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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12 SACRAMENTO DIVISION

13 Harmeet Singh KHAMBA a.k.a. Gurjit SINGH,

14 Petitioner-Plaintiff,

15 v.

16 Sergio ALBARRAN, Acting Field Office
17 Director of San Francisco Office of Detention
18 and Removal, U.S. Immigrations and Customs
19 Enforcement; U.S. Department of Homeland
20 Security; Todd M. LYONS, Acting Director,
21 Immigration and Customs Enforcement, U.S.
22 Department of Homeland Security; Kristi
23 NOEM, Secretary, U.S. Department of
24 Homeland Security; and Pamela BONDI,
25 Attorney General of the United States; Minga
26 WOFFORD, Facility Administrator at Mesa
27 Verde Detention Center, Bakersfield, California;

28 Respondents-Defendants.

Case No. 1:25-cv-01227-SKO

**EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

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

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

1
2 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local
3 rules of this Court, Petitioner hereby moves this Court for an order that Respondents-Defendants
4 U.S. Department of Homeland Security (DHS), United States Immigration and Customs
5 Enforcement (ICE), Pam Bondi, in her official capacity as the U.S. Attorney General, and Minga
6 Wofford, in her official capacity as Facility Administrator at Mesa Verde, Bakersfield, California,
7 be enjoined from continuing to incarcerate Petitioner, and, following his release, be enjoined from
8 re-arresting him without first providing him with a hearing before a neutral adjudicator, prior to
9 any future re-arrest, to determine whether circumstances have materially changed such that his
10 re-incarceration would be justified because (1) there is clear and convincing evidence establishing
11 that he is a danger to the community or a flight risk and (2) his removal from the United States is
12 reasonably foreseeable (related to Claims 1-6 in the petition and complaint). Petitioner
13 additionally seeks to enjoin Respondents from removing him from the United States to any third
14 country to which he does not have a removal order (i.e., any country other than India) without
15 first providing him with constitutionally compliant procedures (related to Claim 7 in the petition
16 and complaint).

17 The reasons in support of this Motion are set forth in the accompanying Memorandum
18 of Points and Authorities. This Motion is based on the Declaration of Johnny Sinodis with
19 Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Complaint for
20 Declaratory and Injunctive Relief, as well as his Ex-Parte Motion for Temporary Restraining
21 Order. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that
22 he warrants a temporary restraining order due to his weighty liberty interest under the Due
23 Process Clause of the Fifth Amendment in remedying his unlawful incarceration, where that
24 detention was imposed absent a pre-deprivation due process hearing, and in preventing his
25 summary removal to a third country—i.e., any country other than India—without first providing
26 him with notice and an opportunity to apply for fear-based relief as to that third country.

27 WHEREFORE, Petitioner prays that this Court grant his request for a temporary
28 restraining order requiring ICE to immediately release him from custody (to enjoin the unlawful

1 ongoing detention), enjoining Respondents from re-detaining him before providing him a hearing
2 before a neutral adjudicator prior to any re-detention, and enjoining Respondents from removing
3 him to any third country without first providing him with constitutionally compliant procedures.
4 The only mechanism to ensure that he is not continuously unlawfully detained in violation of his
5 due process rights is an ex parte temporary restraining order from this Court.

6 Dated: September 19, 2025

Respectfully Submitted

7 /s/ Johnny Sinodis

8 Johnny Sinodis

9 Attorney for Petitioner

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1 **I. INTRODUCTION**

2 Petitioner, Mr. Harmeet Singh Khamba a.k.a. Gurjit Singh, through undersigned counsel,
3 hereby files this motion for an ex parte temporary restraining order (TRO) and preliminary
4 injunction (PI) to enjoin the U.S. Department of Homeland Security (DHS), U.S. Immigration
5 and Customs Enforcement (ICE) from continuing to incarcerate him, from subsequently re-
6 arresting him unless and until he is afforded notice and a hearing before a neutral decisionmaker
7 on the question of whether his release should be revoked, and from removing him to any third
8 country without first providing him with constitutionally compliant procedures.

9 Petitioner is a citizen and national of India who is married to a U.S. citizen. Together, he
10 and his wife live with their U.S. citizen children in Carmel, California, where Petitioner also runs
11 his own business. In 2005, the Board of Immigration Appeals (BIA) ordered Petitioner removed
12 to India (and India only), but Respondents have not been able to execute that removal order, and
13 there is no credible evidence that they will ever be able to execute it. *See* Dkt. 1-1, Declaration of
14 Johnny Sinodis (Sinodis Decl.) at Ex. C (BIA Order). For that reason, in 2007, ICE issued
15 Petitioner a Form I-220B, Order of Supervision (OSUP), which permits him to legally remain
16 living and working in the United States. *Id.* at Ex. A (OSUP). In issuing an OSUP, ICE had to
17 determine that he was neither a danger nor a flight risk, as required by binding regulations.

18 Petitioner had been reporting to ICE on a regular basis pursuant to his OSUP, until ICE
19 suddenly and unlawfully detained him on August 29, 2025, without advance notice or an
20 opportunity to be heard as to why his incarceration is not justified. *Id.* at Ex. D (Declaration of
21 Michael Mehr). Circumstances have not materially changed since 2007, as Petitioner is still not
22 a danger or a flight risk, and his removal to India is still not reasonably foreseeable. His
23 incarceration is therefore unlawful. Based on these circumstances, he raises numerous ways in
24 which his ongoing detention must be enjoined. He further requests an injunction against removal
25 to a third country without due process.

26 When a noncitizen like Petitioner is released from custody pursuant to an OSUP because
27 removal to their country of origin is not possible, their re-detention is limited by regulation,
28 statute, and the Constitution. The basic principle that individuals placed at liberty are entitled to

1 process before the government imprisons them has particular force here, where Petitioner's
2 detention was *already* found to be unnecessary—by ICE—to prevent flight or protect the
3 community, as evidenced by ICE's decision to issue him an OSUP, and no circumstances have
4 changed that would justify his arrest. Petitioner must therefore be released from confinement
5 because he was not provided notice and a hearing before a neutral adjudicator prior to his arrest.

6 Furthermore, following his release, and *prior to any re-arrest*, Petitioner must be provided
7 notice and a hearing before a neutral arbiter where ICE bears the burden of justifying that his re-
8 incarceration is required because clear and convincing evidence exists to demonstrate that (1) he
9 is a flight risk or a danger to the community and (2) his removal is reasonably foreseeable. During
10 any such hearing, he must be afforded the opportunity to present arguments as to why he should
11 not be re-arrested and re-incarcerated, and the neutral arbiter must consider whether, in lieu of
12 detention, alternatives to detention exist to mitigate any risk established by ICE.

13 Petitioner meets the standard for a TRO. He and his family will continue to suffer
14 immediate and irreparable harm stemming from his unlawful arrest absent an order from this
15 Court ordering ICE to release him immediately and enjoining ICE from re-arresting him unless
16 and until he receives a hearing before a neutral arbiter where the government must bear the burden
17 by clear and convincing evidence to show that (1) he is a flight risk or danger to the community
18 and (2) his removal is reasonably foreseeable. He would also suffer immediate and irreparable
19 harm if removed to a third country where his life could be in danger without first being provided
20 with constitutionally compliant procedures providing him adequate notice and an opportunity to
21 demonstrate if his life or safety is in danger or he stands a high risk of persecution or torture.
22 Because holding federal agencies accountable to constitutional demands is in the public interest,
23 the balance of equities and public interest are also strongly in his favor.

24 **II. STATEMENT OF FACTS AND CASE**

25 Petitioner is a citizen and national of India who entered the United States in 1994 on a
26 visitor's visa. Sinodis Decl. at Ex. D (Declaration of Michael Mehr). He came to the U.S. because
27 his family suffered heinous persecution and torture based on their religion, ethnicity, political
28 opinion, and membership in a particular social group. Petitioner's brother had been killed for his

1 political activities, and Petitioner had been arrested twice in India.

2 Subsequently, through incorrect advice of his prior counsel, Petitioner applied for asylum
3 in 1998 using another name rather than his birth name. On September 13, 1999, an Immigration
4 Judge (IJ) denied his application but granted him voluntary departure. *Id.* at Ex. B (IJ Decision).
5 The BIA subsequently affirmed the IJ on March 28, 2003, and Petitioner filed a petition for review
6 with the Ninth Circuit. The Ninth Circuit remanded Petitioner's case and, on remand, the BIA
7 affirmed the IJ again on May 16, 2005. *Id.* at Ex. C (BIA Decision). Thereafter, because ICE
8 could not effect Petitioner's removal from the United States to India, ICE issued Petitioner an
9 OSUP, with which he has complied since 2007. *Id.* at Ex. A (OSUP). The OSUP requires him to
10 attend regular check in appointments at the ICE San Francisco Office and permits him to apply
11 for work authorization which was regularly applied for and granted. 8 C.F.R. § 241.5.


12 For the past eighteen years, Petitioner has been living at liberty, during which time he has
13 been with his family—including his U.S. citizen wife and children, grieving the loss of his son—
14 while complying with the terms of his OSUP and starting a successful business. During his more
15 than three-decade residence in the United States, Petitioner has only been arrested once for
16 disturbing the peace, an infraction, in 1994.

17 On information and belief, ICE has never been able to obtain a travel document from India
18 enabling the agency to physically remove Petitioner. *Id.* at Ex. D (Declaration of Michael Mehr).

19 On August 5, 2025, Petitioner attended a check in appointment at the ICE San Jose sub-
20 office where he was given an ankle monitor to always wear, without being given any reason why
21 he needed electronic monitoring. *Id.* He was then told to appear in person for an appointment on
22 August 20, which he did. *Id.* Nine days later, on August 29, ICE appeared at Petitioner's business
23 in Carmel, California, and arrested him with no notice or hearing and absent any change in
24 circumstances. To date, Petitioner has not been provided any post-deprivation interview, under 8
25 C.F.R. § 241.13, and, on information and belief, his OSUP remains active.

26 ICE transferred Petitioner to the Mesa Verde Detention Center where he remains detained.
27 He has not been provided a due process hearing, and his prolonged and potentially indefinite
28 detention is not constitutional, given that his removal to India, the only country to which he has

1 been ordered removed, is not reasonably foreseeable.

2 Petitioner's U.S. citizen wife has suffered for years with mental health challenges. *Id.* at
3 Ex. H (Psychological Evaluation). Last year she and Petitioner lost a twenty-year-old child in a
4 tragic motorcycle accident. *Id.* Since then, Petitioner's wife has had a severe mental health
5 collapse including suicidal ideation. In a psychological evaluation, she was diagnosed with Major
6 Depressive Disorder, Severe, Panic Disorder and other psychiatric disorders. *Id.* The psychologist
7 stated that if she lost her husband she would deteriorate and likely re-experience suicidal ideation.
8 *Id.* His wife's physician states, since his arrest, she "is depressed with severe heart pain." *Id.* at
9 Ex. I (Letter of Dr.  M.D.).

10 Petitioner has filed a motion to reopen removal proceedings with the BIA because he will
11 be eligible for adjustment of status once his U.S. citizen wife's visa petition is approved. *Id.* at
12 Ex. F (Motion to Reopen Receipt Notice); *id.* at Ex. G (Motion to Reopen). Petitioner also filed
13 a motion for a stay of removal with the BIA. Pursuant to the BIA's policy, the BIA will only
14 adjudicate a motion for stay if ICE confirms that it intends to imminently remove the
15 noncitizen. *See* BIA Practice Manual Ch. 6.3(c)(2)(A)-(B).¹ Here, ICE informed the BIA that it
16 has no plans to remove Petitioner, and the BIA relayed that information to Petitioner's other
17 counsel, Michael Mehr. Sinodis Decl. at Ex. D (Declaration of Michael Mehr).²

18 On information and belief, on January 25, 2025, officials in the new Trump administration
19 directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office
20 was instructed to make seventy-five arrests per day.³ Multiple credible reports demonstrate that,
21 in recent weeks and months, countless noncitizens across the country have been incarcerated or
22 re-incarcerated by ICE.⁴ ICE has engaged in highly publicized arrests of individuals who

23 _____
¹ Available at <https://www.justice.gov/eoir/reference-materials/bia/chapter-6/3> (accessed Sept. 14, 2025).

24 ² Petitioner also attempted to file a Motion for Stay directly with ICE, but they would not even accept it for filing.
25 *Id.* When asked when they intended to remove Petitioner, they refused to give his other attorney that information and
26 never answered the question. *Id.*

27 ³ *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (Jan. 26, 2025), available
28 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

⁴ *See supra* n.2; "ICE arrests at Sacramento immigration courts raises fear among immigrant community," KCRA
(June 3, 2025), <https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405>; "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025),
<https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> ("The Rapid Response Network, an
immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision

1 presented no flight risk or danger, often with no prior notice that anything regarding their status
2 was amiss or problematic, whisking them away to faraway detention centers without warning.⁵

3 Decisions issued by other courts in this District and the Northern and Eastern Districts of
4 California further corroborate that ICE is re-arresting and re-incarcerating individuals who are
5 not flight risks or dangers to the community, including when their removals from the United States
6 are not reasonably foreseeable.⁶

7 Petitioner is also at risk of being unlawfully removed to a third country without
8 constitutionally adequate notice and a meaningful opportunity to apply for fear-based protection,
9 including protection under the Convention Against Torture (CAT), in violation of the INA,
10 binding international treaty, and due process. Currently, DHS has a policy of removing or seeking
11 to remove individuals to third countries *without* first providing adequate notice of third country

12
13 Appearance Program – for what are usually routine appointments to check on their immigration status. But the
14 immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and
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16 3-year-old child, in San Bernardino, advocates say,” San Bernardino Chronicle (June 5, 2025),
17 <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>; “Cincinnati high
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19 <https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.

20 ⁵ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
21 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
22 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University
23 PhD student detained by federal agents,” CNN (Mar. 28, 2025), [https://www.cnn.com/2025/03/27/us/rumeyssa-ozturk-](https://www.cnn.com/2025/03/27/us/rumeyssa-ozturk-detained-what-we-know/index.html)
24 [detained-what-we-know/index.html](https://www.cnn.com/2025/03/27/us/rumeyssa-ozturk-detained-what-we-know/index.html) (Rumeyssa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney
25 & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico
26 (Mar. 19, 2025), available at [https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)
27 [student-00239754](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754) (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

28 ⁶ See, e.g., *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-JC, Dkt. 14 (C.D. Cal. Aug. 14, 2025) (“The
only changed circumstance the government cites is the reopening of Petitioner’s Ninth Circuit case”); *Zakzouk*, No.
25-CV-06254 (RFL), 2025 WL 2097470, at *2 (“Although Petitioner-Plaintiff informed the ICE officer that she has
no right to return to either country because she is stateless, the officer told Petitioner-Plaintiff that
‘things are different now.’”); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-
01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, -
-- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal.
June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*,
No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 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); *Doe v. Andrews*, No. 1:25-cv-00506-SAB-HC, 2025 WL 1856591 (E.D.
Cal. June 26, 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 2420390 (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*, No. 3:25-cv-05071-TLT, Dkt. 25 (Sept. 16,
2025); *Yang v. Kaiser, et al.*, 2:25-cv-02205-DAD-AC, Dkt. 16 (E.D. Cal. Aug. 21, 2025); *Sun v. Santacruz Jr., et*
al., 5:25-cv-02198-JLS-JC, Dkt. 13 (C.D. Cal. Aug. 26, 2025).

1 removal, or any meaningful opportunity to contest that removal if the individual has a fear of
 2 persecution or torture in that country. *Id.* at Ex. J (DHS Policy Regarding Third Country
 3 Removal).⁷ Intervention from this Court is therefore required.

4 **III. LEGAL STANDARD**

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

15 **IV. ARGUMENT**

16 **A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER**

17 A TRO should be issued if “immediate and irreparable injury, loss, or irreversible damage
 18 will result” in the absence of an order. Fed. R. Civ. P. 65(b). TROs prevent irreparable harm
 19 before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of*
 20 *Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439
 21 (1974). Petitioner is likely to succeed on the merits of his claims or, at a minimum, has raised
 22 serious questions as to the merits and shown that the balance of equities tips sharply in his favor.

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

26 Petitioner is likely to succeed on his claim that, in his particular circumstances, the Due

27 ⁷ Courts have also struck down these unlawful efforts. *See, e.g., T.M. v. Andrews*, No. 2:25-CV-08208, ECF No. 34
 28 (C.D. Cal. Sep. 12, 2025); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June
 30, 2025); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025);
Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288 (W.D. Wash. August 21, 2025); *Phan v. Beccerra*, No.
 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D. Cal. July 16, 2025).

1 Process Clause prevents Respondents from continuing to detain him because he cannot be
2 deported to India, thereby rendering his confinement indefinite.

3 Following a final order of removal, ICE is directed by statute to detain an individual for
4 ninety days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety-day period, also
5 known as “the removal period,” generally commences as soon as a removal order becomes
6 administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B). If ICE fails to effect removal
7 during the ninety-day period, the law requires ICE to release the individual under conditions of
8 supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed
9 within the removal period, the alien, pending removal, shall be subject to supervision.”). Limited
10 exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond ninety days if
11 the individual was ordered removed on criminal grounds or is determined to pose a danger or
12 flight risk. 8 U.S.C. § 1231(a)(6). However, ICE’s authority to detain an individual beyond the
13 removal period under such circumstances is not boundless.⁸ Rather, it is constrained by the
14 constitutional requirement that detention “bear a reasonable relationship to the purpose for which
15 the individual [was] committed.” *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the
16 post-final-order detention statute is to effectuate removal (and not to be punitive), detention bears
17 no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

18 The Supreme Court has addressed the statute’s silence regarding the limits on post-final
19 order detention and has definitively held that such detention has the potential to be indefinite and
20 thus unconstitutional. The Supreme Court held that post-final order detention is only authorized
21 for a “period reasonably necessary to secure removal,” a period that the Court determined to be
22 presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee provides
23 “good reason” to believe that their removal is not significantly likely in the reasonably foreseeable
24 future, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701.

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26 ⁸ The removal period begins on the latest of the following: (1) the date the removal order becomes administratively
27 final; (2) if the removal order is judicially reviewed and if a court orders a stay of removal, the date of the court’s
28 final order; and (3) if the alien is detained or confined (except under an immigration process), the date the alien is released. 8 U.S.C. § 1231(a)(B). A case becomes administratively final once the removal order ultimately affirmed. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). Here, Petitioner’s removal period began on May 16, 2005, when the BIA affirmed the IJ a second time. Sinodis Dec. at Ex. C (BIA Decision).

1 If the government cannot do so, the individual must be released. In light of the Supreme Court
2 limitations imposed on the statutory scheme, the government updated the regulations to be
3 consistent with those constitutionally required limitations on indefinite detention. Under those
4 regulations, detainees are entitled to release even before six months of detention, as long as
5 removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after
6 ninety days where removal not reasonably foreseeable). Moreover, under the Supreme Court’s
7 constitutional limitations on indefinite detention, as the period of post-final-order detention
8 grows, what counts as “reasonably foreseeable” must conversely shrink. *Zadvydas* at 701.

9 Here, Petitioner’s removal order became final in 2006 and ICE issued him an OSUP in
10 2007 because it could not remove him to India. To date, ICE still does not have a travel document
11 from India. Petitioner’s detention is therefore unconstitutional because it is indefinite.
12 Respondents have acknowledged in cases with similarly situated petitioners that they did not
13 obtain travel documents before arresting the noncitizen. *See, e.g., Hoac*, No. 2:25-CV-01740-DC-
14 JDP, 2025 WL 1993771, at *1 (government had no travel document for petitioner); *Phan*, No.
15 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *1 (same); *Yang*, 2:25-cv-02205-DAD-AC, Dkt.
16 16. Because Petitioner’s removal is not reasonably foreseeable, and the government failed to
17 provide him with notice, evidence, or an opportunity to be heard on this issue before arbitrarily
18 arresting him. His continued detention without any reasonably foreseeable end point is thus
19 unconstitutionally prolonged in violation of clear Supreme Court precedent. *Id.* This is
20 particularly true where, as here, Respondents have no intention to remove him. Sinodis Decl. at
21 Ex. D. He must therefore be released. 8 C.F.R. § 241.13(b)(1).⁹

22 **2. Petitioner is Likely to Succeed on the Merits of His Claim That his**
23 **Incarceration is Unlawful Because it is in Violation of the**
24 **Regulations.**

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26 ⁹ *See also Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) (ordering release from
27 physical custody under *Zadvydas*); *Tadros v. Noem*, No. 2:25-cv-04108-EP (D.N.J. June 17, 2025) (same); 8 C.F.R.
28 § 241.13(b)(1); *see also Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-
DC-JDP, 2025 WL 1993735, at *7; *Yang*, 2:25-cv-02205-DAD-AC (HC, *Galindo v. Andrews*, 1:25-cv-00942-KES-
SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D.Tex. Aug. 3,
2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL
2097470.

1 Petitioner’s re-incarceration is separately unlawful because the controlling regulations
2 specify the circumstances that permit his re-arrest, and Respondents have not established that
3 circumstances have changed regarding his lack of danger or flight and the foreseeability of his
4 removal, which is required under those regulations. Additionally, Respondents have not followed
5 their own regulations in re-detaining Petitioner, which mandate that he be provided with notice
6 and an interview promptly after his detention at which he can respond to the purported reasons
7 for revocation of his release. 8 C.F.R. § 241.13(i)(3).

8 By regulation, noncitizens with final removal orders who are released from detention or
9 not taken into custody during the removal period are subject to an OSUP, which is documented
10 on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an OSUP, the
11 regulations further specify that ICE cannot revoke such an order without cause or adequate legal
12 process. 8 C.F.R. § 241.13(i)(2)-(3). Under the regulations, ICE has the authority to re-incarcerate
13 a noncitizen previously ordered removed *only* in specific circumstances, such as where an
14 individual violates any condition of release or there are changed circumstances regarding the
15 reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. §
16 241.13(i). Here, because Petitioner has not received notice whatsoever of the reason for his re-
17 detention, there is no indication that he violated a condition of release and no indication that there
18 are changed circumstances such that a travel document has been issued or that he is now a danger
19 or flight risk. Thus, Respondents did not properly follow the regulatory procedures to re-detain
20 Petitioner. *Id.*; 8 C.F.R. § 241.13(i) (requiring notice of the reason for revocation of release, and
21 an interview at which an individual has an opportunity to respond to the reasons given for
22 revocation and submit evidence and information on his behalf, including to show that there is no
23 significant likelihood of removal in the reasonably foreseeable future); *Ceesay v. Kurzdorfer*, 781
24 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) (“because ICE did not follow its own regulations in
25 deciding to re-detain Ceesay, his due process rights were violated, and he is entitled to release.
26 And even if that were not so, he still would be released because he was not afforded even the
27 minimal due process that protects everyone—citizens and noncitizens—in the United States”).

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3. Petitioner is Likely to Succeed on the Merits of His Claim That in This Case Due Process Required a Hearing Before a Neutral Arbiter Prior to Any Arrest by ICE, and he is Entitled to Such a Hearing Prior to Any Future Re-Detention.

ICE failed to follow the controlling regulations in arresting Petitioner but, even if they had complied with the procedures set forth in those regulations, ICE's regulatory authority to unilaterally arrest him is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated"). To protect that interest, on the particular facts of Petitioner's case, due process required notice and a hearing, *prior to any arrest*, at which he should have been afforded the opportunity to advance his arguments as to why he should not be re-detained. This never occurred. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to re-detain noncitizens require notice and a pre-deprivation hearing *before* re-detention by ICE.¹⁰

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

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¹⁰ *See, e.g., Rodriguez-Flores*, No. 2:25-cv-06900-JGB-JC, Dkt. 14; *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- 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 v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025); *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D.Tex. Aug. 3, 2025); *M.R.*, No. 25-cv-05436-RFL, 2025 WL***; *Diaz*, No. 3:25-cv-05071, 2025 WL***; *Doe*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *4 (holding the Constitution requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranting preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025). *Paz Hernandez*, No. 1:25-cv-00986-KES-CDB, 2025 WL 2420390; *Guzman*, No. 1:25-cv-01015-KES-SKO, 2025 WL 2617256; *R.D.T.M.*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255; *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2458865 (N.D. Cal. Aug. 25, 2025); *Rodriguez Diaz*, No. 3:25-cv-05071-TLT, Dkt. 25; *Yang*, 2:25-cv-02205-DAD-AC, Dkt. 16; *Sun*, 5:25-cv-02198-JLS-JC, Dkt. 13.

a. Petitioner Has a Protected Liberty Interest

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Petitioner’s liberty from immigration custody, a form of civil detention, is protected by the Due Process Clause: “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

For eighteen years preceding his arrest on August 29, 2025, Petitioner exercised that freedom under ICE’s OSUP. *See Sinodis Decl. at Ex. A (OSUP)*. Although he was released under supervision, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 (“even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody”).

Just as importantly, Petitioner continued presenting himself before ICE for his regular check-in appointments for the past eighteen years, where ICE did not seek to re-arrest him during this time. ICE instead gave him future dates and times to check in, which he followed. *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 (“DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him”) (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)); *Sun*, 5:25-cv-02198-JLS-JC, Dkt. 13. During that time, he was employed, started his own business, and supported his loved ones, including his U.S. citizen wife.

Individuals—including noncitizens—have a liberty interest in their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that “[i]t is well-established that the due process clause applies to protect immigrants”). This is further reinforced by *Morrissey*, in which the Supreme Court recognized the protected liberty rights under the Due Process Clause of a *criminal* detainee who was released on parole from incarceration. 408 U.S. at 481-82. The Court noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family

1 and friends and to form the other enduring attachments of normal life”—thus, those released on
2 parole have a protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482.
3 The Court further noted that the parolee has relied on at least an implicit promise that parole will
4 be revoked only if he fails to live up to the parole conditions, and the liberty of a parolee, although
5 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
6 a grievous loss on the parolee and often others.” *Id. See also Young*, 520 U.S. at 152 (individuals
7 placed in a pre-parole program created to reduce prison overcrowding have a protected liberty
8 interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (individuals released on
9 felony probation have a protected liberty interest requiring pre-deprivation process). In turn, “[b]y
10 whatever name, the liberty is valuable and must be seen within the protection of the [Fifth]
11 Amendment.” *Morrissey*, 408 U.S. at 482.

12 As the First Circuit has explained, when analyzing the issue of whether a specific
13 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the
14 issue by comparing the specific conditional release in the case before them with the liberty interest
15 in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st
16 Cir. 2010) (internal quotation marks and citation omitted). So fundamental to due process is the
17 concept of liberty that it is even well-established that an individual maintains a protectable liberty
18 interest where the individual obtains liberty through a *mistake* of law or fact. *See id.*; *Johnson v.*
19 *Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (due process considerations support the notion that
20 an inmate released on parole by mistake, because he was serving a sentence that did not carry a
21 possibility of parole, could not be re-incarcerated because the mistaken release was not his fault,
22 and he had appropriately adjusted to society, so it “would be inconsistent with fundamental
23 principles of liberty and justice” to return him to prison).

24 Here, when this Court ““compar[es] the specific conditional release in [Petitioner’s case],
25 with the liberty interest in parole as characterized by *Morrissey*,”” they are strikingly similar. *See*
26 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enables him to do
27 a wide range of things open to persons”” who have never been in custody or convicted of any
28 crime, including to live at home, work with his community, and “be with family and friends and

1 to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. And, unlike
2 in these Supreme Court cases, Petitioner is not a criminal detainee but a civil detainee and thus
3 the due process considerations of his liberty should be even weightier than the courts have already
4 found apply in the criminal context.¹¹

5 Petitioner has complied with all conditions of release for over eighteen years. During that
6 time, he has been a productive member of society who cares for his U.S. citizen family members,
7 including his U.S. citizen wife who suffers from extreme psychological and emotional issues.
8 Precedent from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty
9 interest in his continued release from detention

10 **b. Petitioner’s Liberty Interest Mandated a Due Process**
11 **Hearing Before His Arrest, and Once Released,**
12 **Mandates Such a Hearing Prior to Any Re-Detention**

13 Petitioner asserts that, here, (1) where his detention is civil, (2) where he has been at liberty
14 for eighteen years, during which time he has complied with his OSUP, (3) where his removal is
15 not reasonably foreseeable, (4) where no change in circumstances justify his detention, and (5)
16 where the only circumstance that has changed is ICE’s arrest quota directives, due process
17 mandated that he receive notice and a hearing before a neutral adjudicator *prior* to his detention.

18 “Adequate, or due, process depends upon the nature of the interest affected. The more
19 important the interest and the greater the effect of its impairment, the greater the procedural
20 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
21 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
22 “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient
23 administration of” its immigration laws in order to determine what process he is owed to ensure
24 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. This Court must
25 consider three factors set forth in *Mathews v. Eldridge* in conducting its balancing test.¹²

26 ¹¹ “[D]ecisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of
27 [noncitizens in immigration custody],” who are “most decidedly entitled to *more* considerate treatment than those
28 who are criminally detained.” *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5
(D. Ariz. Nov. 18, 2016) *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up) (emphasis added).

¹² “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation
of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural
safeguards; and finally the government’s interest, including the function involved and the fiscal and administrative

1 The Supreme Court “usually has held that the Constitution requires some kind of a hearing
2 *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127
3 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
4 only remedies the State could be expected to provide” can post-deprivation process satisfy the
5 requirements of due process. *Id.* at 985. Moreover, only where “one of the variables in
6 the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the
7 kind of deprivation at issue” such that “the State cannot be required constitutionally to do the
8 impossible by providing predeprivation process,” can the government avoid providing pre-
9 deprivation process. *Id.*

10 Because, in this case, the provision of a pre-deprivation hearing was both possible and
11 valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner
12 with notice and a hearing *prior* to his arrest. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769
13 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinermon*, 494 U.S. at 985;
14 *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.
15 1984) (individuals awaiting involuntary civil commitment proceedings may not constitutionally
16 be held in jail pending the determination as to whether they can ultimately be recommitted). Under
17 *Mathews*, once Petitioner is ordered released, “the balance weighs heavily in favor of
18 [Petitioner’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

19 **i. Petitioner’s Interest in His Liberty is Profound**

20 Under *Morrissey* and its progeny, individuals conditionally released from serving a
21 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
22 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
23 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
24 constitutional due process before he is re-incarcerated—apply with even greater force to
25 individuals like Petitioner, who have already been determined to not present a risk or danger or
26 flight and are facing *civil* (not criminal) detention. Parolees and probationers have a diminished
27 liberty interest given their underlying convictions. *See, e.g., United States v. Knights*, 534 U.S.

28 burdens that the additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing
Mathews v. Eldridge, 424 U.S. 319, 335 (1976)).

1 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal
2 parolee context, courts have held that parolees cannot be re-arrested without a due process hearing
3 where they can raise any claims they may have regarding why their re-incarceration would be
4 unlawful. See *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner
5 retains a truly weighty liberty interest even though he was under supervised release.

6 What is at stake in this case for Petitioner is one of the most profound individual interests
7 recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and
8 be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding
9 physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation
10 omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by
11 the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See also *Zadvydas*, 533
12 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms
13 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”);
14 *Cooper v. Oklahoma*, 517 U.S. 348 (1996). Thus, it is clear that there is a profound private interest
15 at stake in this case, which must be weighed heavily when determining what process Petitioner is
16 owed under the Constitution. See *Mathews*, 424 U.S. at 334-35

17 **ii. The Government’s Interest in Keeping Petitioner**
18 **Incarcerated is Low and the Burden on the Government**
19 **to Release Him is Minimal**

20 Respondents’ interest in keeping Petitioner detained without a due process hearing is low,
21 and when weighed against his significant private interest in his liberty, the scale tips sharply in
22 favor of ordering release. It becomes abundantly clear that the *Mathews* test favors him when the
23 Court considers that the process he seeks—release from civil custody until he is provided with
24 notice and a hearing regarding whether he should be re-detained—is standard for the government.
25 Providing Petitioner with a future hearing before a neutral adjudicator to determine whether he is
26 a flight risk or danger to the community and whether his removal is reasonably foreseeable would
27 impose only a *de minimis* burden on the government, because the government routinely conducts
28 these reviews for individuals in his same circumstances. 8 C.F.R. § 241.4(e)-(f).

1 As immigration detention is civil, it can have no punitive purpose. The government's only
2 interests in holding an individual in immigration detention can be to prevent danger to the
3 community or to effectuate removal *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court
4 has made clear that indefinite detention of noncitizens who cannot be removed to the country of
5 the removal order is unconstitutional. In this case, Respondents cannot plausibly assert that they
6 had a sudden interest in detaining Petitioner due to alleged dangerousness, or due to a change in
7 the foreseeability of his removal to India, as there is no evidence that his circumstances have not
8 changed since ICE issued him an OSUP in 2007.

9 Moreover, Petitioner has always had a removal order since before his OSUP, and yet he
10 is not a flight risk because he continued to appear before ICE on a regular basis for each and every
11 appointment that has been scheduled. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach
12 greater importance to a person’s justifiable reliance in maintaining his conditional freedom so
13 long as he abides by the conditions on his release, than to his mere anticipation or hope of
14 freedom”); *Pinchi*, --- F.Supp.3d ---, 2025 WL 2084921, at *3 (“the government’s decision to
15 release an individual from custody creates ‘an implicit promise,’ upon which that individual may
16 rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the ... conditions [of
17 release].’”) (quoting *Morrissey*, 408 U.S. at 482).

18 Thus, as to flight risk, Petitioner’s post-OSUP conduct in the form of compliance with his
19 check-ins further confirms that he is not a flight risk and that he will present himself at any future
20 ICE appearances, as he has consistently done. *Zadvydas*, 533 U.S. at 699 (ICE’s interest is to
21 “assure [Petitioner’s] presence at the moment of removal.”). ICE’s interest in keeping him
22 detained is therefore low. That ICE has a new policy to make a minimum number of arrests each
23 day under the new administration does not constitute a material change in circumstances or
24 increase the government’s interest in detaining her.¹³ *See Zakzouk*, 2025 WL 2097470, *2

25
26 ¹³ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
27 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
28 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
[https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-
and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) (“At the end of May 2025, ‘Stephen Miller, a senior White House official, told Fox News that the White
House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested

1 (“Although Petitioner[] informed [] ICE [] that she has no right to return to either country because
2 she is stateless, the officer told Petitioner-Plaintiff that ‘things are different now.’”); *Singh*, No.
3 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 (“The law requires a change in
4 relevant facts, not just a change in [the government’s] attitude”) (internal quotations omitted).

5 Moreover, the “fiscal and administrative burdens” that a pre-deprivation bond hearing
6 would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not
7 seek a unique or expensive form of process, but rather a routine hearing before a neutral arbiter
8 regarding whether his release should be revoked and whether he should be re-detained. But there
9 is no justifiable reason to further Petitioner’s incarceration prior to such a hearing taking place.
10 As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest
11 in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
12 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
13 revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

14 Release from custody until ICE assesses and demonstrates to a neutral adjudicator that
15 Petitioner is actually a flight risk or danger to the community, and that his detention is not going
16 to be indefinite, is far *less* costly and burdensome for the government than keeping him detained.
17 As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of
18 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
19 cost of \$6.5 million.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

20 **iii. Without Release from Custody, the Risk of Erroneous**
21 **Deprivation of Liberty is High, and Process in the Form**
22 **of a Constitutionally Compliant Hearing Where ICE**
23 **Carries the Burden Would Decrease That Risk**

24 Releasing Petitioner from civil custody, and ensuring he is provided a pre-deprivation
25 hearing in the future, would decrease the risk of him being erroneously deprived of his liberty.
26 Before he can be lawfully detained, he must be provided with a hearing before a neutral
27 adjudicator at which the government is held to show that the circumstances have changed since
28 his release in 2007 such that clear and convincing evidence exists to establish that he is a danger

more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day, reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”).

1 to the community or a flight risk and that his removal is reasonably foreseeable.

2 Under the process that ICE maintains is lawful—which affords Petitioner no process
3 whatsoever—ICE can simply re-detain him whenever the agency wants. The risk that Petitioner
4 will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after
5 making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 241.4(l), revocation of release
6 on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations
7 are actually insufficient to protect his due process rights, as they permit ICE to unilaterally re-
8 detain individuals, even for an accidental error in complying with the conditions of supervision,
9 for example. They permit ICE to unilaterally revoke a release determination without oversight of
10 any kind—even if, as here, the individual has been living at liberty for years and no circumstances
11 justify their arrest. After re-arrest, ICE again makes its own, one-sided custody determination and
12 can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-(f).

13 By contrast, the procedure Petitioner seeks—a pre-deprivation hearing to assess whether
14 he is a danger or a flight risk and whether his removal is reasonably foreseeable—is much more
15 likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc.*
16 *v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments depending on
17 credibility of witnesses and assessment of conditions not subject to measurement” are at issue,
18 the “risk of error is considerable when just determinations are made after hearing only one side”).
19 “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239
20 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*,
21 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty
22 under *Mathews* can be decreased where a neutral adjudicator, rather than ICE alone, makes
23 custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

24 Due process also requires consideration of alternatives to detention at any custody
25 redetermination hearing that may occur. The primary purpose of immigration detention is to
26 ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably
27 related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See*
28 *Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

1
2 As the above-cited authorities show, Petitioner is likely to succeed on his claim that the
3 Due Process Clause required notice and a hearing before a neutral decisionmaker *prior to any*
4 arrest and incarceration by ICE. And, at the very minimum, he clearly raises serious questions
5 regarding this issue, thus also meriting a TRO.

6 **4. Petitioner is Likely to Succeed on the Merits of His Claim That he**
7 **is Entitled to Constitutionally Adequate Procedures Prior to Any**
8 **Third Country Removal.**

9 Under the INA, Respondents have a clear and non-discretionary duty to execute final
10 orders of removal only to the designated country of removal. The statute explicitly states that a
11 noncitizen “shall remove the [noncitizen] to the country the [noncitizen] . . . designates.” 8 U.S.C.
12 § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the
13 country of removal, the statute further mandates that DHS “shall remove the alien to a country of
14 which the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama*
15 *v. ICE*, 543 U.S. 335, 341 (2005). As the Supreme Court has explained, such language “generally
16 indicates a command that admits of no discretion on the part of the person instructed to carry out
17 the directive,” *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007)
18 (quotation omitted); *see also Black’s Law Dictionary* (11th ed. 2019). Accordingly, any imminent
19 third country removal fails to comport with the statutory obligations set forth by Congress in the
20 INA and is unlawful.

21 Moreover, prior to any third country removal, ICE must provide Petitioner with sufficient
22 notice and an opportunity to respond and apply for fear-based relief as to that country, in
23 compliance with the INA, due process, and the binding international treaty: The Convention
24 Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁴ Currently,
25 DHS has a policy of removing or seeking to remove individuals to third countries without first
26 providing constitutionally adequate notice, or any meaningful opportunity to contest that removal
27 if the individual has a fear of persecution or torture in that country. Sinodis Decl. at Ex. J.

28 ¹⁴ United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
(Dec. 10, 1984), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

1 Instead, the policy squarely violates the INA because it does not take into account, *or even*
2 *mention*, an individual’s designated country of removal—thereby fully contravening the statutory
3 instruction that DHS must only remove an individual to the designated country of removal. U.S.C.
4 § 1231(b)(2)(A)(ii). Further, the policy plainly violates the United States’ obligations under the
5 CAT and principles of due process because it allows DHS to provide individuals with *no notice*
6 *whatsoever* prior to removal to a third country, so long as that country has provided “assurances”
7 that deportees from the United States “will not be persecuted or tortured.” Sinodis Decl. at Ex. J.
8 If, in turn, the country has not provided such an assurance, then DHS officers must simply inform
9 an individual of removal to that third country but are not required to inform them of their rights
10 to apply for protection from removal to that country under the INA or the CAT. *Id.* Rather,
11 noncitizens instead must already be aware of their rights under this binding international treaty
12 and must affirmatively state a fear of removal to that country in order to receive a fear-based
13 interview to screen for their eligibility for protection under the CAT. *Id.* If the screening interview
14 were to happen, there is hardly any meaningful opportunity or time to consult with an attorney or
15 guarantee that the process will occur in the noncitizen’s native language or a language they
16 understand. *Id.* And, in actuality, the screening interview is not a screening interview at all,
17 because DHS officers under the policy are instructed to determine at this interview “whether the
18 alien would more likely than not be persecuted on a statutorily protected ground or tortured in the
19 country of removal”—which is the standard for protection under the CAT that IJs apply after a
20 full hearing in Immigration Court. *Id.* Then, if the officer determines that the noncitizen has not
21 met this standard, they will be removed to the third country to which they claimed, and tried to
22 demonstrate within twenty-four hours, a fear of persecution or torture. *Id.* Finally, there is no
23 indication that any of this process will occur in an individual’s native language, or a language that
24 they understand. *Id.* This is nothing more than a fig leaf of due process meant to deprive
25 individuals of the protection that the law and treaty are supposed to provide them.

26 Clearly, this policy violates CAT, which instructs that the United States cannot remove
27 individuals to countries where they will face torture, because the policy allows DHS to swiftly
28 remove noncitizens to countries where they very well may face torture if those countries simply

1 provide the United States with “assurances” that deportees will not be tortured. *Id.* Moreover, the
2 policy puts the onus on individuals to be aware of their rights under the CAT—which is a treaty
3 that binds the United States *government*—instead of ensuring that DHS officials make individuals
4 aware of their rights, which would more squarely comport with *DHS’s obligations* under the
5 treaty not to remove individuals to countries where they face torture. *Id.*

6 For similar reasons, the policy also violates principles of due process, because it does not
7 provide individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.*
8 Again, the policy allows individuals to be removed to third countries *without any notice or an*
9 *opportunity to be heard* if that country merely promises that deportees will not face torture there,
10 and if individuals are otherwise unaware of their right to seek fear-based relief. *Id.*¹⁵

11 The U.S. District Court for the District of Massachusetts previously issued a nationwide
12 preliminary injunction blocking such third country removals without notice and a meaningful
13 opportunity to apply for relief under the Convention Against Torture. *D.V.D., et al. v. U.S.*
14 *Department of Homeland Security, et al.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The
15 Supreme Court has since granted the government’s motion to stay the injunction on June 23,
16 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025), limiting
17 nationwide injunctions. Thus, the Supreme Court’s order, which is not accompanied by an
18 opinion, signals only disagreement with the nature, and not the substance, of the nationwide
19 preliminary injunction.¹⁶ This is made clear by the Court’s decision in *Trump v. J.G.G.*, 604 U.S.

20 _____
21 ¹⁵ See also, *Ortega*, No. 25-cv-5259, 2025 WL 1771438 (TRO prohibiting the government from “arresting, detaining,
22 or removing” the Petitioner to a third country “without notice and a hearing.”); *J.R.*, No. 2:25-cv-01161-JNW, 2025
23 WL 1810210 (TRO prohibiting the government from removing Petitioner to “any third country in the world absent
24 prior approval from this Court”); *Vaskanyan*, No. 25-cv-1475, 2025 WL 2014208, *9 (TRO prohibiting government
25 from “removing the Petitioner “to a third country, i.e., a country other than the countries designated as he countries
26 of removal in Petitioner’s final order of removal...without written notice to both Petitioner and Petitioner’s counsel
27 in a language the Petitioner can understand); *Nguyen*, No. 2:25-CV-01398, 2025 WL 2097979 (PI prohibiting
28 removing Mr. Khan to any country where he is likely to face imprisonment upon arrival).

¹⁶ The Supreme Court’s July 3, 2025 order in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, 606 U.
S. ____ (2025), further reinforces that the Supreme Court only disagrees with the means of a nationwide injunction,
and not the underlying substance of the nationwide injunction. There, the Court held that the stay of the preliminary
injunction divests remedial orders stemming from that injunction of enforceability, and cited to *United States v. Mine*
Workers, 330 U. S. 258, 303 (1947) for the proposition that: “The right to remedial relief falls with an injunction
which events prove was erroneously issued and *a fortiori* when the injunction or restraining order was beyond the
jurisdiction of the court.” *Id.* In any event, the remedial order at issue involved six individuals who had *already been*
removed from the United States to a third country, and is therefore distinct from this case, where Mr. Yang remains
in the United States and this Court therefore continues to have jurisdiction over his case.

1 670 (2025), where the Court explained that the putative class plaintiffs there had to seek relief in
2 individual habeas actions (as opposed to injunctive relief in a class action) against the
3 implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove
4 non-citizens to a third country. Regardless, ICE appears to be emboldened and intent to implement
5 its campaign to send noncitizens to far corners of the planet—places they have absolutely no
6 connection to whatsoever—in violation of individuals’ due process rights.¹⁷

7 Petitioner’s removal to a third country would violate his due process rights unless he is
8 *first* provided with sufficient notice and a meaningful opportunity to apply for protection under
9 the CAT. Intervention by this Court is necessary to protect those rights.

10 **5. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief**

11 Petitioner will suffer irreparable harm were he to be deprived of his liberty and subjected
12 to continued and indefinite detention by immigration authorities without being immediately
13 released and provided the constitutionally adequate process that this motion for a TRO seeks.
14 Detainees in civil ICE custody are held in “prison-like conditions” which have real consequences
15 for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has
16 explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It
17 often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407
18 U.S. 514, 532-33 (1972); *accord Nat’l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365,
19 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the
20 irreparable harms imposed on anyone subject to immigration detention” including “subpar
21 medical and psychiatric care in ICE detention facilities, the economic burdens imposed on
22 detainees and their families as a result of detention, and the collateral harms to children of
23 detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. Finally, the government itself
24 has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of
25 Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in
26 Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety

27 _____
28 ¹⁷ CBS News, “Politics Supreme Court lets Trump administration resume deportations to third countries without
notice for now” (June 24, 2025), available at: <https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/>.

1 standards; staffing shortages affecting the level of care detainees received for suicide watch, and
2 detainees being held in administrative segregation in unauthorized restraints, without being
3 allowed time outside their cell, and with no documentation that they were provided health care or
4 three meals a day).¹⁸

5 Petitioner had been on an OSUP for eighteen years. During that time, he started a business,
6 and supported his family, employees, and community. If he remains detained, he would likely be
7 unable to continue supporting his family and employees as he cannot work from detention.
8 Importantly, he would also be ripped away from the opportunity to continue caring for his wife
9 who suffers from mental health illnesses particularly after the unexpected loss of their son.
10 Sinodis Decl. at Ex. H (Psychological Report).

11 Moreover, if Petitioner remains incarcerated, his health could be endangered. On April
12 18, 2024, the U.S. Department of Homeland Security OIG released a report on the results of an
13 unannounced inspection at Mesa Verde that took place from April 18 to 20, 2023.¹⁹ The OIG
14 reviewed 59 medical grievances filed at Mesa Verde and found that “medical staff did not act on
15 any of the paper medical grievances within 24 hours as required...The delayed action in response
16 to medical grievances could negatively impact detainee’s health care.” Detainees at Mesa Verde
17 have also reported issues with spoiled food and lack of attention to dietary needs that go
18 unresolved.²⁰ Petitioner is likely to suffer irreparable harm in these conditions.

19 Further, Petitioner will suffer irreparable harm were he to be removed to a third country
20 without first being provided with constitutionally compliant procedures to ensure that his right to
21 apply for fear-based relief is protected. Individuals removed to third countries under DHS’s policy
22 have reported that they are now stuck in countries where they do not have government support,
23 do not speak the language, and have no network.²¹ Others removed in violation of their prior grant

24 _____
25 ¹⁸ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed June
27, 2025).

26 ¹⁹ *Id.*

27 ²⁰ See “Resistance, Retaliation, Repression: Two Years in California Immigration Detention,” ACLU of Northern
California (2024), available at: <https://www.aclunc.org/publications/resistance-retaliation-repression-two-years-california-immigration-detention>.

28 ²¹ NPR, “Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available
at: <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

1 of protection have reported severe torture at the hands of government agents.²²

2 It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes
3 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
4 *Burns*, 427 U.S. 347, 373 (1976)). Thus, a TRO is necessary to prevent Petitioner from suffering
5 irreparable harm by being subject to unlawful and unjust detention, and by being summarily
6 removed to any third country where he may face persecution or torture.

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

9 The balance of hardships strongly favors Petitioner. The government cannot suffer harm
10 from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*,
11 753 F.2d 719, 727 (9th Cir. 1983). Therefore, the government cannot allege harm arising from a
12 TRO or preliminary injunction ordering it to comply with the Constitution. Further, any burden
13 imposed by requiring Respondents to release Petitioner from custody (and provide notice and a
14 hearing before a neutral adjudicator prior to any future re-detention) is both *de minimis* and clearly
15 outweighed by the substantial harm he will suffer as long as he continues to be detained. *See*
16 *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of
17 affording fair procedures to all persons, even though the expenditure of governmental funds is
18 required.”). Similarly, any burden of requiring Respondents *not* to remove Petitioner to any third
19 country is outweighed by the substantial harm he may suffer if removed to a country where he
20 will face persecution or torture. *See id.*

21 Finally, a TRO is in the public interest. First and most importantly, “it would not be
22 equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal
23 law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*,
24 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029
25 (9th Cir. 2013)). If a TRO is not entered, Respondents would effectively be granted permission
26 to detain Petitioner, and/or to summarily remove him to any third country, in violation of the
27 requirements of Due Process. “The public interest and the balance of the equities favor

28 ²² NPR, “Abrego Garcia says he was severely beaten in Salvadoran prison” (July 3, 2025), available at:
<https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture>.

1 ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at
2 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public
3 interest benefits from an injunction that ensures that individuals are not deprived of their liberty
4 and held in immigration detention because of bonds established by a likely unconstitutional
5 process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public
6 interest concerns are implicated when a constitutional right has been violated, because all citizens
7 have a stake in upholding the Constitution.”).

8 Therefore, the public interest overwhelmingly favors entering a TRO.

9 **V. CONCLUSION**

10 For all the above reasons, Petitioner warrants a TRO that orders Respondents to release
11 him from custody, not re-detain him unless he is afforded notice and a hearing before a neutral
12 adjudicator on whether it is justified by clear and convincing evidence that he is a danger to the
13 community or a flight risk and that his removal is reasonably foreseeable, and refrain from
14 removing him to any third country without first providing him constitutionally-compliant
15 procedures.

16 Dated: September 19, 2025

Respectfully submitted,

17 /s/ Johnny Sinodis

18 Johnny Sinodis

19 Chloe Czabaranek

20 Attorneys for Petitioner
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