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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SISAWANG KHAMBOUNHEUANG,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 25-cv-2575-JO-SBC

Notice of Motion and Memorandum of Law in Support of Preliminary Injunction

Introduction

On October 9, 2025, this Court granted Mr. Khambounheuang's motion for a temporary restraining order and ordered his immediate release. Dkt. 12. The Court set a briefing schedule for a preliminary injunction and ordered the parties to address in part "the Government's compliance with procedures under both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13." Dkt. 11, 12.

Several updates are worth noting. Although the government released Mr. Khambounheuang from detention, ICE placed an ankle monitor on him five days later. It is unclear whether this ankle monitor is consistent with Mr. Khambounheuang's prior conditions of supervision. And ICE has yet to provide an initial informal interview permitting Mr. Khambounheuang to contest his redetention.

Additionally, ICE now claims to have a travel document for Mr. Khambounheuang. However, ICE has not explained how it completed its internal process, submitted the application to Laos; and received a travel document for Mr. Khambounheuang in the span of a single week. Petitioner thus requests at a minimum that this Court view the travel document *in camera* to confirm its existence before relying on it to find changed conditions or a significant likelihood of removal in the reasonably foreseeable future.

Apart from these developments, the factors relevant to the preliminary injunction remain the same as when the Court granted the TRO. Petitioner is likely to succeed on the merits of his claim and will suffer irreparable harm in the absence of injunctive relief. Furthermore, the balance of hardships and the public interest weigh heavily in his favor. For these reasons, the Court should grant the request for a preliminary injunction.

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Statement of Facts

I. In 2000, ICE tried and failed to remove Mr. Khambounheuang because the Laotian consulate refused to issue travel documents.

Sisawang Khambounheuang and his family came to the United States in 1979 as refugees from Laos. Exhibit A of habeas petition ("Khambounheuang Declaration") at ¶ 1. Mr. Khambounheuang became a lawful permanent resident and remained so until 2000, when he was ordered removed due to an assault conviction. *Id.* at ¶ 3. After he was ordered removed, he was detained for two years pending his removal while the government tried unsuccessfully to deport him to Laos. *Id.* at ¶ 4. After Mr. Khambounheuang was released in 2002, he attended every check in appointment and did not get any new criminal convictions. *Id.* at ¶ 5.

For the next 23 years, Mr. Khambounheuang worked as a cook at a restaurant. *Id.* at ¶ 8. But several months ago, he quit his longtime job as a restaurant cook so he could be a full-time caretaker for his elderly mother, who has dementia. *Id.*

On August 13, 2025, ICE arrested Mr. Khambounheuang when he went for his annual check in appointment. *Id.* at ¶ 6. Upon his arrest, ICE did not assert that he was in violation of the conditions of his supervised release, nor that there were any changed circumstances justifying his redetention. *Id.* ICE also did not provide Mr. Khambounheuang an informal interview or an opportunity to contest his redetention. *Id.*

Mr. Khambounheuang filed a petition for a writ of habeas corpus and a motion for a temporary restraining order. Dkt. 1, 3. He asserted that his redetention violated the regulations and *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), and that the Court should prevent the government from removing him to a third country absent procedural due process protections. On October 9, 2025, this

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Court granted his request for a temporary restraining order and ordered his release. Dkt. 12.

II. Following this Court's release order, ICE placed an ankle monitor on Mr. Khambounheuang, did not provide him an initial informal interview, and claimed that it had obtained a travel document.

ICE released Mr. Khambounheuang on October 9, 2025, but ordered him to attend a check in appointment on October 14, 2025.[1] When Mr. Khambounheuang went to this check in appointment, ICE did not provide him an informal interview with an opportunity to contest his redetention under 8 C.F.R. § 241.13(i)(3). Instead, ICE fitted Mr. Khambounheuang with an ankle monitor and informed him that he could not leave his residence for the next two days between the hours of 8 a.m. and 6 p.m. in

Before Mr. Khambounheuang's release, Deportation Officer Jason Cole had declared under penalty of perjury that ICE had been "diligently preparing a travel document request to send to the Laos embassy" but that this request was still "pending adjudication" in ICE's own internal process. Dkt. 10-2 at 3, Declaration of Jason Cole, October 6, 2025. But one week later, on October 13, 2025, an AUSA contacted undersigned counsel to advise her that ICE had obtained a travel document for Mr. Khambounheuang. In other words, ICE claimed to have completed its internal adjudication, submitted a request for a travel document to Laos, and received a travel document back from Laos in the course of a single week. This week also occurred during a federal government shutdown and a federal holiday.

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[1] The facts in this paragraph are based on a phone conversation that undersigned counsel had with Mr. Khambounheuang and his family on the afternoon of October 14, 2025.

III. The government is carrying out deportations to third countries without providing sufficient notice and opportunity to be heard.

As detailed in his habeas petition and motion for a TRO, ICE has been deporting individuals to third countries without adequate notice or a hearing. *See* Dkt. 1 at 16–19; Dkt. 3 at 9–11. What's more, the Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. For example, the government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See Wong, supra*.

On June 23 and July 3, 2025, in light of procedural arguments regarding the viability of national class-wide relief rather than individual relief, the Supreme Court issued a stay of a class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025). That national injunction had required ICE to

follow the statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025). On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exh. B to Habeas Petition.

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.* Upon serving notice, ICE "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." *Id.* (emphasis original). Depending on whether immigrants assert a credible fear, they will either be removed or screened by USCIS for withholding or removal or Convention Against Torture ("CAT") relief within 24 hours. *Id.* If USCIS determines that an individual does not qualify, they will be removed there despite asserting fear. *Id.*

Argument

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843–44 (9th Cir. 2024) (quoting *Alliance for the Wild*

Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011)). "Alternatively, a preliminary injunction may issue where serious questions going to the merits were raised and the balance of hardships tips sharply in plaintiff's favor if the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 844 (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1135). The standards for granting a preliminary injunction are the same as the standards for granting temporary restraining order. *See O.M. ex rel. Moultrie v. Nat'l Women's Soccer League, LLC,* 541 F. Supp. 3d 1171, 1177 (D. Or. 2021).

I. The government remains in violation of the regulations and has not shown changed circumstances or a significant likelihood of removal.

In its Order granting the TRO, this Court ordered the parties' preliminary injunction briefing to address "the Government's compliance with procedures under both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13," including "the Government's grounds and internal decision-making process for revoking Petitioner's release, including whether any changed circumstances justify revocation of Petitioner's release." Dkt. 12 at 2.

The government remains in violation of these regulations. At the time of his arrest, Mr. Khambounheuang was not told why ICE was revoking his supervised release, as the regulations require. *See* 8 C.F.R. § 241.13(i)(3) ("*Upon revocation,* the alien will be notified of the reasons for revocation of his or her release.") (emphasis added). Nor has ICE ever "conduct[ed] an initial informal interview" or afforded Mr. Khambounheuang an "opportunity to respond to the reasons for revocation stated in the notification" at either his August 13 arrest or his October 14 check in. *Id.* Because ICE has still not complied with or cured any of its regulatory violations, a preliminary injunction is warranted.

Instead, ICE placed an ankle monitor on Mr. Khambounheuang at his October 14 check-in appointment. Because Mr. Khambounheuang does not have access to a written list of the conditions of his supervised release, he does not

know whether the Court's Order returning him to the prior conditions of his release permitted ICE to place this ankle monitor. Mr. Khambounheuang thus requests that the government produce a copy of the conditions of his supervised release to help this Court determine whether the continued use of an ankle monitor is consistent with the Court's release order, both in the enforcement of the TRO and in the context of a preliminary injunction.

Finally, as of October 13, 2025, ICE claims that it has obtained a travel document for Mr. Khambounheuang. But only seven days earlier, on October 6, 2025, Deportation Officer Jason Cole declared under penalty of perjury that ICE had been "diligently preparing a travel document request to send to the Laos embassy" and that it was "pending adjudication" in ICE's own internal process. Dkt. 10-2 at 3, Declaration of Jason Cole. For ICE to have obtained a travel document, it must have: 1) finished its internal adjudication process; 2) submitted Mr. Khambounheuang's travel document request to the Laos embassy; and 3) received a travel document back from the Laos embassy—all in the course of a single week that included a government shutdown and a federal holiday.

ICE has not produced a copy of this travel document to Mr. Khambounheuang. Should the government rely on ICE's representation to claim that there are changed circumstances showing a significant likelihood of removal in the reasonably foreseeable future, Mr. Khambounheuang requests that the Court order ICE to produce a copy of this travel document, or at least permit the Court to view it *in camera*.[2]

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[2] Mr. Khambounheuang does not allege that the AUSA or the U.S. Attorney's Office have knowingly made any misrepresentations—only that ICE's unverified statements should be confirmed before the Court relies on them to make a finding of changed circumstances or a significant likelihood of removal in the reasonably foreseeable future.

II. A preliminary injunction is warranted because Petitioner is likely to succeed on the merits, or at least raise serious merits questions.

A. Petitioner is likely to succeed on the merits of his claim that his detention violates *Zadvydas*.

In his motion for a TRO, Mr. Khambounheuang explained why he was likely to succeed on the merits of his claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Dkt. 3 at 6–7. Mr. Khambounheuang was ordered removed more than six months ago, as his removal order became final in 2000. Khambounheuang Declaration" at ¶ 3. He was also been detained for well over two years while ICE has attempted to remove him between 2000 and 2002, and he was detained for nearly two months before this Court ordered his release. *Id.* at ¶¶ 4–6. Thus, he has been detained for more than six months cumulatively, and the *Zadvydas* grace period has ended.

There is also strong evidence that there is no "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Laos refused to accept Mr. Khambounheuang during the two years he was detained between 2000 and 2002. Khambounheuang Declaration at ¶ 4. Laos still has no repatriation agreement with the United States. And ICE was unable to remove Petitioner in the two months he was recently detained. Absent actual evidence (beyond its unverified assertion) that ICE has obtained a travel document, it is not significantly likely that he will be removed in the reasonably foreseeable future. Thus, this Court will likely find that Petitioner warrants *Zadvydas* relief.

B. Petitioner is likely to succeed on the merits of his claim that ICE violated its own regulations.

In addition to *Zadvydas*'s protections, a series of regulations provide extra process for someone who, like Petitioner, is re-detained following a period of release. Under 8 C.F.R. § 241.4(l), ICE may re-detain an immigrant on supervision only with an interview and a chance to contest a re-detention. When

an immigrant is specifically released after giving good reason why they cannot be removed, additional regulations apply: ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances," a noncitizen likely can be removed in the reasonably foreseeable future. *Id.* § 241.13(i)(2).

The regulations further provide noncitizens with a chance to contest a re-detention decision. ICE must "notif[y] [the person] of the reasons for revocation of his or her release." *Id.* § 241.13(i)(3). ICE must then "conduct an initial informal interview promptly" after re-detention "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* During the interview, the person "may submit any evidence or information" showing that the prerequisites to re-detention have not been met, and the interviewer must evaluate "any contested facts." *Id.*

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

ICE did not—and still has not—complied with any of these regulations. Petitioner did not violate the conditions of his release, and ICE has not provided evidence that there are no changed circumstances that justify re-detaining him. Nor has Petitioner received the interview required by regulation—either when he was arrested on August 13 or when he attended his check in appointment on October 14. No one from ICE has ever invited him to submit evidence to contest his detention. *Id.* "[B]ecause officials did not properly revoke petitioner's release

pursuant to the applicable regulations," this Court will likely find that "petitioner is entitled to his release" on an order of supervision. *Liu*, 2025 WL 1696526, at *3.

These regulatory violations also caused Mr. Khambounheuang prejudice. ICE has admitted that it did not have a travel document for Mr. Khambounheuang when it re-detained him on August 13. *See* Dkt. 10-2. Thus, it had no authority to re-detain him given that there were no violations of supervised release or "changed circumstances" suggesting a "significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future" at the time of his re-detention. 8 C.F.R. § 241.13(i)(1) and (2). Accordingly, Mr. Khambounheuang was deprived of his liberty for an unspecified period of time—including his ability to care for his elderly mother and spend time with his family—which alone caused him prejudice.

What's more, these regulations are "intended to provide due process in that they are fairly construed to be part of a procedural framework" that is "designed to ensure the fair processing of an action affecting an individual." *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025) (quotations omitted). So "when they are not followed, *prejudice is presumed*." *Id.* (emphasis added). Indeed, the Ninth Circuit has held that while a petitioner "[o]rdinarily" has the responsibility to show prejudice, it "may be presumed" where "compliance with the regulation is mandated by the Constitution." *Sanchez v. Sessions*, 904 F.3d 643, 652 (9th Cir. 2018) (quotations omitted). Other circuits hold the same. *See Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) ("As a general rule, prejudice will have to be specifically demonstrated, unless compliance with the regulation is mandated by the Constitution, in which case prejudice may be presumed.") (quotations and alterations omitted); *Martinez Camargo v. INS*, 282 F.3d 487, 492 (7th Cir. 2002) (same)."

Here, as in these cases, compliance with 8 C.F.R. § 241.13(i) and 8 C.F.R. § 241.4(*l*) ensures that a noncitizen will receive the procedural due process guarantee of notice and an opportunity to be heard. It confirms that ICE will not detain first and construct "changed circumstances" after—which is exactly what it did in this case by detaining Mr. Khambounheuang *before* it began seeking travel documents. Not only does this violation of a constitutionally-backed regulation mean that prejudice is presumed, the deprivation of Mr. Khambounheuang's liberty for an unspecified period of time stripped him of the opportunity to care for his mother and spend time with his family. This is more than enough to show prejudice.

C. Petitioner is likely to succeed on the merits of his claim that he is entitled to adequate notice and an opportunity to be heard prior to any third country removal.

Finally, Petitioner is likely to succeed on the merits of his claim that he may not be removed to a third country absent adequate notice and an opportunity to be heard. U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections in the CAT prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary

return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

To comport with due process, the government must provide notice of third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

Due process also requires "ask[ing] the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring a

minimum of 15 days' notice). "[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason: To have a meaningful opportunity to apply for fear-based protection, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear. !

Respondents' third country removal program skips over these statutory and constitutional procedural protections. According to ICE's July 7 guidance, individuals can be removed to third countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic assurances." Exh. B to Habeas Petition at 1. Petitioner is likely to succeed on the merits of his claim on this fact alone, because the policy instructs officers to provide no notice or opportunity to be heard. The same is true of the minimal procedures ICE offers when no diplomatic assurances are present. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone reopen removal proceedings.

Faced with similar arguments, several courts have recently granted individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210; *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

III. Petitioner will suffer irreparable harm absent injunctive relief.

Petitioner also meets the second factor, irreparable harm. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged

deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).

Here, the potential irreparable harm to Petitioner is even more concrete. "Unlawful detention certainly constitutes 'extreme or very serious damage, and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). Third-country deportations pose that risk and more. Recent third-country deportees have been held, indefinitely and without charge, in hazardous foreign prisons. *See* Wong et al., *supra*. They have been subjected to solitary confinement. *See* Imray, *supra*. They have been removed to countries so unstable that the U.S. government recommends making a will and appointing a hostage negotiator before traveling to them. *See* Wong, *supra*. These and other threats to Petitioner's health and life independently constitute irreparable harm.

IV. The balance of hardships and the public interest weigh heavily in petitioner's favor.

The final two factors for a TRO—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor. On the one hand, the government "cannot reasonably assert that it is harmed in any legally cognizable sense" by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government's treatment "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a

preliminary injunction."). On the other hand, Petitioner faces weighty hardships: unlawful, indefinite detention and removal to a third country where he is likely to suffer imprisonment or serious harm. The balance of equities thus favors preventing the violation of "requirements of federal law," *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful detention and unlawful third country removal.

Conclusion

For those reasons, Petitioner requests that this Court issue a preliminary injunction.

Respectfully submitted,

Dated: October 15, 2025

s/ Kara Hartzler
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