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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

KHALID FAWZI ZAKZOUK,

Petitioner-Plaintiff,

v.

MOISES BECERRA, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office;

TODD LYONS, Acting Director of United States Immigration and Customs Enforcement;

KRISTI NOEM, Secretary of the United States Department of Homeland Security,

PAM BONDI, Attorney General of the United States,

Respondents-Defendants.

No. 3:25-cv-06254

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner-Plaintiff, Khalid Fawzi Zakzouk ("Mr. Zakzouk") hereby moves this Court for an order enjoining Respondents-Defendants Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, from re-arresting and re-detaining Mr. Zakzouk unless and until there is a reasonable likelihood of his removal *and* he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Lina Baroudi with Accompanying Exhibits in Support of Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Mr. Zakzouk raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing his unlawful re-incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

Undersigned counsel emailed Elizabeth Kurlan and Pamela Johann, attorneys in the Civil Division for the United States Attorney's Office for the Northern District of California on July 25, 2025 at 10:56 a.m. with a draft of Mr. Zakzouk's Petition for Writ of Habeas Corpus and informed them that both the habeas petition and a Motion for a Temporary Restraining Order would be filed today. Counsel also stated that the Mr. Zakzouk is scheduled to report to ICE on

Monday morning and, given the circumstances, inquired if the government would be willing to stipulate to the TRO. To date, no response has been received.

WHEREFORE, Petitioner-Plaintiff prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents-Defendants from re-incarcerating him unless and until Respondents-Defendants demonstrate a reasonable likelihood of his removal, and Petitioner is afforded a hearing before a neutral decisionmaker on the question of whether his re-incarceration would be lawful. Petitioner-Plaintiff is currently scheduled to appear before ICE, as required by Respondents-Defendants, on the morning of Monday, July 28, 2025, when Respondents-Defendants likely will attempt to re-arrest and re-incarcerate him.

Dated: July 26, 2025

Respectfully Submitted

*/s/Lina Baroudi*_____
Lina Baroudi
Attorney for Mr. Zakzouk

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I. INTRODUCTION

Petitioner-Plaintiff, Khalid Fawzi Zakzouk ("Mr. Zakzouk" or "Petitioner-Plaintiff"), by and through his undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS') U.S. Immigration and Customs Enforcement ("ICE") from re-arresting and re-detaining Mr. Zakzouk unless and until there is a reasonable likelihood of his removal *and* he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

DHS had previously detained, and released, Mr. Zakzouk on two occasions pending its unsuccessful attempts to remove him. After three months (90 days) in custody of the ICE San Francisco Office, ICE confirmed to Mr. Zakzouk that as a stateless Palestinian with no right to return to any country, the likelihood of his removal was not reasonably foreseeable.

Upon his release on January 10, 2008, Mr. Zakzouk was placed on an Order of Supervision ("OSUP") for the second time, which permitted him to remain free from custody because his removal was not reasonably foreseeable and he is neither a flight risk nor a danger to the community. The OSUP also required him to attend regular check-in appointments at the ICE San Francisco Office, and permitted him to apply for work authorization. 8 C.F.R. § 241.5.

Over the last seventeen years in which he has lived at liberty, Mr. Zakzouk has been the primary caretaker for his fourteen-year-old U.S. citizen daughter, who has been diagnosed with major depressive disorder and anxiety and relies heavily on her father to support her as an

LQBTQIA+ teenager.[1] Mr. Zakzouk is also the homemaker in the family, responsible for preparing all meals and managing the household, while he supports his U.S. citizen spouse's career. He has complied with the terms of his OSUP, regularly renews his employment authorization, and attends his check-in appointments. He has never missed a check-in appointment and has lived at the same address and community for years. For more than seventeen years, ICE has not moved to re-detain Mr. Zakzouk.

On July 17, 2025, Mr. Zakzouk attended his regularly scheduled check-in appointment at the ICE San Francisco Office; he was told that should return the following week to apply for travel documents to Saudi Arabia and Jordan. Upon explanation that he has no right to return to either country and that he is stateless, an ICE officer informed Mr. Zakzouk that "things are different now." He was instructed to return on Monday, July 21st, but obtained an extension until Monday July 28, 2025. Mr. Zakzouk promptly sought counsel.

On July 24, 2025, Mr. Zakzouk's undersigned counsel emailed ICE San Francisco to seek clarification as to the purpose of the July 28th appointment. Counsel reminded ICE that Mr. Zakzouk is a stateless Palestinian who was released from ICE custody on OSUP because ICE was unable to remove him. She also asked for clarification as to what has changed since his release. To date, counsel has not received a response.

Numerous credible reports demonstrate that, across the country, including in San Francisco and other Bay Area cities, individuals are being called in for check-ins and then arrested

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[1] Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, and Asexual, with the plus sign (+) representing all other sexual orientations and gender identities not explicitly listed.

by ICE.[2]

In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.[3]

In light of credible reports of ICE re-incarcerating individuals at their check-ins, there is a strong likelihood that Mr. Zakzouk will be arrested and detained at this appointment, even though he poses no flight risk, presents no danger to the community, and his removal is not reasonably foreseeable. If he is arrested, he faces the very real possibility of being transferred outside of Northern California with little or no notice, far away from his spouse, his minor U.S.

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[2] "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025), https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php; "Cincinnati high school graduate faces deportation after routine ICE check-in," ABC News (June 9, 2025), https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262.

[3] *See, e.g.*, McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), *available at* https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754 (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

citizen child, his community, and his attorney.

By statute and regulation, ICE has the authority to re-detain a noncitizen on an OSUP previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Zakzouk's case, due process requires notice and a hearing, prior to any re-detention, at which he is afforded the opportunity to advance his arguments as to why he should not be re-detained. The only legitimate (and constitutional) justifications for immigration detention are danger and flight risk. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). When immigration agents released Mr. Zakzouk from their custody on his own recognizance – twice –, they necessarily determined that he was neither a danger to the community nor a flight risk. *See* 8 C.F.R. § 1236(c)(8) ("Any [authorized] officer … may … release [a noncitizen] not described in section [1226](c)(1) of the Act … provided that the [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding."); *see also, e.g.*, *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."). But nothing about Mr. Zakzouk's circumstances changed between the government's initial determination seventeen years ago and his ICE check-in this month to justify re-detention. On the contrary, Mr. Zakzouk's conduct in the past seventeen years – his full compliance with supervision requirements, his appearance at

all of his ICE check-in appointments, his commitment to his spouse and minor daughter, and his community ties – only further confirm the government's conclusion that he is not a danger or flight risk. This basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where Mr. Zakzouk's detention was *already* found to be unnecessary to serve its purpose. ICE previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify re-arrest.

Moreover, under the INA, Respondents-Defendants have a statutory obligation to remove Mr. Zakzouk only to the designated country of removal – in this case, Saudi Arabia. 8 U.S.C. § 1231(b)(2)(A)(ii). If Mr. Zakzouk is to be removed to a third country, Respondents-Defendants must first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE must provide him with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* LB Decl. at Exh. A (DHS Policy Regarding Third Country Removal). The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of Homeland Security, et al.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S.

Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary foreseeable.

Therefore, at a minimum, in order to lawfully re-arrest Mr. Zakzouk, the government must first establish, by clear and convincing evidence and before a neutral decision maker, that he is a danger to the community or a flight risk, such that his re-incarceration is necessary. Moreover, ICE cannot re-detain Mr. Zakzouk until it establishes that the likelihood of removal is removably foreseeable. And, prior to any third country removal, ICE must provide Mr. Zakzouk with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

VI. STATEMENT OF FACTS AND THE CASE

Mr. Zakzouk entered the United States on an F-1 student visa on June 1, 1988, traveling with an Egyptian Refugee Travel Document. On March 31, 1998, he filed an application for asylum with the former Immigration and Naturalization Service ("INS"), in which he sought protection from his country of birth and country of last habitual residence, Saudi Arabia.[4] 8 U.S.C.

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[4] The Immigration and Naturalization Service (INS) was dissolved in March 2003 pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. Its functions were transferred to the newly created Department of Homeland Security (DHS), with immigration-related responsibilities divided primarily among U.S. Citizenship and Immigration Services

§ 1101(a)(42)(A); 8 C.F.R. § 1208.13(b)(2)(ii). Despite his birth there, Mr. Zakzouk is not a citizen of Saudi Arabia because Saudi Arabia's citizenship law is based on a strict interpretation of *jus sanguinis* (right of blood). Mr. Zakzouk has never been accorded citizenship by any country, nor is he eligible for a passport from the Palestinian Authority (PA).

Since Saudi Arabia is not a signatory to the 1951 Refugee Convention, it does not issue refugee travel documents to Palestinians. Instead, it is common for Palestinians in Saudi Arabia to apply for an Egyptian refugee travel document at the Egyptian embassy, even though Egypt does not offer citizenship to Palestinians.

The Chicago Asylum Office declined to grant Mr. Zakzouk's case, and he was referred to the Chicago Immigration Court for removal proceedings. On January 24, 2000, an immigration case denied Mr. Zakzouk's applications for relief and ordered him removed. Although Mr. Zakzouk filed a motion to reopen, that was also denied by the immigration judge on February 18, 2003.

At some point, Mr. Zakzouk was imprisoned for a pending criminal charge for about three months. Upon his release, ICE in Milwaukee – his previous place of residence – detained Mr. Zakzouk for about three months. Presumably because he could not be removed to any country, ICE released Mr. Zakzouk on his own recognizance and placed him on an OSUP. After obtaining permission from ICE, Mr. Zakzouk moved to San Francisco. He was detained by the ICE San Francisco Office for three months; upon release, ICE confirmed to Mr. Zakzouk that as a stateless

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(USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

Palestinian with no right to return to any country, his removal was not reasonably foreseeable.

Upon release on January 10, 2008, Mr. Zakzouk was again placed on an OSUP, which permitted him to remain free from custody because his removal was not reasonably foreseeable and he is neither a flight risk nor a danger to the community. The OSUP also required him to attend regular check-in appointments at the ICE San Francisco Office, and permitted him to apply for work authorization. 8 C.F.R. § 241.5.

Over the last seventeen years in which he has lived at liberty, Mr. Zakzouk has been the primary caretaker for his fourteen-year-old U.S. citizen daughter, who has been diagnosed with major depressive disorder and anxiety and relies heavily on her father to support her as an LGBTQIA+ teenager. Mr. Zakzouk is also the homemaker in the family, responsible for preparing all meals and managing the household, while he supports his U.S. citizen spouse's career. He has complied with the terms of his OSUP, regularly renews his employment authorization, and attends his check-in appointments. He has never missed a check-in appointment and has lived at the same address and community for years. For more than seventeen years, ICE has not moved to re-detain Mr. Zakzouk.

On July 17, 2025, Mr. Zakzouk attended his regularly scheduled check-in appointment at the ICE San Francisco Office; he was told that he should return the following week to apply for travel documents to Saudi Arabia and Jordan. Upon explanation that he has no right to return to either country and that he is stateless, an ICE officer informed Mr. Zakzouk that "things are different now." He was instructed to return on Monday, July 21st, but obtained an extension until Monday July 28, 2025. Mr. Zakzouk promptly sought counsel.

On July 24, 2025, Mr. Zakzouk's undersigned counsel emailed ICE San Francisco to seek clarification as to the purpose of the July 28th appointment. Counsel reminded ICE that Mr.

Zakzouk is a stateless Palestinian who was released from ICE custody on OSUP because ICE was unable to remove him. She also asked for clarification as to what has changed since his release. To date, counsel has not received a response.

Upon release from ICE San Francisco on January 10, 2008, Mr. Zakzouk was again placed on an OSUP, which permitted him to remain free from custody following his removal order because his removal was not reasonably foreseeable and he is neither a flight risk nor a danger to the community. The OSUP also required him to attend regular check-in appointments at the ICE San Francisco Office, and permitted him to apply for work authorization. 8 C.F.R. § 241.5.

Over the last seventeen years in which he has lived at liberty, Mr. Zakzouk has been the primary caretaker for his minor U.S. citizen daughter, and sole support for his U.S citizen spouse. He has complied with the terms of his OSUP, regularly renewed his employment authorization, and attended his check-in appointments. He has never missed a check-in appointment and has lived at the same address for fourteen years. For more than seventeen years, ICE has not moved to re-detain Mr. Zakzouk.

In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.

In light of credible reports of ICE re-incarcerating individuals at their check-ins, it highly likely Mr. Zakzouk will be arrested and detained at this appointment, despite the fact that his removal is not reasonably foreseeable and he is neither a flight risk nor a danger to the community. If he is arrested, he faces the very real possibility of being transferred outside of Northern California with little or no notice, far away from his spouse, his minor U.S. citizen child, and his community.

Mr. Zakzouk is also at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture, in violation of the INA, binding international treaty, and due process. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* LB Decl. at Exh. A (DHS Policy Regarding Third Country Removal).

Intervention from this Court is therefore required to ensure that Mr. Zakzouk does not suffer irreparable harm in the form of unjustified, prolonged, and indefinite re-detention, and further violation of his rights in the form of summary removal to a third country.

VII. LEGAL STANDARD

Mr. Zakzouk is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Mr. Zakzouk does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Zakzouk overwhelmingly satisfies both standards.

IV. ARGUMENT

A. MR. ZAKZOUK WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Zakzouk is likely to be re-arrested absent any material change in circumstances and prior to receiving a hearing before a neutral adjudicator, and potentially removed to a third country, in violation of his due process rights, without intervention by this Court. Mr. Zakzouk will continue to suffer irreparable injury if he is arrested and detained without due process and separated from his U.S. citizen spouse and minor child.

1. Mr. Zakzouk is Likely to Succeed on the Merits of His Claim That, in Violation of Clear Supreme Court Precedent, His Re-Detention Would Be Unconstitutional Because it is Likely Indefinite.

First, Mr. Zakzouk is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-detaining him because he is a stateless Palestinian without travel documents and, therefore, his indefinite detention would be unconstitutional because there is no end in sight. Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A); § 1231(a)(1)(B). ICE did in fact detain Mr. Zakzouk during that removal period – twice -- following his final order of removal. During that entire removal period, ICE in Milwaukee was

not able to remove him to any country. After moving to San Francisco, ICE again detained Mr. Zakzouk for another 90-day period. As ICE San Francisco itself admitted to Mr. Zakzouk, it recognized that as a stateless Palestinian with no right to return to any country, the likelihood of his removal was not reasonably foreseeable.

If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

The Supreme Court has addressed the fact that the statute is silent regarding the limits on post-final order detention, and as definitively held that such detention has the potential to be indefinite and such indefinite detention would be unconstitutional. Thus, there must be constitutional limits on post-final order detention. Specifically, the Supreme Court held that post final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee provides "good reason" to believe that his or her removal is not

significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

In light of the Supreme Court limitations imposed on the statutory scheme, the government updated the regulations to be consistent with those constitutionally required limitations on indefinite detention. Under those regulations, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable). Moreover, under the Supreme Court's constitutional limitations on indefinite detention, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas* at 701. In this case. Mr. Zakzouk was released from ICE detention after the conclusion of the 90-day removal period, specifically because his removal was not foreseeable at all. And nothing has changed. If ICE is permitted re-detain him now, under the possibility he might be removed some day simply because he has a removal order, then he very likely will be detained in ICE custody essentially forever. Here, Mr. Zakzouk's re-detention would be unconstitutional because it will be indefinite.

Thus, Mr. Zakzouk's removal is not reasonably foreseeable in this case, and the government has not provided him with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-detaining him. Any detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. Id. Moreover, Mr. Zakzouk has already served two separate 90-day periods in ICE detention before he was released on January 10, 2008, and therefore he must not be re-detained. 8 C.F.R. § 241.13(b)(1); *see also* LB Decl. at Exh. F *Cordon-Salguero v. Noem*, No. 1:25-cv01626 (D. Md.

June 18, 2025) (ordering release from physical custody under *Zadvydas*); Exh. G, *Tadros v. Noem*, No. 2:25-cv-04108 (D.N.J. June 17, 2025) (same); *Hoac v. Becerra, et al*, 2:25-cv-01740 (E.D. Cal. July 16, 2025) (same); *Phan v. Becerra, et al*, 2:25-cv-01757 (E.D. Cal. July 16, 2025) (same).

2. Mr. Zakzouk is Likely to Succeed on the Merits of His Claim That Due Process Requires a Hearing Before a Neutral Adjudicator Prior to Any Re-Detention by ICE

Mr. Zakzouk is likely to succeed on his claim that the Due Process Clause of the Constitution prevents Respondents from re-arresting him without providing a pre-deprivation hearing before a neutral adjudicator where the government demonstrates by clear and convincing evidence that there has been a material change in circumstances such that he is now a danger or a flight risk.

The Due Process Clause applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("[T]he government has no legitimate interest in detaining

individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates either that the government acted with a punitive purpose or that it lacks any legitimate reason to detain him").

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Mr. Zakzouk Has a Protected Liberty Interest in His Release

Mr. Zakzouk's liberty from immigration custody, a form of civil detention, is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For more than seventeen years, Mr. Zakzouk has exercised that freedom under his prior release from ICE custody in January 2008. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. Because of Mr. Zakzouk's statelessness, his removal is not foreseeable at all, let alone reasonably. Therefore, any re-detention is unconstitutional.

Just as importantly, Mr. Zakzouk has been presenting himself before ICE for his regular check-in appointments for the past seventeen years, where ICE did not seek to re-arrest him during this time. ICE instead gave him a future date and time to appear again each week, month, or year, which he did. For the past seventeen years, he has also devoted himself to his family, acting as the primary caretaker to his minor child and supporting his spouse's career. Individuals—including noncitizens—released from incarceration have a liberty interest in their freedom. Id. at 696 (recognizing the liberty interest of noncitizens on OSUPs); Getachew v. INS, 25 F.3d 841 (9th Cir. 1994) (noting that "[i]t is well-established that the due process clause applies to protect immigrants"). This is further reinforced by *Morrissey*, in which the Supreme Court recognized the protected liberty rights under the Due Process Clause of a criminal detainee who was released on parole from incarceration. 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life"—thus, those released on parole have a protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482. *See also Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon, supra*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). In fact, so fundamental to due process is the concept of liberty that it is even well established that an individual maintains a

protectable liberty interest where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted). Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Zakzouk's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Moreover, Mr. Zakzouk is not a criminal detainee, but a civil detainee, and thus the due process considerations of his liberty should be even weightier than the courts have already found apply in the criminal context. Precedent from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his continued release from detention.

b. Mr. Zakzouk's Liberty Interest Mandates a Due Process Hearing Before any Re-Detention.

Mr. Zakzouk asserts that, here, (1) where his detention is civil, (2) where he has diligently complied with ICE's reporting requirements on a regular basis, and (3) where on information and belief ICE officers would arrest Mr. merely to fulfill an arrest quota because his removal is not

reasonably foreseeable and potentially indefinite, due process mandates that he is required to receive notice and a hearing before an Immigration Judge prior to any re-arrest.

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 332-35 (1976) this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335. The Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards – is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process,"

can the government avoid providing pre-deprivation process. *Id.* Because, in this case, the provision of a pre-deprivation hearing are both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Mr. Zakzouk with notice and a hearing prior to any re-incarceration and revocation of his OSUP. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before an Immigration Judge, which ICE failed to provide.

i. Mr. Zakzouk's Interest in His Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd v. District of Columbia*, 864 F.3d 671 (D.C. Cir. 2017) and *Johnson*, *supra* —that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Zakzouk, who have also been released from prior ICE custody and are facing civil (not criminal) detention. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have

regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Zakzouk, as a civil detainee, retains a truly weighty liberty interest even though he was under conditional release prior to his re-arrest. What is at stake in this case for Mr. Zakzouk is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

ii. The Government's Interest in Re-Detaining Mr. Zakzouk is Low and the Burden on the Government is Minimal

The government's interest in re-detaining Mr. Zakzouk without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of releasing him from custody. It becomes abundantly clear that the *Mathews* test favors Mr. Zakzouk when the Court considers that the process Mr. Zakzouk seeks— his release by ICE from civil detention after 90 days, all of which occurred seventeen years ago and where nothing in the interim has changed to warrant re-detention after—is a standard course of action for the government. Providing Mr. Zakzouk with a future hearing before an Immigration Judge to determine whether his removal is reasonably foreseeable and if there is otherwise evidence that he is a flight risk or danger to the community would impose only a de minimis burden on the

government, because the government routinely conducts these reviews for individuals in his same circumstances. 8 C.F.R. § 241.4(e)-(f). As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order, is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. Zakzouk due to alleged dangerousness, or due to a change in the foreseeability of his removal, as his circumstances have not changed since his release from ICE custody in 2008. Moreover, Mr. Zakzouk has always had a removal order since before his release, and yet is not a flight risk because he has continued to appear before ICE on as requested for each and every appointment that has been scheduled. See *Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971). Thus, as to the factor of flight risk, Mr. Zakzouk's post-release conduct in the form of full compliance with his check-in requirements further confirms that he is not a flight risk and that he remains likely to present himself at any future ICE appearances, as he always has done. What has changed, however, it that ICE has a new policy to make a minimum number of

arrests each day under the new administration – but that does not constitute a material change in circumstances or increase the government's interest in detaining him.[5]

Moreover, as discussed previously, nothing has changed regarding the lack of foreseeability of his removal from the U.S. Keeping him free from custody until ICE assesses and demonstrates to a more neutral immigration judge that Mr. Zakzouk is actually a flight risk or danger to the community, or that his detention is not going to be indefinite, is far less costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

iii. Without a Pre-Deprivation Hearing, the Risk of an Erroneous Deprivation of Liberty is High

Ensuring that Mr. Zakzouk is provided a pre-deprivation hearing prior to any re-detention would decrease the risk of him being erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with a hearing before an immigration judge at which the government is held to show that his detention will not be indefinite (that is, his removal is reasonably foreseeable), or that the circumstances have changed since his release in 2008 such that evidence exists to establish that he is a danger to the community or a flight risk. Under the process that ICE maintains is lawful—which affords Mr. Zakzouk no whatsoever—ICE can simply re-detain him at any point if the agency desires to do so.

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[5] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," Washington Post (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/icearrests-raids-trump-quota/.

Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations are actually insufficient to protect his due process rights, as they permit ICE to unilaterally re-detain individuals, even for an accidental error in complying with the conditions, for example. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold him. 8 C.F.R. §§ 241.4(e)-(f). By contrast, the procedure Mr. Zakzouk seeks –that he be provided a future hearing in front of an immigration judge prior to any re-detention at which the government proves that his detention will not be indefinite, or otherwise that the circumstances have changed since his release in 2008 to justify his detention – is much more likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where an Immigration Judge, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure removal if reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to detention must be considered in determining whether Mr. Zakzouk re-detention is warranted.

3. Mr. Zakzouk is Likely to Succeed on the Merits of His Claim That he is Entitled to Constitutionally Adequate Procedures Prior to Any Third Country Removal

Finally, Mr. Zakzouk is likely to succeed on the merits of his claim that he must be provided with constitutionally adequate procedures – including notice and an opportunity to respond and apply for fear-based relief – to being removed to any third country. Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. The statute explicitly states that a noncitizen "shall remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen. *See* 8 U.S.C. § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005). As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful. Moreover, prior to any third country removal, ICE must provide Mr. Zakzouk with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in

compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[6]

Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. LB Decl. at Exh. A (DHS Policy Regarding Third Country Removal). Instead, the policy squarely violates the INA because it does not take into account, or even mention, an individual's designated country of removal—thereby fully contravening the statutory instruction that DHS must only remove an individual to the designated country of removal. U.S.C. § 1231(b)(2)(A)(ii). Further, the policy plainly violates the United States' obligations under the Convention Against Torture and principles of due process because it allows DHS to provide individuals with no notice whatsoever prior to removal to a third country, so long as that country has provided "assurances" that deportees from the United States "will not be persecuted or tortured." *Id.* If, in turn, the country has not provided such an assurance, then DHS officers must simply inform an individual of removal to that third country, but are not required to inform them of their rights to apply for protection from removal to that country under the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their rights under this binding international treaty, and must affirmatively state a fear of removal to that country in order to receive a fear-based interview to screen for their eligibility for protection under the Convention

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[6] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

Against Torture. *Id.* Even so, the screening interview is hardly a meaningful opportunity for individuals to apply for fear-based relief, because the interview happens within 24 hours after an individual states a fear of removal to a recently-designated third country, which hardly provides for any time to consult with an attorney or prepare any evidence for the interview. *Id.* And, in actuality, the screening interview is not a screening interview at all, because USCIS officers under the policy are instructed to determine at this interview "whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal" – which is the standard for protection under the Convention Against Torture that immigration judges apply after a full hearing in Immigration Court. *Id.* Then, if the USCIS officer determines that the noncitizen has not met this standard, they will then be removed to the third country to which they claimed, and tried to demonstrate within 24 hours, a fear of persecution or torture. *Id.* Finally, there is no indication that any of this process will occur in an individual's native language. *Id.* This is nothing more than a fig leaf of due process meant to deprive individuals of the protection that the law and treaty are supposed to provide them.

Clearly, this policy violates the Convention Against Torture, which instructs that the United States cannot remove individuals to countries where they will face torture, because the policy allows DHS to swiftly remove noncitizens to countries where they very well may face torture if those countries simply provide the United States with "assurances" that deportees will not be tortured. *Id.* Moreover, the policy puts the onus of individuals to be aware of their rights under the Convention Against Torture — which is a treaty that binds the United States government — instead of ensuring that DHS officials make individuals aware of their rights, which would more squarely comport with DHS's obligations under the treaty not to remove individuals to countries where they face torture. *Id.* For similar reasons, the policy also violates

principles of due process, because it does not provide individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.* Again, the policy allows individuals to be removed to third countries without any notice or an opportunity to be heard if that country merely promises that deportees will not face torture there, and if individuals are otherwise unaware of their right to seek fear-based relief. *Id.*; *see also* LB Decl. at Exh. F (*J.R. v. Bostock, et al.*, 2:25cv-01161 (W.D. Wash. June 30, 2025) (TRO prohibiting the government from removing petitioner to "any third country in the world absent prior approval from this Court"). The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of Homeland Security, et al.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.[7] This is made clear by the Court's

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[7] The Supreme Court's July 3, 2025 order in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, 606 U. S. ____ (2025) further reinforces that the Supreme Court only disagrees with the means of a nationwide injunction, and not the underlying substance of the nationwide injunction. There, the Court held that the stay of the preliminary injunction divests remedial orders stemming from that injunction of enforceability, and cited to *United States v. Mine Workers*, 330 U. S. 258, 303 (1947) for the proposition that: "The right to remedial relief falls with an injunction which events prove was erroneously issued and a fortiori when the injunction or restraining order was beyond the jurisdiction of the court." *Id.* In any event, the remedial order at issue involved six individuals who had *already* been removed from the United States to a third country, and is therefore distinct from this case, where Mr. Zakzouk remains in the United States and this Court, therefore, continues to have jurisdiction over his case.

decision in *Trump v. J.G.G.*, 604 U.S. The Supreme Court's July 3, 2025 order in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.,* 606 U. S. ____ (2025) further reinforces that the Supreme Court only disagrees with the means of a nationwide injunction, and not the underlying substance of the nationwide injunction. There, the Court held that the stay of the preliminary injunction, where the Court explained that the putative class plaintiffs there had to seek relief in individual habeas actions (as opposed to injunctive relief in a class action) against the implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a third country. Regardless, ICE appears to be emboldened and intent to implement its campaign to send noncitizens to far corners of the planet – places they have absolutely no connection to whatsoever – in violation of individuals' due process rights.[8]

Mr. Zakzouk's removal to a third country would violate his due process rights unless he is first provided with sufficient notice and a meaningful opportunity to apply for protection under the Convention Against Torture. Intervention by this Court is necessary to protect those rights.

4. Mr. Zakzouk will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Zakzouk will suffer irreparable harm if he is deprived of his liberty and subjected to indefinite detention by immigration authorities without being provided the constitutionally adequate process (a future pre-deprivation hearing before an immigration judge prior to re-detention) that this motion for a temporary restraining order seeks. Detainees in civil ICE custody are held in "prison-like conditions" which have real consequences for their lives. *Preap v.*

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[8] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-tothird-countries-without-notice/.

Johnson, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Finally, the government itself has documented alarmingly poor conditions in ICE detention centers.

Mr. Zakzouk has been out of ICE custody for more than seventeen years. During that time, he has married a U.S. citizen and is the primary caretaker of their fourteen-year-old daughter. If he is re-detained, it would devastate his family. Not only is he a huge source of support for his daughter, he is also the homemaker of the family, cooks all of the meals, and supports his spouse in her career.

Further, Mr. Zakzouk will suffer irreparable harm were he to be removed to a third country without first being provided with constitutionally-compliant procedures to ensure that his right to apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.[9] Others removed in violation of their prior grant

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[9] NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available at: https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deportedby-the-u-s-are-stuck-in-panama-unable-to-return-home.

of protection under the Convention Against Torture have reported that they faced severe torture at the hands of government agents.[10] It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Zakzouk from suffering irreparable harm from an unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

5. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

The balance of hardships strongly favors Mr. Zakzouk. His detention is potentially indefinite, and his summary removal to any third country where he may face persecution or torture would violate the INA, binding international treaty, and his due process rights. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Further, any burden imposed by requiring the Respondents not to detain Mr. Zakzouk and to provide notice and a hearing before an immigration judge prior to any future re-detention) is both de minimis and clearly outweighed by the substantial harm he will suffer as long as he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). Similarly, any burden of requiring Respondents not to remove Mr. Hoac to any third country is outweighed by

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[10] NPR, "Abrego Garcia says he was severely beaten in Salvadoran prison" (July 3, 2025), available at: https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prisonbeaten-torture.

the substantial harm he may suffer if removed to a country where he will face persecution or torture. *See id.* Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to re-detain Mr. Zakzouk, and/or to summarily remove him to any third country, in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. 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.").

V. CONCLUSION

For all the above reasons, Mr. Zakzouk warrants a temporary restraining order that Respondents not re-detain him unless he is afforded notice and a hearing before an immigration judge on whether his re-detention is not indefinite and, further, whether it is justified by evidence that he is a danger to the community or a flight risk, and not remove him to any third country without first providing him with constitutionally-compliant procedures.

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Respectfully submitted,

/s/ Lina Baroudi

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