

1 Stacy Tolchin (CA SBN #217431)
2 Law Offices of Stacy Tolchin
3 776 E. Green St., Ste. 210
4 Pasadena, CA 91101
5 Telephone: (213) 622-7450
6 Facsimile: (213) 622-7233
7 Email: Stacy@Tolchinimmigraton.com

8 Counsel for Petitioner

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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 Saul PANUELAS GUTIERREZ,
14
15 Petitioner,

16 v.

17 Kristi NOEM, Secretary, Department
18 of Homeland Security; Todd LYONS,
19 in his official capacity as Acting
20 Director of U.S. Immigration and
21 Customs Enforcement; Pam BONDI,
22 Attorney General of the United States;
23 and David GOMEZ, Field Office
24 Director, San Bernardino ICE Field
25 Office.

26 Respondents.
27
28

No. 5:25-cv-02668-DOC-RAO

PETITIONER'S POINT AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION

Date of Hearing: Nov. 13, 2025

Time: 10:00 a.m.

Judge: Hon. David O. Carter
District Court Judge

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I. INTRODUCTION

Petitioner Saul Panuelas Gutierrez was granted deferral of removal under the Convention Against Torture and cannot be removed to Mexico as result of a final March 6, 2023 immigration judge decision. Dkt # 4-1, Tolchin Dec. Exh. D. Nevertheless, on October 9, 2025, Petitioner was taken into custody by immigration officials in the San Bernardino Immigration and Customs Enforcement (ICE) Field Office and was told he was being held for processing to a third country for removal. Tolchin Dec. Exh. A. There is no lawful basis for such a detention when Petitioner has already been held for more than six months pursuant to a final order of removal, and the government did not seek his removal to a third country at that time. Petitioner cannot lawfully be detained absent evidence that his removal is reasonably foreseeable. No such evidence exists. And if the government has obtained such evidence, Due Process requires that Petitioner be given proper notice of probable removal to a third country and an opportunity to apply for protection under the Convention Against Torture. *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2411010, at *3 (E.D. Cal. Aug. 20, 2025).

On October 31, 2025, the Court granted Petitioner's Ex Parte Application for Temporary Restraining Order, requiring that Petitioner be released on or before November 7, 2025. Dkt # 16 at 9. Petitioner is still in immigration custody as of the filing of this brief. Tolchin Supplemental Declaration at Exh. L. He now seeks a preliminary injunction, maintaining that he cannot be re-detained without sufficient notice and evidence of a travel document, such that he has sufficient time to seek protection from the immigration court if necessary.

II. STATEMENT OF FACTS

Petitioner was born in Mexico and came to the United States in 1987 at the age of 12. He did not have lawful status. Dkt # 4-1, Tolchin Dec. Exh. D. Petitioner

1 resides in Lake Elsinore, California and has an extended community and family
2 support. Id. at Exh. H. Petitioner grew up in San Clemente, California with his
3 parents, siblings, uncle, and cousins. Id. at Exh. D. He joined the [REDACTED]
4 [REDACTED] gang at the age of 14. Petitioner had been experiencing bullying and
5 believed that the gang would provide protection. He was “jumped in” to the gang at
6 the age of 16. Id.

7 On October 15, 1993, Petitioner went to eat at a local Taco Bell with friends,
8 and then went to the local beach. A man was in his truck near the beach and
9 Petitioner and his friends pulled over near the man. Id. After a brief exchange,
10 Petitioner’s friend punched the man in the face. The man pulled away and four
11 additional trucks approached. Id. Petitioner and his friends grabbed what they
12 could find to defend themselves. Petitioner threw a “rock the size of a golf ball” at
13 the top of one of the trucks. Id. One of the objects that was thrown pierced a truck
14 window, striking a 17 year old boy in the car and placing him in a coma. The
15 victim later died from the wound. Id.; Tolchin Dec. Exhs. J-K. Petitioner and his
16 friends were arrested. Petitioner was charged with second degree murder, seven
17 counts of assault, and gang enhancements. Tolchin Dec. Exhs. D, I. He was age 17
18 at the time, but was charged as an adult. Id.

19 This case garnered community outrage and substantial media attention.
20 Tolchin Dec. Exhs. H, J, K. Petitioner was sentenced to fifteen years to life in
21 prison and was placed in prison with other gang members from the Sureños gang.
22 Tolchin Dec. Exhs. D, I. He believed that he had to join the or else he would be
23 severely harmed or killed. Tolchin Dec. Exh. D.

24 Petitioner was required to participate in riots and fights on behalf of the gang
25 and was in prison for nearly thirty years. Id. In 2015, Petitioner heard testimony
26 from the victim’s family during his parole hearing, and began thinking about his
27 decisions. He began to distance himself from the gang and chose to work in the
28

1 prison instead of participating in gang activities, and was beaten because of this
2 choice. *Id.* The [REDACTED] gang threatened to kill Petitioner. *Id.* Petitioner
3 affirmatively informed prison officials of the activities of the [REDACTED] gang and its
4 leadership. He then disassociated with the gang and was moved to a cell in the
5 general population. *Id.*

6 Petitioner went on in prison to earn his General Educational Development
7 (GED) degree, and attended vocational classes, bible study, and self-help classes.
8 *Id.* In 2021, when Petitioner was waiting for his parole hearing, a member of the
9 [REDACTED] gang threatened to kill Petitioner. *Id.*

10 In 2022, Petitioner's murder conviction was vacated, and he was resentenced
11 to 18 years in prison, receiving credit for time served. *Id.*; Tolchin Dec. Exh. I.

12 Once Petitioner was released in 2022, he was transferred to immigration
13 custody. Tolchin Dec. Exhs. D, G. On May 5, 2022, Petitioner was detained by
14 immigration authorities and was issued an administrative order of removal by DHS
15 pursuant to 8 U.S.C. § 1228(b). Tolchin Dec. Exh. G. He expressed a reasonable
16 fear of return to Mexico and was placed into "withholding only" proceedings
17 before an immigration judge, while still detained. Tolchin Dec. Exh. F.

18 While Petitioner was detained, DHS could have sought removal to a third
19 country since Petitioner was subject to a removal order.¹ It did not.

20 On November 10, 2022, Petitioner was ordered released on a \$5,000 bond
21 and Alternatives to Detention by the immigration judge, after having been in
22 custody for more than six months. Tolchin Dec. Exh. E. As a part of the terms of
23 release, Petitioner reported regularly to ICE on an Order of Supervision. Tolchin
24 Dec. Exh. B.

25 On March 6, 2023, the immigration judge granted Petitioner deferral of
26

27 ¹ *Johnson v. Guzman Chavez*, 594 U.S. 523, 528, 141 S. Ct. 2271, 2281, 210 L. Ed.
28 2d 656 (2021).

1 removal under Article III of the Convention Against Torture, based on a clear
2 probability that Petitioner would suffer torture if removed to Mexico, based on his
3 risk of torture from gangs in Mexico and that Mexican officials would consent or
4 acquiesce to such torture. Tolchin Dec. Exh. D. DHS did not appeal the decision.
5 Tolchin Dec. Exh. C. Petitioner reported as required under the terms of his order of
6 supervision. Tolchin Dec. Exhs. A, B.

7 On October 9, 2025, Petitioner went to report to the San Bernardino ICE
8 Field Office and was taken into immigration custody. Tolchin Dec. Exh. A. He was
9 told that ICE would seek his removal to a third country. He was not informed that
10 there was any evidence that DHS had obtained documents for third country
11 removal or that he had violated the terms of his release. *Id.*

12 Petitioner filed a petition for writ of habeas corpus and an *Ex Parte*
13 Application for a Temporary Restraining Order before the Court on October 9,
14 2025. Dkts ## 1, 4. On October 31, 2025, the Court granted the Application and
15 ordered that Petitioner be released from custody on or before November 7, 2025.
16 Dkt # 16 at 9. Petitioner has not yet been released from custody. Tolchin
17 Supplemental Declaration at Exh. L. The Court further set a hearing on a
18 preliminary injunction for November 13, 2025, and ordered that any supplemental
19 briefing be filed by November 5, 2025. *Id.*

20 21 **III. ARGUMENT**

22 In order to obtain a preliminary injunction, Petitioner must demonstrate that
23 (1) he is likely to succeed on the merits of their claims; (2) he is likely to suffer
24 irreparable harm in the absence of preliminary relief; (3) the balance of equities
25 tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res.*
26 *Def. Council*, 555 U.S. 7, 22 (2008). A sliding scale test may be applied and an
27 injunction should be issued when there is a stronger showing on the balance of
28

1 hardships, even if there are “serious questions on the merits ... so long as the
2 plaintiff also shows a likelihood of irreparable harm and that the injunction is in
3 the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th
4 Cir. 2011); *see also Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98
5 F.4th 1180, 1190 (9th Cir. 2024).

6 Petitioner satisfies the criteria for an injunction.

7
8 A. THE RELEASE OF PETITIONER PURSUANT TO THE TRO
DOES NOT MOOT PETITIONER’S CLAIM

9 While the Court ordered that Respondents release Petitioner by November 7,
10 2025, which they still have not done, that release will not moot this action.
11 Petitioner will still be on an order of supervision after his release, which requires
12 him to meet regularly with immigration authorities. Tolchin Dec. Exh. B. A
13 preliminary injunction is still required so that Petitioner is not detained again if
14 Immigration and Customs Enforcement (ICE) chooses to engage in another
15 “fishing expedition” searching for a third country of removal, and so that he is
16 given sufficient notice before he is taken into custody so that he can seek
17 protection under the Convention Against Torture before the immigration judge, if
18 necessary.

19 A petition for writ of habeas corpus is moot when a detainee is released
20 from custody. *Munoz v. Rowland*, 104 F.3d 1096, 1098 (9th Cir. 1997); *Sila v.*
21 *Warden*, No. EDCV 22-1632 RSWL (AS), 2023 WL 2504476, at *2-3 (C.D. Cal.
22 Feb 13, 2023). “Although the word ‘custody’ is elastic, all definitions of it
23 incorporate some concept of ongoing control, restraint, or responsibility by the
24 custodian.” *See Samirah v. O’Connell*, 335 F.3d 545, 549 (7th Cir. 2003) *citing*
25 *Black’s Law Dictionary* 384 (6th ed.1990). Federal courts have interpreted
26 “custody” for habeas purposes broadly and have found a petitioner to be in
27 “custody” where he is “subject both to ‘significant restraints on liberty ... which
28

1 are not shared by the public generally,’ along with ‘some type of continuing
2 governmental supervision.’ ” *Obado v. New Jersey*, 328 F.3d 716, 717 (3d Cir.
3 2003). “Restraints short of incarceration may satisfy the ‘in custody’ requirement
4 for habeas relief, but the restraint must significantly compromise the individual's
5 ‘liberty to do those things which in this country free men are entitled to
6 do.’” *Lopez Lopez v. Charles*, No. 12-cv-101445, 2020 WL 419598, at *3 (D.
7 Mass. Jan. 26, 2020) *citing Jones v. Cunningham*, 371 U.S. 236, 243, 83 S.Ct. 373,
8 9 L.Ed.2d 285 (1963).

9 The order of supervision continues Petitioner’s custody status in this case
10 and provides continued jurisdiction. It is also unclear if ICE will add additional
11 intensive monitoring and an ankle bracelet to the existing order of supervision
12 once he is released. Tolchin Dec. Exh. B. Therefore, Petitioner is clearly still in
13 custody and the habeas is not moot even upon his release once Respondents have
14 complied with the Court’s October 31, 2025 order. *Orellana Juarez v. Moniz*, No.
15 25-CV-11266-MJJ, 2025 WL 1698600, at *4 (D. Mass. June 11, 2025) (“Mr.
16 Orellana Juarez lives in reasonable fear that a violation may result in physical
17 detention, and ultimately trigger removal proceedings against him.”)
18

19
20 B. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF
21 HIS CLAIMS.

22 Petitioner is likely to succeed on his claims that his October 9, 2025
23 detention by Respondents violates the statute at 8 U.S.C. § 1231(a)(6), *Zadvydas v.*
24 *Davis*, 533 U.S. 678 (2001), Due Process, and governing regulations that require
25 the government to establish that removal is reasonably foreseeable once a
26 noncitizen has already been held for more than 180 days and cannot be removed.
27 Dkt # 16 at 5. He also is likely to prevail on his claim that he cannot be removed to
28 a third country without proper notice and an opportunity to apply for protection

1 under the Convention Against Torture.

2
3 1. Petitioner is Likely to Succeed on His Claim that His Re-
4 Detention Would Violate the Statute, Regulations, and Due
5 Process if Respondents Cannot Demonstrate that His Removal
6 is Reasonably Foreseeable

7 The Immigration and Nationality Act authorizes a post-removal-period
8 detention of six months to allow the United States to effectuate removal. 8 U.S.C. §
9 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001). Once removal is no longer
10 foreseeable, it is a violation of 8 U.S.C. § 1231(a)(6) and Due Process to hold a
11 noncitizen in immigration detention. The Administrative Procedure Act (APA)
12 provides that a court shall hold unlawful and set aside an agency action that is “in
13 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”
14 5 U.S.C. § 706(2)(C).

15 *Zadvydas* places the initial burden on the alien to show, after a detention
16 period of six months, that there is “good reason to believe that there is no
17 significant likelihood of removal in the reasonably foreseeable future. *Pelich v.*
18 *I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003). Petitioner was already detained
19 pursuant to a final order of removal in 2022, at which time the government could
20 have sought removal to a third country. *Johnson v. Guzman Chavez*, 594 U. S. 523,
21 526 (2021); *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL
22 2411010, at *3 (E.D. Cal. Aug. 20, 2025). The administrative removal order issued
23 on May 5, 2022 was a final order of removal issued pursuant to 8 U.S.C. § 1228(b).
24 Tolchin Dec. Exh. G. This started the period for removal under 8 U.S.C. §
25 1231(a)(2)(A). *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL
26 2411010, at *3 (E.D. Cal. Aug. 20, 2025). “But after that 90-day removal period
27 concludes—in what is referred to as the ‘post-removal period’—the government’s
28 detention authority shifts to § 1231(a)(6). *Id.* citing U.S.C. § 1231(a)(6); *Guzman*

1 *Chavez*, 594 U.S. at 528–29. The six month period in § 1231(a)(6) has therefore
2 already run.

3 The burden is now on the government to prove that Petitioner has a
4 significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §
5 241.13(i). *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4
6 (D. Minn. Aug. 25, 2025) (“the regulations at issue in this case place the burden on
7 ICE to first establish changed circumstances that make removal significantly likely
8 in the reasonably foreseeable future.” That period does not just automatically reset.
9 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash.
10 Aug. 21, 2025); *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6
11 (N.D. Cal. Apr. 19, 2018). The government has not met that burden. Petitioner’s
12 detention is a violation of 8 U.S.C. § 1231(a)(6) and Due Process. No evidence was
13 provided that Petitioner’s removal was now reasonably foreseeable. Tolchin Dec.
14 Exh. A.

15
16 2. Petitioner is Likely to Succeed on His Re-Detention Violates
17 the “Changed Circumstances” Regulations

18 In addition, as the Court found in its October 31, 2025 order, Petitioner is
19 likely to succeed on his regulatory challenge to his re-detention. Dkt # 16 at 5. The
20 regulations address the requirement that immigration authorities may only re-detain
21 an individual who was released from custody if there are changed circumstances
22 which now provide that removal is reasonably foreseeable. DHS regulations
23 authorize the revocation of an order of release only when “if, on account of
24 changed circumstances, the Service determines that there is a significant likelihood
25 that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. §
26 241.13(i)(2). The APA provides that a court shall hold unlawful and set aside an
27 agency action that is “without observance of procedure required by law.” 5 U.S.C.
28

1 § 706(2)(D). An agency's failure to follow its regulations that are meant to protect
2 fundamental rights is a violation of due process. *Accardi v. Shaughnessy*, 347 U.S.
3 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147
4 F.3d 1148, 1153 (9th Cir. 1998). The regulation at 8 C.F.R. § 241.13(i)(2) is
5 designed to protect the fundamental interest of liberty, and the failure to follow the
6 regulation is a violation of due process.

7 As discussed above, this regulation places the burden on the government to
8 demonstrate that there are new circumstances which now establish that removal is
9 reasonably foreseeable, consistent with the requirements of *Zadvydas*. See also
10 *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn.
11 Aug. 25, 2025) (the burden falls on the government to change the present state of
12 affairs and it therefore must demonstrate changed circumstances). In this case, the
13 only representation made by Respondents regarding Petitioner's removal was in
14 Respondents' Opposition to the Application for Temporary Restraining Order. Dkt
15 # 6 at 2 ("But the government is now taking steps to remove him to a third
16 country..."). No declaration or evidentiary submission was even provided to the
17 Court explaining why Petitioner's removal is now reasonably foreseeable.
18 Threadbare assertions that the government is seeking removal are not enough to
19 meet this requirement. *Sun v. Noem*, No. 3:25-CV-02433-CAB-MMP, 2025 WL
20 2800037, at *3 (S.D. Cal. Sept. 30, 2025). See also *Hoac v. Becerra*, No. 2:25-CV-
21 01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) ("The fact that
22 Respondents intend to complete a travel document request for Petitioner does not
23 make it significantly likely he will be removed in the foreseeable future."); *Nguyen*
24 *v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *4 (D. Mass. June 20,
25 2025) (finding insufficient the government's assertions that they are processing a
26 travel document because they "have not identified what concrete steps ICE has
27 taken to process" the document nor whether the request was submitted to the
28

1 removal country); *Roble*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4
2 (finding insufficient the government's assertion that ICE "requested third country
3 removal assistance from [Enforcement and Removal Operations] HQ." (alteration
4 in original)).

5 Hence, the re-detention of Petitioner is a violation of 8 C.F.R. § 241.13(i)(2)
6 and Petitioner's due process rights without evidence of changed circumstances that
7 Petitioner's removal is reasonably foreseeable.

8
9 3. Petitioner is Likely to Succeed on His Re-Detention Would
10 Violate 8 C.F.R. § 241.4(l) and Due Process

11 Next, the regulations also have additional restrictions as to when release may
12 be revoked. The regulation at 8 C.F.R. § 241.4(l) authorizes the revocation of
13 release only where there has been a violation of the conditions of release or there
14 has been a determination by the Executive Associate Commissioner that "i) The
15 purposes of release have been served; (ii) The alien violates any condition of
16 release; (iii) It is appropriate to enforce a removal order or to commence removal
17 proceedings against an alien; or (iv) The conduct of the alien, or any other
18 circumstance, indicates that release would no longer be appropriate." The APA
19 provides that a court shall hold unlawful and set aside an agency action that is
20 "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). An
21 agency's failure to follow its regulations that are meant to protect fundamental
22 rights is a violation of due process. *Accardi v. Shaughnessy*, 347 U.S. 260, 267, 74
23 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148,
24 1153 (9th Cir. 1998). The regulation at 8 C.F.R. § 241.13(i)(2) is designed to
25 protect the fundamental interest of liberty, and the failure to follow the regulation
26 is a violation of due process.

27 None of the circumstances under 8 C.F.R. § 241.4(l) have been met, in
28 violation of the regulation at 8 C.F.R. § 241.13(i)(3) and in violation of Due

1 Process. Alternatively, if such determinations have been met, Petitioner has not
2 been notified of such determinations in violation of due process. Tolchin Dec. Exh.
3 A. *Perez-Escobar v. Moniz*, No. 25-CV-11781-PBS, 2025 WL 2084102, at *2 (D.
4 Mass. July 24, 2025) (“ICE’s failure to give Petitioner meaningful notice of the
5 basis for its revocation of his release violated the regulation and due process.”
6

7 4. Petitioner is Likely to Succeed on His Third Country Removal
8 Claim

9 Last, Respondents claim that they have detained Petitioner to process him
10 for removal to a third country, as Petitioner cannot be removed to Mexico. Tolchin
11 Dec. Exh. A; Dkt # 6 at 2. Under the Due Process Clause of the Fifth Amendment
12 to the United States Constitution, no person shall be “deprived of life, liberty, or
13 property, without due process of law.” U.S. Const. amend. V. “Freedom from
14 imprisonment—from government custody, detention, or other forms of physical
15 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*,
16 533 U.S. 678, 690 (2001). Due Process requires notice and an opportunity to
17 respond before Petitioner is removed to a third country. *Mullane v. Cent. Hanover*
18 *Bank & Tr. Co.*, 339 U.S. 306, 320, 70 S. Ct. 652, 660, 94 L. Ed. 865 (1950).

19 “Failing to notify individuals who are subject to deportation that they have
20 the right to apply ... for withholding of deportation to the country to which they
21 will be deported violates both INS regulations and the constitutional right to due
22 process.” *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999). Article III of
23 the Convention Against Torture bars the removal of any individual to a country
24 where they face a clear probability of torture.

25 Petitioner must be provided notice and an opportunity to seek protection
26 under Article III of the Convention Against Torture before he may be removed to a
27 third country. In *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *19
28 (W.D. Wash. Aug. 21, 2025), the district court found that the petitioner was likely

1 to succeed on his claim that removal to a third country without meaningful notice
2 and reopening of his removal proceedings for a hearing, would violate due process.
3 *See also Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *5 (N.D.
4 Cal. Aug. 6, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at
5 *19 (W.D. Wash. Aug. 21, 2025); *Van Tran v. Noem*, No. 25-CV-2334-JES-MSB,
6 2025 WL 2770623, at *3 (S.D. Cal. Sept. 29, 2025); *Garcia-Ayala v. Andrews*, No.
7 2:25-CV-02070-DJC-JDP, 2025 WL 2597508, at *3 (E.D. Cal. Aug. 8, 2025). *See*
8 *also D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 389 (D. Mass.),
9 *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7,
10 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D.
11 Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of*
12 *Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025).

13 Notice is important, because courts have recognized that the government is
14 removing noncitizens to third countries where they will be intentionally
15 imprisoned. *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *24
16 (W.D. Wash. Aug. 21, 2025). “A noncitizen must be given sufficient notice of a
17 country of deportation that, given his capacities and circumstances, he would have
18 a reasonable opportunity to raise and pursue his claim for withholding of
19 deportation.” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019).
20 Petitioner must be able to seek protection under the Convention Against Torture
21 before the immigration judge if the government is able to find a country of removal
22 and Petitioner fears that he will be tortured if removed there. *Zakzouk v. Becerra*,
23 No. 25-CV-06254-KAW, 2025 WL 2899220, at *4 (N.D. Cal. Oct. 10, 2025) (“to
24 the extent the Government now seeks to remove Petitioner to a third country *for*
25 *which no final removal order exists* (such as Jordan), Petitioner would have a right
26 to be afforded notice and an opportunity to be heard on a fear-based claim as to
27 that country under the Fifth Amendment.”) As such, before Petitioner is removed
28

1 to any third country, he must be provided with proper notice and an opportunity to
2 apply for protection under the Convention Against Torture.

3
4 C. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE
5 ABSENCE OF A PRELIMINARY INJUNCTION

6 In the absence of a preliminary injunction, Petitioner is subject to re-
7 detention and a restriction on his liberty, a fundamental right. He faces being
8 separated from his family and community as well. Tolchin Dec. Exh. H. “Freedom
9 from imprisonment—from government custody, detention, or other forms of
10 physical restraint—lies at the heart of the liberty” that the Due Process Clause
11 protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes “a
12 loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp.
13 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on*
14 *other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th
15 Cir. 2022). It “is well established that the deprivation of constitutional rights
16 unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990,
17 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989,
18 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95
19 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
20 government's current policies [which fail to consider financial ability to pay
21 immigration bonds] are likely unconstitutional—and thus that members of the
22 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
23 the absence of the injunction—that Plaintiffs have also carried their burden as to
24 irreparable harm.”). Petitioner clearly demonstrates irreparable harm. *Garcia-*
25 *Ayala v. Andrews*, No. 2:25-CV-02070-DJC-JDP, 2025 WL 2597508, at *4 (E.D.
26 Cal. Aug. 8, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616,
27 at *7 (N.D. Cal. Aug. 6, 2025).
28

1 D. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR
2 AND AN INJUNCTION IS IN THE PUBLIC INTEREST

3 Because the government is a party, the balance of equities and whether the
4 injunction is in the public interest are considered together. *Nken v. Holder*, 556
5 U.S. 418, 435 (2009). Petitioner has established that the public interest factor
6 weighs in his favor because his claims assert violations of federal laws. *See Valle*
7 *del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because re-detention
8 after Petitioner has been detained in excess of 6 months and cannot be removed "is
9 inconsistent with federal law, . . . the balance of hardships and public interest
10 factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*,
11 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno*
12 *Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction
13 issued in *Moreno II* and quoting approvingly district judge's declaration that "it is
14 clear that neither equity nor the public's interest are furthered by allowing
15 violations of federal law to continue"). This is because "it would not be equitable
16 or in the public's interest to allow the [government] . . . to violate the requirements
17 of federal law, especially when there are no adequate remedies available." *Valle*
18 *del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in
19 original) (citation omitted). Indeed, Respondents "cannot suffer harm from an
20 injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d
21 1127, 1145 (9th Cir. 2013).

22
23 **IV. CONCLUSION**

24 For the foregoing reasons, the Court should grant Petitioner's Motion for
25 Preliminary Injunction and order that Petitioner not be re-detained without 1)
26 evidence of a travel document or other document establishing that his removal is
27 reasonably foreseeable; and 2) 14 days notice prior to detention so that he may
28 seek reopening for protection under the Convention Against Torture before the

1 immigration judge, if necessary.

2

3 Dated: November 5, 2025

Respectfully Submitted,

4

S/Stacy Tolchin

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Stacy Tolchin (CA SBN #217431)

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Law Offices of Stacy Tolchin

7

776 E. Green St., Ste. 210

8

Pasadena, CA 91101

9

Telephone: (213) 622-7450

10

Facsimile: (213) 622-7233

11

Email:

12

Stacy@Tolchinimmigration.com

13

Counsel for Petitioner

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner certifies that this Memo contains 4489 words, which complies with the word limit of L.R. 11-6.1.

s/ Stacy Tolchin
Stacy Tolchin
Counsel for Petitioner

1 Stacy Tolchin (CA SBN #217431)
2 *Email: Stacy@Tolchinimmigration.com*
3 Law Offices of Stacy Tolchin
4 776 E. Green St., Suite 210
5 Pasadena, CA 91101
6 Telephone: (213) 622-7450
7 Facsimile: (213) 622-7233

8 Counsel for Petitioner

9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 Saul PANUELAS GUTIERREZ,

13 Petitioner,

14 v.

15 Kristi NOEM, Secretary, Department of
16 Homeland Security; Todd LYONS, in his
17 official capacity as Acting Director of U.S.
18 Immigration and Customs Enforcement; Pam
19 BONDI, Attorney General of the United
20 States; and David GOMEZ, Field Office
21 Director, San Bernardino ICE Field Office.

22 Respondents.

No. 5:25-cv-02668-DOC-RAO

SUPPLEMENTAL
DECLARATION OF STACY
TOLCHIN IN SUPPORT OF
PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION

1 I, Stacy Tolchin, hereby declare and state the following:

2 1. My business address is Law Offices of Stacy Tolchin, 776 E. Green St.
3 Suite 210, Pasadena, CA 91101.

4 2. I have personal knowledge of the events described below.

5 3. I represent Petitioner before this Court.

6 4. This declaration supplements my prior declaration of October 9, 2025.

7 5. Attached as **Exhibit L** is a document from the Immigration and Customs
8 Enforcement showing that Petitioner is detained at the Adelanto detention facility.

9
10 Pursuant to 28 C.F.R. § 24.201(f), I hereby verify that the information
11 provided in the application and all accompanying material is true and correct to the
12 best of my information and belief. Executed this 5th day of November 2025 at
13 Pasadena, CA.

14

15

S/Stacy Tolchin

16

Stacy Tolchin (CA SBN #217431)

17

Law Offices of Stacy Tolchin

18

776 E. Green St., Ste. 210

19

Pasadena, CA 91101

20

Telephone: (213) 622-7450

21

Facsimile: (213) 622-7233

22

Email: Stacy@Tolchinimmigration.com

23

Counsel for Petitioner

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