 2016, the gang MS-13 began extorting and threatening Mr. Garcia Ayala and his family. They coerced him into serving as a neighborhood lookout for the gang to keep his family and himself safe. Ex. E, Individual Calendar Hearing Transcript at 31:3-12 (Nov. 17, 2022) (ICH Tr.). Mr. Garcia Ayala was also frequently harassed, detained, beaten, and threatened by a corrupt police officer who harbors personal resentment toward him. Mr. Garcia Ayala was beaten so many times that he lost count. *Id.* at 42:3-4.

In 2017, Mr. Garcia Ayala was arrested and incarcerated for possession of marijuana. He suffered more beatings from prison guards throughout his time in prison. In 2019, guards informed him that he was scheduled to be transferred to a different prison, which was controlled by the Mara 18 gang, which posed a grave risk because of his past association with MS-13. *Id.* at 42:4-7. Immediately upon his release in 2021, MS-13 contacted Mr. Garcia Ayala and told him he had to begin carrying out missions for them. He refused and told them he wanted to leave the gang, especially as he had converted to Christianity while in prison. The gang threatened him with death. *Id.* at 34:18-22. The corrupt police officer had also been threatening to kill him and

[1] On July 29, 2025, undersigned counsel notified / attempted to notify the Respondents by contacting Edward Olsen, Chief of the Civil Division for the U.S. Attorney's Office for the Eastern District of California, as well as Elliot Wong and Michelle Rodriguez, Assistant U.S. Attorneys, counsel for Respondents. *See* attached Affidavit regarding Notice to Respondents.

began appearing at his mother's home upon his release from prison and continues to look for him. *Id.* at 46:3-23.

In 2022, Mr. Garcia Ayala fled to the United States to escape increasing threats from MS-13, the corrupt police officer, and the government, which had recently instituted a "State of Exception" that continues to give the Salvadoran government extraordinary powers to punish harshly any individuals it deems may be affiliated with gangs. *See, e.g., id.* at 46:9-12, 47:8-23, 48:2-3.

On or around July 13, 2022, Mr. Garcia Ayala entered the United States without inspection and was apprehended near the border, put in expedited removal, and received a positive determination in his Credible Fear Interview. Ex. B, Immigration Judge Decision at 1-2.

At Mr. Garcia Ayala's removal hearing on February 7, 2023, the Immigration Judge (IJ) found him ineligible for asylum and Withholding of Removal on the basis of "material support" to MS-13. *Id.* at 10. However, the IJ found that Mr. Garcia Ayala was more likely than not to experience torture or death if returned to El Salvador and accordingly granted Deferral of Removal under the Convention Against Torture. *Id.* At that time, DHS determined that Mr. Garcia Ayala was neither a danger to the community nor a flight risk and he was released. *See, e.g.,* Ex. D, ICE Supervision Sheet. On March 6, 2023, Mr. Garcia Ayala timely filed a notice of appeal of the IJ's denial of asylum and withholding of removal. Ex. C, Notice of Appeal. The case is currently pending before the BIA.

Since his release in February 2023, Mr. Garcia Ayala has remained employed, working in construction. *See, e.g.,* Ex. F, Petitioner Decl. ¶¶ 1, 3-5. He maintains consistent contact with family, friends, and community, including his U.S. citizen niece and nephews. *See* Exs. F-J, Decls. in Support of Petitioner. Mr. Garcia Ayala contributes significant financial support to his family in the United States and is a constant presence at family and community gatherings. *See* Ex. G, Martha Hernandez Decl. ¶¶ 1-2; Ex. H Hugo Guzman Decl. ¶ 4; Ex. I Chelsea Guzman Decl. ¶ 3; Ex. J Maria Mejia Decl. ¶ 7. He has remained in perfect compliance with his ICE Order of

Supervision (OSUP), never having missed a single appointment since his release over two years ago. Ex. D, ICE Supervision Sheet.

On June 25, 2025, ICE arrested Mr. Garcia Ayala without explanation when he checked in, as required under OSUP. Ex. A, Notice of Revocation of Release. Since then, ICE has held him in detention without bond. There is no final order of removal against Mr. Garcia Ayala. He is concerned that he may be removed or repatriated to a third country before he has an opportunity to apply for withholding of removal or protection under the Convention Against Torture as to such country.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §2241 to review Mr. Garcia-Ayala's claims in habeas proceedings. *See* 28 U.S.C. §2241(c) (writ of habeas extends to persons who are detained in violation of the Constitution or laws or treaties of the United States); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (an individual subject to detention and removal is entitled to judicial review in habeas as to "questions of interpretation and constitutionality"). *See also Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (en banc) (28 U.S.C. § 2241 "makes the writ of habeas corpus available to all persons 'in custody in violation of the Constitution or laws or treaties of the United States'"). In addition, this Court has jurisdiction to issue a mandamus order under 28 U.S.C. §1361 to compel the Respondents to perform a duty owed to Mr. Garcia-Ayala – namely to provide a bond hearing, as required by Due Process, prior to his re-detention.

LEGAL BACKGROUND

The interest at stake when a prisoner is held in jail without bond is fundamental. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (freedom from imprisonment "lies at the heart of the liberty that [the Due Process Clause] protects"). For a noncitizen to be held in immigration detention, there must be "special and narrow nonpunitive circumstances." *Id.* There are two "special and nonpunitive circumstances" that may justify immigration detention: "preventing danger to the

community" and "ensuring the appearance of [noncitizens] at future immigration proceedings." *Id.* Continuing to hold a noncitizen in detention if neither of these circumstances applies violates due process. According to the Ninth Circuit:

> [D]ue process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint. ... Because it is improper to ask the individual to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection.

Singh v. Holder, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (cleaned up), quoting *Zadvydas*, 533 U.S. at 690, and *Addington v. Texas*, 441 U.S. 418, 427 (1979). If the government cannot establish by clear and convincing proof that Mr. Garcia-Ayala is either a danger to the community or a flight risk, then his continued detention violates due process.

The Supreme Court has consistently emphasized the importance of the writ of habeas corpus in protecting against unconstitutional detention. *Johnson v. Avery*, 393 U.S. 483, 485 (1969). The writ should receive "special, preferential consideration to insure expeditious hearing and determination." *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954). *See also Hoeun Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (the writ of habeas corpus is intended to be a "swift and imperative remedy in all cases of illegal restraint," citing *Fay v. Noia*, 372 U.S. 391, 400 (1963)).

A. DHS's Authority to Detain Noncitizens

The relevant statutory authority for DHS to detain Mr. Garcia-Ayala is found in 8 U.S.C. §1225, which applies to individuals who are apprehended while arriving in the United States. If a person apprehended while arriving in the United States expresses a fear of persecution or an intention to apply for asylum, then the person is referred to an asylum officer for a "credible fear interview." 8 U.S.C. §1225(b)(1)(A)(ii). The general rule, according to §1225(b)(1)(B)(ii), is that a person who is determined to have a credible fear of persecution (such as Mr. Garcia-Ayala) will be detained while his application for asylum is being considered. However, the statute also

provides that the person can be released on parole. 8 U.S.C. §1182(d)(5)(A). *See* 8 C.F.R. §208.30(f) (if an applicant establishes a credible fear (as Mr. Garcia-Ayala has done), "[p]arole . . . may be considered . . . in accordance with section 212(d)(5) of the Act and [8 C.F.R.] §212.5"); *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018) (person subject to removal proceedings under §1225(b)(1) can be released under the parole provision); *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025) (a person apprehended while arriving in the United States is ineligible for subsequent release on bond under 8 U.S.C. §1226(a); "[t]he only exception permitting the release [of the noncitizen] is the parole authority provided by 8 U.S.C. §1182(d)(5)(A)"). In order for a person to be released on parole, DHS must determine that s/he is not a danger to the community and not a flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."); *accord, Harman Singh v. Andrews*, 2025 U.S. Dist. LEXIS 132500, *19, 2025 WL 1918679 (E.D. Cal. 7/11/2025) (noting DHS's "own prior determination that petitioner did not pose a danger or a flight risk").

After parole has been granted, DHS is allowed to terminate parole only in two circumstances: (1) "upon accomplishment of the purpose for which parole was authorized"; and (2) where "neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United States." 8 CFR 212.5(e)(2)(i). This regulation also provides that if parole is to be terminated, then written notice of termination must be given to the noncitizen.

B. Protection Against Persecution or Torture

United States immigration laws provide noncitizens in the United States with three forms of protection from persecution and torture: asylum, withholding of removal, and protection under the Convention Against Torture (CAT). A person apprehended at the border is screened for a credible fear of persecution or torture, 8 C.F.R. §235.3(b)(4), and if determined to have a credible

fear is referred to an immigration judge for full consideration of whether such relief should be granted. 8 C.F.R. §208.30.

Asylum can be granted to a person who has a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. §1158; §1101(a)(42). Asylum provides a pathway to lawful permanent resident status and full protection against deportation to any country. If asylum is granted, the person cannot be deported to their country of origin or to any other country.

Withholding of removal is a form of mandatory protection against removal to a particular country. The statute provides that DHS *may not* remove a person to a country where their life or freedom would be threatened because of their race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §1231(b)(3)(A). An individual is ineligible for withholding of removal if they have, among other things, committed certain serious crimes or provided "material support" to terrorist groups. *See* 8 U.S.C. §1231(b)(3)(B).

Protection under the Convention Against Torture is also a form of mandatory protection against removal to a particular country. Under the Foreign Affairs Reform and Restructuring Act (FARRA). Pub. L. 105-277 Div. G §2242(a), 112 Stat. 2681, 2681-822 (1999) (codified as statutory note to 8 U.S.C. §1231), Congress instructed that the U.S. government may not "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." *Id.* This mandatory form of protection applies to all persons and has no exceptions.

In removal proceedings, the immigration judge designates a country of removal. Prior to removal, the noncitizen must be afforded an opportunity to apply for protection from removal to any country of removal designated by the immigration judge. Thus, if ICE intends to remove a person to a third country not designated by the immigration judge, that person must be afforded notice and an opportunity to apply for withholding of removal and/or CAT relief as to that country. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019). *See also*

Trump v. J.G.G., 145 S. Ct. 1003, 1006 (2025) (per curiam) (all nine Supreme Court justices agreed that "notice must be afforded within a reasonable time and in such a manner as will allow [plaintiffs] to actually seek . . . relief in the proper venue before such removal occurs"); *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) ("a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief").

LEGAL ARGUMENT

A. Standard for Temporary Restraining Order

A petitioner seeking a temporary restraining order must establish the following elements: (1) the petitioner 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 the petitioner's favor; and (4) a restraining order is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where there are "serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff" a temporary restraining order can be granted "so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Under this standard, a temporary restraining order should be issued requiring the Respondents to release Mr. Garcia-Ayala immediately, and ordering that the Respondents may not re-detain him unless they establish, by clear and convincing evidence, that Mr. Garcia-Ayala is either a danger to the community or a flight risk.

B. Likelihood of Success on the Merits

i. Petitioner is entitled to immediate release.

In this case, DHS has terminated parole without following the governing regulations. Regulations authorize termination of parole only if DHS determines that either (1) the purpose for which parole was granted has been accomplished, or (2) neither humanitarian reasons nor public benefit warrants the continued presence of the noncitizen in the United States. 8 C.F.R.

§212.5(e)(2). DHS has not made any such determination, and there is no reasonable basis for termination of parole. The purpose for which parole was granted—consideration of Mr. Garcia-Ayala's application for asylum—has not been completed; his case is still pending before the Board of Immigration Appeals. And, given that Mr. Garcia-Ayala has not committed any criminal offense, is working lawfully, and is providing support for U.S. citizen family members, there is no legitimate reason for DHS to change its original determination that humanitarian reasons and the public benefit warrant Mr. Garcia-Ayala's physical presence in the United States. He cannot be deported to El Salvador and no other country has been designated. Thus, there is a strong likelihood, under the facts of this case, that the revocation of Mr. Garcia-Ayala's parole is improper under the statute and regulations.

Whether or not the revocation of Mr. Garcia-Ayala's parole is permissible under the statute and regulations, his re-detention after DHS released him from custody violates Due Process. There is no evidence to support a claim that he is a danger to the community or a flight risk; accordingly, his re-detention violates Due Process. *Singh*, 638 F.3d at 1203-04.

The procedural protections required as a matter of due process are evaluated using the *Mathews v. Eldridge* factors: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used; and (3) the government's interest, including the fiscal and administrative burdens that additional procedural requirements entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); s*ee also, e.g., Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

According to *Zinermon v. Bur*ch, 494 U.S. 113, 127 (1990), "[a]pplying [the *Mathews*] test, the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property" (emphasis added). Here, the *Mathews* test requires that DHS provide a hearing before Mr. Garcia-Ayala is re-detained.

First, Mr. Garcia-Ayala has a substantial private interest remaining free from detention, and that interest has only grown during the 28 months that he was out of detention.[2] During that time he has worked lawfully to support his family; he has become an active member of his community; and he has fully complied in every respect with the requirements of supervision. The private interest affected when DHS re-detained Mr. Garcia-Ayala "is the most significant liberty interest there is—the interest in being free from imprisonment. … Case after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" *Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), and *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

Second, the risk of erroneous deprivation is high. Mr. Garcia-Ayala has not committed any criminal offenses since he was released from detention. He has reported to ICE on every occasion he was required to do so; he has not missed one single check-in or any scheduled immigration hearing. Civil immigration detention, which is "nonpunitive in purpose and effect[,]" is justified only if a noncitizen presents a danger to the community or a flight risk. *See Zadvydas*, 533 U.S. at 690; *Padilla*, 704 F. Supp. 3d at 1172. The risk of an erroneous deprivation of liberty is high where a person who has been released from custody years earlier and has committed no criminal offenses is re-detained without affording any sort of hearing. *See, e.g., A.E. v. Andrews*, 2025 U.S. Dist. LEXIS 94233, *12, 2025 WL 1424382 (Report and Recommendation, adopted 2025 U.S. Dist. LEXIS 125244, 2025 WL 1808676 (E.D. Cal. 7/1/2025)).

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[2] Mr. Garcia-Ayala's liberty interest in the context of civil immigration detention is greater than that of a person in criminal proceedings. *See, e.g., Unknown Parties v. Johnson*, 2016 U.S. Dist. LEXIS 189767, *14, 2016 WL 8188563 (D. Az. 2016), *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) ("decisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody]," who are "most decidedly entitled to *more* considerate treatment than those who are criminally detained") (cleaned up and emphasis added); *Ortega*, 415 F. Supp. 3d at 970 (in the context of civil immigration detention, "[the petitioner's] liberty interest is arguably greater than the interest of parolees [in the context of criminal detention]").

Finally, the government's interest in detaining Mr. Garcia-Ayala without a hearing is low. First, the government's interest at stake is preventing danger to the community and ensuring that Mr. Garcia-Ayala appears at all scheduled check-ins. Given Mr. Garcia-Ayala's conduct over the past two years, any suggestion that he is a danger to the community or a flight risk is completely speculative. The government does not have a legitimate interest in taking him into custody without a pre-deprivation hearing. *See, e.g., Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, *7-8, 2025 WL 1853763 (N.D. Cal. 7/4/2025) (the government's interest in re-detaining a person released from custody is low where the person "has consistently appeared for her immigration hearings for more than two years and she does not have a criminal record"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("the government's interest in re-arresting Ortega without a hearing before an IJ is low); *Doe v. Becerra*, 2025 U.S. Dist. LEXIS 37929, *16, 2025 WL 691664 (E.D. Cal. 3/3/2025) (same).

On balance, the *Mathews* factors establish that Mr. Garcia-Ayala was entitled to a hearing before he was re-detained. This court certainly has authority to rectify an unconstitutional arrest and detention. According to 28 U.S.C. §2243, this Court may "summarily hear and determine the facts, and dispose of the matter as law and justice require." This Court has authority to order the release of a habeas petitioner. *See, e.g. Nadarajah v. Gonzales*, 443 F.3d 1069, 1084 (9th Cir. 2006) (ordering "immediate release, subject to terms and conditions to be set by the appropriate delegate of the Attorney General"); *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001) ("federal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in criminal habeas cases"); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1038 (N.D. Cal. 2018) (ordering release "immediately" where government failed to meet its burden of proof); *see also Hernandez*, 872 F.3d at 999 ("unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages").

Where a noncitizen has been released from immigration custody and has not committed any criminal offenses, district courts have consistently barred the government from re-detaining

that person unless there is a pre-deprivation hearing at which the government has the burden of proving, by clear and convincing evidence, that the person is a danger to the community or a flight risk. *See, e.g., Valdez v. Joyce*, 2025 U.S. Dist. LEXIS 117131, *10, 2025 WL 1707737 (S.D.N.Y. 6/18/2025) (where petitioner was paroled into the United States and attended all required check-ins, his arrest without notice at an immigration court hearing violated due process; court ordered immediate release); *Harman Singh v. Andrews*, 2025 U.S. Dist. LEXIS 132500, *4 2025 WL 1918679 (E.D. Cal. 7/11/2025) (order that DHS release petitioner immediately and not re-detain him unless it proves danger to the community or flight risk by clear and convincing evidence); *Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, *11, 2025 WL 1853763 (N.D. Cal. 7/4/2025) (order that DHS must immediately release petitioner and not re-detain her without notice and a pre-deprivation hearing before a neutral decisionmaker); *Garcia v. Bondi*, 2025 U.S. Dist. LEXIS 113570, *10, 2025 WL 1676855 (N.D. Cal. 6/14/2025) (where petitioner had been previously released and was in compliance with an order of supervision, court enjoined DHS from re-detaining petitioner without pre-deprivation notice and a hearing); *Diaz v. Kaiser*, 2025 U.S. Dist. LEXIS 113566, *10, 2025 WL 1676854 (N.D. Cal. 6/14/2025) (same); *Romero v. Kaiser*, 2022 U.S. Dist. LEXIS 82538, *8-9, 2022 WL 1443250 (N.D. Cal. May 6, 2022) (where petitioner was previously released because there was no clear and convincing evidence of danger to the community or flight risk, and DHS threatened to re-detain petitioner, court enjoined DHS from re-detaining petitioner without notice and a hearing); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1058 (N.D. Cal. 2021) (where petitioner was released on bond established by immigration judge and ICE threatened to re-detain petitioner, court enjoined ICE from re-detaining petitioner without pre-deprivation notice and hearing); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) (where petitioner had been previously released and was in compliance with an order of supervision, court enjoined DHS from re-detaining petitioner without pre-deprivation notice and a hearing). As the above-mentioned cases establish, Mr. Garcia-Ayala has a strong likelihood of success on his claim for release from detention.

ii. Petitioner is entitled to protection against removal to an undesignated third country.

Regarding Petitioner's claim that he could be removed to a previously undesignated country other than El Salvador, several courts have already held that such removal would be unlawful. *See* Ex. K, *Mahdejian v. Bradford*, Case No. 25-cv-00191 (E.D. Tex. 7/3/2025) (where petitioner had been granted withholding of removal as to Iran, court issued injunction prohibiting DHS from removing him to a third country without notice and a meaningful opportunity to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, 2025 U.S. Dist. LEXIS 121997, *7, 2025 WL 1771438 (N.D. Cal. 6/26/2025) (where petitioner was granted CAT relief as to El Salvador, "there are no countries to which Ortega could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires"); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) ("ICE's attempt to remove petitioner to Somalia [a previously undesignated country of removal] without notice, much less an opportunity to be heard, violated petitioner's due process rights."); *see also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (INS concedes that "the last minute designation of Armenia as a country of deportation violated due process" and petitioner is entitled to a remand to "present additional evidence of the persecution that he would face if deported to that country"). These cases establish at least a likelihood of success with respect to Mr. Garcia-Ayala's argument that he cannot be deported to a country other than El Salvador. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (all nine Supreme Court justices agreed that "notice must be afforded within a reasonable time and in such a manner as will allow [plaintiffs] to actually seek . . . relief in the proper venue before such removal occurs"); *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) ("[i]n order to actually seek habeas relief, a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief").

C. Irreparable Harm

There is no doubt about the possibility of irreparable harm. Continued detention in violation of Due Process constitutes irreparable harm. *Hernandez*, 872 F.3d at 994 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury."); *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")

Furthermore, as to the risk of deportation to an undesignated third country, the Supreme Court has long recognized that removal is a "particularly severe" injury, inflicting substantial harm on a noncitizen. *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yeu Ting v. United States*, 149 U.S. 698, 740 (1893)). Special care accordingly must be taken in asylum cases lest the court permit persecution to occur. *See Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (threat of persecution, including beatings, constitutes irreparable harm); *D.V.D. v. DHS*, 2025 U.S. Dist. LEXIS 74197, *53 (D. Mass. 2025). Removal to an undesignated third country constitutes an irreparable harm.

D. Balance of Equities and the Public Interest

The remaining two factors to be considered for a TRO—balance of harms and public interest—merge when the government is the party opposing a motion for preliminary injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Government will suffer no irreparable harm if the court allows Mr. Garcia Ayala to remain free from detention and stays removal while this lawsuit is pending. In addition, it is in the public interest to prevent the Petitioner from being unlawfully deported to a country where he would be persecuted or tortured and to allow him to pursue his claims for relief. According to the Supreme Court, "there is a public interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken*, 556 U.S. at 436; *see also Alabama Ass'n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) ("our system does not permit agencies to act unlawfully even

in pursuit of desirable ends"); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952) (affirming district court's preliminary injunction of an illegal executive order even though a wartime president said his order was "necessary to avert a national catastrophe"). The balance of the equities and the public interest counsel in favor of granting a stay of removal. *See, e.g., Diaz v. Kaiser*, 2025 U.S. Dist. LEXIS 113566, *8, 2025 WL 1676854, at *8 (N.D. Cal. 2021) ("The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering."); *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a party's constitutional rights.").

CONCLUSION

For the foregoing reasons, Petitioner Luis Garcia-Ayala requests that this Court issue an order directing the Respondents to release him from detention immediately, as has been done in other cases. *See, e.g., Harman Singh v. Andrews*, 2025 U.S. Dist. LEXIS 132500, *19, 2025 WL 1918679 (E.D. Cal. 7/11/2025); *Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, *11, 2025 WL 1853763 (N.D. Cal. 7/4/2025); *Valdez v. Joyce*, 2025 U.S. Dist. LEXIS 117131, *10, 2025 WL 1707737 (S.D.N.Y. 6/18/2025). Mr. Garcia-Ayala requests further that the Court issue an order that he may not be re-detained unless DHS proves, at a hearing either before this Court or before an immigration judge, by clear and convincing evidence, that he is either a danger to the community or a flight risk. In addition, Petitioner requests that the Respondents be enjoined from removing him to any third country.

Dated this 29th day of July 2025.

/s/ Peter A. Habib

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