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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALI GHAFOURI,

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.

Case No.: 25-cv-2675-RBM-BLM

Traverse in Support of Petition for Writ of Habeas Corpus and Reply in Support of Temporary Restraining Order

I. Introduction

The government's return and opposition includes the following evidence:

- A notice of revocation of release provided to Mr. Ghafouri five months after ICE revoked his release, alleging the wrong year and contents of his removal order, and alleging the only changed circumstance warranting revocation is that his "case is under current review for removal to an alternative country," ECF No. 9, Exhibit 8;
- A declaration from a San Diego deportation officer declaring that Mr. Ghafouri was released from ICE custody in 2007 and 2009 because, both times, "ICE was unable to obtain a travel document" from Iran; that "ICE is not seeking to remove Petitioner to a third country"; that ICE submitted travel document requests to the Iranian embassy in May and September of this year and has not received a decision; and that ICE successfully removed only 12 Iranian immigrants in fiscal year 2025, ECF No. 9, Declaration of David Townsend, ¶¶ 12, 15, 17, 19, 20, 22; and
- Several administrative warrants of removal dated the day Mr. Ghafouri was re-detained this year, alleging he is "subject to removal/deportation from the United States" and "removable," and that a deportation officer "determined that, pending a final administrative determination in [his] case, [he] will be: Detained by the Department of Homeland Security," without any additional information as to why he is being re-detained over 20 years after he was ordered removed, ECF No. 9, Exhibits 4, 5, 6.

This evidence does not rebut Mr. Ghafouri's claims. This Court should grant Mr. Ghafouri's petition on all three claims, or, in the alternative, grant a temporary restraining order or preliminary injunction.

II. Argument

A. This Court has jurisdiction to consider Mr. Ghafouri's claims.

Contrary to the government's arguments, Section 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at *7[1]—the same claim that Mr. Ghafouri raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). The statute does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Instead, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to Mr. Ghafouri's claims. He challenges violations of ICE's mandatory duties under statutes, regulations, and the Constitution.

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[1] Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act ("FTCA") case, *id.* at *2, while this is a pre-removal habeas petition. But the analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and Mr. Ghafouri are challenging the same kind of agency action. *See Kong*, 62 F.4th at 616–17 (explaining that a decision about § 1252(g) in an FTCA case would also affect habeas jurisdiction).

"Though 8 U.S.C § 1252(g) precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Ghafouri's] continued detention and the process required in relation to third country removal." *Y.T.D. v. Andrews*, No. 25-cv-01100-JLT, 2025 WL 2675760, *5 (E.D. Cal. Sept. 18, 2025).

Other courts agree. *See, e.g.*, *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to ICE "failing to carry out non-discretionary statutory duties and provide due process").

In short, Mr. Ghafouri does not challenge whether the government may "execute" his removal under 8 U.S.C § 1252(g)—only whether it may detain him up to the date it does so or remove him to a third country without notice and an opportunity to be heard. This Court has jurisdiction.

B. Mr. Ghafouri's claims succeed on the merits.

Because the government's evidence is insufficient to justify Mr. Ghafouri's detention, his petition should be granted outright, or, in the alternative, this Court should release him on a TRO pending further briefing.

1. Claim One: ICE did not adhere to any of the regulations governing re-detention, warranting release.

The government does not claim to have complied with 8 C.F.R. §§ 241.4 and 241.13. For Mr. Ghafouri, those regulations permit his re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be

removed in the reasonably foreseeable future," § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) "upon revocation," "notifie[s]" the noncitizen "of the reasons for revocation of his or her release," § 241.13(i)(2)(iii), 241.13(*l*)(1); (4) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3); and (5) "affords the [person] an opportunity to respond to the reasons for revocation," *id.*

The government's evidence indicates it notified Mr. Ghafouri of his revocation of release on October 10, 2025, five months after it revoked his release on May 15, 2025. ECF No. 9, Exhibit 8. In that notification, it alleges that "[o]n June 17, 2004," Mr. Ghafouri was "ordered removed to Iran" and "granted a withholding of removal to Iran. [His] case is under current review for removal to an alternate country." *Id.* In fact, Mr. Ghafouri was ordered removed on June 5, 2003, and does not have withholding of removal to Iran. Exhibit A to Habeas Petition (Declaration of Ali Ghafouri) ¶ 2; *see* ECF No. 9, Exhibit 2 (2003 removal order).

A five-month-late notice is not one given "upon revocation." §§ 241.13(i)(2)(iii), 241.4(*l*)(1). There is no evidence that this notice was accompanied with a chance for Mr. Ghafouri to respond in an informal interview; even if there was, that interview would not have been "prompt[]." §§ 241.4(*l*)(1), 241.13(i)(3).

ICE's reasons for revocation are clearly wrong, in addition to insufficient: Mr. Ghafouri does not have withholding of removal to Iran, ECF No. 9, Exhibit 2; his case is apparently not under review for third-country removal, ECF No. 9, Declaration of David Townsend, ¶ 17; and there was not even a request for travel documents from Iran until a week after his arrest, *id.* ¶ 19. There were no "changed circumstances" supporting a determination that "there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." § 241.13(i)(2). Five months after the government requested travel documents

from Iran this year, the government has still not heard back. ECF No. 9, Declaration of David Townsend, ¶¶ 19–20. That's consistent with what happened the last two times ICE requested travel documents for Mr. Ghafouri. *Id.* ¶¶ 12, 15.

In the last several weeks, multiple judges from this district have ordered release for failure to follow these regulations on records less egregious than this one. *See, e.g.*, *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *accord Grigorian v. Bondi*, No. 25-cv-22914-RAR, 2025 WL 2604573 (S.D. Fl. Sept. 9, 2025); *Delkash v. Noem*, No. 25-cv-1675-HDV-AGR, 2025 WL 2683988 (C.D. Cal. Aug. 28, 2025) (granting habeas petitions specifically as to Iranian nationals due to regulatory violations). This Court should do the same.

The government's two remaining arguments on Mr. Ghafouri's regulatory claims—that Mr. Ghafouri must show prejudice, and that the regulations do not implement due process and protected liberty interests—also fail.

First, Mr. Ghafouri need not show prejudice from these regulatory claims. But, of course, he can. "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up). Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the

most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is required.

Regardless, a violation of a regulation is prejudicial where, as here, "the merits" of an immigrant's case for relief "were never considered by the agency at all." *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1052 (9th Cir. 2023). Faced with that total deprivation, a petitioner need not point to the specific "evidence [he] would have presented to support [his] assertions" or make "any allegations as to what the petitioner or his witnesses might have said." *Id.* (cleaned up).

And Mr. Ghafouri could "present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up). He would have had a very strong argument against re-detention had ICE given him notice and an opportunity to respond. Importantly, ICE was fully capable of trying to get a travel document while Mr. Ghafouri remained at liberty. Detaining him is therefore unnecessary. Mr. Ghafouri deserved a chance to make that case upon his re-detention. Because ICE did not make any of the proper findings, let alone give Mr. Ghafouri timely notice and a chance to contest them, he must be released.

Second, of course § 241.13(i) and § 241.4(*l*)(1) implement the basic due process protections of notice and an opportunity to be heard before being detained indefinitely. Their violation is an enforceable violation of a protected interest in being free from indefinite detention. "When someone's most basic right of freedom is taken away, that person is entitled to at least some minimal process; otherwise, we all are at risk to be detained—and perhaps deported—because someone in the government thinks we are not supposed to be here." *Ceesay*, 781 F. Supp. 3d at 165.

In arguing otherwise, the government "confuses [Mr. Ghafouri's] right to an order of supervision, which ICE indeed has discretion to grant or deny, with his right not to be detained without adequate—in fact, without *any*—process. The right to be free from detention can never be dismissed as discretionary." *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Bui's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

Because the government utterly failed to comply with each requirement of § 241.4 and § 241.13 when revoking Mr. Ghafouri's release, it should, "[l]ike many other district courts within this circuit," "find[] that these failures constitute a violation of Petitioner's due process rights and justif[y] his release." *Bui v. Noem*, No. 25-cv-2111, 2025 WL 2988356, *5 (S.D. Cal. Oct. 23, 2025).

C. Claim Two: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*.

Next, government provides no evidence that Mr. Ghafouri will likely be

removed to Iran, let alone in the reasonably foreseeable future.

As the government apparently does not dispute, the six-month grace period has passed. Mr. Ghafouri was ordered removed in 2003, and he has been detained for more than 11 months cumulatively since then.[2] And the government does not deny that Mr. Ghafouri has provided "good reason" to doubt his reasonably foreseeable removal, thereby forfeiting the issue. *See Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928 (D. Minn. 2006).

The burden therefore shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future"). The government meets neither.

1. The government provides no evidence to support a "significant likelihood of removal" to Iran.

As an initial matter, the government has not shown that Mr. Ghafouri's removal to Iran is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701.

Deportation Officer Townsend's assertions—that he is "confident ICE will obtain a [travel document] to effectuate [Mr. Ghafouri's] removal to Iran" and is "aware of no barrier to the consulate's issuance of a travel document"—are not supported by the evidence. ECF No. 9, Declaration of David Townsend ¶¶ 21, 23.

There are, in fact, many barriers. The Department of Homeland Security issued a report in 2019 discussing Iran's and several other countries' longstanding failure to cooperate with repatriation entitled, *ICE Faces Barriers in Timely*

[2] This total time is calculated based on the Declaration of David Townsend, including the time Mr. Ghafouri was detained in ICE custody post removal from June 5, 2003, to August 18, 2003 (2 months, 13 days); April 12, 2007, to May 2, 2007 (20 days); March 10, 2009, to June 16, 2009 (3 months, 5 days); and May 15, 2025 to present (5 months, 9 days). ECF No. 9, Declaration ¶¶ 9–10, 12, 14–16.

Repatriation of Detained Aliens.[3] President Trump reiterated this year in a presidential proclamation that Iran "has historically failed to accept back its removable nationals." Presidential Proclamation, *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, June 4, 2025.[4]

Deportation Officer Townsend notes that in fiscal year 2024 ICE removed 27 Iranian citizens and 11 Iranian citizens in fiscal year 2025. ECF No. 9 ¶ 22. He does not indicate whether they were, in fact, removed to Iran or a third country. *See id.* (citing annual report that tabulates annual "ICE removals by country of citizenship," not removals *to* that particular country). Nor does he mention that, as of January 2025, there were 2,618 Iranians in the United States with final orders of removal. *See* Maham Javaid & Adrián Blanco Ramos, *Countries refusing deportees could hinder Trump's immigration plans*, The Washington Post (Jan. 27, 2025).[5] The fact that, last year, the United States removed 11 of 2,618 Iranians somewhere does not indicate a significant likelihood of Mr. Ghafouri's removal to Iran.

Further, courts have "demanded an individualized analysis" of why *this* person—Mr. Ghafouri—will likely be removed. *Nguyen v. Scott*, __ F. Supp. 3d __, 2025 WL 2419288, *17 (W.D. Wash. 2025) (citing *Nguyen v. Hyde*, 2025 WL 1725791, *4 (D. Mass. June 20, 2025)). Because "[t]he government has not provided any evidence of [Iran's] eligibility criteria or why it believes Petitioner

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[3] *See* page 30, available at https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf; https://static.foxnews.com/foxnews.com/content/uploads/2024/12/get-backs-re-non-detained-docket-1.pdf.

[4] Available at https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/.

[5] Available at https://www.washingtonpost.com/world/2025/01/27/trump-deportees-venezuela-china-india-cuba/.

now meets it," and because the only individualized evidence indicates that Iran has already twice declined to provide travel documents to Mr. Ghafouri, ECF No. 9, Townsend Declaration ¶¶ 12, 15, the government's evidence is insufficient. *Id.* at *18.

Importantly, good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Here, then, "[w]hile the respondent asserts that [Mr. Ghafouri's] travel document requests with [the Iranian] Consulate[]" remain pending, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019); *accord Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*,

No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

2. The government provides no evidence to support that any removal will occur "in the reasonably foreseeable future."

Additionally, even if ICE will eventually remove Mr. Ghafouri, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Cole provides no timetable for how long travel document requests like his typically take.

That is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Ghafouri] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might*

occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

Courts have routinely granted habeas petitions where, as here, the government does not establish *Zadvydas*'s timing element. *See, e.g.*, *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and recommendation adopted,* No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) ("[A] theoretical possibility of eventually being removed does not satisfy the government's burden[.]"); *Eugene v. Holder*, No. 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) ("While Respondents contend Petitioner *could* be removed to Haiti, it has not been shown that it is significantly likely that Petitioner *will* be removed in the *reasonably foreseeable* future."); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting petition because even if "Petitioner's removal will ultimately be effected . . . the Government has not rebutted the presumption that removal is not likely to occur in the reasonably foreseeable future"); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the government had not provided any "evidence . . . that travel documents will be issued in a matter of days or weeks or even months").

In sum, there could be "some possibility that [Iran] will accept Petitioner at some point. But that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *16. Mr. Ghafouri therefore succeeds under *Zadvydas*, too.

D. Claim Three: The government does not deny that ICE's third-country removal policy violates due process, and this claim is justiciable.

This Court should also prohibit ICE from removing Mr. Ghafouri to a third country without adequate notice. The government does not try to defend ICE's third-country removal policy on the merits. Instead, the government says that a third-country removal challenge is nonjusticiable under Article III because ICE

professes no current plans to remove Mr. Ghafouri to a third country. ECF No. 9 at 4; *but see* ECF No. 9, Exhibit 8 (informing Mr. Ghafouri that his supervision is being revoked because "[y]our case is under current review for removal to an alternate country").

"There, so to speak, lies the rub." *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). "[A]ccording to [Respondents], an individual must await notice of removal before his claim is ripe[.]" *Id.* But under ICE's policy, "there is no notice" for certain removals and inadequate notice for others. *Id.* And if Mr. Ghafouri "is removed" before he can raise this challenge, Respondents will then argue that "there is no jurisdiction" to bring him back to the United States. *Id.*

This Court need not adopt that Kafkaesque view. The government has not denied that "the default procedural structure without an injunction" is "set forth in DHS's March 30 and July 9, 2025 policy memoranda," which provide for third-country removal with little or no notice. *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). And Mr. Ghafouri has "point[ed] to 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." *Id.*; *see* ECF No. 1 at 4–6. "On balance," then, "there is a sufficiently imminent risk that [Mr. Ghafouri] will be subjected to improper process in relation to any third country removal to warrant imposition of an injunction requiring additional process." *Y.T.D.*, 2025 WL 2675760, at *11; *accord Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (granting temporary restraining orders or habeas petitions ordering the government to not remove petitioners to third countries).

III. The remaining TRO factors decidedly favor Mr. Ghafouri.

This Court need not evaluate the other TRO factors—the Court may simply grant the petition outright. But if the Court does decide to evaluate irreparable harm and balance of harms/public interest, Mr. Ghafouri should prevail.

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments,[6] the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Fifth Amendment protects. *Zadvydas*, 533 U.S. at 690. Furthermore, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26.

On the balance-of-equities/public-interest prong, the government is correct that there is a "public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the government likely cannot remove Mr. Ghafouri in the reasonably foreseeable future, and even if it could, it is equally "well-established that 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends.'" *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also "would not be equitable or in the

[6] The government cites three cases to support the position that illegal immigration detention is not irreparable harm. ECF No. 9 at 13–14. All involved immigrants who were actively appealing to the BIA, but wanted a federal court to intervene before the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *1 (W.D. Wash. Feb. 19, 2021); *Cortez v. Nielsen*, No. , 2019 WL 1508458 (N.D. Cal. Apr. 5, 2019); *Resendiz v. Holder*, 2012 WL 5451162. These courts indicated only that post-bond-hearing detention pending an ordinary BIA appeal, in which administrative exhaustion was available to the petitioner and being pursued, was not irreparable harm. *Id.*

public's interest to allow the [government] to violate the requirements of federal law" with respect to detention and re-detention, *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the "public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. 418, 436. *See, e.g.*, *Sun*, 2025 WL 2800037 at *4 (explaining this and holding that the "third and fourth *Winter* factors support injunctive relief" enjoining the petitioner's improper revocation of immigration supervision); *Delkash*, 2025 WL 2683988 at *6 (enjoining the government from re-detaining or removing an Iranian national to a third country without notice and an opportunity to be heard).

Conclusion

For all these reasons, this Court should grant the petition, or at least enter a temporary restraining order and injunction. In either case, the Court should (1) order Mr. Ghafouri's immediate release; (2) prohibit Respondents from re-detaining Mr. Ghafouri unless and until Respondents obtain a travel document; without following all regulatory procedures; (3) prohibit Respondents from re-detaining Mr. Ghafouri without first following all regulatory procedures; and (4) prohibit Respondents from removing Mr. Ghafouri to a third country without following the process laid out in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).

Respectfully submitted,

Dated: October 24, 2025

s/ Jessie Agatstein

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