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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Luis Valladares Arenas,  
*Petitioner,*

v.

Pamela Bondi, Attorney General of the  
United States;  
Kristi Noem, Secretary of the Department  
of Homeland Security;  
Todd M. Lyons, Acting Director of U.S.  
Immigration and Customs Enforcement;  
Christopher D. McGregor, Acting Field  
Office Director of U.S. Immigration and  
Customs Enforcement, Enforcement and  
Removal Operations, Phoenix;  
*Respondents.*

No. 2:25-cv-04413-DWL--JZB

**EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER**

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Petitioner, Mr. Luis Valladares Arenas., by and through his undersigned counsel, hereby moves for a temporary restraining order enjoining Respondents from violating Petitioner’s due process rights and circumventing this Court’s jurisdiction by unlawfully removing him to a third country without a meaningful opportunity to be heard on a potential fear-based claim for relief. This motion is based upon Federal Rule of Civil Procedure 65 the incorporated memorandum of points and authorities, and the simultaneously filed Petition for Writ of Habeas Corpus and Exhibits, as well as any further information presented to the Court in connection with this application.

Dated: November 26, 2025

Respectfully submitted,  
/s/ Benjamin T. Wiesinger  
**Counsel for Petitioner**

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**INTRODUCTION**<sup>1</sup>

1  
2 Petitioner Mr. Luis Valladares Arenas brings a straight-forward habeas petition seeking  
3 relief pursuant to mandatory statutory, regulatory, and due process protections in connection with  
4 the revocation of his Order of Supervision (“OSUP”) and imminent removal to a third country  
5 without any meaningful opportunity to assert a fear-based claim for withholding of removal. Mr.  
6 Valladares Arenas is a Cuban national who was detained on November 20, 2025 despite being in  
7 compliance with his OSUP. At the time of his arrest, ICE officers said they would remove him to  
8 a third country, Mexico. Exh. 1. Mr. Valladares Arenas is not a citizen of and has no connection  
9 Mexico.

10 On November 20, 2025, an attorney submitted a request to ICE for any notices served on  
11 Petitioner and a request for a fear-based interview. Exh. 1. Among other critical positions, that  
12 request explained Mr. Valladares Arenas fears removal to Mexico and demanded ICE comply with  
13 its obligations to provide him with sufficient notice and meaningful opportunity to reopen removal  
14 proceedings upon a potential designation of any third country for removal. *Id.* In other words,  
15 Petitioner asked that ICE give him his statutory and constitutional opportunity to explain to an  
16 Immigration Judge why his life or freedom would be threatened by removal to a specific third  
17 country. *Id.* Respondents did not respond to this request. Instead, Respondents revoked Mr.  
18 Valladares Arenas OSUP, detained him, and seem ready to remove him to a third country.

19 Respondents are imminently and irreparably violating Mr. Valladares Arenas’s rights in  
20 brazen violation of their statutory, regulatory, and due process obligations. If Respondents indeed  
21 are seeking to remove him to a third country, Mr. Valladares Arenas would review upon proper  
22 notice of which country and likely assert a fear-based claim and demand a real opportunity to be  
23 heard, including by moving to reopen his immigration proceedings if necessary. Irreparable harm  
24 is obvious given the risk of persecution and torture. Moreover, it “is well established that the  
25 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*  
26 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

27 \_\_\_\_\_  
28 <sup>1</sup> Petitioner’s counsel apologizes for any errors in this filing. We are filing as quickly as possible given the circumstances.

1 And “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Id.*  
2 (internal citation omitted).

3 **STATEMENT OF FACTS**

4 Petitioner Mr. Valladares Arenas was born in Cuba on December 11, 1985, and is a Cuban  
5 citizen. He is not a citizen of any country besides Cuba, nor does he have ties to any other country.  
6 Mr. Valladares Arenas was brought to the U.S. as a young child of about four years old with his  
7 father who was fleeing Cuba due to ~~XXXXXXXXXXXXXXXXXXXX~~ Ex. 1 (Laner Decl.), ¶ 11.

8 Mr. Valladares Arenas grew up in Arizona attending elementary, middle, and high school  
9 in local Arizona schools. Ex. 1, ¶ 12. He suffered through addiction, which led him to become  
10 unhoused and resulted in a 2013 conviction for attempted kidnapping in violation of Arizona  
11 Revised Statutes (“A.R.S.”) §§ 13-1001, 13-1304. *See* Ex. 1, ¶ 13. Following this conviction, he  
12 was placed in removal proceedings in February 2016. Exhibit 5, April 19, 2015, Removal Order  
13 (Removal Order). Mr. Valladares Arenas was unrepresented in proceedings and was ordered  
14 removed to Cuba on April 19, 2016. *Id.* Because Mr. Valladares Arenas was unable to be removed  
15 to Cuba, he was released from custody.

16 On February 23, 2018, Petitioner was convicted of Theft of Means of Transportation under  
17 A.R.S. § 13-1814; Attempted Theft of Means of Transportation under A.R.S §§ 13-1001, 13-1814,  
18 and 13-703; Possession of a Deadly Weapon by Prohibited Possessor under A.R.S. §§ 13-3202A4  
19 and 13-703; and Attempt to Possess a Dangerous Drug under A.R.S. §§ 13-1001 and 13-3407.  
20 Following his release from criminal custody, ICE placed petitioner on an OSUP.

21 Mr. Valladares Arenas took advantage of the rehabilitative programing in prison and  
22 overcame his substance addiction and has reintegrated with his family and community. Exh. 1, ¶  
23 13. Petitioner completed his probation and paid his restitution. *Id.*, ¶ 14.

24 Mr. Valladares Arenas has been working for a pool plastering company for the last two  
25 years. *Id.*, ¶ 10. This past year in recognition of his skill and leadership he was promoted to the  
26 foreman of the company. *Id.*, ¶ 17. Mr. Valladares Arenas and his long-term committed partner  
27 welcomed their son this July. *Id.*, ¶ 16. He is a present father and shares primary caregiving duties  
28 with his partner, especially when she has work obligations. *Id.* Among his friends and family, he is

1 known as someone who is responsible and dependable. *Id.*, ¶ 18. He's become the resident  
2 handyman for his friends and family, as someone who can build and fix things for their houses. *Id.*  
3 His mother is elderly, and he supports her and helps her maintain her home. *Id.* He gives charity to  
4 the unhoused and feels this is especially important given his previous struggles. *Id.*, ¶ 19.

5 Mr. Valladares Arenas attended his ICE check-ins, possessed a valid work permit, and was  
6 in compliance with all of his immigration obligations before ICE arrested him without notice on  
7 November 20, 2025. Exhibit 6, Jun. 1, 2025, Employment Authorization Document. On the  
8 morning of November 20, 2025, Mr. Valladares Arenas was arrested in front of his long-term  
9 partner and their four-month-old baby as they left the Southwest ticket counter at the Phoenix Sky  
10 Harbor International Airport. Exh. 1, ¶ 2. The ICE agents told Mr. Valladares Arenas that they  
11 would deport him to Mexico. *Id.* The agents did not tell Mr. Valladares Arenas where they were  
12 taking him.

13 The same morning, Mr. Valladares Arenas's partner contacted an immigration attorney. *Id.*  
14 Attorney Laner attempted to contact Mr. Valladares Arenas at the Phoenix ICE-ERO office and  
15 was informed that he was not there yet. *Id.*, ¶ 5. Attorney Laner called back about an hour later and  
16 was told to file Form G-28, Notice of Entry of Appearance, to speak with Mr. Valladares Arenas.  
17 *Id.*, ¶ 6. Attorney Laner submitted her Form G-28 via email and requested a legal call with  
18 Petitioner. *Id.*, ¶ 6. Attorney Laner did not receive a legal call and called the ICE-ERO office again.  
19 Attorney Laner was denied a legal call and received conflicting responses, including that Mr.  
20 Valladares Arenas was not in their custody while simultaneously being told that the office "does  
21 not set up legal calls." *Id.*, ¶ 8. Petitioner's long-term partner was able to contact him and was able  
22 to confirm that Petitioner was at the Phoenix ICE-ERO office. *Id.*, ¶ 8.

23 Concerned that ICE was blocking Petitioner's right counsel, Attorney Laner then submitted  
24 a request via email to ICE to be served with any notices or orders issued by ICE, and that Petitioner  
25 be given a Credible/Reasonable Fear Interview. *Id.*, ¶ 9. Among other critical positions, that request  
26 explained Mr. Valladares Arenas fears removal to Mexico and demanded ICE comply with its  
27 obligations to provide him with sufficient notice and a meaningful opportunity to reopen removal  
28 proceedings upon a potential designation of any third country for removal. *Id.*, Exhibit 2, Request

1 for Fear Interview. Respondents have not yet responded to this request.

2 On November 22, Mr. Valladares Arenas's long term partner spoke with him and was told  
3 he was moved to a facility in Florence, Arizona. Exh. 1, ¶ 10. Mr. Valladares Arenas's location is  
4 not yet updated on the ICE Online Detainee Locator, the main system for the public to find his  
5 whereabouts. Upon information and belief, it appears Respondents are preparing to remove Mr.  
6 Valladares Arenas to a third country without providing a meaningful opportunity to be heard on his  
7 fear-based claims.

8 As Respondents were notified through the Credible/Reasonable Fear Interview request, Mr.  
9 Valladares Arenas would apply for fear-based protection and withholding of removal as to certain  
10 third countries. Ex. 2. Respondents have not yet provided any meaningful notice—and no notice to  
11 counsel, so it is difficult for Mr. Valladares Arenas to explain the basis for his fear-based claim as  
12 to a specific country.

13 The United States Department of State issues Country Reports on Human Rights Practices  
14 for various countries. These Country Reports could illustrate part of the basis for Petitioner's  
15 hypothetical fear-based protection claims. If Respondents provide notice of a particular third  
16 country they seek to remove Mr. Valladares Arenas to, Petitioner's counsel will evaluate and  
17 supplement the record with Mr. Valladares Arenas's basis for a fear-based claim if applicable.

18 Further, Mr. Valladares Arenas may have cause to open his underlying removal order as he  
19 was unrepresented and may not have fully been advised of his rights. Petitioner's counsel is  
20 requesting Petitioner's full immigration file to investigate the underlying order.

21 **ARGUMENT**

22 Pursuant to *Winter v. Nat. Resources Defense Council*, a plaintiff seeking a temporary  
23 restraining order must establish that: (1) he is likely to succeed on the merits of his claims; (2) he  
24 is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities  
25 tips in his favor; and (4) an injunction is in the public interest. 555 U.S. 7, 20 (2008); *Matsumoto*  
26 *v. Labrador*, 122 F.4th 787, 804 (9th Cir.2024).

27 The Ninth Circuit has adopted a "sliding scale variant of the *Winter* test" called the "serious  
28 questions test." *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th

1 Cir. 2024) (citing *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).  
2 Under the “serious questions test,” a plaintiff is entitled to a temporary restraining order “if it  
3 demonstrates (1) serious questions going to the merits, (2) a likelihood of irreparable injury, (3) a  
4 balance of hardships that tips sharply towards the plaintiff, and (4) the injunction is in the public  
5 interest.” *Id.* As to the first element, the “serious questions” standard is “a lesser showing than  
6 likelihood of success on the merits.” *Id.* (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1217).  
7 In addition, when the party opposing injunctive relief is a government entity, the third and fourth  
8 factors combine. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

9 **I. Petitioner Is Likely to Succeed on the Merits**

10 “Noncitizens, even those subject to a final removal order, have constitutional rights just like  
11 everyone else in the United States.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y.  
12 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 393 (2001)). In this case, Petitioner has met the  
13 “serious questions” standard because he has shown that his rights were violated under the  
14 Administrative Procedure Act and the Immigration and Nationality Act, and that he was denied due  
15 process under the Fifth Amendment.

16 **a. Petitioner is likely to succeed in his Fifth Amendment and APA Claims that his  
17 OSUP was unlawfully revoked and resulting in his unlawful detention.**

18 8 U.S.C. § 1231 governs the detention and removal of noncitizens following a final order  
19 of removal. A noncitizen who has been ordered removed but has been released “shall be subject to  
20 supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3); *see also*  
21 *id.* § 1231(a)(6).

22 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 are the regulations that govern the detention and  
23 release of removable noncitizens. These regulations also establish the procedures that must be  
24 followed if a noncitizen’s order of supervision is revoked. *See* 8 C.F.R. § 241.4(l); *id.* § 241.13(i).  
25 Government agencies are required to follow their own regulations. *United States ex rel Accardi v.*  
26 *Shaughnessy*, 347 U.S. 260, 268(1954); *United States v. Ramos*, 623 F.3d 672, 683 (9th Cir. 2010).  
27 In this case, Respondents repeatedly violated the governing regulations, resulting in a denial of  
28

1 Petitioner's due process rights and constituting arbitrary and capricious agency action under the  
2 APA.

3 *i. Petitioner was denied notice of the reasons for revocation.*

4 Pursuant to 8 C.F.R. § 241.4(l) and § 241.13(i), a noncitizen released on an Order of  
5 Supervision must be provided notice of the reasons for the revocation. *See* 8 C.F.R. §§ 241.4(l)(1),  
6 241.13(i)(3). Furthermore, the governing regulations require the reasons to be given "upon  
7 revocation." 8 C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(3).

8 Here, no notice was given to Mr. Valladares Arenas for the revocation of his OSUP.  
9 Therefore, there are no factual allegations of what led Respondents to re-detain Mr. Valladares  
10 Arenas. A Notice of Revocation must list specific reasons for the revocation of OSUP, in order to  
11 allow a noncitizen to respond. *See Bui v. Warden of Otay Mesa Detention Facility*, 2025 WL  
12 2988356, at \*4 (S.D. Cal. Oct. 23, 2025) (finding generic statement that "your case has been  
13 reviewed" insufficient notice); *Esmail v. Noem*, 2:25-cv-08325-WLH-RAO, 2025 WL 3030590, at  
14 \*5 (C.D. Cal. Sept. 12, 2025) (finding generic statement that petitioner's "case had been reviewed"  
15 insufficient notice); *Sarail A. v. Bondi*, 2025 WL 2533673, at \*10 (D. Minn. Sept. 3, 2025) (finding  
16 exact same language to be insufficient notice); *M.S.L. v. Bostick*, 2025 WL 2430267, at \*2, 10-11  
17 (D. Or. Aug. 21, 2025) (finding virtually identical language to be insufficient notice); *Yang v.*  
18 *Kaiser*, 2025 WL 2791778, at \*6 (E.D. Cal. Aug. 20, 2025) (finding exact same language to be  
19 insufficient notice).

20 In addition, any notice of revocation given to Mr. Valladares Arenas at this point will be  
21 untimely. As it will not be served until *after* DHS already re-detained Petitioner. *See* 8 C.F.R. §  
22 241.4(l)(1) (requiring notice "upon revocation"); *id.* § 241.13(i)(3) (same); *Constantinovici v.*  
23 *Bondi*, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985, at \*6 (S.D. Cal. Oct. 10, 2025)  
24 (finding petitioner was not given any reasons for his re-detention prior to his arrest and therefore  
25 any later notice was untimely); *M.S.L.*, 2025 WL 2430267, at \*11 (same).

26 In short, because Mr. Valladares Arenas was not given any notice with specific reasons for  
27 the revocation of his release at the time he was detained, it violated the governing regulations and  
28 Mr. Valladares Arenas's constitutional right to due process.

1                    *ii. Petitioner was denied an opportunity to respond to the reasons for the*  
2                    *revocation.*

3                    Under the governing regulations, an “initial informal interview” is also required upon  
4                    detention. 8 C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(3). The purpose of the informal interview is “to  
5                    afford [the noncitizen] an opportunity to respond to the reasons for revocation stated in the  
6                    notification.” 8 C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(3).

7                    Here, we are not sure what Respondents will allege is the interview that took place.  
8                    However, as discussed above, Mr. Valladares Arenas was not provided notice or the specific factual  
9                    reasons for his reasons for his re-detention. Therefore, he could not have had an actual “opportunity  
10                    to respond to the reasons for revocation stated in the notification” since none were given to him. 8  
11                    C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(3). Any interview that may have taken place is meaningless  
12                    and does not serve the intended purpose because there was insufficient notice.

13                    In sum, the requirement that Mr. Valladares Arenas be afforded an “informal initial  
14                    interview” for purposes of responding to the reasons for the revocation cannot have been met. The  
15                    Respondents’ actions violated the governing regulations and Mr. Valladares Arenas’s rights under  
16                    the Due Process Clause. *See Yang*, 2025 WL 2791778 at \*5 (concluding that “a failure to provide  
17                    an informal hearing is alone sufficient” to grant a TRO); *Phan v. Beccerra*, No. 2:25-CV-01757-  
18                    DC-JDP, 2025 WL 1993735, at \*4 (E.D. Cal. July 16, 2025) (finding petitioner likely to succeed  
19                    on claim that re-detainment was unlawful because no informal interview was provided); *Hoac v.*  
20                    *Becerra*, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025) (same).

21                    *iii. Petitioner’s detention is arbitrary and capricious under the APA*

22                    Mr. Valladares Arenas’s detention is arbitrary and capricious under the APA, 5 U.S.C. §  
23                    701 et seq. Under the APA, courts must “hold unlawful and set aside agency action ... found to  
24                    be—arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law” or  
25                    “without observance of procedure required by law.” 5 U.S.C. § 706(2). Agency action is “arbitrary  
26                    and capricious if the agency relied on factors which Congress has not intended it to consider,  
27                    entirely failed to consider an important aspect of the problem, offered an explanation for its decision  
28                    that ran counter to the evidence before the agency, or is so implausible that it could not be ascribed

1 to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*  
2 *v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). “[A]n agency’s action can only survive  
3 arbitrary or capricious review where it has articulated a satisfactory explanation for its actions  
4 including a rational connection between facts found and the choice made.” *Alliance for the Wild*  
5 *Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023) (internal quotation marks and citation omitted).  
6 A court “may not infer an agency’s reasoning from mere silence.” *Arrington v. Daniels*, 516 F.3d  
7 1106, 1112 (9th Cir. 2008) (internal quotation marks and citation omitted). “An agency may not,  
8 for example, depart from a prior policy sub silencio or simply disregard rules that are still on the  
9 books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (citation omitted).

10 Furthermore, Petitioner has a right to set aside agency action that violated agency  
11 procedures, rules, or instructions as arbitrary and capricious under the *Accardi* doctrine. *See United*  
12 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954) (“If petitioner can prove the  
13 allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).  
14 Under this doctrine, agencies are bound to follow their own rules that affect the fundamental rights  
15 of individuals, even those that limit otherwise discretionary decisions. *See id.* (holding that BIA  
16 must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235  
17 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their  
18 own procedures . . . even where the internal procedures are possibly more rigorous than otherwise  
19 would be required.”).

20 Respondents’ failure to follow its own regulations in 8 C.F.R. §§ 241.4(l), 241.13(i) was in  
21 violation of the *Accardi* doctrine and was arbitrary and capricious, constituting a violation of the  
22 APA. Moreover, the agency has articulated no reasons for deciding to revoke Mr. Valladares  
23 Arenas’s OSUP. Any future reasoning the agency gives for its decision to revoke Mr. Valladares  
24 Arenas’s OSUP will be a post-hoc rationalization. *Sw. Ctr. for Biological Diversity v. U.S. Forest*  
25 *Serv.*, 100 F.3d 1443, 1450 (9th Cir. 1996) (holding letter dated after a decision was made could not  
26 be used as a post-hoc rationalization to justify the agency’s action). On this record, ICE’s decision  
27 to revoke the OSUP was arbitrary and capricious.

28

1 ICE's failure to follow its own regulations in its decision to detain Mr. Valladares Arenas  
2 was arbitrary and capricious. As described above petitioner was given no reasoning for the  
3 revocation of his OSUP, despite the regulations requiring the agency to provide notice and  
4 reasoning of the revocation. 8 C.F.R. § 241.4(l)(1); *id.* § 241.13(i)(3). Therefore, the revocation of  
5 Mr. Valladares Arenas's OSUP and his continued detention are arbitrary and capricious making his  
6 detention unlawful.

7 **b. Petitioner is Likely to Succeed on his Claims Under the INA and Fifth**  
8 **Amendment that His Removal to Third Country Without Process is Unlawful.**

9 The Ninth Circuit held that “[f]ailing to notify individuals who are subject to deportation  
10 that they have the right to apply for asylum in the United States and for withholding of deportation  
11 to the country to which they will be deported violates both INS regulations and the constitutional  
12 right to due process.” *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that “last  
13 minute” designation of alternative country without meaningful opportunity to apply for protection  
14 “violate[s] a basic tenet of constitutional due process”). *See also Najjar v. Lynch*, 630 F. App'x 724  
15 (9th Cir. 2016) (“In the context of country of removal designations, last minute orders of removal  
16 to a country may violate due process if an immigrant was not provided an opportunity to address  
17 his fear of persecution in that country.”) In practice, the “guarantee of due process includes the right  
18 to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her  
19 particular claim.” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (ordering the  
20 same for non-citizen petitioner and holding ICE “has an affirmative obligation to make a  
21 determination regarding a noncitizen’s claim of fear before deporting” them). This is because  
22 “third-country removals are subject to the same mandatory protections that exist in removal or  
23 withholding-only proceedings.” *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL  
24 2014208 at \*6 (C.D. Cal. June 25, 2025) (citing *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F.  
25 Supp. 3d 355 (D. Mass.), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass.  
26 May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May  
27  
28

1 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F. Supp.  
2 3d 223 (D. Mass. 2025)).

3 While the Ninth Circuit decisions above clearly evince Mr. Valladares Arenas's likelihood  
4 of success on the merits, a full constitutional analysis further illustrates his likelihood of success.  
5 To "establish a procedural due process violation, the plaintiff must identify a protected liberty or  
6 property interest and allege that the defendants, acting under color of state law, deprived [him] of  
7 that interest without constitutionally adequate process." *D.V.D.*, 778 F.Supp.3d at 387 (cleaned up).  
8 The "basic purport of the constitutional requirement is that, before a significant deprivation of  
9 liberty or property takes place at the state's hands, the affected individual must be forewarned and  
10 afforded an opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* (cleaned  
11 up).

12 Relevant here, "Congress clearly established the right to deferral or withholding of removal  
13 based on a legitimate fear-based claim." *Id.*; *see also Jama v. ICE*, 543 U.S. 335, 348 (2005)  
14 (explaining that individuals who "face persecution or other mistreatment in the country designated"  
15 as their place of removal "have a number of available remedies," by statute, regulation, and under  
16 international law, to "ensur[e] their humane treatment"). Moreover, "[i]t is well established that  
17 the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings."  
18 *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)).  
19 This means "notice must be afforded within a reasonable time and in such a manner as will allow  
20 them to actually seek habeas relief in the proper venue before such removal occurs." *Id.* To be sure,  
21 "there can be no disagreement that the same constitutional guarantees apply to withholding-only  
22 relief." *D.V.D.*, 778 F.Supp.3d at 387.

23 An increasingly large host of courts in this Circuit and across the country have found the  
24 Government's "policy or practice of executing third-country removals" fail to "provid[e] notice  
25 and a meaningful opportunity to present fear-based claims, and that such policy or practice  
26 constitutes a deprivation of procedural due process." *Id.* at 387–89 ("The Court finds it likely that  
27 Defendants have applied and will continue to apply the alleged policy of removing aliens to third  
28 countries without notice and an opportunity to be heard on fear-based claims—in other words,

1 without due process.”)

2 The Government’s March 30, 2025 and July 9, 2025 policy memoranda are clear evidence  
3 of Respondents’ intent to unlawfully effectuate a third country removal, just as they have done with  
4 many others already. ICE’s new standard procedure for third-country removals is to not ask a non-  
5 citizen whether they are afraid of being removed to a specific third country. Exh. 3. If the non-  
6 citizen is provided a “reasonable means and opportunity to speak with an attorney,” then they may  
7 be removed within as few as 6 hours after notice of removal. *Id.* If they cannot speak to an attorney,  
8 they may be removed in as few as 24 hours. *Id.* If the non-citizen affirmatively states a fear of  
9 removal, USCIS is to screen them within 24 hours and unless the non-citizen—again without any  
10 mention of counsel—fails to establish they “would more likely than not be persecuted on a  
11 statutorily protected ground or tortured in the country of removal,” remove them as soon as  
12 possible. *Id.*

13 Here, Mr. Valladares Arenas has been told by ICE agents arresting him that he could be  
14 deported to Mexico. Ex. 1, ¶ 2. However, Mr. Valladares Arenas has not been served any documents  
15 or notice as to which country ICE intends to remove him.

16 Accordingly, Respondents’ actions here and their general policy guidance “violate[] both  
17 INS regulations and the constitutional right to due process,” as enumerated by the Ninth Circuit  
18 and sister district courts. *Andriasian*, 180 F.3d at 1041 (“last minute” designation of alternative  
19 country without meaningful opportunity to apply for protection “violate[s] a basic tenet of  
20 constitutional due process”); *see also Najjar*, 630 Fed. App’x. 724 (similar); *Aden*, 409 F. Supp. 3d  
21 at 1010; *Vaskanyan*, 2025 WL 2014208, at \*6.

22 This Court should join its peers in finding that Respondents’ third country removal process  
23 is unlawful. *D.V.D.*, 778 F.Supp.3d at 392–93 (granting preliminary injunction and mandating due  
24 process protections as discussed above and requested herein); *Vaskanyan*, 2025 WL 2014208, at  
25 \*6–9 (holding “Petitioner’s removal to a third country without due process ... is likely to result in  
26 irreparable harm” and enjoining Petitioner’s removal to a third country without the same  
27 protections mandated in the D.V.D. injunction); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025  
28 WL 1810210, at \*4 (W.D. Wash. June 30, 2025) (granting TRO enjoining Government from

1 removing petitioner to “any third country in the world absent prior approval from this Court”);  
2 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2097979, at \*3 (W.D. Wash. July 25, 2025) (same);  
3 *Phan*, 2025 WL 1993735, at \*7 (enjoining third country removal “without notice and an  
4 opportunity to be heard”); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at \*2  
5 (S.D. Tex. Aug. 1, 2025) (prohibiting “transferring, relocating, or removing Petitioner outside the  
6 Southern District of Texas without an Order from the Court”); *Gomez v. Chestnut*, No. 2:25-CV-  
7 00975-GMN-BNW, 2025 WL 1695359, at \*4 (D. Nev. June 17, 2025).

8 Taken together, Mr. Valladares Arenas easily meets his burden of demonstrating a  
9 likelihood of success on the merits of his due process and INA violation claims, or at least, serious  
10 questions going to the merits. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.  
11 2011).

## 12 **II. Absent Immediate Relief, Petitioner will Suffer Irreparable Harm**

13 First, the “deprivation of constitutional rights ‘unquestionably constitutes irreparable  
14 injury.’” *Melendres*, 695 F.3d at 1002 (quoting *Elrod*, 427 U.S. at 373); *Delkash v. Noem*, 2025  
15 WL 2683988 at \*6 (C.D. Cal. Aug. 28, 2025). Here, the failure to provide Mr. Valladares Arenas  
16 with due process as required under the Constitution before revoking his OSUP constitutes  
17 irreparable injury.

18 Respondents also appear likely to imminently remove Mr. Valladares Arenas to a third  
19 country without providing him mandatory statutory and constitutional protections. *See* Exh. 3  
20 (explaining DHS’s July 9, 2025, Third Country Removal policy memorandum setting forth  
21 *standard* procedure is to remove non-citizens to third countries in as few as 24 hours without due  
22 process protections). Therefore, significant irreparable harm is obviously imminent. *Melendres*,  
23 695 F.3d at 1002 (“the deprivation of constitutional rights ‘unquestionably constitutes irreparable  
24 injury’”). As the *D.V.D.* District Court explained, the irreparable harm resulting from third country  
25 removal without sufficient opportunity to apply for fear-based protection “is clear and simple:  
26 persecution, torture, and death. It is hard to imagine harm more irreparable.” *D.V.D.*, 778 F.Supp.3d  
27 at 391. The Supreme Court similarly held in a more unfavorable fact pattern involving detainees  
28 who are members of a designated foreign terrorist organization that “notice roughly 24 hours before

1 removal, devoid of information about how to exercise due process rights to contest that removal,  
2 surely does not pass muster.” *A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025). Accordingly, an  
3 increasingly long list of courts in this district and throughout the country have held “removal to a  
4 third country without due process . . . is likely to result in irreparable harm” and issued TROs  
5 enjoining such removals. *Vaskanyan*, 2025 WL 2014208, at \*6 (enjoining removal without  
6 protections mandated in the *D.V.D.* injunction). *Supra* p. 13 (discussing *J.R.*, 2025 WL 1810210,  
7 at \*4; *Nguyen*, 2025 WL 2097979, at \*3; *Phan*, 2025 WL 1993735, at \*7; *Misirbekov*, 2025 WL  
8 2201470, at \*2; *Gomez*, 2025 WL 1695359, at \*4). This Court should likewise enjoin Respondents  
9 from subjecting Mr. Valladares Arenas to irreparable harm and stripping the Court of its  
10 jurisdiction<sup>2</sup> via an unlawful third-country removal.

11 In addition, the Ninth Circuit and courts in this district have repeatedly recognized that the  
12 irreparable harm suffered by anyone in ICE detention may include “subpar medical and psychiatric  
13 care, . . . economic burdens imposed on detainees and their families as a result of detention, and the  
14 collateral harms to children of detainees whose parents are detained.” *Hernandez v. Sessions*, 872  
15 F.3d 976, 995 (9th Cir. 2017); *see, e.g. Sun v. Santaacruz*, 5:25-cv-02198-JLS-JC, 2025 WL  
16 2730235, at \*7 (C.D. Cal. Aug. 26, 2025) (finding detention would cause irreparable harm as it  
17 prevents petitioner from “support[ing] her family financially and emotionally”); *Pinchi v. Noem*,  
18 2025 WL 2084921, at \*6 (N.D. Cal. July 24, 2025) (“The likely consequences of [petitioner’s]  
19 detention—which would prevent her from providing for her family and sever her from  
20 existing medical care—are grave and irreparable.”).

21 Mr. Valladares Arenas has a family that includes his long-term partner, who is a lawful  
22 permanent resident; his four-month-old U.S. citizen son; and his U.S. citizen mother. Exh. 1, ¶¶

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<sup>2</sup> The All Writs Act authorizes courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). In the immigration context, courts have recently invoked the All Writs Act to preserve their jurisdiction over constitutional challenges to lightning-fast deportations. *See, e.g., A.A.R.P.*, 605 U.S. at 97 (noting that the Court “had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter,” by ordering their continued presence in the United States until further order of the Court (citing 28 U.S.C. § 1651(a))); *Garcia v. Noem*, No. 8:25-CV-00951-PX, 2025 WL 2062203, at \*6–10 (D. Md. July 23, 2025) (enjoining third-country removal proceedings in order to preserve jurisdiction pursuant to the All Writs Act); *Ozturk v. Trump*, 2025 WL 1145250, at \*23 (D. Vt. Apr. 18, 2025) (ordering return of detainee from Louisiana to Vermont), stay and mandamus denied sub nom., *Ozturk v. Hyde*, 136 F. 4th 382 (2d Cir. 2025); *Perez v. Noem*, 2025 U.S. Dist. Lexis 113509, at \*4–5 (S.D.N.Y. June 13, 2025) (enjoining detainee’s transfer outside New York and New Jersey absent further court order).

1 16–18. His family relies on him emotionally and financially. *Id.* Mr. Valladares Arenas is very  
2 present in his infant son’s life and shares the caregiving duties with his partner. *Id.* Without his  
3 support, his partner may be forced to give up some of her contracting work to care for their son,  
4 further financially and emotionally burdening their family. *Id.*

5 In sum, the failure to provide Mr. Valladares Arenas with due process as required under the  
6 Constitution, and the harms of his continued detention including the detrimental impact on his  
7 family, constitute irreparable injury. Therefore, this second *Winter* factor also weighs in Petitioner’s  
8 favor.

9 **III. The Public Interest and Equities Favor Granting Relief**

10 The balance of the equities and the public interest strongly favor granting Mr. Valladares  
11 Arenas requested relief. These two “merge where, as is the case here, the government is the  
12 opposing party.” *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (citing *Nken v. Holder*,  
13 556 U.S. 418, 435 (2009)). At its core, “it is always in the public interest to prevent the violation  
14 of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (internal citation omitted). In cases  
15 implicating removal, “there is a public interest in preventing [non-citizens] from being wrongfully  
16 removed, particularly to countries where they are likely to face substantial harm.” *Nken*, 556 U.S.  
17 at 436; *see also Vaskanyan*, 2025 WL 2014208, at \*8 (holding and quoting same). In response, the  
18 Government “cannot reasonably assert that it is harmed in any legally cognizable sense by being  
19 enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). For  
20 example, the *D.V.D.* Court “found it likely that these [third-country] deportations have or will be  
21 wrongfully executed ... [and] that these circumstances countervail the public’s normal and  
22 meaningful ‘interest in prompt execution.’” 2025 WL 1142968, at \*23. To boot, Mr. Valladares  
23 Arenas’s “‘likelihood of success on the merits [further] lightens [Respondents’] stated interests.’”  
24 *Id.*

25 In addition, it is undisputed that “the public has a strong interest in upholding procedural  
26 protections against unlawful detention.” *Rodriguez-Flores v. Semaia et al.*, 2:25-cv-6900-JGB-JC,  
27 2025 WL 2684181, at \*5 (C.D. Cal. Aug. 14, 2025) (citation modified). Although the public has  
28 an interest in the execution of immigration laws, this interest is outweighed by the strong public

1 interest of ensuring due process rights are vindicated, particularly in the context of immigration  
2 detention, and the minimal burden on Respondents in releasing Petitioner from detention. *See*  
3 *X.R.M.*, 5:25-cv- 02783-AB-PVC, ECF No. 296, at 9 (finding Respondents’ interest in enforcement  
4 of immigration laws “not so compelling as to permit Respondents to violate Petitioner’s [] rights”);  
5 *Delkash*, 2025 WL 2683988 at \*6 (finding same); *Singh v. Andrews*, 2025 WL 1918679, at \*9 (E.D.  
6 Cal. July 11, 2025) (same).

7 A final consideration is the “general public’s interest in the efficient allocation of the  
8 government’s fiscal resources.” *Hernandez*, 872 F.3d at 996. The Ninth Circuit has recognized the  
9 “staggering” costs of immigration detention and courts have considered these costs in concluding  
10 that the public interest weighs in favor of a noncitizen’s release from detention. *Id.*; *see, e.g., Sun*,  
11 2025 WL 2730235, at \*7; *Sequen v. Kaiser*, 2025 WL 2203419, at \*3 (N.D. Cal. Aug. 1, 2025);  
12 *Pinchi*, 2025 WL 2084921, at \*7.

13 Moreover, in “comparison to the persecution Petitioner would face, Respondent would  
14 suffer little to no harm if Petitioner’s Motion were granted.” *Misirbekov*, 2025 WL 2201470, at \*2.  
15 In other words, a “TRO would impose little to no prejudice on the Government, which is free to  
16 any time to execute the removal order by” *lawfully* removing G.A.A. *J.R.*, 2025 WL 1810210, at  
17 \*4.

18 In sum, the third and fourth *Winter* factors—the balance of equities and the public interest—  
19 weigh strongly in Petitioner’s favor. *See Esmail*, 2025 WL 3030589, at \*8 (finding same); *Delkash*,  
20 2025 WL 2683988 at \*6 (same); *Sun*, 2025 WL 2730235, at \*7 (same); *Pinchi*, 2025 WL 2084921  
21 at \*7 (same).

22 **IV. Petitioner Has Demonstrated That All Four *Winter* Factors Weigh Heavily in His**  
23 **Favor and the Court Should Issue a TRO**

24 Petitioner has demonstrated that he is likely to succeed on the merits (or that he has at least  
25 raised “serious questions”) of his claim that Respondents violated his due process rights under the  
26 Fifth Amendment, that he is likely to suffer irreparable harm in the absence of emergency relief,  
27 that the balance of equities tips sharply in his favor, and that the requested relief is in the public  
28 interest. Therefore, a TRO should issue. *See Bui*, 2025 WL 2988356, at \*5 (finding violations of

1 DHS regulations to constitute a violation of Petitioner’s due process rights and granting habeas  
2 petition); *Constantinovici*, 2025 WL 2898985, at \*7 (same); *Phan v. Noem*, No. 3:25-CV-02422-  
3 RBM-MSB, 2025 WL 2898977, at \*5 (S.D. Cal. Oct. 10, 2025) (same); *Esmail*, 2025 WL 3030589,  
4 at \*3 (finding same and granting preliminary injunction); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT  
5 EPG, 2025 WL 2581575, at \*9 (E.D. Cal. Sept. 5, 2025) (same); *Delkash*, 2025 WL 2683988, at  
6 \*6 (same); *M.S.L.*, 2025 WL 2430267, at \*12 (finding same and granting habeas petition); *Yang*,  
7 2025 WL 2791778, at \*5 (finding same and granting TRO in part); *Phan*, 2025 WL 1993735, at \*4  
8 (finding same and granting preliminary injunction).

9 In addition to requesting that the TRO bar his removal from the United States during the  
10 pendency of the adjudication of the habeas petition, Petitioner also requests his release from  
11 detention subject to his previously issued OSUP. This remedy returns him to *status quo ante litem*.  
12 The *status quo ante litem* is the “last uncontested status which preceded the pending controversy.”  
13 *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (citation modified).  
14 Because Mr. Valladares Arenas is challenging the violation of his due process rights at his re-  
15 detainment, the last uncontested status was on November 20, 2025, immediately prior to his re-  
16 detention. *See Esmail*, 2025 WL 3030590, at \*6 (finding that because ICE violated governing  
17 regulations regarding revocation of release, appropriate remedy is to release him from detention);  
18 *Hoac*, 2025 WL 1993771, at \*7 (finding that because petitioner challenged his re-detainment, the  
19 “last uncontested status” was before he was re-detained, and granting release); *Pinchi*, 2025 WL  
20 1853763, at \*3 (same). Accordingly, Petitioner seeks his release from custody, subject to the OSUP,  
21 in order to preserve the pre-detention November 20, 2025 *status quo*.

22 Finally, upon the issuance of a TRO, the Court has discretion to set “the amount of security  
23 required, if any.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009); *see also* Fed. R. Civ.  
24 P. 65(c). Indeed, “the district court may dispense with the filing of a bond when it concludes there  
25 is no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Id.* (citation  
26 modified). “Courts regularly waive security in cases like this one.” *Singh*, 2025 WL 1918679, at  
27 \*9 (granting preliminary injunction and ordering petitioner’s release from ICE detention).

28

1 In this case, it is unlikely any harm will come to Respondents as a result of the issuance of  
2 a TRO and Respondents will incur negligible or zero financial costs. Petitioner asks the Court to  
3 exercise its discretion to waive the bond requirement. *See, e.g., Sun*, 2025 WL 2730235, at \*8  
4 (waiving bond); *Pinchi*, 2025 WL 1853763, at \*4 (same); *Singh*, 2025 WL 1918679, at \*9 (same);  
5 *Garcia v. Bondi*, 2025 WL 1676855, at \*3 (N.D. Cal. June 14, 2025) (same).

6 **CONCLUSION**

7 For the foregoing reasons, this Court should issue a TRO in this matter while the merits of  
8 the pending Petition for Writ of Habeas Corpus are litigated. Specifically, Petitioner requests that  
9 the Court order:

- 10 • That Mr. Valladares Arenas be released from ICE custody immediately;
- 11 • That Mr. Valladares Arenas shall not be re-detained unless he receives due process as
- 12 required under the Due Process Clause of the Fifth Amendment;
- 13 • That Mr. Valladares Arenas shall not be removed from the United States during the
- 14 pendency of the habeas petition;
- 15 • That Mr. Valladares Arenas shall not be removed to any Third Country without being
- 16 provided Notice and a reasonable opportunity to apply for relief removal from said Third
- 17 Country.

18  
19 Dated: November 26, 2025,

Respectfully submitted,

20 /s/ Benjamin T. Wiesinger

21 **BENJAMIN T. WIESINGER**

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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner’s attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 26th day of November 2025 in Phoenix, Arizona.

/s/ Benjamin T. Wiesinger

**Counsel for Petitioner**