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Garbis Krajekian

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Garbis Krajekian,

Petitioner-Plaintiff,

v.

John CANTU, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Fred FIGUEROA, in his Official Capacity, Warden, at Eloy Detention Center, Eloy, Arizona

Respondents-Defendants.

Case No. TBD

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION: HEARING REQUESTED

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Petitioner hereby moves this Court for an order that Defendants Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), Pam Bondi, in her official capacity as the U.S. Attorney General, and Fred Figueroa, in his official capacity as Warden of the Eloy Detention Center in Eloy, Arizona, be enjoined from continuing to detain Petitioner-Plaintiff Garbis Krajekian ("Mr. Krajekian") in custody, and, following his release, be enjoined from re-detaining him without first providing him with a hearing before an Immigration Judge prior to any future re-detention, as required by the Due Process clause of the Fifth Amendment. Petitioner additionally seeks to enjoin Respondents from removing Petitioner from the United States to any third country to which he does not have a removal order (i.e. any country other than Syria) without first providing him with constitutionally-compliant procedures.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful re-detention, where that detention appears indefinite and which was imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order requiring ICE to immediately release him from custody (to enjoin the unlawful ongoing detention), enjoining Respondents from re-detaining him before providing him a hearing before an Immigration Judge prior to any re-detention, and enjoining Respondents from removing him to any third country without first providing him with constitutionally compliant procedures. The only mechanism to ensure that he is not continuously unlawfully detained in violation of his due process rights is an ex-parte temporary restraining order from this Court.

Dated: July 28, 2025

Respectfully Submitted

/s/Jesse Evans-Schroeder
Attorney for Petitioner-Plaintiff

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I. INTRODUCTION

Petitioner-Plaintiff Mr. Krajekian, by and through 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") Immigration and Customs Enforcement ("ICE") from his ongoing immigration detention in its custody and immediately release him. Mr. Krajekian also seeks an order enjoining Respondents from re-detaining him unless and until he is afforded notice and a hearing before an Immigration Judge prior to any future re-detention where DHS bears the burden of demonstrating that his removal is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified (i.e. whether he poses a danger or a flight risk), and where the Immigration Judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish, as well as an order enjoining Respondents from removing him to any third country without first providing him with constitutionally-compliant procedures.

Mr. Krajekian is a Syrian citizen who has lived in the United States, first as a student and then as a U.S. lawful permanent resident, since approximately 1994. Although he was ordered removed on October 3, 2017, he was released from detention due to ICE's inability to execute his removal. He has been reporting to ICE on a regular basis since his release from detention over seven years ago. Mr. Krajekian's re-detention by ICE must be held unlawful as it is limitless in duration. He has also never been ordered removed to any third country or notified of such potential removal. Mr. Krajekian's detention is both unconstitutional because it is indefinite, and illegal because it does not comport with the regulations, and he was otherwise not provided any pre-deprivation hearing before his recent detention by ICE. Based on these circumstances, he raises three ways in which his ongoing detention is unlawful and must be enjoined, and as well requests an injunction against removal to a third country in case that is in the offing:

First, once a noncitizen is so released, their re-detention is limited by regulation, statute and the constitution. By statute and regulation, only in specific circumstances (that do not apply here) does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C.

§ 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability of ICE to simply re-arrest someone following their release from detention, however, is further limited by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, due process requires that he be released from unlawful re-detention because he was not provided notice and a hearing before an Immigration Judge (as a neutral adjudicator).

Second, following his release, the same principles must apply, such that in the future he be provided with notice and a hearing, *prior to any re-detention*, at which DHS bears the burden of justifying his re-detention (to a neutral adjudicator such as an Immigration Judge who is not part of ICE or DHS) and at which Mr. Krajekian will be afforded the opportunity to advance his arguments as to why he should not be re-detained.

Third, the Supreme Court has limited the potentially indefinite post-removal order detention to a *maximum* of six months, because removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because the United States and Syria do not maintain diplomatic relations, Mr. Krajekian'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 before arbitrarily and unilaterally re-detaining him. His continued detention is indefinite and thus unconstitutionally prolonged, and the only remedy is his immediate release.

Mr. Krajekian the standard for a temporary restraining order. He will continue to suffer immediate and irreparable harm stemming from his unlawful re-detention absent an order from this Court enjoining the government from further unlawful detention by ordering his release from detention, and enjoining future re-detention unless and until he receives a hearing before an Immigration Judge. He would also suffer immediate and irreparable harm if removed to a third country where his life could be in danger. For that reason, he also seeks an order enjoining Defendants from removing him to any third country without first being provided with constitutionally-compliant procedures providing him adequate notice and an opportunity to demonstrate if his life is in danger or he stands a high risk of torture—all of which are demanded by the Constitution. Since holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Mr. Krajekian's

favor.

II. STATEMENT OF FACTS AND CASE

Mr. Krajekian first entered the United States in 1994 around the age of 19 student visa holder. He later became a U.S. lawful permanent resident.

Mr. Krajekian was released from incarceration in 2017, after serving approximately 41 months in federal prison for convictions he sustained in 2015. After his release, he was detained by ICE and underwent removal proceedings while detained. At his first hearing, he requested removal to Switzerland, but was ordered removed to Switzerland or Syria by the Immigration Judge on October 3, 2017, at his first hearing in removal proceedings. Exhibit ("Exh.") C (Transcript of October 3, 2017 Hearing). Petitioner feared removal to Syria, and queried the immigration judge about his eligibility for protection from return to Syria. Id. The judge vaguely indicated he would be removed to Switzerland, and cut off Petitioner's inquiry as to forms of protection such as relief under the Convention Against Torture. Id. At that time (and currently to this day) he could not be repatriated to Syria by reason of the U.S.'s cessation of diplomatic relations with Syria in 2012.[1] Because he could not be removed to Syria (the only country named in his removal order), and no party believed it was reasonably foreseeable that he ever would be so removed, Mr. Krajekian was released from ICE detention after approximately three months. Exh. D (Order of Supervision, dated December 29, 2017).

Mr. Krajekian was released from ICE custody on or about December 29, 2017, and placed on a Form I-220B, Order of Supervision ("OSUP"), which permitted him to remain free from custody following his removal proceedings because he is neither a flight risk nor a danger to the community. Id. The OSUP also required him to attend regular check in appointments at the ICE Phoenix office, and permitted him to apply for work authorization. 8 C.F.R. § 241.5. Id. Once so released, he has been able to re-establish his life free from incarceration, and rebuild his relationships with family, including his U.S. citizen wife and children. Exh. E (Petitioner's

[1] The U.S. Department of State updated the Syria Travel Advisory on March 3, 2025, noting "[t]he U.S. government suspended operations in 2012…Do not travel to Syria for any reason." U.S. Department of State, Syria Travel Advisory (March 3, 2025), available at: https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/syria-travel-advisory.html .

Declaration). For the past seven-and-a-half years, Mr. Krajekian has complied with the terms of his OSUP, attending his appointments which have been intermittently scheduled at 3-, 6-, and over 12- month intervals. Exh. D; Exh. E.

On January 3, 2025, 2024, Mr. Krajekian attended his regularly scheduled check in appointment at the ICE Phoenix office. Id. On that date, he was requested to return for a subsequent check in on July 10, 2025. Id. Without advance notice, on April 6, 2025, ICE nabbed Mr. Krajekian in or near his Phoenix-area home. Exh. E. No explanation was given to Mr. Krajekian for his detention. Id. There is no evidence of any other change relevant to his detention status, removability, or criminal record. Id. On information and belief, his Form I-220B OSUP has never been revoked, withdrawn, or otherwise cancelled. Mr. Krajekian has cooperated with ICE's minimal efforts—if any—to secure travel documents to Syria. Exh. E; Exh. F (Signed "Instruction Sheet").

III. LEGAL STANDARD

Petitioner 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 Petitioner 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, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

A. PETITIONER 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. Krajekian's continuous, indefinite detention violates his due process rights, and so too did his re-detention prior to receiving a hearing before an Immigration Judge. Mr. Krajekian has already suffered irreparable injury in the form of incarceration and will continue to suffer irreparable injury each day he remains detained without due process.

The Court should enjoin further detention because Mr. Krajekian is likely to succeed on the merits of claims one, two, and three below, and should enjoin removal to a third country other than Syria without the constitutionally required procedures, because he is likely to succeed on the merits claim four below. Mr. Krajekian asks the Court to grant all or part of the requested injunction.

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

First, Mr. Krajekian is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-detaining Mr. Krajekian because he cannot be deported to Syria and therefore his indefinite detention is 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. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

ICE did in fact detain Mr. Krajekian during that removal period, following his administratively final order of removal. During that entire removal period, ICE was not able to remove him to Syria.

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 has 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. Krajekian 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, save that Mr. Krajekian has now surpassed the presumptively reasonable 6-month period for ICE to secure his removal. 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. Krajekian's detention is unconstitutional because it is indefinite. The U.S. does not maintain normal diplomatic relations with Syria and has not since 2012.[2] There is no evidence that Syria will agree to take him now. Thus, Mr. Krajekian'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 or since his re-detention. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Id.* Moreover, Mr. Krajekian has already served approximately 90 days in ICE detention before he was released in 2017, and an additional 90 days since his re-detention: Therefore, he may—and under these circumstances, must—be released. 8 C.F.R. § 241.13(b)(1); *see also Quoc Chi Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025); *Phong Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000 (E.D. Cal. July 16, 2025); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS 133521 (E.D. Cal. July 14, 2025); *Karem Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025).

2. Petitioner is Likely to Succeed on the Merits of His Claim That his Re-Detention is Unlawful Because it is in Violation of the Regulations.

Mr. Krajekian's re-detention is separately unlawful because the controlling regulations specific the circumstances that permit his re-detention, and Respondents have not established that circumstances have changed regarding the foreseeability of his removal which is required under those regulations.

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[2] *See supra*, n. 1.

By regulation, non-citizens with final removal orders who are released from detention after a post-order custody review are subject to an Order of Supervision ("OSUP"), which is documented on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an order of supervision, the regulations further specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

In this case, Mr. Krajekian was released on an Order of Supervision. It specified the conditions imposed on him, and it is uncontested that he complied with all of those conditions.

Under the regulations, ICE has the authority to re-detain a noncitizen previously ordered removed *only* in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i). On information and belief, Mr. Krajekian has not violated his OSUP. Further, he has not been provided any evidence of changed circumstances, nor any assurance that Respondents ever properly followed the regulatory procedures to re-detain him based on changed circumstances. *Id.*; 8 C.F.R. § 241.13(i) (requiring notice of the reason for revocation of release, and an interview at which an individual has an opportunity to respond to the reasons given for revocation and submit evidence and information on his behalf, including to show that there is no significant likelihood of removal in the reasonably foreseeable future).

Here, Mr. Krajekian's detention is further unlawful because Respondents squarely violated the controlling regulations in re-detaining him.

3. Petitioner is Likely to Succeed on the Merits of His Claim That Due Process Requires That He Should Have Been Afforded a Hearing Before an Immigration Judge Prior to Any Re-Detention by ICE, and he is Entitled to Such a Hearing Prior to Any Future Re-Detention.

Mr. Krajekian is also likely to succeed on his claim that fundamental principles of due process require that he cannot be re-detained by ICE without first being provided a pre-deprivation hearing before an Immigration Judge where the government shows that his removal

is reasonably foreseeable and that circumstances have changed since his release in 2017, including that Mr. Krajekian is now a danger or a flight risk.

ICE failed to follow the controlling regulations in re-detaining Mr. Krajekian but, even if they had complied with the procedures set forth in those regulations, ICE's regulatory authority to unilaterally re-detain Mr. Krajekian is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("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"). In turn, to protect that interest, on the particular facts of Mr. Krajekian's case, due process required notice and a hearing, *prior to any re-arrest*, at which he was afforded the opportunity to advance his arguments as to why he should not be re-detained. This never occurred. *See Quoc Chi Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025); *Phong Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000 (E.D. Cal. July 16, 2025); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS 133521 (E.D. Cal. July 14, 2025); *Karem Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025).

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. Petitioner Has a Protected Liberty Interest in His Release

Mr. Krajekian'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 over seven years preceding his re-detention on April 6, 2025, Mr. Krajekian exercised that freedom under his prior release from ICE custody in 2017. He thus retained 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.In this case, in the absence of any evidence that Mr. Krajekian's removal to Syria may be effectuated, his removal is not foreseeable at all, let alone reasonably. Therefore, his continued detention is unconstitutional.

Just as importantly, Mr. Krajekian's continued presenting himself before ICE for his regular check-in appointments for the past seven-and-a-half 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 at regular intervals, which he did. For the past four years, he was also gainfully employed and worked hard to reconnect with loved ones, including his wife and children.

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 v. Scarpelli*, 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. Krajekian'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. Krajekian 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.*

Since his release in 2017, which came after approximately 3.5 years of incarceration and approximately 90 days in ICE custody, Mr. Krajekian has been focused on rebuilding his life, including by reconnecting with family and securing employment. 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. Petitioner's Liberty Interest Mandated a Due Process Hearing Before any Re-Detention, and Once Released, Mandates Such a Hearing Prior to Any Re-Detention

Mr. Krajekian asserts that, here, (1) where his detention is civil, (2) where he has diligently complied with ICE's reporting requirements on a regular basis for over 7 years, and (3) where on information and belief ICE officers arrested Mr. Krajekian merely to fulfill an arrest quota because his removal is not reasonably foreseeable and potentially indefinite, due process

mandates that he was 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*, 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 v. Eldridge*, 424 U.S. 319, 335 (1976)).

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 was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Mr. Krajekian 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. Petitioner'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* and *Johnson*—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. Krajekian, 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. Krajekian, 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. Krajekian 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 Keeping Petitioner in Detention is Low and the Burden on the Government to Release Him from Custody is Minimal

The government's interest in keeping Mr. Krajekian in detention 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 Petitioner when the Court considers that the process Petitioner seeks—release from civil custody after ICE *already* released Mr. Krajekian from civil detention over *seven 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. Krajekian 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 Petitioner's 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 Petitioner due to alleged dangerousness, or due to a change in the foreseeability of his removal to Syria, as his circumstances have not changed since his release from ICE custody in 2017.

Moreover, Mr. Krajekian has always had a removal order--since before his release--and yet he is not a flight risk because he has continued to appear before ICE on a regular basis for every appointment that has been scheduled over a period of more than seven years. *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. Krajekian'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.[3] Moreover, as discussed previously, nothing has changed regarding the lack of foreseeability of his removal to Syria.

Release from custody until ICE assesses and demonstrates to a more neutral Immigration Judge that Mr. Krajekian 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 v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

iii. Without Release from Custody, the Risk of an Erroneous Deprivation of Liberty is High

Releasing Mr. Krajekian from civil custody, and ensuring he is provided a pre-deprivation hearing in the future, 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 2017 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. Krajekian no process

[3] *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/ice-arrests-raids-trump-quota/.

whatsoever—ICE can simply re-detain him at any point if the agency desires to do so, as ICE did on April 6, 2025. Mr. Krajekian has already been erroneously deprived of his liberty when he was detained at or near his home, and the risk he will continue to be deprived is high if ICE is permitted to keep him detention after making a unilateral decision to re-detain him. Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. It is unknown in this case who made the determination to re-detain Mr. Krajekian here. Thus, the regulations are 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. Krajekian seeks—release from custody, and that he be provided a future hearing in front of an Immigration Judge prior to any re-detention at which the government that his detention will not be indefinite, or otherwise that the circumstances have changed since his release in 2021 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. Krajekian's re-detention is

warranted.

4. Petitioner 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. Krajekian 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—prior 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 id.* § 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. Krajekian 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.[4] 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

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

country.[5]

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 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 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,

[5] Catholic Legal Immigration Network, "Updates on Third Country Removals and the D.V.D. Litigation," June 26, 2025, available at: https://www.cliniclegal.org/resources/removal-proceedings/updates-third-country-removals-and-dvd-litigation.

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 J.R. v. Bostock*, No. 2:25-cv-01161-JNW, 2025 U.S. Dist. LEXIS 124229 (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.[6] This is made clear by the Court's decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025), 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.[7]

Mr. Krajekian'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.

5. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Krajekian will suffer irreparable harm were he to remain deprived of his liberty and subjected to continued and indefinite detention by immigration authorities without being immediately released and provided the constitutionally adequate process (a future pre-deprivation hearing before an Immigration Judge) 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. 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

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[6] 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) (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. Krajekian remains in the United States and this Court therefore continues to have jurisdiction over his case.

[7] 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-to-third-countries-without-notice/.

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*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention centers.[8]

Mr. Krajekian has been out of ICE custody for nearly seven-and-a-half years. During that time, he has been reconnecting with his family, including his U.S. citizen wife and children, after spending approximately 41 months incarcerated in federal custody. He has assisted his wife in maintaining a landscaping business and raising their two children. During the three months of renewed detention, his wife has struggled to continue her own employment, as well as run their family business all while raising her children. His continued detention rips him from his family, and imperils the family's economic and emotional well-being.

Moreover, if Mr. Krajekian remains detained in an immigration jail, his health could be endangered. On October 20, 2024, Detention Watch Network released a report the Eloy Detention Center, noting it "has gained notoriety as the "deadliest immigration detention center in the U.S.'" [9] The report documents that ICE's own Office of Detention Oversight documented serious lapses in medical care and failure to comply with suicide and self-harm intervention standards. *Id.* In February of 2024, Florence Immigrant and Refugee Rights Project staff

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[8] *See, e.g.*, DHS, Office of Inspector General ("OIG"), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (violations of health and safety standards; staffing shortages affecting suicide watch, and detainees held in unauthorized restraints, without being allowed time outside their cell,). U.S. Dep't of Homeland Security Office of Inspector General, OIG-24-23, Results of an Unannounced Inspection of ICE's Golden State Annex in McFarland, California (Sept. 24, 2024), available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf.

[9] Detention Watch Network, "Anthology of Abuse" (DATE), available at: https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center_.pdf

documented numerous complaints of poor medical care, unsanitary dining conditions, inadequate laundry services, frequent lockdowns, improper use of suicide watch and segregation, and verbal and physical abuse by detention center staff. *Id.*

Further, Mr. Krajekian 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.[10] Others removed in violation of their prior grant of protection under the Convention Against Torture have reported that they faced severe torture at the hands of government agents.[11] 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. Krajekian from suffering irreparable harm by remaining in unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

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

First, the balance of hardships strongly favors Mr. Krajekian. 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 Mr. Krajekian's 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 to release Mr. Krajekian from custody (and provided notice and a hearing before an Immigration Judge prior to any future re-

[10] 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-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home.

[11] 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-prison-beaten-torture.

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. Krajekian to any third country is outweighed by 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 detain Mr. Krajekian, 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. Krajekian warrants a temporary restraining order that Respondents release him from custody, 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.

Dated: July 28, 2025

Respectfully submitted,

s/Jesse Evans-Schroeder
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