Jessie Agatstein
Cal. Bar No. 319817
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
jessie_agatstein@fd.org

Attorneys for Ms. Gharakhan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SARINEH GHARAKHAN,

Petitioner,

v.

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

Respondents.

Case No.: 25-cv-2879-DMS-AHG

Reply in support of temporary restraining order

Table of Contents

I. Introduction

In its combined return and opposition to a temporary restraining order, the government does not address the following of Ms. Gharakhan's arguments:

- That her eight-month detention violates ICE's regulations that she be held for no more than six months for a violation of her immigration supervision conditions, *see* ECF No. 1 at 1, 8–11; 8 C.F.R. § 241.13(i)(2);
- That she has never received the "prompt[]" "informal interview" required by regulation, in violation of her due process rights, *see* ECF No. 1 at 1, 8–11; 8 C.F.R. § 241.13(i)(2);
- That under *Zadvydas*, the six-month removal period expired in 2019, *see* ECF No. 1 at 13;
- That under *Zadvydas*, the burden has shifted to "the Government [to] respond with evidence," *Zadvydas v. Davis*, 333 U.S. 678, 701 (2001); *see* ECF No. 1 at 2, 11–17; and
- That ICE's current third-country removal policy, to which it intends to subject Ms. Gharakhan, "contravenes Ninth Circuit law," *Nguyen v. Scott*, __ F. Supp. 3d __, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025); ECF No. 1 at 2, 17–21.

Instead, the government submits evidence:

- That it informed Ms. Gharakhan in February that she "will be: Detained by the Department of Homeland Security," without providing a reason for her detention, apparently without determining whether there is a significant likelihood she may be removed in the reasonably foreseeable future, and without informing her whether and why her supervision had been revoked, *see* 8 C.F.R. § 241.13(i)(2), (3), ECF No. 9, Exhibit 5;

- That ICE intends to conduct its first custody status review on or about October 31, over eight months after Ms. Gharakhan was first detained, to determine whether to release her based on whether she "will not pose a danger to the community and will not present a flight risk," ECF No. 9, Exhibit 6, and not whether "there is no significant likelihood the alien can be removed in the reasonably foreseeable future, 8 C.F.R. § 241.13(b)(2)(i); and
- That ICE first began its internal process to "locate a third country for resettlement" six months after Ms. Gharakhan was re-detained, on August 15, and that it has sent additional internal requests in September and October, which all "remain pending." ECF No. 9, Declaration of Daniel Negrin.

This evidence does not rebut Ms. Gharakhan's claims. This Court should grant Ms. Gharakhan a temporary restraining order, or, in the alternative, grant the petition.

II. There is no jurisdictional bar to this Court's resolution of the petition or TRO.

In a footnote, the government argues that this Court may lack jurisdiction under 8 U.S.C. § 1252(g). *See* ECF No. 9 at 8 n.2. This Court has jurisdiction. Courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at *7—the same claim that Ms. Gharakhan raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal

orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). The statute does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Instead, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

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

III. Ms. Gharakhan's claims will prevail on the merits.

Because the government's evidence is insufficient to justify Ms. Gharakhan's detention, this Court should release her on a TRO or grant her petition outright.

A. Claim One: ICE did not adhere to any regulations governing re-detention or continued detention, warranting release.

The government does not meaningfully claim to have complied with 8 C.F.R. §§ 241.4 and 241.13. For Ms. Gharakhan, those regulations permit her re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," based "on account of changed circumstances," § 241.13(i)(2), or if Ms. Gharakhan "violates any of the

conditions of release," § 241.13(i)(1); (2) if ICE, "upon revocation," "notifie[s]" the noncitizen "of the reasons for revocation of his or her release," § 241.13(i)(2)(iii), 241.13(*l*)(1); (3) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3); (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.*; and (5) if the person violates conditions, she may "be continued in detention for an additional six months," § 241.13(i)(1).

The government's evidence indicates it has never notified Ms. Gharakhan of the reasons for the revocation of her release. The day Ms. Gharakhan was detained, ICE served a warrant notifying Ms. Gharakhan that she "is removable from the United States." ECF No. 9, Exhibit 4. The next day, ICE informed Ms. Gharakhan in a "Notice of Custody Determination" that a deportation officer had "determined that, pending a final administrative determination in your case, you will be: Detained by the Department of Homeland Security." ECF No. 9, Exhibit 5.

Neither of these documents includes any "of the reasons for revocation of [Ms. Gharakhan's] . . . release." § 241.13(i)(2)(iii), 241.13(*l*)(1). "[A] reason is what makes an action intelligible, accounted for, or exampled. In the regulation, then, the 'reasons' for revocation' should explain ICE's course of action. 8 C.F.R. § 241.13(i)(3)." *Sarail A. v. Bondi*, No. 25-cv-2144-ECT, 2025 WL 2533673, *5 (D. Minn. Sept. 3, 2025). They should be "the specific facts supporting ICE's decision." *Id.* at *6. Nothing in either of these documents meet that regulatory standard. Neither even mentions that her release was being revoked at all.

The two documents instead seem to be forms meant for noncitizens who are currently in removal proceedings, not for people who have already been ordered removed and have been released on supervision. One reads, "YOU ARE COMMANDED to arrest and take into custody for removal proceedings . . . the above-named alien." *See* ECF No. 9, Exhibit 4. The other indicates

Ms. Gharakhan was detained under "section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations." ECF No. 9, Exhibit 5. That is not right, because those are parts of the U.S. Code and regulations that govern detention "pending a decision on whether the alien is to be removed." 8 U.S.C. § 1226(a); *accord* 8 C.F.R. § 236.1. Detention after the issuance of an order of removal is governed by an entirely different statutory and regulatory scheme: 8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4, 241.13.

Next, there is no evidence that these notices were accompanied with a chance for Ms. Gharakhan to respond in an informal interview. *Id.* §§ 241.4(*l*)(1), 241.13(i)(3). Nor was Ms. Gharakhan given a chance to "respond to the reasons for revocation." *Id.*

Finally, and most concerningly, the government does not respond to the fact that it cannot hold Ms. Gharakhan under the regulations governing revocation of release for more than "six months." § 241.13(i)(1). Ms. Gharakhan has been held since February 23. That means she has been held, without any form of process required under the regulations, for 8 months and 8 days.

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

No. 25-cv-1675-HDV-AGR, 2025 WL 2683988 (C.D. Cal. Aug. 28, 2025) (granting habeas petitions specifically as to Iranian nationals due to regulatory violations). This Court should do the same.

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

First, Ms. Gharakhan need not show prejudice from these regulatory claims. But, of course, she can. "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up). Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is required.

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

And Ms. Gharakhan could "present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up). Most glaringly, she would have been detained for no more than six months.

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

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

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

Because the government utterly failed to comply with each requirement of § 241.4 and § 241.13 when revoking Ms. Gharakhan's release and keeping her in detention for more than eight months, this Court should, "[l]ike many other district courts within this circuit," "find[] that these failures constitute a violation of Petitioner's due process rights and justif[y] h[er] release." *Bui v. Noem*, No. 25-cv-2111, 2025 WL 2988356, *5 (S.D. Cal. Oct. 23, 2025).

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

Next, government provides no evidence that Ms. Gharakhan will likely be removed to an unidentified third country, let alone in the reasonably foreseeable future.

As the government apparently does not dispute, the six-month grace period has passed. Ms. Gharakhan was ordered removed in November 2018, so her removal period expired in April 2019. She has also been detained for more than eight months this year.

The government also does not deny that Ms. Gharakhan has provided "good reason" to doubt whether her removal is reasonably foreseeable. The government has already been unable to remove her to a third country once, in 2018 and 2019, resulting in her release on supervision. ECF No. 9, Declaration of Daniel Nagin ¶ 5. In the eight months it has detained her this year, it has still been unable to remove her.

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

1. The government provides no evidence to support a "significant likelihood of removal" to an unidentified third country.

As an initial matter, the government has not shown that Ms. Gharakhan's removal to an unidentified third country is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701. As Ms. Gharakhan noted in her habeas petition, the government has not been able to remove her to a third country for the last seven years. ECF No. 1 at 14–15.

The government has provided no evidence that it will succeed in removing Ms. Gharakhan to a third country now. Deportation Officer Negrin declares that his office has "sent requests to ERO's Removal Management Division for third country removal" on "August 15, September 18, and October 8, 2025," and requested "an update" on October 28, 2025. ECF No. 9, Declaration of Daniel Negrin. It is not clear that the government has *ever* asked a third country to accept Ms. Gharakhan or to issue her travel documents. Instead, the declaration indicates only that one part of ICE has asked another part of ICE to seek third country removal. *See id.* "Respondents fail to establish what countries, if any, they have contacted regarding Petitioner's resettlement, and what responses they have received, if any." *Conchas-Valdez v. Casey*, No. 25-cv-2469-DMS-JLB, 2025 WL 2884822, *3 (S.D. Cal. Oct. 6, 2025). And as in *Conchas-Valdez*, the government's "minimal work on this case"—here, three internal requests and one follow up email over the course of eight months—"do not instill confidence that it will be able to secure Petitioner's removal in the reasonably foreseeable future." *Id.*

Regardless, even good faith efforts to secure a travel document from a particular country do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation

continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

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

Here, then, "[w]hile the respondent asserts that [Ms. Gharakhan's] travel document requests with[in ICE]" remain pending, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019); *accord Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or

why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

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

Additionally, even if ICE will eventually remove Ms. Gharakhan, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Negrin provides no timetable for how long internal requests for third-country removal typically take.

That is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Ms. Gharakhan] to be repatriated, this Court certainly cannot conclude that h[er] removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

Courts have routinely granted habeas pctitions where, as here, the government does not establish *Zadvydas*'s timing element. *See, e.g.*, *Villanueva v. Tate*, __ F. Supp. 3d __, 2025 WL 2774610, *10 (S.D. Tex. Sept. 26, 2025) (granting *Zadvydas* petition as to third-country removal because detention would be for "an indefinite and undetermined period of time" since, among other reasons, the government's efforts to remove the petitioner over the prior 8-year

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

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

C. Claim Three: The government does not deny that ICE's third-country removal policy violates due process.

The government does not address Ms. Gharakhan's argument that ICE's existing third-country removal policy—to provide between zero and 24 hours' notice before removing a noncitizen—violates due process.

Instead, it briefly argues that an injunction ordering the government to provide notice and an opportunity to be heard before removal to a third country would be reversed under the Supreme Court's stay in *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025).

However, "[t]he 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." *Nguyen*, 2025 WL 2419288 at *22. Because the Supreme Court did not issue a decision explaining its stay, courts "cannot ascertain from the Supreme Court's emergency order whether it found the government likely to succeed on its jurisdictional or substantive claims." *Id.* at *23. This distinction matters because "one of the government's primary arguments—that the *D.V.D.* court had no power to enter *classwide* injunctive relief—would have no bearing on the merits of individual habeas petition." *Id.* Further, "absent 'clear guidance from the Supreme Court' that" existing law on third-country removals is "'no longer good law,' this Court must follow 'well-established precedent.'" *Id.* (internal citations omitted); *accord, e.g.*, *Louangmilith v. Noem*, No. 25-cv-2502-JES, 2025 WL 2881578, *4 (S.D. Cal. Oct. 9, 2025).

In fact, "[t]o dismiss Petitioner's claims for preliminary injunctive relief at this time would effectively preclude [her] from the relief [s]he seeks entirely and potentially foreclose any relief that [s]he could be entitled to as part of the *D.V.D.* class if [s]he is removed before the class-wide claims are resolved." *Sagastizado v. Noem*, __ F. Supp. 3d __, 2025 WL 2957002, *8 (S.D. Tex. Oct. 2, 2025).

The government has no other argument on the merits against this Court's issuance of a temporary restraining order and injunctive relief against third-country removal without adequate notice and an opportunity to be heard. For the reasons identified in Ms. Gharakhan's petition and motion for temporary relief, this Court should enjoin Respondents from removing Ms. Gharakhan to a third country absent the process identified in her prayer for relief.

IV. The remaining TRO factors decidedly favor Ms. Gharakhan.

This Court need not evaluate the other TRO factors—the Court may simply grant the petition outright. But if the Court does decide to evaluate irreparable harm

and balance of harms/public interest, Ms. Gharakhan should prevail.

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments,[1] the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Fifth Amendment protects. *Zadvydas*, 533 U.S. at 690. Furthermore, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26.

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

[1] The government cites three cases to support the position that illegal immigration detention is not irreparable harm. ECF No. 9 at 9–10. All involved immigrants who were actively appealing to the BIA, but wanted a federal court to intervene before the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *1 (W.D. Wash. Feb. 19, 2021); *Cortez v. Nielsen*, No. , 2019 WL 1508458 (N.D. Cal. Apr. 5, 2019); *Resendiz v. Holder*, 2012 WL 5451162. These courts indicated only that post-bond-hearing detention pending an ordinary BIA appeal, in which administrative exhaustion was available to the petitioner and being pursued, was not irreparable harm. *Id.* The government also cites one case for this proposition in which the court *did* grant a temporary restraining order ordering an immigration judge to reconsider a request for a bond hearing. *See Lopez Reyes v. Bonnar*, No. 18-cv-07429, 2018 WL 7474861, *10–11 (N.D. Cal. Dec. 24, 2018).

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

V. Conclusion

For all these reasons, this Court should enter a temporary restraining order and injunction, or simply grant the petition. In either case, the Court should (1) order Ms. Gharakhan's immediate release; (2) prohibit Respondents from re-detaining Ms. Gharakhan unless and until Respondents obtain a travel document, or as otherwise lawful under 8 C.F.R. § 241.13(i); (3) prohibit Respondents from re-detaining Ms. Gharakhan without first following all regulatory procedures; and (4) prohibit Respondents from removing Ms. Gharakhan to a third country without providing written notice, a meaningful opportunity to raise a fear-based claim for CAT protection prior to removal of at least 10 days, a requirement that Respondents move to reopen her immigration proceedings if Ms. Gharakhan demonstrates reasonable fear or removal, and if the Respondents find she has not demonstrated a reasonable fear, a requirement preventing her removal for at least fifteen days to allow Ms. Gharakhan to seek reopening of her immigration proceedings.

Respectfully submitted,

Dated: October 31, 2025

s/ Jessie Agatstein
Jessie Agatstein
Federal Defenders of San Diego, Inc.
Attorneys for Ms. Gharakhan
Email: jessie_agatstein@fd.org