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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Y.T.D.,

Petitioner,

v.

TONYA ANDREWS, in her official capacity as Facility Administrator of Golden State Annex Detention Facility,

MOISES BECERRA, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, San Francisco,

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and

PAM BONDI, in her official capacity as Attorney General of the United States,

Respondents.

No.

MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Y.T.D., by and through his undersigned counsel, hereby moves for a temporary restraining order: 1) enjoining Respondents from continuing to detain him and ordering his release from immigration detention; and 2) enjoining Respondents from circumventing this Court's jurisdiction and Y.T.D.'s due process rights by unlawfully removing him to a third country without a meaningful opportunity to be heard on a potential fear-based claim for relief. This motion is based upon Federal Rule of Civil Procedure 65, Local Rule 65, the incorporated memorandum of points and authorities, and the simultaneously filed Petition for Writ of Habeas Corpus, Y.T.D.'s Affidavit, and other Exhibits, as well as any further information presented to the Court in connection with this application.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Counsel for Petitioner

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INTRODUCTION

1. The Supreme Court in *Zadvydas v. Davis* held that "indefinite detention" of a non-citizen in removal proceedings is unconstitutional. 533 U.S. 678 (2001). Civil detention is "nonpunitive in purpose and effect," and the "Due Process Clause applies to 'all persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 690, 693–94. Therefore, post-removal detention is only permissible for "a period reasonably necessary to bring about the [non-citizen]'s removal from the United States." *Id.* at 689. After six months of post-removal detention, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," a non-citizen's continued detention is presumptively unlawful and the Government must provide sufficient evidence to rebut that presumption. *Id.* at 701.

2. Petitioner Y.T.D. (Y.T.D. or Petitioner) brings a straight-forward habeas petition seeking relief pursuant to *Zadvydas* and the Administrative Procedure Act (APA). He is entitled to immediate release and due process protections. Y.T.D. is an Ethiopian national who has been in detention for over 14 months and remains in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) (Government) at Golden State Annex Detention Facility (GSA) despite winning his immigration case more than seven months ago. On January 6, 2025, an immigration judge (IJ) granted Y.T.D. withholding of removal to Ethiopia under § 241(b)(3) of the Immigration and Nationality Act (INA) because Y.T.D. would likely be tortured and/or persecuted if deported there.

3. Respondents refuse to release Y.T.D., claiming that they are looking for alternative countries for removal despite knowing that Y.T.D. lacks citizenship in or a connection to any other country. More than seven months have already passed, and there is no reason to believe Y.T.D.'s removal is reasonably foreseeable, especially considering the Government's repeated statements that immigrants without any criminal record are a low priority for third-country deportations. The *Zadvydas* court was clear: the Government cannot render Y.T.D.'s continued detention lawful by merely pointing to good faith efforts to find third countries who would accept Y.T.D.'s removal. *Zadvydas*, 533 U.S. at 702.

4. Moreover, once Y.T.D. was granted withholding of removal, he became entitled to review for immediate release under the Government's longstanding—and still current—policy, the Fear-based Grant Release Policy, which requires the release of noncitizens in Y.T.D.'s position absent exceptional circumstances. ICE Acting Director Todd Lyons just a few weeks ago in a public interview reiterated: "under the Supreme Court ruling of *Zadvydas*, we don't hold punitively, so we can only hold someone for six months to effectuate their removal." Exhibit 11 (CBS - Transcript: Acting ICE director Todd Lyons on Face the Nation) at 14.[1] Respondents' failure to adhere to its Fear-based Grant Release Policy as applied to Y.T.D. is arbitrary and capricious administrative agency action that violates the APA and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

5. Y.T.D. should not be forced to endure even a single additional day in detention because it "is well established 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)). And, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Id.* (internal citation omitted).

6. As unlikely as Y.T.D.'s removal is, DHS has threatened to brazenly ignore their constitutional and due process obligations by removing non-citizens to third countries with only 24 hours or less notice and no meaningful opportunity to assert a fear-based claim, just as Y.T.D. did with respect to his home country. *See* Exhibit 7 (July 9, 2025 Third Country Removals Memo) at 2. Ninth Circuit precedent is clear: "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"). *See also Najjar v. Lynch*, 630 Fed. App'x. 724 (9th Cir. 2016) (same). This Court should join a host of other recent courts in enjoining

[1] The exhibits mentioned herein are attached to Petitioner Y.T.D.'s Petition for a Writ of Habeas Corpus, filed simultaneously with this motion for temporary restraining order.

Respondents from circumventing the Court's jurisdiction, INS regulations, and due process by removing Y.T.D. to a third country without mandatory protections. *See, e.g., Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *6 (C.D. Cal. June 25, 2025) (holding "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings").

STATEMENT OF FACTS

I. Legal Framework for Detention of Non-Citizens Granted Withholding of Removal

7. Non-citizens in immigration removal proceedings may seek three main forms of relief based on a fear of returning to their home country: asylum, withholding of removal, and Convention Against Torture (CAT) relief. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

8. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)–(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)–(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "*may* be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

9. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [non-citizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701. After six months of detention, if there is "good

reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701.

10. DHS regulations provide that, by the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (k)(1)(i). In making this custody determination, ICE considers several factors, including the availability of travel documents for removal. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

11. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)–(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "specially dangerous." *Id.* § 241.14(f).

12. Consistent with the statutory and regulatory scheme, ICE's longstanding policy (hereinafter the "Fear-based Grant Release Policy") is to release noncitizens immediately following a grant of withholding of removal, "absent exceptional circumstances." Exhibit 5 (Fear-based Grant Release Policy) at 4. "In general, it is ICE policy to favor release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns . . ." and "[p]ursuant to longstanding policy, absent exceptional circumstances... noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released . . ." *Id.* at 2, 4 (emphasis added). This policy specifically instructs the local ICE field office to make an

individualized determination whether to keep a noncitizen detained based on exceptional circumstances. *Id.* at 3. ("[T]he Field Office Director must approve any decision to keep a [non-citizen] who received a grant of any . . . protection in custody.")

13. In 2000, the then-Immigration and Naturalization Service (INS) General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes, but does not require, the detention of non-citizens granted withholding of removal or CAT relief. *Id.* A 2004 ICE memorandum turned this acknowledgement of authority into a presumption, stating that "it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." *Id.*

14. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are "still in effect and should be followed" and that "[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period." *Id.*

15. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the "longstanding policy" that "absent exceptional circumstances… [non-citizens] granted asylum, withholding of removal, or CAT protection by an immigration judge should be released . . ." *Id.* (emphasis added). Director Johnson clarified that "in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community. Rather, the individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation, should be considered in making such determination." *Id.*

II. The Government's Third Country Removal Activities

16. As discussed below, the Government is obligated to provide non-citizens with mandatory statutory and due process protections prior to removing them to a third country. *Infra* p. 13, 14. Since the current administration has taken office, it has been attempting to increase its deportation of non-citizens to third countries.

17. On March 23, 2025, a putative nationwide class challenged this Government practice in *D.V.D. v. DHS* and obtained a temporary restraining order and later a preliminary injunction for a certified class, blocking third country removals without notice and introducing a meaningful opportunity to seek CAT protection. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392–393 (D. Mass. Apr.18, 2025). Under the *D.V.D.* injunction, the Government was required to provide class members the following:

- Written notice of the third country in a language that the non-citizen can understand to the individual and their attorney, if any;
- An automatic 10-day stay between notice and any actual removal;
- Ability to raise a fear-based claim for CAT protection prior to removal; and:
    - If the noncitizen demonstrates "reasonable fear" of removal to the third country, DHS must move to reopen the noncitizen's immigration proceedings.
    - If the noncitizen does not demonstrate a "reasonable fear" of removal to the third country, DHS must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings.

Id. DHS's third-country removal policy pales in comparison to these statutorily and constitutionally necessary protections. *Compare* Exhibit 6 (March 30, 2025 Third Country Removals Memo).

18. On March 30, 2025, DHS issued "Guidance Regarding Third Country Removals" that "clarifie[d] DHS policy regarding the removal of aliens with final orders of removal … to countries other than those designated for removal in . . . removal orders (third country removals)." Ex. 6 at 1. If DHS secures acceptance of a non-citizen's deportation to a third country by that country, DHS will inform the detainee of removal to that country, but "Immigration officers will not affirmatively ask whether the alien is afraid of being removed to that country." *Id.* at 2. If the "alien affirmatively states a fear, USCIS will … screen the alien within 24 hours of referral." *Id.* at 2. In that scenario, "USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal." *Id.* at 2. "If USCIS determines that the alien has not met this standard, the alien will be removed." *Id.* at 2.

19. Thereafter, the Government failed to comply with the *D.V.D.* district court's orders

at multiple points while the TRO and preliminary injunction were in place. On March 31, 2025, at least six D.V.D. class members were removed from Guantanamo to El Salvador on a Department of Defense plane, in violation of the TRO. *See D.V.D. v. DHS*, No. 1:25-cv-10676- BEM (D. Mass. Apr. 30, 2025), ECF No. 86. On May 7, 2025, the Government attempted to deport a flight of class members to Libya without compliance with the preliminary injunction, leading to an emergency TRO motion. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91. On May 20, 2025, while the Government was again in the process of removing class members in violation of the preliminary injunction (this time to South Sudan), the Plaintiffs moved for another emergency TRO, leading the district court order that the Government retain custody of the class members and provide the preliminary injunction's protections. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 20, 2025), ECF No. 116. On June 23, 2025, the Supreme Court issued a summary order that did not provide reasoning, but granted the Government's request to stay the district court's preliminary injunction in *D.V.D. See DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025).

20. On May 16, 2025, in another case, the Supreme Court considered the Government's attempt to remove two Venezuelan nationals who are members of a designated foreign terrorist organization on a day's notice. *See A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025). There, the Supreme Court held: "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *Id.*

21. Nevertheless, DHS felt emboldened by the Supreme Court's stay of the injunction in *D.V.D.* and adopted a third country removal policy that clearly runs afoul of mandatory statutory and constitutional protections and the Supreme Court's views in *A. A. R. P.* On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy memo that states some non-citizens will be deported to third countries with ***literally no notice*** whatsoever: "If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures." Ex. 7 at 1. Otherwise, ICE's new standard procedure is:

- serve a notice of removal on the detainee—not their counsel if they have any;
- not affirmatively ask whether the non-citizen is afraid of being removed to the third country;
- if the non-citizen was "provided reasonable means and opportunity to speak with an attorney," then remove them to the third country in as few as ***6 hours*** after serving the notice of removal;
- if the non-citizen does not affirmatively state a fear of persecution or torture, regardless of whether they had the opportunity to speak to counsel, then remove them in as few as 24 hours after serving the notice of removal;
- if the non-citizen does affirmatively state a fear if removed to the third country, USCIS will screen the non-citizen within 24 hours and unless the non-citizen—again without any mention of counsel—fails to establish they "would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal," remove them as soon as possible; and
- only if a non-citizen affirmatively states a fear of removal to a third country and, on less than 24 hours notice, establish that they are more likely than not to be persecuted or tortured upon removal will USCIS refer the matter to immigration court for further proceeding . . . or "[a]lternatively, ICE may choose to designate another country for removal.

Id.

22. Independent of the now-stayed *D.V.D.* injunction, an increasing number of courts across the country have enjoined the Government from effectuating unlawful third-country removals without adhering to mandatory statutory and constitutional protections. *Vaskanyan*, 2025 WL 2014208, at *6–9 (holding "Petitioner's removal to a third country without due process . . . *is* likely to result in irreparable harm" and enjoining Petitioner's removal to a third country without the same protections mandated in the D.V.D. injunction); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025) (granting TRO enjoining Government from removing petitioner to "any third country in the world absent prior approval from this Court");

Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2097979, at *3 (W.D. Wash. July 25, 2025) (same); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025) (granting TRO and preliminary injunction enjoining removal of "Petitioner to a third country without notice and an opportunity to be heard"); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1, 2025) (granting TRO barring the Government "from transferring, relocating, or removing Petitioner outside the Southern District of Texas without an Order from the Court"); *Gomez v. Chestnut*, No. 2:25-CV-00975-GMN-BNW, 2025 WL 1695359, at *4 (D. Nev. June 17, 2025) (ordering Government "shall provide 72-hours' notice to Petitioner's counsel before it is the Government's intent to remove Petitioner out of the country").

23. Returning to the frequency of deporting non-citizens with withholding of removal relief, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country" in FY 2017. *Johnson*, 141 S. Ct. at 2295 (Breyer, J., dissenting). Despite the Government's efforts, it is still not clear whether the Government will be successful in substantially increasing that 1.6% figure. Beyond the Government's increasing obstacles in court, it has failed to secure many approvals from third countries to accept deportees who have no connection to those countries. For example, Nigeria publicly rebuked the administration's ask for Nigeria to accept deportees from third countries last month. Exhibit 15 (NPR Article – Nigeria Says It Won't Accept Deportees from US).

24. Even if the administration secures approvals, the Government has made repeated public statements that their third-country deportation initiatives target and prioritize removable non-citizens with criminal records. On or around June 1, 2025, the Government deported a group of six individuals to third-country South Sudan (without affording due process[2]), justifying the deportations "by arguing the home countries of the men would not accept them because of the crimes they had committed in the U.S., which included murder and sexual assault." Exhibit 8 (NPR Article – The White House is deporting people to countries they're not from) at 7. In a resulting

[2] *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach . . . in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel.")

press conference, ICE Acting Director Todd Lyons said that third-country deportations are aimed at individuals whose home countries will not accept their repatriation because of their alleged criminal status: "These are the ones that we prioritize every day." *Id.* at 7.

25. On or around June 19, 2025, Tom Homan, the Trump Administration's "Border Czar,"[3] again characterized the administration's priorities in a New York Times interview: "We're prioritizing public safety threats and national security threats. That is our priority." Exhibit 9 (NYT Article – An Interview with Trump's Border Czar, Tom Homan) at 4. When asked if that meant if the administration is prioritizing "everyone who's here illegally … without authorization," Homan clarified: "No, I'm not saying that. I'm saying we're prioritizing public safety threats. People who have committed crimes in this country or committed crimes in their home country and came here to hide. But we're looking for public safety threats and national security threats. They remain the priority." *Id.* at 5. On third-country deportations, Homan said of the administration's priorities: "If it's a significant public safety threat and their country won't take them back, well, they're not staying here." *Id.* at 17.

26. On June 23, 2025, DHS issued a press release: "DHS can finally exercise its undisputed authority to deport criminal illegal aliens–who are not wanted in their home country–to third countries that have agreed to accept them." Exhibit 10 (DHS – DHS releases Statement on Major Victory for Trump Administration) at 1. DHS Assistant Secretary Tricia McLaughlin said: "the Trump Administration can exercise its undisputed authority to remove these criminal illegal aliens," explaining that she was referring to "aliens who are so uniquely barbaric that their own countries won't take them back, including convicted murderers, child rapists and drug traffickers." *Id.* at 1.

27. On July 21, 2025, ICE Acting Director Lyons was asked: "Is the policy still to prioritize the arrests and deportation of people who are here illegally, but are also violent offenders?" Ex. 11 at 8. Lyons responded: "Yes, that's one thing, and that's one thing I'm extremely

[3] "Border Czar" is seemingly Tom Homan's official title. In that role he is "in charge of all Deportation of Illegal Aliens." Kaitlan Collins and Colin McCullough, *Trump announces Tom Homan, his former acting ICE director, will be administration's 'border czar'*, CNN, Nov. 11, 2024, https://www.cnn.com/2024/11/10/politics/tom-homan-border-czar-ice-donald-trump.

focused on since I became the acting director, is the fact that the president and Secretary Noem have made a promise to the American public that ICE is going to focus on the worst of the worst, and that's what we do need to focus our limited resources on. That's one thing I've always said from the start." *Id.* On third-country deportations, Lyons also said: "**Prime example, if we had a country that won't take a homicide suspect back, and under the Supreme Court ruling of Zadvydas, we don't hold punitively, so we can only hold someone for six months to effectuate their removal** . . . my main focus, like I said, is the safety and security in the United States. Why would we let child rapists with a propensity of violence back into the community, because their home nation won't take them, when they're not here lawfully, or they have no right to stay here. That's our focus." *Id.* at 14, 15.

III. Y.T.D.'s Immigration and Custody Status

28. Petitioner Y.T.D. was born in Ethiopia on July 4, 1997, and is an Ethiopian citizen. Exhibit 1 (Affidavit of Y.T.D) at 2. Neither he nor his parents are citizens of any country besides Ethiopia. *Id.*

29. Y.T.D. suffered repeated persecution and torture in Ethiopia on the basis of his ethnic background. *Id.* He fled Ethiopia out of fear for his life. *Id.* He came to the United States through the southern border while President Biden's Circumvention of Lawful Pathways rule was in effect from May 2023 to May 2025, presumptively disqualifying him from asylum. *Id. See also* 88 Federal Register 31314, (May 16, 2023); 8 C.F.R. § 208.33(a). Promptly upon entry into the United States, he was brought into custody and has been in detention since then. Ex. 1 at. 2. On July 1, 2024, DHS served him with a Notice to Appear (NTA), charging him as removable under two provisions of § 212(a) for being present in the United States without being admitted or paroled and without certain documents. Ex. 1 at 2. NTA. On June 1, 2024, Y.T.D. was brought to Golden State Annex Detention Facility (GSA), where he has been detained since. Ex. 1 at 2.

30. On January 6, 2025, an IJ granted Y.T.D. withholding of removal under the INA, finding that he would more likely than not be tortured and/or persecuted if he was removed back to Ethiopia because of his ethnic/racial status. Exhibit 4 (IJ Decision Granting Withholding of Removal) at 1. Y.T.D. was ordered removed to, and his removal withheld from, Ethiopia. *Id.* at 3.

On February 6, 2025, Y.T.D.'s withholding of removal order became final because the appeal period expired. *See* 8 U.S.C § 1231(a)(l)(B)(i); 8 C.F.R. § 1241.l(c).

31. It is worth noting that given the "clear probability" standard required for withholding of removal is much more stringent than the "well-founded fear" standard for asylum, Y.T.D. would have qualified for asylum had he entered the United States before May 10, 2023 or after May 10, 2025—i.e., when the Circumvention of Lawful Pathways rule was not in effect. *See Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000) (comparing asylum and withholding of removal standards). For reference, to be granted withholding of removal under the INA, a non-citizen must objectively establish that it is "more likely than not" (i.e. 50%+) that the applicant's race, religion, nationality, membership in a particular social group, or political opinion would be "a reason" his or her "life or freedom would be threatened" in the future. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017).

32. Sometime after his Withholding of Removal Order became final, Y.T.D. was informed by ICE that it would attempt to remove him to a third country. Ex. 1 at 3. ICE told Y.T.D. that they would seek his removal to Kenya, Eritrea, Somalia, or Benin. *Id.* Y.T.D. is not a citizen of and has no connection to any of those countries. *Id.* at 2. Upon information and belief, ICE to date has failed to secure acceptance of Y.T.D.'s removal to any third country from any such third country despite Y.T.D. being granted withholding of removal more than seven months ago. *Id.*

33. On July 30, 2025, Y.T.D.'s counsel submitted a request to ICE for immediate release from ICE custody in accord with INA § 241(a)(3) and/or on parole under INA § 212(d)(5) and a 2021 DHS Policy Memorandum. Exhibit 2 (Release Request). That request explained that Y.T.D. is not a flight risk and is committed to complying with any order of supervision. *Id.* at 2. Y.T.D.'s uncle is his sponsor, a U.S. citizen, and a resident of Colorado. *Id.* at 3. Y.T.D.'s uncle declared that he would be willing to provide for and support Y.T.D. comprehensively as Y.T.D. acclimates to life in the United States if released. *Id.* at 2. Y.T.D. has no criminal record in the U.S. or his country of origin and has never had any dealings with drugs, firearms, or violence. *Id.* at 2.

34. The release request explained that Y.T.D.'s removal does not seem to be imminent given ICE's failure to identify a willing third country for removal in more than seven months. *Id.*

at 3. Nevertheless, the request expressed that Y.T.D. fears removal to each of the four identified countries and demanded ICE comply with its obligations to provide him with sufficient notice and meaningful opportunity to reopen removal proceedings upon a potential designation of any third country for removal. *Id.* at 3.

35. The request also demanded release for urgent humanitarian reasons pursuant to INA § 212(d)(5). *Id.* at 3. INA § 212(d)(5) provides that parole "would generally be justified" for individuals "who have serious medical conditions in which continued detention would not be appropriate." *Id.* at 3. *See* 8 CFR § 212.5(b)(1). Y.T.D. has anxiety and, possibly, post-traumatic stress disorder ("PTSD") from the torture he endured in Ethiopia. *Id.* at 3. Y.T.D.'s prolonged 14-month detention has aggravated the trauma that Y.T.D. endured, manifesting in serious mental and physical health conditions. *Id.* at 3. GSA's officials were the same color uniform as Y.T.D.'s torturers, triggering his anxiety and causing regular nightmares, as recounted to GSA's psychologist. *Id.* at 3. Counsel relayed studies that show "increased length of imprisonment . . . directly exerts harm" and that "detention lasting 6 months of longer . . . [results in] even higher rates of poor [health], mental illness, and PTSD." *Id.* at 3. In addition to his exacerbated mental health conditions, since arriving in detention, Y.T.D. has experienced increasing digestive issues and pain in his shoulder—which have not been sufficiently treated at GSA. *Id.* at 3.

36. On July 30, 2025, the same day as Y.T.D.'s counsel submitted his release request, an ICE officer at GSA told Y.T.D. that he was not being considered for release and that his file was received by ICE headquarters. Ex 1 at 4. Y.T.D.'s counsel to this day have not received a response to the release request.

37. ICE has not identified any exceptional circumstances warranting Y.T.D.'s continued detention under ICE policy. Nor has ICE charged Y.T.D. as "specially dangerous" under 8 C.F.R. § 241.14.

38. As explained to Respondents, if Y.T.D. is released, he will live with his sponsor uncle who will provide him with all the support he needs. Ex. 1 at 5.

39. It is worth noting that inadequate conditions of detention at GSA are well documented. The California Department of Justice (Cal DOJ) has regularly reviewed and reported

on ICE detention facilities in California. Exhibit 12 (Cal DOJ ICE Detention Facilities Report). In May 2025, Cal DOJ published their most recent report in which they provided a facility-specific review of Golden State Annex. *Id.* at 52. As to GSA, Cal DOJ found that the facility offered inadequate quality of mental health and other medical care in several ways. *Id.* at 66. On April 18, 2024, DHS's Office of Inspector General issued a report with "Results of an Unannounced Inspection of ICE's Golden State Annex in McFarland, California. Exhibit 13 (DHS OIG Results of an Unannounced Inspection). The government itself found "facility staff did not always provide timely action of medical grievances and did not properly record paper grievances." *Id.* at 5. The government also concluded that "Golden State Did Not Comply with Cleanliness and Sanitation Standards." *Id.* at 8.

IV. Y.T.D. Has Expressed a Credible Fear of Removal to the Third Countries Respondents Have Identified

40. In the unlikely event that Respondents secured approval of Y.T.D.'s deportation from Benin, Eritrea, Somalia, or Kenya, Y.T.D. would move to re-open his immigration case and apply for fear-based protection and withholding of removal as to the third country. Ex. 1 at 4. Y.T.D. already expressed his fear of removal to each of the four countries to Respondents. *See* Ex. 2 at 3. The United States Department of State issues Country Reports on Human Rights Practices for various countries. These Country Reports illustrate part of the basis for Y.T.D.'s hypothetical fear-based protection claims. For example, in its most recent report on Eritrea, the State Department determined Eritrea is plagued by "significant human rights issues" including "disappearances; torture or cruel, inhuman, or degrading treatment or punishment; arbitrary arrest or detention." Exhibit 16 (Eritrea Country Report) at 1. The State Department also found Eritrea "did not recognize Ethiopians . . . as refugees," and even if it did, "the government had no established system for providing protection to refugees." *Id.* at 13. The situation for Ethiopians is especially fraught because "at any moment, war between Ethiopia and Eritrea could break out" over territorial and ethnic conflict. Exhibit 17 (Al Jazeera Article – Are Ethiopia and Eritrea hurtling towards war) at 8. The State Department made similar human rights abuse findings for Benin, Kenya, and Somalia. Exhibit 18 (Benin Country Report); Exhibit 19 (Kenya Country Report); Exhibit 20 (Somalia

Country Report). Most recently, "Ethiopians living in Somalia have become the subject of physical violence, verbal threats and intimidation since Somaliland consented to give Ethiopia access to its coastline" in 2024. Exhibit 21 (VOA Article – Ethiopian Refugees in Somalia Fear Violence Over Deal With Somaliland) at 1. Further, based on the statements and actions of countries that have recently accepted third country removals from the United States, Y.T.D. would likely succeed on the claim that these countries would repatriate him to Ethiopia where he would face torture and/or persecution, in violation of U.S. and international refugee law. Exhibit 22 (NYT Article – African Nation Says It Will Repatriate Migrants Deported by U.S.) at 2 (Eswatini repatriating deportees); Exhibit 23 (Reuters Article – The US said it had no choice but to deport them to a third country. Then it sent them home) at 2 (Libya repatriating deportees).

LEGAL STANDARD

41. Y.T.D. is entitled to a temporary restraining order (TRO) if he establishes: "(1) a likelihood of success on the merits, (2) that [he] will likely suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tip in [his] favor, and (4) that the public interest favors an injunction." *Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). The Ninth Circuit has adopted a "sliding scale" approach wherein "the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012) (per curiam) (citations omitted). Thus, a temporary restraining order may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). To succeed under the "serious question" test, Y.T.D. must show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

ARGUMENT

I. Y.T.D. Is Likely to Succeed on the Merits

a. Y.T.D.'s Continued Detention Is Statutorily and Constitutionally Unlawful Under *Zadvydas* Because His Removal Is Not Reasonably Foreseeable

42. Y.T.D. was awarded withholding of removal relief more than seven months ago, and, yet, Respondents have failed to effectuate a lawful removal to a third country. Y.T.D.'s third-country removal is still not reasonably foreseeable, and, therefore, his continued detention runs afoul of his due process rights and the INA. As explained above, the Supreme Court held in *Zadvydas* that the post-removal-period detention scheme contains "an implicit 'reasonable time' limitation." 533 U.S. at 682. 8 U.S.C. § 1231(a)(6)—the provision of the INA governing post-removal-period detention—when "read in light of the Constitution's demands, limits [a non-citizen]'s post-removal-period detention to a period reasonably necessary to bring about that [non-citizen]'s removal from the United States. It does not permit indefinite detention." *Id.* at 689. This is because "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690.

43. To determine whether the post-removal-period detention is lawful, the Supreme Court directed courts to consider "whether the detention in question exceeds a period reasonably necessary to secure removal," measuring reasonableness "primarily in terms of the statute's basic purpose" of "assuring the [non-citizen]'s presence at the moment of removal." *Id.* at 699. In interpreting § 1231(a)(6), the *Zadvydas* court found "Congress previously doubted the constitutionality of detention for more than six months," and accordingly held that after a non-citizen is detained for six months, if the detainee "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. *See also Nadarajah v. Gonzales*, 443 F.3d 1069, 1078 (9th Cir. 2006) (holding same). For detention to remain reasonable, "as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701.

44. Y.T.D. is unlikely to be deported from the United States, let alone in the reasonably

foreseeable future. He cannot be deported to his home country of Ethiopia because he has a final grant of withholding of removal. *See* 8 U.S.C. § 1231 (b)(3).

45. It is also exceedingly unlikely that ICE will identify an alternative country to which it can remove Y.T.D. First, in 2017, ICE only managed to remove to third countries less than two percent of non-citizens granted withholding relief. *Johnson*, 141 S. Ct. at 2295 (Breyer, J., dissenting). While the current administration has been attempting to increase that figure, it is not clear whether they will secure sufficient approvals from third countries to accept deportees with no ties in the near future such that Y.T.D.'s third-country removal would be reasonably foreseeable.

46. Second, Y.T.D. has no criminal record in the United States or Ethiopia. The administration has made repeated public statements explaining their third-country deportation initiatives target and prioritize removable non-citizens with criminal records. *Supra*, p. 15.

47. Third, Y.T.D.'s withholding of removal status and credible fears of persecution and torture if removed to any of the four countries Respondents have mentioned to which he could be deported further render his removal not reasonably foreseeable. It is black letter law that Y.T.D. must be provided a meaningful opportunity to apply for protection prior to removal to a third country. The Ninth Circuit held that "[f]ailing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041 (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"). *See also Najjar*, 630 Fed. App'x. 724 ("In the context of country of removal designations, last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country.") In practice, the "guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (ordering the same for non-citizen petitioner and holding ICE "has an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting" them). This is because "third-country removals are subject to the same mandatory

protections that exist in removal or withholding-only proceedings." *Vaskanyan*, 2025 WL 2014208, at *6 (citation omitted). In the unlikely event that Respondents secure approval of Y.T.D.'s deportation from Benin, Eritrea, Somalia, or Kenya, Y.T.D. would move to re-open his immigration case and apply for protection. Y.T.D. is likely to prevail in securing withholding of removal as to any of those countries. *Supra* p. 20.

48. Together, Y.T.D. easily meets his burden of demonstrating a likelihood of success on the merits of his due process and INA violation claims, or at least, serious questions going to the merits. *All. for the Wild Rockies*, 632 F.3d at 1131. He need only show "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable" and that burden is even lower as to establishing serious questions. *Zadvydas*, 533 U.S. at 701. With each passing day in detention, Respondents' evidentiary burden to rebut Y.T.D.'s showing increases. *Id.*

49. Respondents cannot satisfy their burden by simply establishing "good faith efforts to effectuate . . . deportation continue." *Id.* at 702. The Supreme Court rejected the idea that Y.T.D. would need to show anything like "the absence of any prospect of removal." *Id.* For example, in a recent Central District of California case, the Government established it was "pursuing the possibility of removing Petitioner to [third-country] Armenia" and that "ICE now expects to receive an answer from the Armenian consulate within approximately two weeks." *Vaskanyan*, 2025 WL 2014208, at *5. But the Court held that since the petitioner identified potential obstacles to being removed to Armenia, "at best, the government has shown that 'good faith efforts' to effectuate . . . deportation continue," failing to meet its burden on rebuttal. *Id.* (granting habeas petitioner's motion for temporary restraining order). The Court in *Misirbekov* likewise held a similarly situated detainee met their burden because they were withheld from removal to their home country and they did "not have citizenship nor any ties to any other country." 2025 WL 2201470, at *2. Just so here. There is no indication Respondents will get a favorable decision from any third country in the near future, and even if they did, Y.T.D. is likely to prevail in moving for withholding of removal.

50. Respondents may seek to justify Y.T.D.'s continued detention by alleging he is a flight risk or dangerous, but not only do those considerations not apply to Y.T.D., the evidentiary record instead bolsters his claim for immediate supervised release. The *Zadvydas* Court observed

that the first justification for post-removal-period detention—risk of flight—is "weak or nonexistent where removal seems a remote possibility at best." *Id.* As for the second justification—protecting the community—the Court observed that it has "upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections." *Id.* at 691. Where "preventive detention is of potentially indefinite duration," the Court has "demanded that the dangerousness rationale be accompanied by some other special circumstance . . . that helps to create the danger." *Id. See also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."). But ICE has not identified any exceptional circumstances warranting Y.T.D.'s continued detention under ICE policy. Nor has ICE charged Y.T.D. as "specially dangerous" under 8 C.F.R. § 241.14. Nor could they. Y.T.D. has no criminal record, and he has previously provided a declaration from his U.S. citizen sponsor, his uncle, ensuring that he will have housing, complete support, and means to appear for any necessary hearings or appointments. Ex. 2 at 2. The *Misirbekov* Court held the exact same facts "support granting supervised release rather than indefinite detention." 2025 WL 2201470, at *2. *See Zadvydas*, 533 U.S. at 700 (explaining "the [non-citizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.").

51. To the extent this Court considers any factors outside of the foreseeability of Y.T.D.'s removal, which it need not do, Y.T.D. has significant equities that warrant release as set forth in his July 30, 2025 request for release, including his serious medical conditions that continue to deteriorate in detention. *Supra* p. 19.

b. Respondents' Continued Detention of Y.T.D. Without Custody Review Consistent with ICE Policy Violates the APA and Due Process

52. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). Under the *Accardi* doctrine, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise

discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

53. When agencies fail to adhere to their own policies as required by *Accardi*, the action is arbitrary, capricious, and contrary to law under the APA and/or a due process violation. *See Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA"); *Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

54. Prejudice is generally presumed when an agency violates its own policy. *See Montilla* v, I,N.S., 926 F.2d 162 (2d. Cir. 1991) at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them.").

55. ICE's long-standing Fear-based Grant Release Policy is to release non-citizens immediately following a grant of withholding or CAT relief absent exceptional circumstances. *See* Ex. 5 at 2 ("In general, it is ICE policy to favor the release [non-citizens] who have been granted protection by an immigration judge, absent exceptional concerns . . ."); *id.* at 4 ("Pursuant to longstanding policy, absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released . . .") (emphasis added). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained based on exceptional circumstances. *See id.* at 3 ("[T]he Field Office Director must approve any decision to keep a[] [non-citizen] who received a grant of [asylum, withholding, or CAT relief] in custody."). The Policy constitutes ICE's interpretation of the statute and regulations governing post-removal order detention. *See* 8 U.S.C. § 1231; 8 C.F.R. §§ 241.4, 241.13, 241.14. Furthermore, by reiterating the Policy four times over the last two

decades and using mandatory language, ICE leadership has clearly indicated that it intends the Policy to be binding on all field offices and officers. *See, e.g.*, Ex. 5 at 2. ("In all cases, the Field Office director *must* . . .") (emphasis added); *id.* at 4 ("I am issuing this reminder to ensure that ICE personnel remain cognizant of and continue to follow this Directive"); *see also Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987) ("[A]n agency pronouncement is transformed into a binding norm if so intended by the agency."). The Policy also establishes procedures for reviewing the custody of non-citizens who are granted immigration relief and is clearly intended, at least in part, to benefit those non-citizens. *See* Ex. 5 at 4 (referring to "ICE policy favoring a non-citizen's release"). ICE Acting Director Todd Lyons summarized the Policy in a July 21, 2025 interview: "under the Supreme Court ruling of *Zadvydas*, we don't hold punitively, so we can only hold someone for six months to effectuate their removal." Ex. 11 at 14.

56. Here, Respondents should have reviewed Y.T.D. custody under the Fear-based Grant Release Policy as soon as they decided not to appeal his grant of withholding of removal relief, and then again when it became administratively final. *See* Ex. 5 at 3. Upon information and belief, they did not. There is furthermore no evidence that the San Francisco ICE Field Office Director, Respondent Becerra, who is vested with non-delegable review power under the Fear-based Grant Release Policy, approved Y.T.D.'s continued detention at any point after he was granted relief, as required by the Policy. *See* Ex. 5 at 2–3.

57. Respondents' failure to promptly review Y.T.D.'s custody under the Fear-based Grant Release Policy is prejudicial to him because the Policy implicates his fundamental liberty interests and due process rights. The Policy provides Y.T.D. with a discrete opportunity to win his freedom from detention and that opportunity has thus far been withheld from him. *See Zadvydas*, 533 U.S. at 690.

58. The Policy presumes that non-citizens granted withholding or CAT relief will be released "absent exceptional circumstances, such as when the non-citizen presents a national security threat or a danger to the community." Ex. 5 at 4. If Respondents were to review Y.T.D.'s custody under the Policy, he would very likely be released.

59. Therefore, Y.T.D. has been prejudiced by Respondents' failure to review his

custody under the Policy's "exceptional circumstances" standard. According to the *Accardi* doctrine, Respondents' departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Y.T.D.'s due process rights.

60. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy. *See Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."). Alternatively, a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure"). The Court should do so here.

II. Absent Immediate Relief, Y.T.D. will Suffer Irreparable Harm

61. Each day Y.T.D. remains in detention constitutes irreparable harm because it "is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres*, 695 F.3d at 1002 (quoting *Elrod*, 427 U.S. at 373). The Ninth Circuit has specifically recognized "irreparable harms" are "imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) ("Plaintiffs have established a likelihood of irreparable harm by virtue of the fact that they are likely to be unconstitutionally detained"). *See also Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (holding same); *Nguyen*, 2025 WL 2097979, at *3 (same). This is especially true for unlawful detention which "certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in [monetary] damages." *Hernandez*, 872 F.3d at 999. *See Phan*, 2025 WL 1993735, at *5 (citing *Hernandez* and finding irreparable harm). The *Hernandez* Court further explained that "evidence of subpar medical and psychiatric care in ICE detention facilities" "highlight in more concrete terms" some of the "irreparable harms" imposed on immigration detainees. 872 F.3d at 995. Just so for Y.T.D. as his continued detention exacerbates his serious medical conditions, including those relating to his trauma and potential P.T.S.D.[4]

[4] The California Department of Justice recently published a facility-specific review of Golden State Annex and concluded "quality of mental health care was impacted by the quality of psychotherapy, inconsistent documentation of psychiatric diagnoses, lack of non-medication interventions, and inadequate medication management"; "Mental health

62. Moreover, even though Y.T.D. is unlikely to be removed to a third country, if Respondents do attempt to effectuate a third-country removal, they are likely to do so without providing Y.T.D. mandatory statutory and constitutional protections. *Supra* p. 13 (explaining DHS's July 9, 2025 Third Country Removal policy memorandum setting forth *standard* procedure is to remove non-citizens to third countries in as few as 24 hours without due process protections). As the *D.V.D.* District Court explained, the irreparable harm resulting from third-country removal without sufficient opportunity to apply for fear-based protection "is clear and simple: persecution, torture, and death. It is hard to imagine harm more irreparable." *D.V.D.* 778 F.Supp.3d at 391. The Supreme Court similarly held in a more unfavorable fact pattern involving detainees who are members of a designated foreign terrorist organization that "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *A. A. R. P.*, 145 S. Ct. at 1368. Accordingly, an increasingly long list of courts in this district and throughout the country have held that "removal to a third country without due process … *is* likely to result in irreparable harm" and issued TROs enjoining such removals. *Vaskanyan*, 2025 WL 2014208, at *6 (enjoining removal without protections mandated in the *D.V.D.* injunction). *Supra* p. 15 (discussing *J.R.*, 2025 WL 1810210, at *4; *Nguyen*, 2025 WL 2097979, at *3; *Phan*, 2025 WL 1993735, at *7; *Misirbekov*, 2025 WL 2201470, at *2; *Gomez*, 2025 WL 1695359, at *4). This Court should likewise enjoin Respondents from subjecting Y.T.D. to irreparable harm and stripping the Court of its jurisdiction[5] via an unlawful third-country

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and medical staff did not engage in appropriate treatment planning or multidisciplinary treatment to address detainee needs"; "Suicide prevention and interventions were insufficient due to inconsistent suicide risk assessments, facility related risks, and lack of safety planning"; and "The facility failed to adequately assess the mental health of disciplined detainees before placement in restricted housing." Ex. 12 at 53. DHS's Office of Inspector General itself found "facility staff did not always provide timely action of medical grievances and did not properly record paper grievances." Ex. 13 at 5.

[5] The All Writs Act authorizes courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). In the immigration context, courts have recently invoked the All Writs Act to preserve their jurisdiction over constitutional challenges to lightning-fast deportations. *See, e.g., A.A.R.P.*, 145 S. Ct. at 1369 (noting that the Court "had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter," by ordering their continued presence in the United States until further order of the Court (citing 28 U.S.C. § 1651(a))); *Garcia v. Noem*, No. 8:25-CV-00951-PX, 2025 WL 2062203, at *6–10 (D. Md. July 23, 2025) (enjoining third-country removal proceedings in order to preserve jurisdiction pursuant to the All Writs Act); *Ozturk v. Trump*, 2025 WL 1145250, at *23 (D. Vt. Apr. 18, 2025) (ordering return of detainee from Louisiana to Vermont), stay and mandamus denied sub nom., *Ozturk v. Hyde*, 136 F. 4th 382 (2d Cir. 2025); *Perez v. Noem*, 2025 U.S. Dist. Lexis 113509, at *4–5 (S.D.N.Y. June 13, 2025) (enjoining detainee's transfer outside New York and New Jersey absent further court order).

removal.

III. The Public Interest and Equities Favor Granting Relief

63. The balance of the equities and the public interest strongly favor granting Y.T.D.'s requested relief. These two "merge where, as is the case here, the government is the opposing party." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). First, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (internal citation omitted). In cases implicating removal, "there is a public interest in preventing [non-citizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken*, 556 U.S. at 436. *See also Vaskanyan*, 2025 WL 2014208, at *8 (holding and quoting same). In response, the Government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). That is true not only of Y.T.D.'s continued detention but also of the unlikely but possible prospect of Y.T.D.'s third-country removal in accord with DHS's new third-country removal policies. For example, the *D.V.D.* Court "found it likely that these [third-country] deportations have or will be wrongfully executed … [and] that these circumstances countervail the public's normal and meaningful 'interest in prompt execution.'" 778 F.Supp.3d at 391–92. To boot, Y.T.D.'s "'likelihood of success on the merits [further] lightens [Respondents'] stated interests.'" *Id.*

64. Second, the "public has a strong interest in upholding procedural protections against unlawful detention." *Diaz*, 2025 WL 1676854, at *3. Respondents' failure to adhere to its Fear-based Grant Release Policy as applied to Y.T.D. counsels in favor of granting an injunction.

65. Third, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,'" and that "[s]upervised release programs cost much less by comparison." *Hernandez*, 872 F.3d at 996. *See Phan*, 2025 WL 1993735, at *6 (citing same in granting plaintiff's motion for TRO and preliminary injunction).

66. Lastly, in "comparison to the persecution Petitioner would face, Respondent would suffer little to no harm if Petitioner's Motion were granted." *Misirbekov*, 2025 WL 2201470, at *2. In other words, a "TRO would impose little to no prejudice on the Government, which is free at

any time to execute the removal order by" *lawfully* re-detaining and deporting Y.T.D., whose release, again, could be subject to any appropriate supervisory conditions. *J.R.*, 2025 WL 1810210, at *4.

IV. If Necessary, an *Ex Parte* TRO Is Appropriate

67. Y.T.D.'s undersigned counsel have taken efforts to ensure Respondents are on notice of Y.T.D.'s motion for temporary restraining order, petition for writ of habeas corpus, and other filings. Exhibit 24 (Affidavit of Pirzada Ahmad). Y.T.D.'s counsel are filing this and Y.T.D.'s related submissions electronically in the Eastern District of California, which effectuates service on the U.S. Attorney's Office. Further, Y.T.D.'s counsel emailed copies of Y.T.D.'s file-ready submissions to the U.S Attorney's Office for the Eastern District of California at the addresses of Edward.Olsen@usdoj.gov (Edward Olsen, Chief of Civil Division), Elliot.Wong@usdoj.gov (Elliott Wong), michelle.rodriguez@usdoj.gov (Michelle Rodriguez), and Cheri.Buxbaum@usdoj.gov (Cheri Buxbaum). In that email communication, Y.T.D.'s counsel explained that they will request that the Court set a hearing for as soon as practicably possible. Therefore, Y.T.D. has provided Respondents with "actual" and "[a]ppropriate notice" pursuant to LR 231(a).

68. Nevertheless, the Court may issue an *ex parte* TRO upon movant's showing that "immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard." Fed. R. Civ. P. 65(b)(1). Y.T.D. "has met those requirements by demonstrating through specific facts in the supporting declarations that immediate and irreparable injury would result before full briefing could occur." *J.R.*, 2025 WL 1810210, at *4 (holding *ex parte* TRO is appropriate and necessary because of potential for third-country removal "with minimal notice"). The Court should issue the requested TRO expeditiously even if it finds Y.T.D. has "raised serious questions going to the merits," as opposed to likelihood of success," so long as he establishes "'imminent threat of severe, irreparable harm.'" *Nguyen*, 2025 WL 2097979, at *3 (citing *A.A.R.P.*, 145 S. Ct. at 1369). Such an extraordinary measure is also necessary to ensure preservation of the "Court's jurisdiction." *Id.* (citing *A.A.R.P.*, 145 S. Ct. at 1369).

V. No Security Is Appropriate for an Indigent Petitioner

69. Although Federal Rule of Civil Procedure 65(c) can require a security for a temporary restraining order, a district court "has discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). No security is appropriate where there is no quantifiable harm to the restrained party and where the order is in the public interest. *Save Our Sonoran, Inc v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005); *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). District courts routinely exercise this discretion to require no security in cases brought by indigent or incarcerated people. *See, e.g., Vaskanyan*, 2025 WL 2014208, at *8; *Diaz*, 2025 WL 1676854, at *3. Due to his prolonged detention, Y.T.D. is indigent. Ex. 1 at 3. Accordingly, the Court should not require him to post security.

CONCLUSION

Y.T.D. respectfully requests this Court grant his Motion for a Temporary Restraining Order. In doing so, the Court should:

1) enjoin Respondents' continued detention of Y.T.D., ordering his immediate release—subject to any supervisory conditions the Court deems appropriate;

2) enjoin Respondents from removing Y.T.D. from this District or, at least, removing Y.T.D. via a third-country deportation without providing him and his counsel meaningful notice and opportunity to assert a fear-based claim:

a) a minimum of ten (10) days to raise a fear-based claim for protection prior to removal;

b) if Y.T.D. demonstrates reasonable fear of removal to the third country, Respondents must move to reopen Y.T.D.'s removal proceedings;

c) if Y.T.D. is not found to have demonstrated a reasonable fear of removal to the third country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15) days for Y.T.D. to seek reopening of his immigration proceedings.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242 AND LR 190

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 29th day of August 2025 in Oakland, CA.

/s/ Sean Lai McMahon

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and L.R. 65-1, I hereby certify that on August 29, 2025, this was filed in the Eastern District of California, which effectuates service on the U.S. Attorney's Office.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Counsel for Petitioner