Arash Yasrebi
Yasrebi Law
One Sansome Street, Suite 3500
San Francisco, CA 94104
Tel: (415) 819-1898
Email: arash@yasrebilaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT OF CALIFORNIA

Agusto RAMOS MENDOZA,

Petitioner,

v.

Todd LYONS, Acting Director, Immigration and Customs Enforcement; Sergio ALBARRAN, Field Office Director of Enforcement and Removal Operations, San Francisco Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Executive Office for Immigration Review; Minga WOFFORD, Facility Administrator of Mesa Verde ICE Processing Center,

Respondents.

Case No. 1:25-cv-01650-DC-SCR

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

PETITIONER'S DHS NUMBER:

TABLE OF CONTENTS

I. INTRODUCTION..1

II. LEGAL ARGUMENT..1

A. Petitioner Is Likely to Succeed on the Merits of His Claims.............................1

1. *Zadvydas*' Reasonable Foreseeability of Removal.......................................1

2. The Statute and Regulation Govern Procedures for Revoking an Order of Supervision..2

3. The Regulations permitting Order of Supervision revocation absent findings of flight risk or danger to the community are *ultra vires*..................................5

4. The APA Sets Minimum Standards for Final Agency Action..........................6

5. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules..................7

6. Petitioner Has Expressed a Fear of Removal to Third Countries, Including Mexico..8

B. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO......................12

C. The Balance of Equities Tips in Petitioners' Favor and a TRO is in the Public Interest..14

III. CONCLUSION...15

TABLE OF AUTHORITIES

FEDERAL STATUTES

5 U.S.C. § 704 6

8 USC 1158(a)(2)(A) 11, 12

8 U.S.C. § 1231(a) 5, 6

8 U.S.C. § 1231(a)(2)(A) 1

8 U.S.C. § 1231(a)(3) 1,2

8 U.S.C. § 1231(a)(6) 2,3

8 USC § 1231(b)(2)(E)(vii) 12

8 U.S.C. § 1231(b)(3) 11

8 U.S.C. § 1231(b)(3)(A) 10

FEDERAL REGULATIONS

8 C.F.R. § 1.2 3

8 C.F.R. § 241.4(l) 4, 6

8 C.F.R. § 241.4(l)(1) 4, 5

8 C.F.R. § 241.4(l)(2) 3, 4

8 C.F.R. § 241.13(i) 3

8 C.F.R. § 1240.11(c)(1)(i) 10

FEDERAL CASES

Aden v. Nielsen, 409 F. Supp. 3d 998 (W.D. Wash. 2019) 10, 11

Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999) 9, 10, 11

Barker v. Wingo, 407 U.S. 514 (1972)....................13

Bennett v. Spear, 520 U.S. 154 (1997)....................6

Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137 (W.D.N.Y. 2025)....................3, 5, 8

D.V.D. v. U.S. Dept. of Homeland Sec., 778 F. Supp. 3d 355 (D. Mass. 2025)....................9, 14

El Himri v. Ashcroft, 378 F.3d 932, 938 (9th Cir. 2004)....................10, 12

Elrod v. Burns, 427 U.S. 347 (1976)....................14

Escalante v. Noem, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025)....................1

Guillermo MR. v. Kaiser, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025)....................5

Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017)....................12, 13

Himri v. Ashcroft, 378 F.3d 932 (9th Cir. 2004)....................12

Kossov v. INS, 132 F.3d 405 (7th Cir. 1998)....................10, 11

Melendres v. Arpaio, 695 F.3d 990 (9th Cir. 2012)....................12, 14

Moreno Galvez v. Cuccinelli, 492 F. Supp. 3d 1169 (W.D. Wash. 2020)....................12, 14

Moreno Galvez v. Jaddou, 52 F.4th 821 (9th Cir. 2022)....................12, 14

Morton v. Ruiz, 415 U.S. 199 (1974)....................7

M.S.L. v. Bostock, 2025 WL 2430267 (D. Or. Aug. 21, 2025)....................8

Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S., 743 F.2d 1365 (9th Cir. 1984)....................13

Najjar v. Lynch, 630 Fed. App'x 724 (9th Cir. 2016)....................9

Nken v. Holder, 556 U.S. 418 (2009)....................14

Phong Thanh Nguyen v. Scott, No. 25-cv-01389, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025)....................2

Ragbir v. Barr, 2019 WL 6826008 (2d Cir. July 30, 2019)....................8

Roble v. Bondi, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025)........1

Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir. 2013)........15

Rombot v. Souza, 296 F. Supp. 3d 383 (D. Mass. 2017)........5, 8

U.S. v. Heffner, 420 F.2d 809 (4th Cir. 1969)........7

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954)........7, 8

Valle del Sol Inc. v. Whiting, 732 F.3d 1006 (9th Cir. 2013)........14, 15

Vaskanyan v. Janecka, et al., 2025 WL 2014208 (C.D. California 2025)........10

Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005)........12

You v. Nielsen, 321 F. Supp. 3d. 451 (S.D.N.Y. 2018)........3, 5

Zadvydas v. Davis, 533 U.S. 678 (2001)........1, 2, 6, 12

Zhu v. Genalo, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025)........8

OTHER AUTHORITIES

United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150........10

United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267........10

1 I. **INTRODUCTION**

2 On December 1, 2025, Respondents filed an opposition to Petitioners' Ex Parte Motion for
3 Temporary Restraining Order. In their opposition, Respondents contend that ICE properly
4 exercised its authority to revoke Petitioner's release pending removal and therefore that
5 Petitioner is not likely to succeed on the merits of her claims.

6 II. **LEGAL ARGUMENT**

7 A. **Petitioner Is Likely to Succeed on the Merits of His Claims.**

8 Petitioner is likely to succeed on his claims that his ongoing detention by Respondents is
9 unlawful.

10 1. ***Zadvydas*' Reasonable Foreseeability of Removal**

11 8 U.S.C. § 1231(a)(2)(A) mandates detention during the so-called "removal period," or 90
12 days following entry of a final order of removal. If an individual "does not leave or is not
13 removed within the removal period," then he or she "shall be subject to supervision under
14 regulations prescribed by the Attorney General." *Id.* § 1231(a)(3).

15 Under *Zadvydas v. Davis*, 533 U.S. 678, 701, courts typically presume that six months of
16 post-removal order detention is reasonable, after which a non-citizen can bring a habeas petition
17 to seek release, showing "good reason to believe" there is no significant likelihood of removal.
18 But some recent cases, including *Escalante v. Noem*, 2025 WL 2206113 (E.D. Tex. Aug. 2,
19 2025), have held that when a non-citizen released pursuant to an Order of Supervision is re-
20 detained for the purposes of removal, the government immediately bears the burden to show a
21 substantial likelihood of removal in the now foreseeable future. *See also Roble v. Bondi*, No. 25-
22 CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (applying the "default
23 rule" that the burden falls on the party who generally seeks to change the present state of affairs
24

and that is ICE that seeks to change the present state of affairs by revocation of an Order of Supervision).

Respondents argue that Petitioner's detention, seven days, is not "unlawful, prolonged, or indefinite." *See* Opposition, page 4. Respondents' argument is unavailing and contrary to law because courts have consistently declined to apply the presumption of reasonableness under *Zadvydas* to individuals who have been re-detained. *See S.F. v. Bostock*, No. 3:25-CV-01084-MTK, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025). In fact, courts have found that the re-detention of a petitioner does not reset the six-month detention period established in *Zadvydas*. *See Phong Thanh Nguyen v. Scott*, No. 25-cv-01389, 2025 WL 2419288, at 13 (W.D. Wash. Aug. 21, 2025).

2. <u>The Statute and Regulation Govern Procedures for Revoking an Order of Supervision</u>

A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period").

A non-citizen may only be detained past the 90-day removal period following a removal order if found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. 8 U.S.C. § 1231(a)(6).

But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances…" *Zadvydas v. Davis,* 533 U.S. 678, 699–700 (2001).

1 Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6),
2 that an order of supervision may be revoked and a non-citizen may be re-detained past the
3 removal period: "(1) the purposes of release have been served; (2) the alien violates any
4 condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the
5 alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R.
6 § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a
7 non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot
8 circumvent the plain text of the statute[,]" courts question whether these regulations are ultra
9 vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)
10 (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal
11 period only if person is a risk to the community, unlikely to comply with the order of removal, or
12 was ordered removed on specified grounds).
13 It is clear, however, that regulations permit only certain officials to revoke an order of
14 supervision: the ICE Executive Associate Director, a field office director, or an official
15 "delegated the function or authority . . . for a particular geographic district, region, or area."
16 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2,
17 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles
18 listed in § 241.4). If the field office director or a delegated official intends to revoke an order of
19 supervision, they must first make findings that "revocation is in the public interest and
20 circumstances do not reasonably permit referral of the case to the Executive Associate
21 [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an
22 order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781
23 F. Supp. 3d 137, 161 (finding a delegation order that "refers only to a limited set of powers under
24

part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

In this case, Petitioner's rights were violated in connection with the purported revocation of his Order of Supervision and his rights have been violated in connection with his right to challenge the revocation.

The government violated his due process rights by purporting to revoke his Order of Supervision without complying with the regulations governing such revocations. Once Petitioner was released from detention on an Order of Supervision, the revocation of that release was subject to the provisions of 8 C.F.R. § 241.4(1)(2).

The Notice of Revocation of Release provided by Respondents is extremely vague and ambiguous. It does not specify which section under 8 C.F.R. 214.4(l) or what release condition Petitioner allegedly violated to justify the government's revocation of Petitioner's release. Petitioner has not been afforded an opportunity to respond to the reasons for revocation because no interview with Respondent has been conducted. Furthermore, under 8 C.F.R. 214.4(l)(2), the Field Office Director who revoked the order failed to make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. This constitutes a violation of the regulations. The Field Officer Director failed to show that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. 214.4(l)(2).

Petitioner was arrested and re-detained in violation the statutes and regulations that govern the revocation of a lawful Order of Supervision. Furthermore, the government violated

Petitioner's due process rights by failing to comply with the requirements of 8 C.F.R. § 241.4(1)(1).

8 C.F.R. § 241.4(1)(1) states:

> (l) Revocation of release —
> (1) Violation of conditions of release. Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.

8 C.F.R. § 241.4(1)(1). Petitioner has never been provided with a notification of the revocation of his Order of Supervision, has never been advised of the reasons for the purported revocation, and has never been provided with the informal interview required by § 241.4(l)(1).

Courts have held that the government's failure to follow its own immigration regulations may warrant the release of a detained noncitizen. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017); and *Guillermo MR. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025).

3. **<u>The Regulations permitting Order of Supervision revocation absent findings of flight risk or danger to the community are *ultra vires.*</u>**

Petitioner contends that, prior to his re-detention by ICE, a determination must be made that he poses a danger to the community or is unlikely to comply with an order of removal.

In *You v. Nielsen*, the court held that the provisions of 8 C.F.R. § 241.4(l) purporting to authorize the revocation of release impermissibly exceed the scope of detention authority granted under 8 U.S.C. § 1231(a). *Id.* at 463. The court further determined that an individual with a final

order of removal who is re-detained pending removal is entitled to notice and an informal interview under 8 C.F.R. § 241.4(l), and that 8 U.S.C. § 1231(a) prohibits re-detention absent findings that the individual presents a flight risk or a danger to the community. *Id.*

Therefore, a revocation of an Order of Supervision based solely on the reasons listed in 8 C.F.R. § 241.4(l), without findings of dangerousness or risk of flight, constitutes ultra vires agency action. An individual such as Petitioner, who has been released from detention, has complied with all conditions of supervision, and is not inadmissible or removable on the grounds specified in § 1231, may not lawfully be re-detained without a finding that he poses a danger to the community or a risk of flight, even where her removal may be imminent. *See also Zadvydas v. Davis*, 533 U.S. 678, 700 ("And if removal is reasonably foreseeable, the habeas court should consider the risk of the [noncitizen] committing further crimes as a factor potentially justifying confinement within that reasonable removal period.").

4. <u>The APA Sets Minimum Standards for Final Agency Action</u>

The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704. Final agency actions are those (1) that "mark the consummation of the agency' decision making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

ICE's revocation of an order of supervision is a final agency action subject to this Court's review. The revocation here marked the consummation of ICE's decision-making process regarding Petitioner's custody. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

Respondents request that the Court dismiss this action as to all Respondents except the California City Correctional Facility and Christopher Chestnut. However, this matter also includes claims under the Administrative Procedure Act (APA), in which Petitioner challenges the actions of the other Respondents, including Todd Lyons, Acting Field Director of ICE, Sergio Alberran, Kristin Noem, Secretary of DHS, and Pamela Bondi, Attorney General, as arbitrary, capricious, an abuse of discretion, and contrary to law, based on their failure to comply with governing regulations. Accordingly, all Respondents should remain parties to this action.

5. **The *Accardi* Doctrine Requires Agencies to Follow Internal Rules**

Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

Accardi is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (1974) (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

Where a release notification issued alongside an order of supervision instructs that

a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly departure," ICE's failure to follow that instruction is an *Accardi* violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), vacated and remanded on other grounds sub nom. *Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

6. <u>Petitioner Has Expressed a Fear of Removal to Third Countries, Including Mexico</u>

Upon information and belief, it appears Respondents are preparing to remove Petitioner to a third country without providing a meaningful opportunity to be heard on his fear-based claims. Petitioner would move to re-open his immigration case and apply for fear-based protection and withholding of removal to certain third countries. Petitioner has expressed a fear of removal to

Mexico. Respondents have not yet provided any meaningful notice. Nevertheless, it is obvious that Petitioner's protected status could subject him to persecution and torture in any number of third countries. *See, e.g., D.V.D. v. U.S. Dept. of Homeland Sec.*, 778 F. Supp. 3d 355, 388 (D. Mass. 2025).

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

Further, based on the statements and actions of countries that have recently accepted third country removals from the United States, Petitioner. would likely succeed on the claim that these countries would repatriate him to El Salvador or another third country where he would face torture and/or persecution, in violation of U.S. and international refugee law.

It is black letter law that Mr. Mendoza must be provided with a meaningful opportunity to apply for protection prior to removal to a third country. The Ninth Circuit held that "[f]ailing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian v. INS,* 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"). *See also Najjar v. Lynch*, 630 Fed. App'x 724 (9th Cir. 2016). ("In the context of country of removal designations, last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of

persecution in that country.") In practice, the "guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (ordering the same for non-citizen petitioner and holding ICE "has an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting" them). This is because "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings." *Vaskanyan v. Janecka, et al.*, 2025 WL 2014208, *6 (C.D. California 2025) (citing *D.V.D.*, 778 F.Supp.3d).

For individuals in removal proceedings, the designation of a country of removal (or, at times, countries in the alternative that the IJ designates) on the record provides notice and an opportunity to permit a noncitizen who fears persecution or torture in the designated country (or countries) to file an application for protection. *See* 8 C.F.R. § 1240.10(f) (stating that "immigration judge shall notify the [noncitizen]" of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i).

Pursuant to 8 U.S.C. § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004).

Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267;

1 Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8
2 U.S.C. § 1231(b)(3)).

3 Meaningful notice and opportunity to present a fear-based claim prior to deportation to a
4 country where a person fears persecution or torture are also fundamental due process protections
5 under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko v. U.S. Att'y Gen.*, 149
6 F. App'x 947, 953 (11th Cir. 2005); *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d
7 998, 1004 (W.D. Wash. 2019). Similarly, a "last minute" IJ designation of a country during
8 removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a
9 basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

10 Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop
11 the deportation, is in a language the person understands, and provides for an automatic stay of
12 removal for a time period sufficient to permit the filing of a motion to reopen removal
13 proceedings so that a third country for removal may be designated as required under the
14 regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041;
15 *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of
16 deportation [such] that, given his capacities and circumstances, he would have a reasonable
17 opportunity to raise and pursue his claim for withholding of deportation.").

18 In this case, Respondents failed to provide Petitioner with any meaningful notice to permit
19 the filing of a motion to reopen removal proceedings so that a third country for removal may be
20 designated as required under the regulations and allowing Petitioner to present a fear-based claim
21 before the Immigration Judge.

22 Furthermore, Respondents' intention to remove Petitioner is unlawful because pursuant to 8
23 USC 1158(a)(2)(A), Respondents must show that Petitioner would be received in Mexico and
24

have access to a full and fair procedure for determining a claim to asylum or equivalent protection. Here, the government has failed to show that Mexico is capable of actually receiving Petitioner. In *Himri v. Ashcroft*, 378 F.3d 932 (9th Cir. 2004), as amended (Aug. 24, 2004), amended sub nom. *El Himri v. Ashcroft*, No. 03-71152, 2004 WL 879255 (9th Cir. Aug. 24, 2004) the Ninth Circuit ruled that, where designation of a country of removal is conditional under the statute, DHS must show that the condition is met for that country to be properly designated. Whereas *Himri v. Ashcroft* involved designation under 8 USC § 1231(b)(2)(E)(vii) that was deemed improper because Respondents did not prove that the country would "accept" the respondents as required by the text of that statute, it would be improper to order removal to an country under the text of 8 USC § 1158(a)(2)(A) if it is not where Petitioner "would have access to a full and fair procedure" to seek asylum.

B. <u>Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.</u>

In the absence of a TRO, Petitioner will continue to be unlawfully detained by Respondents.

"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). Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) ("Thus, it follows inexorably from our conclusion that the government's current policies [which fail to

1 consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that
2 members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally
3 in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable
4 harm.").

5 As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a
6 detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it
7 enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat'l Ctr. for*
8 *Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth
9 Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to
10 immigration detention" including "subpar medical and psychiatric care in ICE detention
11 facilities, the economic burdens imposed on detainees and their families as a result of detention,
12 and the collateral harms to children of detainees whose parents are detained." *Hernandez v.*
13 *Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Finally, the government itself has documented
14 alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General
15 (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-
16 2023 (2024) (reporting violations of environmental health and safety standards; staffing
17 shortages affecting the level of care detainees received for suicide watch, and detainees being
18 held in administrative segregation in unauthorized restraints, without being allowed time outside
19 their cell, and with no documentation that they were provided health care or three meals a day).

20 Here, Petitioner's continued detention under the current conditions presents a serious and
21 immediate threat to his physical and mental health. During the time that he has been on an Order
22 of Supervision, Petitioner has worked hard to establish a stable life for himself and his family.
23
24

1 Petitioner's re-arrest absent a hearing before a neutral adjudicator would violate his due
2 process rights under the Constitution. It is clear that "the deprivation of constitutional rights
3 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
4 Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining
5 order is necessary to prevent Mr. Mendoza from suffering irreparable harm by being subject to
6 unlawful and unjust detention.

7 Respondents appear likely to imminently remove Petitioner to a third country without
8 providing Petitioner mandatory statutory and constitutional protections.

9 As the *D.V.D.* District Court explained, the irreparable harm resulting from third country
10 removal without sufficient opportunity to apply for fear-based protection "is clear and simple:
11 persecution, torture, and death. It is hard to imagine harm more irreparable." *D.V.D.*, 778
12 F.Supp.3d at 391

13 **C. <u>The Balance of Equities Tips in Petitioner's Favor and a TRO is in the Public Interest.</u>**
14

15 Because the government is a party, these two factors are considered together. *Nken v. Holder*,
16 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs in his
17 favor because his claims assert that the new policy has violated federal regulations and laws. *See*
18 *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the government's
19 actions resulting in Petitioner being unlawfully "is inconsistent with federal law, …the balance
20 of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno*
21 *Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also*
22 *Moreno Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent
23 injunction issued in *Moreno II* and quoting approvingly district judge's declaration
24

that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully request that the Court grant the motion for a temporary restraining order.

DATED this 3rd Day of December, 2025.

/s/ Arash Yasrebi
Attorney for Petitioner

1
WORD COUNT CERTIFICATION

2 The undersigned, counsel of record for Petitioner certifies that this Response contains
3 4,878 words.

4 /s/ Arash Yasrebi
Arash Yasrebi

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 **PROOF OF SERVICE**

2 I, the undersigned, declare that my office is in San Francisco, California. I am over the
3 age of eighteen (18) years and not a party to the action within. My business address is One
4 Sansome Street, Suite 3500, San Francisco, CA 94104. On December 3, 2025, I served the
5 following documents: PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO
6 PETITIONER'S EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER by
7 placing a true and correct copy in a sealed envelope, each addressed as follows:

8 Kristi Noem
U.S. Department of Homeland Security
9 2801 Nebraska Avenue NW
Washington, D.C. 20528
10
Todd Lyons
11 U.S. Immigration and Customs Enforcement is:
500 12th Street SW
12 Washington, DC 20536

13 Sergio Albarran
San Francisco Field Office
14 U.S. Immigration and Customs Enforcement
630 Sansome Street
15 Rm 590
San Francisco, CA 94111
16
Minga Wofford
17 Mesa Verde ICE Processing Facility
425 Golden State Ave
18 Bakersfield, CA 93301

19 Pamela Bondi
950 Pennsylvania Avenue, NW
20 Washington, DC 20530-0001

21 United States Attorney's Office
501 I Street
22 Suite 10-100
Sacramento, CA 95814
23

24

By mail. I am readily familiar with the business for collection and processing of correspondence for mailing in the United States Postal Service and that this document, with postage fully prepaid, will be deposited with the United States Postal Service this date in the ordinary course of business.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on December 3, 2025, at San Francisco, California.

/s/ Arash Yasrebi
Arash Yasrebi