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Vladimir Kaborda

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Vladimir Kaborda,

Petitioner-Plaintiff,

v.

Luis ROSA, Jr., in his Official Capacity, Warden at Central Arizona Florence Correctional Complex;

John CANTU, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security;

Todd LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pamela BONDI, in her Official Capacity, Attorney General of the United States

Respondents-Defendants.

Case No. TBD

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION: HEARING REQUESTED

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Petitioner Vladimir Kaborda ("Mr. Kaborda") hereby moves this Court for an order that Defendants Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), Pamela Bondi, in her official capacity as the U.S. Attorney General, and Luis Rosa, Jr., in his official capacity as Warden of the Central Arizona Florence Correctional Complex, be enjoined from continuing to detain Petitioner in custody, and, following his release, be enjoined from re-detaining him without first providing him with a hearing before an Immigration Judge prior to any future re-detention, as required by the Due Process clause of the Fifth Amendment. Petitioner additionally seeks to enjoin Respondents from removing Petitioner from the United States to any third country to which he does not have a removal order (i.e. any country other than Belarus) without first providing him with constitutionally-compliant procedures.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful detention, which appears indefinite and was imposed absent a pre-deprivation due process hearing. Petitioner has provided a copy of his Petition for Writ of Habeas Corpus and Motions for Temporary Restraining Order and Motion for

Preliminary Injunction to Katherine Branch, Civil Chief for the U.S. Attorney's Office, by email. *See* Exhibits.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order requiring ICE to immediately release him from custody (to enjoin the unlawful ongoing detention), enjoining Respondents from re-detaining him without a hearing before an Immigration Judge prior to any re-detention, and enjoining Respondents from removing him to any third country without first providing him with constitutionally compliant procedures. Petitioner further prays this Court enjoin ICE from transferring him outside this judicial district while his habeas corpus petition is pending. The only mechanism to ensure that he is not continuously unlawfully detained in violation of his due process rights is a temporary restraining order from this Court.

Dated: October 14 2025

Respectfully Submitted,
s/Jesse Evans-Schroeder
Attorney for Petitioner-Plaintiff

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I. INTRODUCTION

Petitioner-Plaintiff Mr. Kaborda, by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") from his ongoing immigration detention in its custody and immediately release him. Mr. Kaborda also seeks an order enjoining Respondents from re-detaining him unless and until he is afforded notice and a hearing before an Immigration Judge where DHS bears the burden of demonstrating that his removal is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified (i.e. whether he poses a danger or a flight risk), and where the Immigration Judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish. Finally, Mr. Kaborda seeks an order enjoining Respondents from removing him to any third country without first providing him with constitutionally-compliant procedures, and an order enjoining DHS from transferring him outside this judicial district while his petition is pending.

Mr. Kaborda is a native of the Union of Soviet Socialist Republics ("USSR"), who was born in the part of that country that is now Belarus. He entered the United States in March 1995 on a B2 visitor visa. On November 16, 1998, Mr. Kaborda adjusted his status to that of a conditional lawful permanent resident based on his marriage to a United States citizen. He has never entered the United States unlawfully.

On October 25, 2000, Mr. Kaborda and his wife jointly filed a Form I-751,

Petition to Remove Conditions on Residence, with United States Citizenship and Immigration Services ("USCIS"). USCIS denied the petition on March 27, 2008, and terminated Mr. Kaborda's conditional residence. On May 11, 2012, an Immigration Judge ("IJ") ordered Mr. Kaborda removed, and the Board of Immigration Appeals ("BIA" or "Board") affirmed the IJ's decision on October 30, 2013. Mr. Kaborda did not appeal the Board's decision, and his removal order became final on November 29, 2013.

When Mr. Kaborda appeared for removal in 2013, ICE did not remove him, but allowed him to remain at liberty on an Order of Supervision ("OSUP"). Mr. Kaborda complied with the terms of the OSUP since that time and diligently complied with ICE's requests to attempt to obtain travel documents for removal to Belarus and for immigration to a different country where he did not fear persecution or torture. Nonetheless, on September 17, 2025, without prior notice or a hearing, ICE took Mr. Kaborda into custody during a routine check-in appointment in Phoenix, Arizona. Once he was in custody, Mr. Kaborda never received a custody status review either before or after ICE revoked his OSUP and detained him. Mr. Kaborda attempted to make a claim of fear upon his detention, but ICE refused to hear it.

Mr. Kaborda cannot be removed to Belarus because he holds a passport from the USSR, and his Belarussian citizenship status is uncertain. Thus, his re-detention by ICE must be held unlawful as it is limitless in duration. He has also never been ordered removed to any third country or notified of such potential removal. Mr. Kaborda's detention is both unconstitutional because it is indefinite, and illegal because it does not comport with the regulations, and he was otherwise not provided any pre-deprivation

hearing before his recent detention by ICE. Based on these circumstances, he raises three ways in which his ongoing detention is unlawful and must be enjoined, and as well requests an injunction against removal to a third country in case that is in the offing:

First, once a noncitizen is permitted to remain at liberty pursuant to an OSUP, their re-detention is limited by regulation, statute and the Constitution. By statute and regulation, only in specific circumstances (that do not apply here) does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability of ICE to simply re-arrest someone following their release from detention, however, is further limited by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, due process requires that he be released from unlawful re-detention because he was not provided notice and a hearing before an Immigration Judge (as a neutral adjudicator).

Second, following his release, the same principles must apply, such that in the future he must be provided with notice and a hearing, *prior to any re-detention*, at which DHS bears the burden of justifying his re-detention (to a neutral adjudicator such as an Immigration Judge who is not part of ICE or DHS) and at which Mr. Kaborda will be afforded the opportunity to advance his arguments as to why he should not be re-detained.

Third, the Supreme Court has limited the potentially indefinite post-removal order detention to a *maximum* of six months after the removal order becomes final, if removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because it is

not clear that Mr. Kaborda is a citizen of the only country to which he was ordered removed, and ICE has not indicated that it succeeded in obtaining travel documents to permit Mr. Kaborda to be removed to Belarus, Mr. Kaborda's removal is not reasonably foreseeable in this case. Nor has the government provided him with notice, evidence, or an opportunity to be heard on this issue before arbitrarily and unilaterally re-detaining him. It has been nearly twelve years since Mr. Kaborda's removal order became final. His continued detention is indefinite, and the only remedy is his immediate release.

Mr. Kaborda meets the standard for a temporary restraining order. He will continue to suffer immediate and irreparable harm stemming from his unlawful re-detention absent an order from this Court enjoining the government from further unlawful detention by ordering his release from detention, and enjoining future re-detention unless and until he receives a hearing before an Immigration Judge. He would also suffer immediate and irreparable harm if removed to a third country where his life could be in danger. For that reason, he also seeks an order enjoining Respondents from removing him to any third country without first being provided with constitutionally-compliant procedures including adequate notice and an opportunity to demonstrate if his life is in danger or he is likely to face torture—all of which are demanded by the Constitution. Petitioner further seeks an order prohibiting Respondents from transferring him outside this judicial district while this petition is pending, to avoid unlawfully frustrating this tribunal's jurisdiction and Petitioner's ability to access legal counsel. Since holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Mr. Kaborda's favor.

II. STATEMENT OF FACTS AND CASE

Mr. Kaborda was born in the USSR, in the region that later became the country of Belarus. *See* Exhibit A (Declaration of Petitioner); Exhibit B (Notice to Appear). Mr. Kaborda entered the United States for the first time in March 1995 on a B2 visitor visa. *See* Exhibit A. He married Sara Gotbeter ("Ms. Gotbeter"), a United States citizen, and on November 16, 1998, he became a conditional lawful permanent resident of the United States. Exhibits A, B.

On October 25, 2000, Mr. Kaborda and Ms. Gotbeter jointly filed a Form I-751, Petition to Remove Conditions on Residence, with USCIS. *See* Exhibit C (March 27, 2008 Decision of USCIS). USCIS denied the petition on March 27, 2008, after finding that Mr. Kaborda and Ms. Gotbeter married for the sole purpose of circumventing the immigration laws. *Id.* USCIS therefore terminated Mr. Kaborda's conditional residence. *See* Exhibits B, C.

On May 11, 2012, an IJ in Charlotte, North Carolina, ordered Mr. Kaborda removed under 8 U.S.C. § 1227(a)(1)(D)(i), as a noncitizen lawfully admitted for permanent residence on a conditional basis whose status was terminated. Exhibit B; *see also* Exhibit D (October 30, 2013 Decision of the Board of Immigration Appeals). Mr. Kaborda appealed the IJ's decision to the Board, which affirmed the IJ's order on October 30, 2013. Exhibit D. Mr. Kaborda did not appeal the Board's order, and as such, his order of removal became final on November 29, 2013. *See* Exhibit A.

In 2013, Mr. Kaborda presented himself to ICE for removal to Belarus and submitted paperwork through ICE to the Belarus Embassy to seek travel documents. *See*

Exhibit A. However, when Mr. Kaborda provided his deportation officer with his USSR passport, the officer explained that ICE could not remove Mr. Kaborda with that passport because USSR no longer exists. *Id.* ICE did not request further paperwork from Mr. Kaborda for removal to Belarus in more recent years. *See id.* ICE then proceeded to place Mr. Kaborda on an OSUP because his removal order to Belarus could not be executed. *Id.*

Mr. Kaborda moved from Greenville, South Carolina to Phoenix, Arizona, where he lived until his recent detention. *Id.* Mr. Kaborda attended check-ins regularly since 2013. *Id.* At first, he was required to report to ICE every few months, but following the COVID pandemic he was required to report only once per year. *Id.* Mr. Kaborda has always followed all the terms designated by ICE on his OSUP, and he has never failed to check in. *Id.*

Mr. Kaborda has also diligently pursued options for obtaining travel documents. As previously mentioned, after his removal order and in the few years that followed, he submitted paperwork through ICE to the Belarus Embassy for the purpose of obtaining travel documents. *Id.* To his knowledge, no response was ever received to those requests. *Id.* He has not been asked to submit paperwork through ICE again in recent years. In 2017, Mr. Kaborda and his new wife – a United States citizen named Yulia – began to investigate a way for him to leave the U.S. and immigrate to another country. *Id.* Mr. Kaborda had informed ICE that he feared removal to Belarus, and ICE told him to pursue ways to leave the United States for another country. *Id.* Mr. Kaborda and his wife therefore spoke with immigration attorneys in Canada and Australia but were advised

that Mr. Kaborda had no options to immigrate to either country. *Id.* Mr. Kaborda provided his deportation officer with the communications and appointments he had with these attorneys to show her that he was abiding by ICE's request to make efforts to obtain travel documents. *Id.*

On September 17, 2025, ICE, without prior notice or a hearing, took Mr. Kaborda into custody in Phoenix, Arizona, at his yearly check-in with ICE. *Id.* ICE informed him that he was being detained because he had an unexecuted order of removal since 2012. *Id.* He inquired what country he would be removed to but was simply told "That's not our problem." *Id.* Mr. Kaborda was not provided with any documentation at the time of his detention. *Id.*

As of the time of this filing, Mr. Kaborda has not been provided with any documentation nor had any meetings with ICE while detained. *Id.* He does not have any information regarding what ICE's plan is for obtaining travel documents for him. *Id.*

Mr. Kaborda fears removal to Belarus because he does not know if he has citizenship there, because when he left in 1995, he possessed only a USSR passport. *Id.* His uncertainty with regard to his citizenship puts him at risk of mistreatment, incarceration, torture, conscription, and death because he does not possess any rights in Belarus. *Id.* Additionally, Mr. Kaborda believes his strong ties to the U.S. are heavily frowned upon because Belarus, an internationally recognized authoritarian republic, views the U.S. as an enemy who may come to think he has been planted as a spy by American authorities. *Id.*

Upon Mr. Kaborda's detention, he expressed his fear of removal to ICE, but the only response he received was, "That's not my problem." *Id.* On September 29, 2025, Mr. Kaborda filed a motion to reopen his removal proceedings before the Board of Immigration Appeals. *See* Exhibit E (Screenshot from Automated Case Information System of Executive Office for Immigration Review). In that motion, Mr. Kaborda expressed his fear of removal to Belarus and filed an application for asylum. *See* Exhibit A. The motion remains pending, and proceedings have not been reopened. Exhibit E.

Mr. Kaborda has been sick for the majority of his time in detention with a bad cold due to freezing conditions in the detention center. He is suffering from excessive mucous buildup in his eyes, congestion, and a runny nose. *See* Exhibit A. He is receiving medical care every day for nasal congestion, cough, and allergies. *Id.* He also has a history of stroke, and he has been receiving stroke medication, which includes aspirin and cholesterol medications. *Id.*

In detention, Mr. Kaborda has been separated from his U.S.-citizen wife, their U.S.-citizen daughter, who is only eight years old, and his adult U.S.-citizen daughter. *Id.* He has received no information about why he is detained, nor about when or to where he might be taken. *Id.*

Since ICE provided Mr. Kaborda with an OSUP nearly twelve years ago, ICE did not seek to revoke the OSUP or detain Mr. Kaborda. Instead, for well over a decade, Mr. Kaborda was attending his routine check-in appointments as required, and developing connections with his family members—including his U.S.-citizen wife and children. *See id.*

Mr. Kaborda therefore does not have travel documents for Belarus or any other country, despite his own diligent efforts to obtain such documents. *See id.* Because ICE has not claimed to have made any effort to obtain travel documents for Mr. Kaborda, he remains in ICE custody with no end in sight to his detention.

III. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . 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." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER BECAUSE HE IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS, AND HE SUFFERS IRREPARABLE INJURY EACH DAY HE REMAINS INDEFINITELY DETAINED.

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Kaborda's continuous, indefinite detention violates his due process rights, and so too did his detention and revocation of his OSUP prior to receiving a hearing before an Immigration Judge. Mr. Kaborda has already suffered irreparable injury in the form of incarceration and will continue to suffer irreparable injury each day he remains detained without due process.

The Court should enjoin further detention because Mr. Kaborda is likely to succeed on the merits of claims one, two, and three below. The Court should enjoin removal to any third country other than Belarus without the constitutionally required procedures, because he is likely to succeed on the merits of claim four, below. To ensure these claims are adjudicated in a manner consistent with Mr. Kaborda's due process rights, the Court should enjoin his transfer outside this judicial district while his petition is pending. Mr. Kaborda asks the Court to grant all or part of the requested injunction.

A. Petitioner is Likely to Succeed on the Merits of His Claims.

The Court should grant the requested relief because Mr. Kaborda is likely to succeed on the merits of each of his claims, as outlined below.

1. Petitioner Is Likely to Succeed on the Merits of His Claim That, in Violation of Clear Supreme Court Precedent, His Continued Detention is Unconstitutional Because it is Indefinite.

First, Mr. Kaborda is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from keeping him in custody, because he cannot be removed to Belarus, and his indefinite detention is unconstitutional because there is no end in sight.

Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

Mr. Kaborda's removal order became final on November 29, 2013, when the 30-day deadline to appeal the Board's order passed. *See* Exhibits A, D. During that entire removal period, which ended on February 27, 2014, ICE was not able to remove Mr. Kaborda to Belarus, and upon information and belief, it did not attempt to remove him to any other country. *See* Exhibit A.

If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the

removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the post-final-order detention statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

The Supreme Court has addressed the fact that the statute is silent regarding the limits on post-final order detention, and has definitively held that such detention has the potential to be indefinite and such indefinite detention would be unconstitutional. Thus, there must be constitutional limits on post-final order detention. Specifically, the Supreme Court held that post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

In light of the Supreme Court limitations imposed on the statutory scheme, the government updated the regulations to be consistent with those constitutionally required limitations on indefinite detention. Under those regulations, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable). Moreover, under the Supreme Court's constitutional limitations on indefinite detention, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas*, 533 U.S. at 701.

Here, Mr. Kaborda was not detained after the Board dismissed his appeal specifically because his removal order could not be executed, and as such, his removal was not reasonably foreseeable. *See* Exhibit A. And nothing has changed, save that Mr. Kaborda has now surpassed the presumptively reasonable six-month period for ICE to secure his removal. If ICE is permitted to revoke his OSUP and detain him now, under the possibility he might be removed some day simply because he has a removal order, then he very likely will be detained in ICE custody essentially forever.

Mr. Kaborda's detention is unconstitutional because it is indefinite. There is no evidence that Belarus has agreed to accept Mr. Kaborda, notwithstanding its refusal to do so throughout the years since he was ordered removed. Mr. Kaborda's only passport is from the USSR; he was unable to obtain travel documents from Belarus when he attempted to do so; and ICE declared upon detaining Mr. Kaborda that it was "not [their] problem" to seek travel documents to effectuate his removal *See* Exhibit A; *see also Muhti. v. Ashcroft*, 314 F. Supp. 418 (M.D. Pa. 2004) (holding, inter alia, that petitioner

did not "hold[] the keys to his freedom" where he attempted to obtain travel documents for himself from numerous countries and did not refuse to comply with any "specific directive" from ICE).

Thus, Mr. Kaborda's removal is not reasonably foreseeable in this case, and the government has not provided him with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily revoking his OSUP and detaining him, or since his detention. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Id.* Therefore, he may—and under these circumstances, must—be released. 8 C.F.R. § 241.13(b)(1); *see also Quoc Chi Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025); *Phong Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000 (E.D. Cal. July 16, 2025); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS 133521 (E.D. Cal. July 14, 2025); *Karem Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025); *see also Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543 (D. Md., Sep. 8, 2025) (granting petition and ordering release because petitioner's opportunity to seek fear-based relief from removal to third countries, and associated timeframes for adjudication of fear claims, demonstrated that there was no substantial likelihood of removal in the reasonably foreseeable future); *Chebib v. DHS*, 2020 WL 2561958 (N.D. Fla. Apr. 1, 2020) (ordering immediate release with order of supervision where removal not foreseeable) (R&R adopted in 2020 WL 25621277 (May 1, 2020)); *Manson v. Barr*, No. 3:20-CV-133, 2020 WL 3962235 (M.D. Fla. Jul. 13, 2020) (same); *Muhti*, 314 F.

Supp. 2d at 430–31 (ordering release of the noncitizen where he showed, and the government failed to rebut, "substantial evidence that removal is unlikely in the reasonably foreseeable future"); *accord Cabrera Galdamez v. Mayorkas*, No. 22-CV-9847, 2023 WL 1777310 (S.D.N.Y. Feb. 6, 2023) (ordering bond hearing in lieu of immediate release despite detention beyond six-months following removal order, because Petitioner's appeal was only impediment to removal); *Shahbaz H. v. Green*, No. 19-8052, 2019 WL 2723880 at *5 (D. N.J. July 1, 2019) (denying petition due to issuance of travel documents by country to which petitioner was ordered removed, but reasoning that "the Government can establish its continued authority to detain only if the Government can rebut [the] evidence and show that the alien's removal remains likely in the reasonably foreseeable future").

2. Petitioner is Likely to Succeed on the Merits of His Claim That his Detention if Unlawful Because He Was Detained, and His OSUP Was Revoked, in Violation of the Regulations.

Mr. Kaborda's detention is separately unlawful because the controlling regulations specify the circumstances that permit the revocation of his OSUP and subsequent detention, and Respondents have not established that circumstances have changed regarding the foreseeability of his removal which is required under those regulations.

By regulation, non-citizens with final removal orders who are released from detention after a post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an order of supervision, the regulations further specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

In this case, Mr. Kaborda was released on an OSUP, which specified the conditions imposed on him, and it is uncontested that he complied with all of those conditions. *See* Exhibit A. Under the regulations, ICE has the authority to re-detain a noncitizen previously ordered removed *only* in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i). Mr. Kaborda has not violated his OSUP. *See* Exhibit A. Further, he has not been provided any evidence of changed circumstances, nor any assurance that Respondents ever properly followed the regulatory procedures to re-detain him based on changed circumstances. *Id.*; 8 C.F.R. § 241.13(i) (requiring notice of the reason for revocation of release, and an interview at which an individual has an opportunity to respond to the reasons given for revocation and submit evidence and information on his behalf, including to show that there is no significant likelihood of removal in the reasonably foreseeable future). Instead, ICE officials simply told Mr. Kaborda upon his detention that he had an unexecuted removal order, which had been true for the entire period of nearly twelve years when he was at liberty subject to the OSUP. *See* Exhibit A.

Mr. Kaborda has not received any review of his custody status, and he has no evidence he has of any efforts by ICE to obtain a travel document for his removal. *See id.* Mr. Kaborda does not have a passport from Belarus, but only from the USSR. Mr. Kaborda has received no documentation from ICE since his detention over three weeks ago, and a Deportation Officer told him that it was "not [ICE's] problem" to obtain travel documents to effectuate his removal order. *Id.* There is no evidence of a change in the

policy of the government of Belarus with respect to Mr. Kaborda's citizenship or its willingness to accept him for removal. Mr. Kaborda did not stop regularly reporting for check-in appointments, and he did not have criminal issues to indicate dangerousness. *See id.*

Thus, Mr. Kaborda's detention is further unlawful because Respondents squarely violated the controlling regulations in re-detaining him.

3. Petitioner is Likely to Succeed on the Merits of His Claim That Due Process Requires That He Should Have Been Afforded a Hearing Before an Immigration Judge Prior to Any Detention by ICE, and he is Entitled to Such a Hearing Prior to Any Future Re-Detention.

Mr. Kaborda is also likely to succeed on his claim that fundamental principles of due process require that his OSUP cannot be revoked, resulting in his detention by ICE, without first affording him a pre-deprivation hearing before an Immigration Judge where the government shows that his removal is reasonably foreseeable and that circumstances have changed since his OSUP was issued in 2013, including that Mr. Kaborda's removal is reasonably foreseeable, or that he is now a danger or a flight risk.

ICE failed to follow the controlling regulations in re-detaining Mr. Kaborda, but even if they had complied with the procedures set forth in those regulations, ICE's regulatory authority to unilaterally re-detain Mr. Kaborda is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to

constitutional due process before he is re-incarcerated"). In turn, to protect that interest, on the particular facts of Mr. Kaborda's case, due process required notice and a hearing, *prior to the revocation of his OSUP*, at which he was afforded the opportunity to advance his arguments as to why he should not be detained. This never occurred. *See Quoc Chi Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025); *Phong Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000 (E.D. Cal. July 16, 2025); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS 133521 (E.D. Cal. July 14, 2025); *Karem Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025).

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

a. Petitioner Has a Protected Liberty Interest in His Release.

Mr. Kaborda's liberty from immigration custody, a form of civil detention, is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

For nearly twelve years preceding his detention and the revocation of his OSUP on September 17, 2025, Mr. Kaborda exercised that freedom under the OSUP issued in 2013. *See* Exhibit A. He thus retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding incarceration. *See Young v. Harper*, 520 U.S.

143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. In this case, in the absence of evidence that Belarus has changed its view on whether Mr. Kaborda can be repatriated, his removal is not foreseeable at all, let alone reasonably. Therefore, his continued detention is unconstitutional.

Just as importantly, for a period of more nearly twelve years, Mr. Kaborda continued presenting himself before ICE for his regular check-in appointments, where ICE did not seek to arrest him. ICE instead gave him a future date and time to appear again at regular intervals, which he did. *See* Exhibit A. During this time, he developed and nurtured deep and lasting connections with his family, including his wife, who is a U.S. citizen, their young daughter, who was born in Arizona, and his adult daughter who is also a United States citizen. *See id.*

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

friends and to form the other enduring attachments of normal life"—thus, those released on parole have a protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482. *See also Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

In fact, so fundamental to due process is the concept of liberty that it is even well-established that an individual maintains a protectable liberty interest where the individual obtains liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Like the terms of parole in *Morrissey*, the conditions of Mr. Kaborda's OSUP "enable[d] him to do a wide range of things open to persons'" who have never been in custody or convicted of any

crime, including to live at home, work with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. *Moreover, Mr. Kaborda is not a criminal detainee, but a civil detainee, and thus the due process considerations of his liberty should be even weightier than the courts have already found apply in the criminal context.* Indeed, unlike in *Morrissey*, Petitioner has never been in criminal custody; ICE never previously found it necessary to detain him; and the terms of his OSUP in recent years required only annual reporting for check-ins. *See* Exhibit A. Precedent from the Supreme Court and the Ninth Circuit makes clear that Mr. Kaborda has a strong liberty interest in his continued release from detention.

b. Petitioner's Liberty Interest Mandated a Due Process Hearing Before any Re-Detention, and Once Released, Mandates Such a Hearing Prior to Any Re-Detention.

Mr. Kaborda asserts that, here, (1) where his detention is civil, (2) where he has diligently complied with ICE's reporting requirements on a regular basis for over twenty years, and (3) where on information and belief ICE officers arrested Mr. Kaborda merely to fulfill an arrest quota because his removal is not reasonably foreseeable and potentially indefinite, due process mandates that he was required to receive notice and a hearing before an Immigration Judge prior to his arrest upon revocation of the OSUP.

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the

[government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Mr. Kaborda with notice and a hearing *prior* to any incarceration and revocation

of his OSUP. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted).[1] Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before an Immigration Judge, which ICE failed to provide.

i. Petitioner's Interest in His Liberty Is Profound.

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Kaborda, who were long ago evaluated for ICE custody and allowed to remain at liberty subject to conditions, and now are facing civil (not criminal) detention.

Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*

[1] *Johnson v. Arteaga v. Martinez*, 596 U.S. __, 142 S. Ct. 1827 (2022), is not to the contrary. The Supreme Court in that case did not address the requirements for revocation of an OSUP, and it specifically indicated that its prior decision in *Zadvydas* was still good law. 142 S. Ct. at 1832.

Wisconsin, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Kaborda, as a civil detainee, retains a truly weighty liberty interest even though his continued liberty was subject to the terms of an OSUP prior to his arrest.

What is at stake in this case for Mr. Kaborda is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision to allow him to remain at liberty and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

ii. The Government's Interest in Keeping Petitioner in Detention is Low and the Burden on the Government to Release Him from Custody is Minimal.

The government's interest in keeping Mr. Kaborda in detention without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of releasing him from custody. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the

process Petitioner seeks—release from civil custody after ICE *already* allowed Mr. Kaborda to remain at liberty subject to conditions nearly *twelve years ago* and where nothing in the interim has changed to warrant re-detention after —is a standard course of action for the government. Providing Mr. Kaborda with a future hearing before an Immigration Judge to determine whether his removal is reasonably foreseeable and if there is otherwise evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely conducts these reviews for individuals in Petitioner's same circumstances. 8 C.F.R. § 241.4(e)-(f).

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order, is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Petitioner due to alleged dangerousness, or due to a change in the foreseeability of his removal to Belarus, as his circumstances have not changed since his OSUP was issued in 2013.

Moreover, Mr. Kaborda has always had a removal order--since before his OSUP was issued--and yet he is not a flight risk because he has continued to appear before ICE on a regular basis for every appointment that has been scheduled over a period of more nearly twelve years. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater

importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)).

Thus, as to the factor of flight risk, Mr. Kaborda's conduct after the OSUP was issued, in the form of full compliance with his check-in requirements, further confirms that he is not a flight risk and that he remains likely to present himself at any future ICE appearances, as he always has done. Petitioner has also complied with all of ICE's requests to submit documents to facilitate his removal to Belarus, and to inquire independently about obtaining documents for departure to another country where he does not fear persecution or torture. *See* Exhibit A. What has changed, however, it that ICE has a new policy to make a minimum number of arrests each day under the new administration – but that does not constitute a material change in circumstances or increase the government's interest in detaining him.[2] Moreover, as discussed previously, nothing has changed regarding the lack of foreseeability of his removal to Belarus.

Release from custody until ICE assesses and demonstrates to a more neutral Immigration Judge that Mr. Kaborda is actually a flight risk or danger to the community, or that his detention is not going to be indefinite, is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which

[2] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

iii. Without Release From Custody, the Risk of an Erroneous Deprivation of Liberty Is High.

Releasing Mr. Kaborda from civil custody and ensuring he is provided a pre-deprivation hearing in the future, would decrease the risk of him being erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with a hearing before an Immigration Judge at which the government is required to show that his detention will not be indefinite (that is, his removal is reasonably foreseeable), or that the circumstances have changed since his OSUP was issued in 2013, such that evidence exists to establish that he is a danger to the community or a flight risk. Indeed, ICE's failure to comply with its own procedures by providing Petitioner with a pre-deprivation hearing, even without more, warrants his immediate release from custody. *See Cifuentes Rivera v. Arnott*, No. 4:25-CV-00570-RK (W.D. Mo. Oct. 7, 2025) (collecting cases and ordering immediate release upon a finding that ICE's failure to comply with its own pre-deprivation procedures for revocation of OSUP and re-detention violated petitioner's due process rights).

Under the process that ICE maintains is lawful – which would afford Mr. Kaborda no process whatsoever – ICE could simply re-detain him at any point if the agency desires to do so. Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. After re-arrest, ICE makes its

own, one-sided custody determination and can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-(f). Thus, the regulations governing re-detention are insufficient to protect Mr. Kaborda's due process rights if he is released, as they permit ICE to unilaterally re-detain individuals, even, for example, due to an accidental error in complying with the conditions.[3]

By contrast, the procedure Mr. Kaborda seeks—release from custody, and that he be provided a future hearing in front of an Immigration Judge prior to any re-detention at which the government that his detention will not be indefinite, or otherwise that the circumstances have changed since the issuance of the OSUP in 2013 to justify his detention—is much more likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one

[3] It is unknown in this case who made the determination to revoke Mr. Kaborda's OSUP and detain him. To the extent this remains unresolved, or if the Executive Associate Commissioner was not the signatory, that error on its own warrants Mr. Kaborda's immediate release. *See Ceesay v. Kurzdorfer*, No. 25-CV-0267-LJV, 2025 WL 1284720, *17 (W.D.N.Y. May 2, 2025) (holding that a petitioner detained based on notice of revocation signed by Assistant Field Office Director was entitled to release "on that basis alone"); *M.S.L. v. Bostock*, No. 25-CV-01204-AA, 2025 WL 2430267, *9-10 (D. Or. Aug. 21, 2025) (same where signatory was Deputy Field Office Director); *see also Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, *7 (D. Md. Aug. 27, 2025) (explaining that although "high-ranking" ICE employees "can execute the powers and duties of an immigration officer," that does not "indicate the reverse: that every immigration officer can execute the powers and duties of the higher-ranking supervisory officials").

of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).

Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to detention must be considered in determining whether Mr. Kaborda's re-detention is warranted.

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

Finally, Mr. Kaborda is likely to succeed on the merits of his claim that he must be provided with constitutionally adequate procedures—including notice and an opportunity to respond and apply for fear-based relief—prior to being removed to any third country.

Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. The statute explicitly states that a noncitizen "*shall* remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).

As the Supreme Court has explained, such language "generally indicates a

command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019). Accordingly, any imminent removal to a third country fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

Moreover, prior to any third country removal, ICE must provide Mr. Kaborda with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[4] Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country.[5] This policy squarely violates the INA because it does not take into account, *or even mention*, an individual's designated country of removal—thereby fully contravening the statutory instruction that DHS must only remove an individual to the designated country of removal. U.S.C. § 1231(b)(2)(A)(ii).

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

[5] Catholic Legal Immigration Network, "Updates on Third Country Removals and the D.V.D. Litigation," June 26, 2025, available at: https://www.cliniclegal.org/resources/removal-proceedings/updates-third-country-removals-and-dvd-litigation.

Further, the policy plainly violates the United States' obligations under the Convention Against Torture and principles of due process because it allows DHS to provide individuals with *no notice whatsoever* prior to removal to a third country, so long as that country has provided "assurances" that deportees from the United States "will not be persecuted or tortured." *Id.* If, in turn, the country has not provided such an assurance, then DHS officers must simply inform an individual of removal to that third country, but are not required to inform them of their rights to apply for protection from removal to that country under the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their rights under this binding international treaty, and must affirmatively state a fear of removal to that country in order to receive a fear-based interview to screen for their eligibility for protection under the Convention Against Torture. *Id.*

Even so, the screening interview is hardly a meaningful opportunity for individuals to apply for fear-based relief, because the interview happens within 24 hours after an individual states a fear of removal to a recently-designated third country, which hardly provides for any time to consult with an attorney or prepare any evidence for the interview. *Id.* And, in actuality, the screening interview is not a screening interview at all, because USCIS officers under the policy are instructed to determine at this interview "whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal"—which is the standard for protection under the Convention Against Torture that Immigration Judges apply after a full hearing in Immigration Court. *Id.* Then, if the USCIS officer determines that the noncitizen has not

met this standard, they will be removed to the third country to which they claimed, and tried to demonstrate within 24 hours, a fear of persecution or torture. *Id.* Finally, there is no indication that any of this process will occur in an individual's native language. *Id.* This is nothing more than a fig leaf of due process meant to deprive individuals of the protection that the law and treaty are supposed to provide them.

Clearly, this policy violates the Convention Against Torture, which instructs that the United States cannot remove individuals to countries where they will face torture, because the policy allows DHS to swiftly remove noncitizens to countries where they very well may face torture if those countries simply provide the United States with "assurances" that deportees will not be tortured. *Id.* Moreover, the policy puts the onus of individuals to be aware of their rights under the Convention Against Torture—which is a treaty that binds the United States *government*—instead of ensuring that DHS officials make individuals aware of their rights, which would more squarely comport with *DHS's obligations* under the treaty not to remove individuals to countries where they face torture. *Id.* For similar reasons, the policy also violates principles of due process, because it does not provide individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.*; *see also Sagastizado Sanchez v. Noem*, 5:25-CV-00104 (S.D. TX, Oct. 2, 2025) (finding due process right to review by immigration judge of USCIS reasonable fear determination as to third country of removal for noncitizen in removal proceedings under 8 U.S.C. § 1229a). Again, the policy allows individuals to be removed to third countries *without any notice or an opportunity to be heard* if that country merely promises that deportees will not face torture there, and if individuals are otherwise

unaware of their right to seek fear-based relief. *Id.; see also J.R. v. Bostock*, No. 2:25-cv-01161-JNW, 2025 U.S. Dist. LEXIS 124229 (W.D. Wash. June 30, 2025) (TRO prohibiting the government from removing petitioner to "any third country in the world absent prior approval from this Court").

The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al.*, 778 F. Supp. 3d 355, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.[6] This is made clear by the Court's decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025), where the Court explained that the putative class plaintiffs there had to seek relief

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

in individual habeas actions (as opposed to injunctive relief in a class action) against the implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a third country. *See also Nguyen v. Scott*, -- F. Supp. 3d --, No. 25-CV-01398, 2025 WL 2419288, *22 (W.D. Wash. Aug. 21, 2025) (noting that the "Supreme Court did not decide *D.V.D.* on the merits, nor did it even necessarily rule on the class's likelihood of success on its due process and APA claims," and concluding that absent any "explanation of its reasoning," the court could not "ascertain from the Supreme Court's emergency order whether it found the government likely to succeed on its jurisdictional or substantive claims"). Regardless, ICE appears to be emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever—in violation of individuals' due process rights.[7]

Mr. Kaborda's removal to a third country would violate his due process rights unless he is *first* provided with sufficient notice and a meaningful opportunity to apply for protection under the Convention Against Torture. But so far, ICE has proven alarmingly dismissive of Petitioner's fear claims, declaring that his fear of removal to Belarus is "not [ICE's] problem." *Id.* This response does not bode well for ICE's willingness to consider a claim of fear to any third country of removal. Accordingly, intervention by this Court is necessary to protect those rights. *See, e.g., Cruz-Medina v.*

[7] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/.

Noem, Case No. 25-CV-1768-ABA (D. Md. Oct. 7, 2025) (preliminarily enjoining removal of petitioner to third country pending opportunity for IJ to review DHS adjudication of fear claim, after petitioner was re-detained after release on OSUP).

B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.

Mr. Kaborda will suffer irreparable harm were he to remain deprived of his liberty and subject to continued and indefinite detention by immigration authorities without being immediately released and provided the constitutionally adequate process (a future pre-deprivation hearing before an Immigration Judge) that this motion for a temporary restraining order seeks. Detainees in civil ICE custody are held in "prison-like conditions" which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention centers.[8]

[8] *See, e.g.*, DHS, Office of Inspector General ("OIG"), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (violations of

Mr. Kaborda's continued detention also prevents him from reuniting with his family members in the United States, in particular his United States-citizen wife and children, all of whom live in Arizona. *See* Exhibit A. Moreover, if Mr. Kaborda remains detained in an immigration jail, his health could be endangered. Indeed, he has already suffered from health issues while detained, and he has a history of serious health conditions, including stroke. *See* Exhibit A. On September 15, 2023, Florence Immigrant and Refugee Rights Project reported "often-egregious delays in specialty medical care" at ICE's Arizona Detention Centers, including Florence, along with complaints about "excessive deprivations" of clothing, blankets, and food for individuals with mental health issues.[9] In an August 20-22, 2024 report, ICE's own Office of Professional Responsibility found that the Florence Detention Center was in compliance with only 10 of 17 Performance-Based National Detention Standards, and the facility's compliance had "trended downward" since the prior inspection in February 2024.[10]

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health and safety standards; staffing shortages affecting suicide watch, and detainees held in unauthorized restraints, without being allowed time outside their cell,). U.S. Dep't of Homeland Security Office of Inspector General, OIG-24-23, Results of an Unannounced Inspection of ICE's Golden State Annex in McFarland, California (Sept. 24, 2024), available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf.

[9] Florence Immigration and Refugee Rights Project, Report on Immigration Detention Complaints, October 2022 – March 2023, available at https://firrp.org/wp-content/uploads/2023/09/2023-09-15_Florence-Project-Report-on-ICE-Detention-Complaints_Oct-2022-March-2023.pdf.

[10] ICE Office of Professional Responsibility, Florence Service Processing Center Compliance Inspection, 2024-005-362 (August 20-22, 2024), available at https://www.ice.gov/doclib/foia/odo-compliance-inspections/florenceSPC_FlorenceAZ_Aug20-22_2024.pdf.

Further, Mr. Kaborda will suffer irreparable harm were he to be removed to a third country without first being provided with constitutionally-compliant procedures to ensure that his right to apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.[11] Others removed in violation of their prior grant of protection under the Convention Against Torture have reported that they faced severe torture at the hands of government agents.[12] It is clear 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)). Thus, a temporary restraining order is necessary to prevent Mr. Kaborda from suffering irreparable harm by remaining in unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

Mr. Kaborda will also suffer irreparable harm if he is transferred outside this judicial district while his petition is pending. Because habeas review is governed by the district-of-confinement/immediate-custodian rule, transfer of a detainee to another judicial district can frustrate effective review. *See Ozturk v. Hyde*, 136 F.4th 382 (2d Cir.

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

[12] NPR, "Abrego Garcia says he was severely beaten in Salvadoran prison" (July 3, 2025), available at: https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture.

2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

Furthermore, in a habeas action, the physical presence of a petitioner in the judicial district where the action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses, and generally present [his or her] habeas claims." *Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025). These interests are particularly acute where, as in Mr. Kaborda's case, the habeas claim is "based on events that occurred in" the same geographic region as the judicial district of detention. *Id.*; *see also* Standing Order 2025-01, Misc. No. 00-308 (D. Md., May 21, 2025) (prohibiting, for at least two business days after the filing of all habeas petitions, removal of petitioners from the continental United States to preserve their ability to participate in court proceedings and access legal counsel); *Velasquez-Salazar v. Dedos*, 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sep. 17, 2025) (enjoining Respondents from transferring petitioner outside judicial district during pendency of habeas action upon a finding that petitioner showed a likelihood of irreparable harm absent injunction). The physical proximity of a petitioner to the adjudicating tribunal also permits a fair hearing of any claims that may develop related to conditions of confinement, such as overcrowding, sanitation, or health issues. *See Ozturk v. Trump*, 779 F. Supp. 3d at 497-98. Ultimately, in light of these concerns, the transfer of a petitioner outside of a judicial district after a habeas action is filed in that district "undoubtedly impact[s]" the very "integrity" of the proceedings themselves. *Id.* The

Court therefore should enjoin Respondents from transferring Petitioner outside of Arizona while this petition is pending.

C. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order.

First, the balance of hardships strongly favors Mr. Kaborda. His detention is potentially indefinite, and his summary removal to a third country where he may face persecution or torture would violate the INA, binding international treaty, and Mr. Kaborda's due process rights. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

Further, any burden imposed by requiring the Respondents to release Mr. Kaborda from custody (and provided notice and a hearing before an Immigration Judge prior to any future re-detention) is both *de minimis* and clearly outweighed by the substantial harm he will suffer as long as he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). Similarly, any burden of requiring Respondents *not* to remove Mr. Kaborda to any third country is outweighed by the substantial harm he may suffer if removed to a country where he will face persecution or torture. *See id.*

Just as the government cannot be burdened by releasing Mr. Kaborda from custody, any burden imposed by requiring them to *maintain* custody in the District of Arizona for the duration of this case is clearly outweighed by the substantial harm Mr.

Kaborda will face if his case cannot be heard at all because he is moved to a different jurisdiction. *See Ozturk v. Hyde*, 136 F.4th 382 ("[f]aced with such a conflict between the government's unspecific financial and administrative concerns on the one hand, and the risk of substantial constitutional harm to [petitioner] on the other, we have little difficulty concluding 'that the balance of hardships tips decidedly' in [the petitioner's] favor") (quoting *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984)).

Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Mr. Kaborda, and/or to summarily remove him to any third country, and/or frustrate this Court's jurisdiction by moving him to another judicial district in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a

constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

V. REQUIREMENTS OF FRCP 65(b)

In compliance with Fed. R. Civ. P. 65(b)(1), Petitioner certifies that prior notice of this motion to counsel for Respondents should not be required because: (1) as the associated habeas petition was only recently filed, no attorney has entered a notice of appearance for Respondents as of the time of this filing; (2) because ICE has not provided Mr. Kaborda with an opportunity to express his fear of persecution and torture in any third country, Mr. Kaborda has shown that immediate and irreparable injury, loss, or damage will result to him before Respondents can be heard in opposition.

VI. CONCLUSION

For all the above reasons, Mr. Kaborda warrants a temporary restraining order that Respondents release him from custody; that Respondents not re-detain him absent notice and a hearing before an Immigration Judge on whether his re-detention is indefinite, and further whether it is justified by evidence that he is a danger to the community or a flight risk; that Respondents not remove him to any third country without first providing him with constitutionally-compliant procedures; and that Respondents not transfer him to another judicial district while this petition is pending.

Dated: October 14, 2025

Respectfully submitted,

s/Jesse Evans-Schroeder
Attorney for Petitioner