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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

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

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, Secretary, U.S. Department of Homeland Security; and Pamela BONDI, Attorney General of the United States; Minga WOFFORD, Facility Administrator at Mesa Verde Detention Center, Bakersfield, California;

Respondents-Defendants.

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

PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

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Petitioner, through undersigned counsel, submits this Reply in Support of his Motion for a Temporary Restraining Order (TRO) and Preliminary Injunction.[1] As this Court already indicated it preliminarily believes, Petitioner was entitled to a hearing *prior* to any re-incarceration and Respondents' failure to afford him that hearing entitles him to immediate release. Dkt. 6. Respondents provide no factual or legal basis to alter the Court's preliminary finding. To the contrary, their opposition only underscores why this Court must intervene.

Respondents effectively concede that: (1) Petitioner is not a danger or flight risk; (2) no change in circumstances justified Petitioner's arrest on August 29, after eighteen years of compliance with his Form I-220B, Order of Supervision (OSUP), and just three weeks after his most recent appointment where U.S. Immigration and Customs Enforcement (ICE) installed an ankle monitor on him; (3) ICE had not even applied for a travel document when they arrested Petitioner, and *still* do not have a travel document to effectuate his removal; and (4) ICE violated its regulations in revoking Petitioner's OSUP. Dkt. 9 (Opp.). Respondents fail to present any documentary evidence that India will issue a travel document within thirty to forty-five days. Respondents do not disavow any intention to remove Petitioner to a third country, nor do they state he would be afforded constitutionally compliant procedures if they elected to do so.

Petitioner is therefore likely to succeed (or has at least raised serious questions) on the merits of his claims. Further, he and his family are suffering irreparable harm each day he remains unlawfully confined, the public interest weighs in favor of his release, and the balance of equities tips sharply in his favor. The Court should therefore grant his motion for a TRO.

ADDITIONAL FACTUAL BACKGROUND

Without evidence, Respondents state that Petitioner did not enter the U.S. with inspection, Opp. at 1, but that allegation is rebutted by the visitor's visa in Petitioner's passport. *See* Dkt. 1-1 at 89; *see also* Declaration of Johnny Sinodis dated Sept. 29, 2025 (Second Sinodis Decl.) at Ex. A (Declaration of Michael Mehr). Moreover, Petitioner's manner of entry has no bearing on his liberty interest in freedom or his entitlement to due process before that freedom is taken away.

[1] Respondents filed their opposition after the deadline set by the Court—September 24, 2025, at 12:00 p.m.—and did not seek leave to file out of time. *See* Dkts. 6, 9. The Court should decline to consider their submission and grant Petitioner's request on that basis alone.

Respondents further state Petitioner failed to request an additional stay of removal after November 1, 2017, as if that matters. Dkt. 9-1, Declaration of Juan Carlo Abad (Abad Decl.) ¶ 16. It does not. Noncitizens on OSUPs often do not submit applications for stays of removal because their removal already cannot be effectuated. Second Sinodis Decl. at Ex. A (Declaration of Michael Mehr); *id.* at Ex. B (Declaration of Stacy Tolchin). Further, whether Petitioner had requested a stay from ICE does not change that (1) he complied with an OSUP for another eight years and (2) ICE repeatedly determined he was neither a danger nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (same). Lastly, ICE's obligation to comply with its regulations when revoking an OSUP exists all the same. *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025).

ARGUMENT

I. Petitioner is likely to succeed—or has raised serious questions—on his claim that due process required that he be provided notice and a hearing before his arrest.

As an individual in this country, Petitioner has due process rights, including a protected liberty interest in his supervised release, which is not diminished by the supervised nature of his release, *Zadvydas v. Davis*, 533 U.S. 678, 696 (2001) (recognizing liberty interest of noncitizens on OSUPs), or by his removal order, *see, e.g.*, *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *7-9 (E.D. Cal. Sept. 5, 2025) (Thurston, J.) (noncitizen with reinstated removal order has protected liberty interest); *Hoac*, 2025 WL 1993771; *Phan v. Becerra*, 2025 WL 1993735 (E.D. Cal. July 16, 2025); *Zakzouk v. Becerra,* 25-CV-06254 (RFL), 2025 WL 2097470 (N.D. Cal. Jul. 26, 2025); *Sun v. Santacruz*, No. 5:25-CV-02198-JLS-JC, 2025 WL 2730235, at *5 (C.D. Cal. Aug. 26, 2025). Respondents do not meaningfully address Petitioner's arguments regarding his protected liberty interest or cite any caselaw finding that interest is not entitled to due process protections—i.e., advance notice and a hearing.

The idea that individuals freed 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), *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); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, *3 (N.D. Cal. July 24, 2025). 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.

Respondents rely on ICE's regulatory authority to detain Petitioner pending his removal, Opp. at 1-3, but the authority to arrest a noncitizen who has been living at liberty for years complying with all conditions of release is proscribed by the Due Process Clause. Numerous district courts, including this Court, have found as much. *Diaz*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *7-9; Dkt. 4 at 10 n.10 (collecting cases). That liberty interest is particularly strong here given that Petitioner is neither a danger nor a flight risk, as his eighteen years of compliance with his OSUP clearly demonstrate.[2] Petitioner's liberty interest is further heightened by his viable claim to relief from removal, which Respondents do not dispute. Dkt 1-1 at Exs. F-G. Respondents also do not explain what interest of theirs could outweigh Petitioner's liberty interest when no circumstances changed between August 5, when Petitioner attended his last check-in and ICE decided to release him, and August 29, when he was arrested with no notice or hearing. To safeguard his protected liberty interest, on the particular facts of Petitioner's case, due process required notice and a constitutionally compliant hearing *prior to any re-detention.* Respondents make no real effort to counter this well-settled constitutional principle.

Respondents argue that Petitioner cannot challenge his detention because he "has been detained by DHS for approximately [one] month," Opp. at 2, but they ignore that incarceration of *any* length inflicts irreparable harm and infringes on a protected liberty interest. *See Rajnish v. Jennings*, No. 3:20-CV-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec. 22, 2020) ("[A]ny length of detention implicates the same liberty fundamental rights."). Respondents further assert

[2] The INA and its implementing regulations likewise constrain Respondents' authority, requiring that any OSUP revocation and arrest follow a determination that the noncitizen is a danger or a flight risk. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451, 462-63 (S.D.N.Y. 2018).

that "immigration laws have long authorized immigration officials to detain aliens such as Petitioner for removal proceedings and detention periods far longer than Petitioner has been detained," citing, inter alia, *Demore v. Kim*, 538 U.S. 510, 523-26 (2003), and *Y.T.D. v. Andrews, et al.*, 1:25-cv-01100-JLT-SKO, Dkt. 24 (E.D. Cal. Sept. 18, 2025). Yet, those cases are inapposite for numerous reasons. For example, unlike Kim and Y.T.D., Petitioner was already released from custody based on ICE's determination that he was neither a danger nor a flight risk. *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *8-9 (E.D. Cal. Aug. 14, 2025) (citing *Pinchi*, 2025 WL 2084921, at *3) (recognizing difference between noncitizens immediately transferred to ICE who are subject to prolonged detention and those "whom ICE has permitted to develop an out-of-custody life in the United States over a period of more than two years."); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *12-13 (E.D. Cal. Aug. 21, 2025) (same). His compliance with all conditions of release only heightened that liberty interest. *See, e.g.*, *Pinchi*, 2025 WL 1853763, at *3, *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on preparole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond.").[3]

Acknowledging that this Court and a growing chorus of others have granted similarly situated petitioners release unless and until they are provided a pre-deprivation hearing, Respondents ask the Court to not require the hearing take place before a neutral adjudicator or impose a clear and convincing standard because they have "not found any authority that supports the imposition of such standards." Opp. at 3 n.2. Respondents cannot be serious. Extensive

[3] Though Respondents do not say it explicitly, they insinuate that Petitioner is due no process and that his only recourse until he is confined six months is to ask ICE to authorize his release. ICE 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). This framework "provides no opportunity to have a neutral party evaluate ICE's unilateral determination of the contested facts." *Guillermo M.R. v. Noem*, -- F. Supp. 3d. --, 2025 WL 1983677, *7 (N.D. Cal. July 17, 2025). By contrast, the procedure Petitioner seeks is standard for Respondents. It does not cause additional fiscal and administrative hurdles, and Respondents have not suggested otherwise. It would provide Petitioner safeguards to ensure his due process rights are protected. Permitting him to remain free until ICE assesses and demonstrates to a neutral adjudicator that his re-incarceration is justified and his removal is reasonably foreseeable is far *less* costly and burdensome for Respondents than detaining him. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Such a hearing is much more likely to produce accurate determinations as to the necessity of confinement. *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").

authority exists to support both requirements. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Supreme Court and Ninth Circuit have also long imposed a clear and convincing standard. *See Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011) (government must bear burden by clear and convincing evidence); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on detainee); *Black v. Decker*, 103 F.4th 133, 157 (2d Cir. 2024). In other civil contexts, the Supreme Court found due process met because the government bore the burden of proof by at least clear and convincing evidence. *See, e.g.*, *U.S. v. Comstock*, 130 S. Ct. 1949 (2010) (government had to prove claim by clear and convincing evidence at initial hearing followed by periodic review); *Addington v. Texas*, 441 U.S. 418, 433 (1979) (requiring government to bear "burden equal to or greater than the 'clear and convincing' standard" affords due process). This Court and others have also imposed the clear and convincing standard for unlawfully rearrested noncitizens. *See, e.g.*, *Espinoza et al. v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *14 (E.D. Cal. Sept. 18, 2025); *Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO, 2025 WL 2411010, at *8-9 (E.D. Cal. Aug. 20, 2025).

II. ICE violated obligatory regulations when revoking Petitioner's OSUP.

As Respondents seemingly acknowledge, ICE has the authority to re-incarcerate a noncitizen previously ordered removed who has been released on an OSUP *only* in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231(a); 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i). *See* Opp. at 2 (citing 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 241.4(a)(1). Respondents do not even attempt to argue that these conditions were met when ICE arrested Petitioner on August 29. Instead, they assert that, because "DHS determined that his removal from the United States to India is now likely because it applied to the Indian Consulate for a travel document for him that it expects to issue within the next 30 to 45 days, DHS' decision to detain Petitioner was then lawful." Opp. at 2. This is wrong. Petitioner did not violate any of his conditions of release, and Respondents do not contend otherwise. Respondents admit that no

circumstances had changed regarding the reasonable foreseeability of Petitioner's removal *at the time of his arrest*, as they did not request a travel document until *three weeks later*. Abad Decl. ¶ 19. ICE cannot bootstrap compliance with the regulations after the fact.

But it gets worse. Respondents gloss over that, for twenty years, ICE has not been able to remove Petitioner to India. This is not a new phenomenon, as India is a recalcitrant country.[4] Respondents' "expectation" that India will issue a travel document "within the next 30 to 45 days," Opp. at 2, is thus nothing but a pipe dream.[5]

Additionally, Respondents waive any argument that they complied with 8 C.F.R. § 241.13(i), which requires notice of the reason for revocation of release, and an interview at which an individual has an opportunity to respond to the reasons given for revocation and submit evidence and information on his behalf, including to show that there is no significant likelihood of removal in the reasonably foreseeable future. Here, Respondents failed to follow any of these procedures in a violation of their own regulation and Petitioner's due process rights. Second Sinodis Decl. at Ex. A (Declaration of Michael Mehr) (confirming that Respondents have not provided Petitioner any interview). Courts, including this one, have ordered similarly situated petitioners released from custody when ICE committed similar or identical regulatory violations. *See Diaz*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *9 (petitioner not afforded appropriate notice and an opportunity to be heard in compliance with the regulation or by any other means was likely to succeed on his claim); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4 ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful."); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) (ICE's failure to comply with informal interview

[4] "'Recalcitrant' and 'Uncooperative': Why Some Countries Refuse to Accept Return of Their Deportees," Migration Policy Institute (Dec. 20, 2022), https://www.migrationpolicy.org/article/recalcitrant-uncooperative-countries-refuse-deportation.

[5] Respondents also ignore that, for noncitizens like Petitioner, who have fully complied with their OSUP for two decades, confinement prior to removal is not necessary, even if a travel document has been issued. Every day, noncitizens out of custody appear for removal without issue. Second Sinodis Decl. at Ex. A (Declaration of Michael Mehr).

requirement justified immediate release).[6] The Court should do the same here.

III. Petitioner's detention is not authorized by 8 U.S.C. § 1231(a)(6) because his removal is still not reasonably foreseeable.

Contrary to Respondents' claim, Petitioner's re-detention is unconstitutionally indefinite, and Respondents have not provided any evidence—apart from the mere statement that "DHS expects him to be removed from the United States to India within the next 30 to 45 days," Opp. at 1—that Petitioner's removal is reasonably foreseeable. Under clear Supreme Court precedent, post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court has determined to be presumptively six months. *Zadvydas*, 533 U.S. at 699–701. That said, detainees are entitled to be released even before six months of detention, where removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after 90 days where removal is not reasonably foreseeable). Moreover, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas*, 533 U.S. at 701.

Although Respondents contend Petitioner has been detained for only a month, Opp. at 3, that is irrelevant to the analysis here. Petitioner's post-final order detention clock began to run when his removal order became final in 2006, and ICE issued him an OSUP in 2007 because it could not remove him to India. 8 C.F.R. § 241.4(g)(1)(i); *Diaz*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *4 ("There is no suggestion [] that Mr. Diaz's removal order became administratively final within the last 90 days under any of these provisions, so the Court concludes it 'became final long ago.'") (internal citation omitted). In Petitioner's case, therefore, nearly

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[6] Courts have also ordered release where the ICE official who revoked release, typically the assistant field office director, did not have authority to do so. Regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay*, 781 F. Supp. 3d at 161 (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an OSUP, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an OSUP, the delegation order must explicitly say so. *See id.* (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision); *Sikeo v. Cantu*, 2:25-cv-03191-SHD-CDB, Dkt. 21 at *2-3 (D. Ariz. Sept. 24, 2025).

twenty years have passed since his post-final order detention clock began to run.

More importantly, Petitioner's removal is not reasonably foreseeable, and Respondents have not provided evidence to rebut this. They summarily state that "[o]n or about September 16, 2025, DHS submitted a travel document application to the Indian consulate in San Francisco, California. Issuance of the travel document is expected within 30-45 days of that date." Abad Decl. ¶ 19. But Respondents provide *no documentary evidence* to substantiate this claim. Respondents have acknowledged in cases with similarly situated petitioners that they did not obtain travel documents before arresting them. *See e.g.*, *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *1 (government had no travel document for petitioner); *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *1 (same). In other cases, statements that ICE requested a travel document turned out to be false. *See, e.g.*, *Nguyen v. Scott*, --- F.Supp.3d ----, 2025 WL 2419288, at *4 (W.D. Wash. Aug. 21, 2025) ("Respondents conceded at [] argument that this statement [that Petitioner's case was 'currently under review by the Government of Vietnam for issuance of travel documents'] was not true, and ICE had not requested a travel document for Petitioner at either the time of his detention or the filing of the sworn Burns declaration."). The Court should not accept at face value Respondents' contention here.

Even if Respondents' statement here were true, however, it would be wholly insufficient to prove that Petitioner's removal is reasonably foreseeable. On information and belief, ICE has never been able to obtain a travel document from India enabling the agency to physically remove Petitioner. Dkt. 1-1 at Ex. D (Declaration of Michael Mehr). This comes as no surprise, given that the United States has previously labeled India as one of the thirteen countries and territories it deems "recalcitrant" because they will not accept their nationals.[7] Respondents provide no explanation at all for why circumstances have now changed such that they would be able to obtain a travel document. *See generally* Opp.

In sum, there is no evidence to support Respondents' bare assertion that Petitioner's removal order is actually executable. This is the essence of the indefinite (and hence unconstitutional) nature of Petitioner's incarceration. Because his removal is not reasonably

[7] *See supra* n.4.

foreseeable, it is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. This is particularly true where, as here, ICE has stated in proceedings before the BIA that they have no intention to remove him, and the BIA has refused to adjudicate his request for a motion to stay on that basis. Dkt. 1-1 at Ex. D. He must therefore be released. 8 C.F.R. § 241.13(b)(1).

IV. Third country removal would violate due process under current procedures.

Contrary to Respondents' assertions, Petitioner is also at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for fear-based protection, in violation of the INA, binding international treaty, and due process. Respondents only argue that Petitioner cannot establish irreparable harm because they have not yet attempted to remove him to a third country. Opp. at 3. But, as this Court has recognized, DHS's current policy is to initiate third-country removals with no advance warning to noncitizens or their counsel. *See, e.g.*, *Y.T.D.*, 1:25-cv-01100-JLT-SKO, Dkt. 24 (recognizing DHS policies regarding third-country removal "are insufficient for due process purposes" and "numerous examples of cases involving individuals who DHS has attempted to remove to third countries with little or no notice or opportunity to be heard");[8] *J.R. v. Bostock*, --- F.Supp.3d ----, 2025 WL 1810210, at *1 (W.D. Wash. June 30, 2025) (describing ICE's attempts to remove Filipino to Libya, then Cuba, both in the middle of the night without warning). And Respondents do not disavow any intention to remove Petitioner to a third country—they only state that has not yet occurred.

V. Petitioner is likely to suffer irreparable harm and the balance of equities and public interest tips sharply in his favor.

Because Petitioner is likely to succeed on the merits of his claim (or has at least raised serious questions), and his claim is constitutional in nature, he has demonstrated he will suffer harm absent immediate injunctive relief. *See, e.g.*, *Pinchi*, 2025 WL 1853763, at *3; *R.D.T.M. v.*

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[8] Respondents cite this case for the proposition that detention is authorized when removal is reasonably foreseeable, Opp. at 2, but *Y.T.D.* is distinguishable in that aspect for several reasons. First, the petitioner in *Y.T.D.* was previously denied bond because of flight risk and was accused of assaulting an officer inside of an ICE detention facility. Here, Respondents have not alleged in any way that Petitioner is a danger a flight risk. Second, *Y.T.D.* was not a case involving the unlawful rearrest presented here, and Petitioner brings separate claims regarding his unconstitutional rearrest and regulatory violations that also justify immediate release. Third, as explained above, Petitioner's removal is not in fact reasonably foreseeable, and Respondents have provided no evidence indicating otherwise.

Wofford, No. 1:25-CV-01141-KES-SKO (HC), 2025 WL 2686866, at *7 (E.D. Cal. Sept. 18, 2025). Respondents ignore the concrete harms Petitioner and his family are experiencing. *See* Dkt. 4 at 13 (describing Petitioner's U.S. citizen wife years-long battle with mental health challenges); Dkt. 1-1 at Ex. H (Psychological Evaluation of Petitioner's wife); *Id.* at Ex. I (Letter of Dr. Ravin Sharma, M.D.); *see also Hernandez*, 872 F.3d at 995 (recognizing "concrete terms the irreparable harms imposed on anyone subject to immigration detention").[9] They also ignore the harms he will experience if removed to a third country. Under DHS's current policies, without protections imposed by this Court, he risks being removed to a country where he lacks any status or connection whatsoever.

"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 and also remove him to a third country in violation of Due Process, the INA, and binding treaty. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Id.* (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). 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).

CONCLUSION

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

[9] *See also* "Immigrants protest solitary confinement, abuse at CA's largest ICE detention center," *The Fresno Bee* (Sept. 22, 2025), https://www.fresnobee.com/news/california/article312180017.html; "A former DACA recipient died in ICE custody. Did officials ignore his pleas for help?," *LA Times* (Sept. 24, 2025), https://www.latimes.com/california/story/2025-09-23/former-daca-recipient-dies-in-ice-custody-after-being-hospitalized (documenting rise in deaths in ICE custody in 2025 over previous years).

Dated: September 29, 2025

Respectfully submitted,

/s/ Johnny Sinodis
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