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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Hiren Jagdish PATEL,

Petitioner-Plaintiff,

v.

Sergio ALBARRAN, Acting Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

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

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

Respondents-Defendants.

Case No. 3:25-cv-7667-WHO

**PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR AN EX PARTE TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

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In their opposition, Respondents show why judicial intervention is necessary. Contrary to Respondents' claims, Petitioner is not contesting his underlying removal order and is not subject to mandatory custody. Given that he is beyond the removal period of his case, he is contesting the right of the Immigration and Customs Enforcement (ICE) to re-arrest him, without a pre-deprivation hearing before this Court or other neutral adjudicator, to effectuate his removal, when his removal is not reasonably foreseeable, and when there is no evidence that he is either a danger to the community or a flight risk. Petitioner has already acknowledged his conviction from 2007, for which he received a four-month sentence.[1] Since that date, he has had no other arrests or convictions, and has a strong record of remorse, rehabilitation, employment, family, and community ties. Dkt. 1-1 at Ex. A. He has also complied with the immigration law and prior OSUP and bond conditions for the past thirteen years, and continues to do so today.

The basis for this habeas and threat of detention in his case is real, given that he is under an Order of Supervision (Form I-220B), is scheduled for his next ICE appointment on October 9, 2025,[2] and based on the fact that ICE has refused to provide assurances that it will not re-arrest him. Dkt. 1-1 at 3. The harm in his case from any detention is also clearly documented: in addition to his liberty interests, Petitioner also has documented serious heart conditions (including four coronary stents and coronary bypass surgery as recently as March 2025), Type 2 Diabetes, hypertension, and he recently underwent emergency gallbladder surgery. *Id.* at Ex. C (Request to reschedule ICE appointment filed June 11, 2025); *see generally* Shastri Declaration ISO Reply.

Respondents repeatedly contend that they can re-arrest Petitioner at any time. ICE also

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[1] As a correction to the briefing, Mr. Patel was convicted under §§ 664/288(a) and 664/288.2(b), for attempted violations of both statutes, not of direct violations.

[2] Mr. Patel was unable to attend his September 11, 2025 OSUP check-in due to an unexpected gall bladder infection and surgery. ICE re-scheduled his appointment to October 9, 2025. *See generally* Shastri Declaration ISO Reply; *id.* at Ex. A (Updated OSUP).

continues to arrest people in his same position, including an elderly woman from India with a final order and serious health conditions at her check-in with ICE on September 12, 2025. *See* Shastri Declaration ISO Reply at Ex. B.

This Court should therefore grant a temporary restraining order (TRO) in this case. Notably, Mr. Patel's next appointment of October 9, 2025 is now more than 14 days in the future. Thus, the Court may want to consider extending the TRO beyond the usual 14 day limit, or converting the TRO hearing to a preliminary injunction hearing to avoid the need for Petitioner to return to this Court on the same basis in the future. Petitioner has clearly established a likelihood of success on the merits, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), and, at the very least, serious questions going to the merits coupled with hardships tipping "sharply" in his favor, *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

Contrary to Respondent's assertions, Petitioner seeks a *prohibitory* injunction that merely maintains the status quo, not a mandatory injunction. Opp. at 5. Prohibitory injunctions prevent a party from taking a particular action and "preserve[s] the status quo pending a determination of the action on the merits." *Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 704 (9th Cir. 1988). "The status quo ante litem refers not simply to any situation before the filing of a lawsuit, but instead to the *last uncontested status* which preceded the pending controversy." *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (emphasis added); *see also Al Otro Lado v. Wolf*, 497 F. Supp. 3d 914, 925 (S.D. Cal. 2020). Here, the status quo is Petitioner living at liberty, exercising his right to freedom for the past thirteen years.[3]

Ordering that Petitioner be provided with a pre-deprivation hearing before this Court or other neutral adjudicator prior to any re-detention, *during the pendency of these proceedings*, is

[3] Even if the Court found Petitioner were seeking a mandatory injunction, the record still overwhelmingly weighs in his favor.

well within this Court's authority. *Center for Biological Diversity v. Brennan*, 571 F.Supp.2d 1105 (2007). It would protect Petitioner's rights on a *temporary basis* and ensure he may continue to litigate the merits of his proceedings free from unlawful custody. *Trump v. International Refugee Assistance Project*, 582 U.S. 571, 580 (2017) ("The purpose of…interim equitable relief is not to conclusively determine the rights of the parties…but to balance the equities as the litigation moves forward."). Courts have granted pre-deprivation hearings to similarly situated noncitizens—through preliminary relief.[4] This Court should do the same.

## ARGUMENT

### I. PETITIONER IS "IN CUSTODY."

Respondents wrongly aver that Petitioner is not in custody, Opp. at 7-8, when he is. As Respondents acknowledge, "[a]n individual does not need to be in actual physical custody to seek habeas relief; the 'in custody' requirement may be satisfied where an individual's release from detention is subject to specific conditions or restraints." *Id.* at 7. The custody requirement is satisfied so long as there is a significant restraint on his liberty "not shared by the public

[4] *See also* Shastri Declaration ISO Reply at Ex. C, *Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-JC, Dkt. 14 (C.D. Cal. Aug. 14, 2025); *Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4 (N.D. Cal. July 26, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025); *Galindo Arzate v. Andrews*, 1:25-cv-00942-KES-SKO, 2025 WL 2230521, (E.D. Cal. Aug. 4, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, 2025 WL 2206113 (E.D. Tex. Aug. 3, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025); *Alva v. Kaiser*, No. 25-cv-06676-RFL, 2025 WL 2419262 (N.D. Cal. Aug. 21, 2025); *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB, 2025 WL 2624226 (E.D. Cal. Aug. 21, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255 (E.D. Cal. Sept. 9, 2025); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2458865 (N.D. Cal. Aug. 25, 2025); *Rodriguez Diaz v. Kaiser*, 2025 WL 1676854, (N.D. Cal. June 14, 2025).

generally." *Jones v. Cunningham*, 371 U.S. 236, 239-40 (1963). A parolee is "in custody" because parole restrictions "significantly restrain petitioner's liberty to do those things which in this country free [people] are entitled to do." *Id.* at 243. Similarly, a person released on their own recognizance is also "in custody" due to "the conditions imposed on petitioner as the price of his release." *Hensley v. Municipal Court*, 411 U.S. 345, 348-49 (1973); *see also Dow v. Circuit Court of First Circuit Through Huddy*, 995 F.2d 922, 923 (9th Cir. 1993) (sentence mandating class attendance constitutes custody).

Thus, Petitioner is in custody for purposes of this petition and complaint given the restrictions required by his Order of Supervision. Dkt. 1-1 at Ex. 6 (OSUP).

Respondents also erroneously assert that Petitioner's claim is not "cognizable." Opp. at 7. However, Petitioner's constitutional as-applied claims are cognizable, as numerous courts have found. *See, e.g.*, *Ortega v. Bonnar*, 415 F. Supp. 3d. 963 (N.D. Cal. 2019); *Meza v. Bonnar, et al.*, No. 18-cv-02708, 2018 WL 2151877; *Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277 (N.D. Cal. Sept. 14, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. Apr. 14, 2021); *Rodriguez Diaz v. Kaiser*, 2025 WL 1676854, (N.D. Cal. June 14, 2025) (prohibiting the government from re-detaining petitioner without notice and a hearing before a neutral adjudicator); *see also* Shastri Declaration ISO Reply at Ex. D (*Yuhua Yang v. Kaiser*, et al., 2:25-cv-02205-DAD-AC, Dkt. 16 (E.D. Cal. Aug. 21, 2025)) (same); *id.* at Ex. E (*T.P.S. v. Kaiser, et al.*, 3:25-cv-05428, Dkt. 4 (N.D. Cal. June 30, 2025)) (same); *id.* at Ex. F (*Zhiyu Yang v. Kaiser, et al.*, 25-cv-06323-JD, Dkt. 10 (N.D. Cal. July 30, 2025)); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (same); *M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL (N.D. Cal. July 17, 2025) (same); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025) (same). This Court should find the same.[5]

## II. PETITIONER'S CLAIMS ARE RIPE.

Respondents claim Petitioner's fear is "speculative," yet they never state they do not

[5] Petitioner's claim is thus also brought to the correct court, given that his custody determination is made by the San Francisco ICE office, which is within the venue of this Court.

intend to re-arrest him at his next ICE check-in, which is October 9, 2025. *See generally* Shastri Declaration ISO Reply. Prior to filing this habeas, Petitioner's counsel contacted Respondents, and did not receive an assurance that he would not be arrested. Dkt. 1-1. His fear is also grounded in public statements made by ICE, numerous reports, DHS policies, and more than a dozen cases cited in his motion where similarly situated noncitizens were re-arrested for no lawful reason. Most recently, on September 12, 2025, ICE arrested an elderly Indian national with a final order, who had been attending her ICE check-ins on an Order of Supervision for more than 13 years. *See* Shastri Declaration ISO Reply at Ex. B. Respondents are also actively following its policy to meet daily arrest quotas and to remove noncitizens to third countries. Dkt. 1 at ¶¶ 40-41.

Respondents also in this case assert they can re-arrest him at any time. Opp. 12-17. Courts have rejected identical ripeness arguments made elsewhere. *See, e.g., Ortega*, 415 F. Supp. 3d at 969; *Jorge M.F.*, 534 F. Supp. 3d at 1055-56. Just like in *Ortega* and *Jorge M.F.*, Respondents' conduct here "implies that the government may act on its presumed authority to re-arrest Petitioner at any moment" because they have refused to provide any assurance that he will not be re-arrested. *Jorge M.F.*, 534 F. Supp. 3d at 1055-56.

Respondents state Petitioner would be able to challenge his re-incarceration if he were re-arrested. Opp. at 15. But if Petitioner were prohibited from bringing his claim until after he is detained, his claim would evade judicial review. The only way in which he can seek review of whether any revocation of his release is lawful is prior to any arrest, and "[t]hat right can only be protected through a challenge brought prior to [her] re-detention." *Jorge M.F.*, 534 F. Supp. 3d. at 1056 (citing *Ortega*, 415 F. Supp. 3d at 969).

ICE must therefore be required to establish that a change in material circumstances warrants his re-confinement prior to any re-arrest. *See Burch*, 494 U.S. at 127 (the Constitution generally "requires some kind of a hearing *before* the State deprives a person of liberty or property."). Like in *Ortega*, *Ortiz Vargas*, *Jorge M.F.*, *Rodríguez Diaz*, *T.P.S.*, *Yang*, and others—where injunctive relief was granted—if Petitioner is re-arrested, he will already have suffered the injury he seeks to avoid.

## III. THE COURT HAS JURISDICTION TO REVIEW PETITIONER'S CLAIMS.

In *D.V.D. v. DHS*, the court addressed identical jurisdictional arguments advanced by the government in opposition to plaintiffs' custody-related claims and dismissed them, concluding that it had jurisdiction. 778 F. Supp. 3d 355, 370-78 (D. Ma. Apr. 18, 2025). Though the Supreme Court subsequently stayed the court's nationwide injunction, it did not disturb the court's jurisdictional analysis. *DHS, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025). This Court should therefore follow *D.V.D.*'s instructive reasoning.

A. **Section 1252(g) does not apply.**

Section 1252(g) applies only to three discrete actions: a "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. Am.-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez (Rodriguez IV)*, 583 U.S. 281, 294 (2018). The Ninth Circuit has consistently held that "§1252(g) should be interpreted narrowly." *Sied v. Nielsen*, 2018 WL 1142202, at *21 (N.D. Cal. Mar. 2, 2018) (citing *U.S. v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc)). "Section 1252(g) does not divest courts of jurisdiction over cases that do not address prosecutorial discretion and address a purely legal question, which does not challenge the Attorney General's discretionary authority." *Id.*

Contrary to Respondents' argument, Petitioner does not contest the execution of his removal order. He has requested an administrative stay of removal from ICE to allow him the opportunity to complete a pending criminal court appeal, to recover from serious medical conditions before his removal is executed, and to provide necessary support to his United States citizen wife, son, and parents. 8 C.F.R. § 241.6. *See* Dkt. 1-1 at Exs. A, B, C; *see also generally* Shastri Declaration ISO Reply. That request for a stay of removal remains pending today. If the stay were granted, the outcome would be a delay in the execution of Petitioner's removal order, not a new immigration court case. *Cf.* Opp. At 10.

However, if that stay were denied and he were required to leave the United States, he merely requests that he be provided notice and a hearing before a neutral decisionmaker regarding whether his re-arrest and re-incarceration would be justified. Dkt. 1 at 21. These claims challenge only his re-detention, and such claims are not barred by § 1252(g). *See* Shastri Decl. ISO Reply

at Ex. D (*Yuhua Yang* at 5-6); *see also Escalante*, 2025 WL 2206113, at *2-3; *Garcia*, 2025 WL 1927596, at *1 n.1 ("Petitioner's claim is not a challenge to a removal order but rather, that his redetention is unconstitutional. As such, § 1252(g) is inapplicable[.]"); *Nak Kim Cheuen v. Marin*, No. 17-cv-01898-CJC-GJS, 2018 WL 1941756, at *4 (C.D. Cal. Mar. 26, 2018) (same).

B. **Neither § 1252(a)(5) nor 1252(b)(9) apply.**

Because Mr. Patel is not challenging the IJ's determination that he is removable or his removal order to India, Respondents' arguments that §§ 1252(a)(5) and 1252(b)(9) bar review fall flat.

In the REAL ID Act of 2005, Congress amended the INA to limit the ways by which an individual might challenge his order of removal. *Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007) (citing §1252(a)(5)). In turn, §1252(b)(9) limits the forum for those challenges to courts of appeals. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016). Actions that do not challenge final orders of removal are not subject to this channeling scheme. *J.E.F.M.*, 837 F.3d at 1032. "[A] suit brought against immigration authorities is not *per se* a challenge to a removal order." *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011).

By its terms, §1252(a)(5) only bars challenges to "an order of removal." It "does not eliminate the ability of a court to review claims that are 'independent of challenges to removal orders.'" *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012) (citation omitted). Petitioner challenges ICE's intention to re-arrest and re-incarcerate him without first providing a constitutionally compliant hearing before a neutral adjudicator, this Court. This Court's inquiry therefore has nothing to do with his removal order. *See also Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (challenge to DHS's attempts, outside of removal proceedings, to remove petitioner to a third country not barred by §1252(a)(5)).

Similarly, §1252(b)(9) does not bar review. In *Rodriguez IV*, the Supreme Court held that §1252(b)(9) did not bar review where the following three facts were present: (1) the noncitizens were not asking for review of a removal order; (2) they were not challenging the decision to detain them in the first instance, or to seek removal to the country where they were ordered removed; and (3) they were not challenging any part of the process by which their removability had been

or would be determined. 138 S. Ct. at 841. All three facts are likewise true here. Therefore, §1252(b)(9) does not bar review.

## IV. PETITIONER MEETS THE STANDARDS FOR INJUNCTIVE RELIEF.

### A. Petitioner has established a likelihood of success or, at the very least, raised serious questions.

Respondents repeatedly state they can re-arrest Petitioner at any moment. Opp. 12-17. They even claim his custody is "mandatory," when it is not. *Id.* at 5. More than five years have passed since the ninety-day removal period ran to zero. *Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) ("The removal period begins on the date the Order of Removal becomes administrative[ly] final, 8 U.S.C. §1231(a)(1)(B)(i)…the statute contains no provisions for pausing, reinitiating, or refreshing the removal period after the 90-day clock runs to zero."). This is precisely why Petitioner sought this Court's intervention. Not only will Respondents misinterpret the law, but they will also disregard it completely.

### B. Petitioner has a weighty liberty interest.

As an individual in this country, Petitioner has due process rights, including a protected liberty interest in his supervised release. This interest is not diminished by virtue of the supervised nature of his release, *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on OSUPs), or by the fact that he is subject to an order of removal, *see, e.g.*, *Hoac*, 2025 WL 1993771; *Phan*, 2025 WL 1993735; *Zakzouk,* 25-CV-06254 (RFL), 2025 WL 2097470 (N.D. Cal. Jul. 26, 2025); *see also* Shastri Decl. ISO Reply at Ex. F (*Zhiyu Yang*).

Moreover, the idea that individuals released from imprisonment—even erroneously—are entitled to hearings prior to their re-incarceration is basic to our law. *See e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997), *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973), and *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982). It applies to prisoners released on parole, probation, and even due to judicial error. *Id.* It rests on the principle that people given freedom should not have it taken away without a pre-deprivation hearing where they can raise any legal objection to re-imprisonment. Dkt. 2 at 10-12 (even person whose freedom is lawfully revocable has a liberty

interest entitling him to due process before re-incarceration).

Here, ICE's regulatory authority to unilaterally re-detain Petitioner 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 Young*, 520 U.S. at 146-47; *Gagnon*, 411 U.S. at 781-82; *Morrissey*, 408 U.S. at 482-483; *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *3. To protect that interest, on the particular facts of Petitioner's case, due process requires notice and a constitutionally compliant hearing *prior to any re-detention.*

C. **The risk of erroneous deprivation is high because Respondents assert they can arrest Petitioner for any reason, and the post-deprivation framework is insufficient to protect his constitutional rights.**

Under the process Respondents maintain is lawful—which affords Petitioner no meaningful process whatsoever—ICE can re-detain him at any point. Opp. at 12-17. "This framework 'provides no opportunity to have a neutral party evaluate ICE's unilateral determination of the contested facts.'" *See* Shastri Decl. ISO Reply at Ex. D (*Yang* at 12) (citing *Guillermo M.R.*, -- F. Supp. 3d. --, 2025 WL 1983677, at *7). Thus, the regulations are insufficient to protect his due process rights.

After re-arrest, ICE again makes its own, one-sided custody determination and can decide whether the agency wants to hold Petitioner. 8 C.F.R. § 241.4(e)-(f). While Respondents cite 8 C.F.R. § 241.4 to claim that this regulation provides Petitioner the opportunity to submit evidence to show he will not be removed in the reasonably foreseeable future, Opp. at 2, 16, Respondents fail to note that the regulations specify that noncitizens can only submit such evidence or information in the context of an interview promptly only *after* their re-detention.

Nevertheless, Petitioner has provided such evidence and information through this motion for TRO and the underlying petition, which is the only means by which he can seek meaningful review in his circumstances.

D. **ICE's interest in re-incarcerating Petitioner without a hearing is nonexistent, and the burden on Respondents is far outweighed by Petitioner's interests.**

Petitioner seeks narrow relief—if ICE wishes to re-arrest him, ICE must demonstrate that circumstances have materially changed since his release, such that detention is warranted before any arrest. Respondents' argument that no such hearing is required disregards the principle that

civil detention comports with due process only when a "special justification" outweighs the "*individual's* constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (emphasis added). It also runs counter to the weight of case law holding that ICE must demonstrate that a noncitizen's re-incarceration is justified before re-arresting them. *See* Dkt. 2 at 10 (collecting cases).[6]

Respondents do not contend that ICE's interest in detaining Petitioner has increased. Respondents implicitly concede he has not violated the terms of his OSUP, and they do not assert that there has been any material change in circumstances. Opp. at 8. Respondents also ignore that Petitioner has appeared for check-ins with ICE and each time ICE determined that detention was not warranted. *See* Dkt. 1-1 at 2-3; *id.* at Ex. D; *see also generally* Shastri Declaration ISO Reply; *id.* at Ex. A.

Respondents' interest in re-incarcerating Petitioner is even further reduced because removal is clearly not reasonably foreseeable. At no point do Respondents claim to have a travel document that would facilitate his removal.

Finally, the procedure that Petitioner seeks – review by this Court or another neutral adjudicator - is standard for the government and has been granted in many recent cases. It does not cause additional fiscal and administrative hurdles, and Respondents have not suggested otherwise. It would, however, provide Petitioner with safeguards to ensure his due process rights are protected. Permitting Petitioner to remain free from custody until ICE assesses and demonstrates to a neutral adjudicator, this Court, that his re-incarceration is justified is far *less* costly and burdensome for the government than detaining her. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

Such a hearing is much more likely to produce accurate determinations regarding the reasonable foreseeability of his removal, and whether he otherwise poses a danger or flight risk.

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[6] *Rodriguez Diaz*, 2025 WL 1676854; *see also* Shastri Declaration ISO Reply at Ex. D *(Yuhua Yang); id.* at Ex. G, *Sun v. Santacruz Jr.*, et al, 5:25-cv-02198-JLS-JC, Dkt. 13 (C.D. Cal. Aug. 26, 2025); *Doe*, -- F. Supp. 3d --, 2025 WL 691664, *8; *Ortega*, No. 25-CV-05259-JST, 2025 WL 1771438; *Pinchi*, 2025 WL 1853763, at *1, *3 (N.D. Cal. July 4, 2025); *Singh*, 2025 WL 1918679; *Garcia*, 2025 WL 1927596, at *6; *Phan*, 2025 WL 1993735; *Hoac*, 2025 WL 1993771; *Guillermo*, --- F.Supp.3d. ---, 2025 WL 1983677, at *1.

*See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (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). This also would not diminish the Respondents' interest in the "enforcement of the United States' immigration laws." Opp.19.

Because immigration detention is civil, it can have no punitive purpose. Respondents' only interests in holding an individual in immigration detention can be to prevent danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 690. Respondents have not claimed that Petitioner is a danger or a flight risk. They have also not claimed to have travel documents to India. Even if DHS were to obtain a travel document, Petitioner does *not* need to be detained to effectuate his removal.

Thus, Petitioner is likely to succeed (or at least raises serious questions) on his claims presented in the TRO motion.

## V. PETITIONER IS LIKELY TO SUFFER IRREPARABLE HARM IN THE ABSENCE OF A TRO AND THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST TIPS SHARPLY IN his FAVOR.

The likelihood of immediate irreparable harm is high, as shown by the ever-increasing number of cases dealing with DHS's decision to arrest a noncitizen for no other reason than that it can. Because Petitioner is likely to succeed on the merits of his claim (or has at least raised serious questions), and that his claim is constitutional in nature, he has sufficiently demonstrated that he will suffer harm absent immediate injunctive relief. *See, e.g.*, *Pinchi*, 2025 WL 1853763, at *3; *Garcia*, 2025 WL 1676855, at *3; *Guillermo*, 2025 WL 1983677, at *11.

Here, Respondents ignore the concrete harms custody inflicts, and the specific harms Petitioner would suffer. *See Hernandez*, 872 F.3d at 995 ("noting irreparable harms imposed on anyone subject to immigration detention."). Clearly, absent a TRO, he will suffer irreparable harm in the form of unnecessary and possibly indefinite detention. Petitioner has also shown that he suffers from well-documented severe heart and other medical conditions that would render any detention life-threatening. Dkt. 1-1 at Exs. A, B, C.

"A plaintiff's likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors decisively in his favor." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). If a TRO were not granted, Respondents would effectively be granted permission to detain Petitioner in violation of due process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Id.* (quoting *Melendres*, 695 F.3d at 1002).

Respondents do not challenge Petitioner's argument that the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Nor will Respondents be injured by an order requiring them to provide a pre-deprivation hearing. Such a hearing is constitutionally mandated under the circumstances, and the government is not injured by being held to the Constitution. *Id.*; *Zepeda*, 753 F.2d at 727.

**CONCLUSION**

This Court should therefore grant Petitioner a TRO until and through his next ICE appointment (or if deemed appropriate and efficient, a preliminary injunction). Petitioner requests this Court to order that, prior to any re-arrest during the pendency of these proceedings, DHS must provide a pre-deprivation hearing to Petitioner before this Court or another neutral arbiter. Due to his heart condition and fragile health, he also asks this Court to have his conditions on OSUP remain the same as they are currently, without any additional conditions such as an ankle monitor.

Dated: September 19, 2025

Respectfully submitted,

/s/ *Avantika Shastri*
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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Petitioner, certifies that this reply brief is 15 pages or less, which complies with the page limit set by the Court's local rules.

Executed this 19th day of September 2025.

*/s/ Avantika Shastri*
Avantika Shastri