UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jose Jair MOSQUERA CAMACHO Petitioner, v. Laura HERMOSILLO, et al., Respondents.	Case No. 3:25-cv-6087 Agency File No. 246-622-239 **EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER** Note on Motion Calendar: December 3, 2025

INTRODUCTION

Petitioner Jose Jair Mosquera Camacho (J.M.C.) hereby petitions this Court for a temporary restraining order (TRO) pursuant to Rule 65 and the All Writs Act. Petitioner is Colombian noncitizen currently detained at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington. Petitioner has been in custody since June of 2025 and was issued an order of withholding of removal under INA § 241(b)(3) on September 3, 2025, by an Immigration Judge.

Neither the Petitioner nor the Respondent appealed the decision of the Immigration Judge, and his removal order became final on September 3, 2025.

The U.S. Government (Respondents) is statutorily prohibited from removing Petitioner to Colombia, his country of origin. Respondents also failed to remove J.M.C. to an alternate country within 90 days after his removal order was final. Respondents now seek to summarily

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remove J.M.C. to another country: Honduras.

J.M.C. entered the United States in March 2023 to seek asylum. Customs and Border Protection (CBP) apprehended J.M.C. shortly after his entry, and released him under an order of recognizance to continue with his removal proceedings in a non-detained setting. The government did not file the formal document (known as a Notice to Appear) to begin J.M.C's removal proceedings with the immigration court until August 8, 2024, more than one year after J.M.C.'s entry into the United States.

Meanwhile, J.M.C. filed his Form I-589, application for asylum and related relief affirmatively with United States Citizenship and Immigration Services (USCIS) on May 8, 2024. Once his removal proceedings formally began on August 8, 2024, J.M.C. refiled his asylum application with the Immigration Court on November 26, 2024.

ICE re-detained J.M.C. on June 6, 2025, after he accidentally drove too close to the Canadian-Washington border. Respondents did not provide J.M.C. a hearing before a neutral decisionmaker where ICE was required to justify the basis for J.M.C.'s detention or explain why J.M.C. is a flight risk or danger to the community. In fact, J.M.C. did not receive any meaningful opportunity to respond to any allegations triggering his re-detention.

Petitioner thus requests that this Court enjoin Respondents from transferring Petitioner outside of this Court's jurisdiction, and order that Respondents release Petitioner from ICE custody within seven days.

ICE has continued to detain Petitioner even though he was granted Withholding of Removal, he has no criminal history, and has significant ties to the community. More importantly, his time in detention exceeds the reasonable amount of time as set forth in *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) and other case law.

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VENUE

Venue is proper because Petitioner is detained at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, which is within the jurisdiction of this District.

JURISDICTION

This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 (INA § 101) *et seq.*

This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

FACTUAL BACKGROUND

J.M.C. is a 24-year-old citizen of Colombia. He entered the United States on or around March 25, 2023, to seek asylum. He was subsequently apprehended by Border Patrol, issued a Notice to Appear, and released from custody on his own recognizance.

Following his release on recognizance, J.M.C. relocated to Washington State. He lived amongst friends and relatives in Lynden, Washington, from March 2023 until his eventual detention in June of 2025. During that time, J.M.C. did not commit any crimes, attempt to abscond, or miss any of his scheduled immigration hearings.

On or about August 8, 2024, DHS filed a Notice to Appear (NTA) with the Seattle Immigration Court formally initiating removal proceedings, approximately 17 months after J.M.C.'s entry into the United States. J.M.C. filed his defensive asylum application with the

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Immigration Court on November 26, 2024. He appeared for his first Master Calendar Hearing (MCH) on November 27, 2024. An immigration judge scheduled J.M.C.'s Individual Calendar Hearing (ICH)—a bench trial to adjudicate J.M.C.'s Form I-589— for 2029.

On June 6, 2025, J.M.C. traveled to Blaine, Washington to meet a friend. J.M.C. unknowingly attempted to purchase water from a convenience store, but got too close to the Canadian-Washington border and was apprehended by CBP officers. He was held in CBP custody to review him and his case. Despite not violating any of the conditions of his release, and having a final hearing date pending with the Seattle Immigration Court, CBP officers detained him without a warrant, and transported him to the NWIPC.

Respondents did not provide any justification or official basis for J.M.C.'s detention, nor did Respondents assess whether J.M.C. presented a flight risk or a danger to the community, prior to re-detaining him. Subsequent to his re-detention, J.M.C. was not provided a hearing before a neutral decision maker to determine whether he was a flight risk or a danger to his community.

J.M.C. pursued his form I-589, application for asylum and related relief the Immigration Court in Tacoma, Washington. On September 3, 2025, an IJ ordered J.M.C. granted withholding of removal, protecting him against deportation to Colombia. All parties waived appeal and the IJ's decision became final on that day.

Respondents are attempting to summarily deport J.M.C. to a third country without notice or an opportunity to Respondent. On or about November 18, 2025, Respondents told J.M.C. that he was going to be deported to Mexico. However, that was ultimately unsuccessful because Mexico did not agree to take J.M.C. On or about December 2, 2025, more than three months after the IJ granted withholding of removal, ICE officers told J.M.C. that they were now going to

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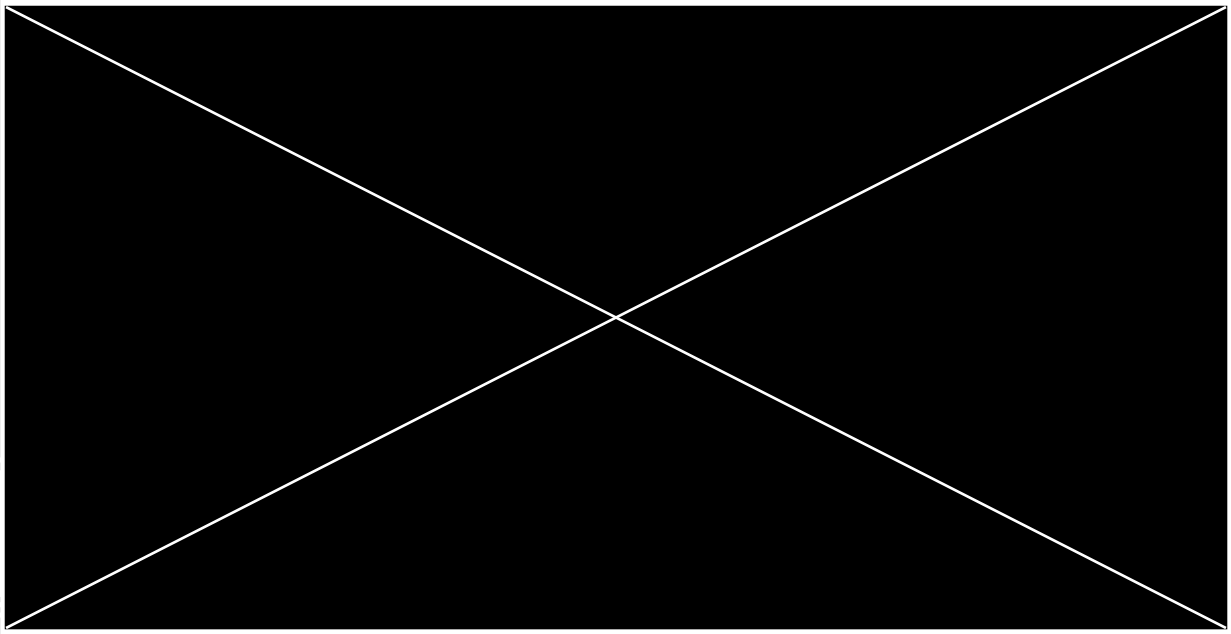
try to deport him to Honduras. J.M.C. has not ties to Honduras, he has never been to Honduras, and he fears harm in Honduras

The notice did not contain sufficient information regarding DHS's intention to remove Mosquera Camacho to Honduras, including an expected date of removal. The notice did not contain sufficient additional information of J.M.C.'s right to seek protection from removal to Honduras or how to seek that protection.

J.M.C. refused to sign the form, and later sought to inform the officer that he was afraid of being removed to Honduras on account of [redacted]

ICE has not provided J.M.C. with any additional information regarding its plans to remove him to Honduras or any other third country. Respondents have not scheduled J.M.C. for a fear screening despite being aware of his fear of deportation. J.M.C. remains detained. On December 3, 2025, his detention will have reached 180 days.



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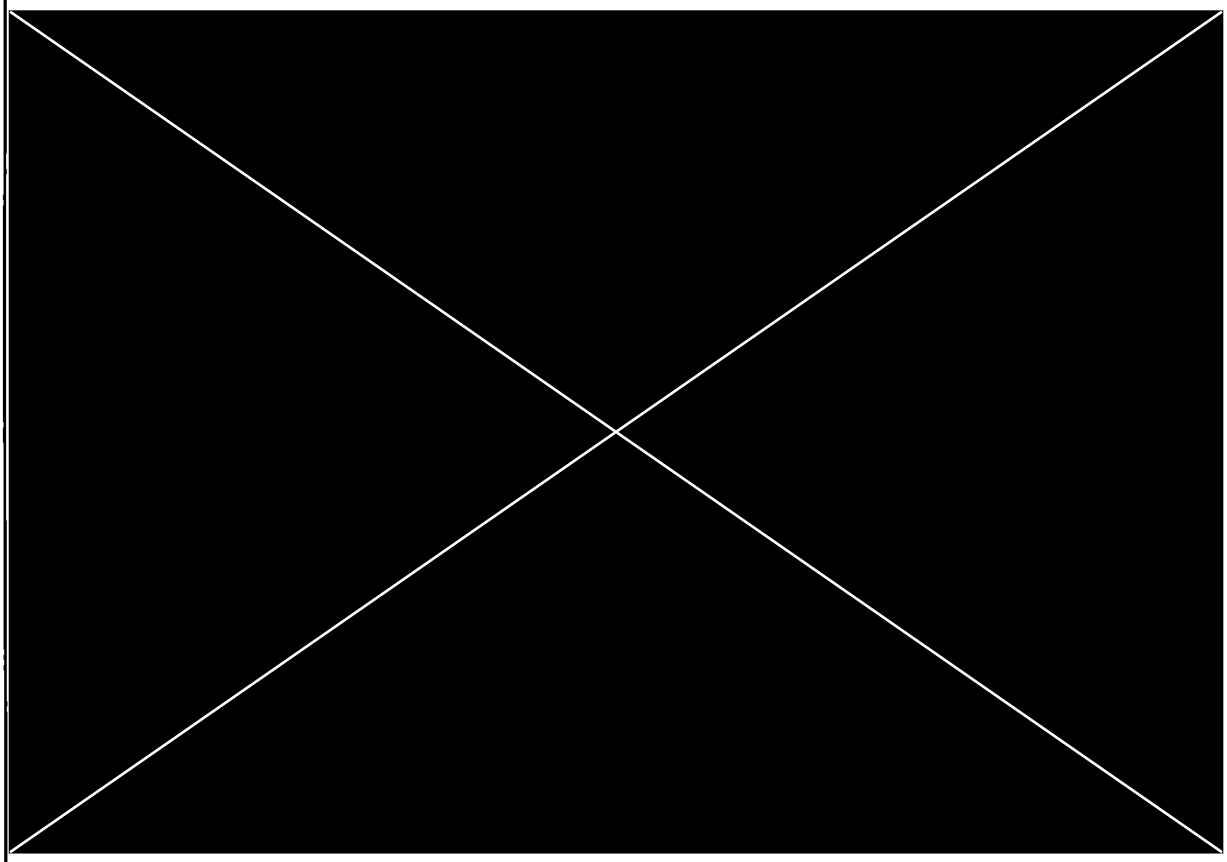

LEGAL STANDARD

A TRO is an "extraordinary remedy" that should be awarded only upon a clear showing that the plaintiff (or in this case, the petitioner) is entitled to such relief. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The petitioner of a TRO must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tips in the petitioner's favor; and (4) that an injunction is in the public interest. *See Id.* at 20.

Alternatively, the petitioner must demonstrate "serious questions going to the merits were raised," that "the balance of hardships tips sharply in the [petitioner's] favor," and that the other two Winter elements are satisfied. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). The "likelihood of success on the merits 'is the most important' Winter

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factor." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)). *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *2 (N.D. Cal. Mar. 31, 2023).

In this instance Petitioner requests that this Court enjoin Respondents from transferring Petitioner outside of this Court's jurisdiction, and order that Respondents release Petitioner from ICE custody within seven days. J.M.C. alleges his continued detention violates fifth amendment constitutional rights to due process and he is entitled to immediate release.

I. Due Process Claim and Likelihood of Success on the Merits

The Petitioner has a strong likelihood of success on his claim that Respondents have not provided any meaningful notice, information, or opportunity to present a claim based on his fear of being removed to Honduras or another third country. As such, Petitioner's rights should be restored and things returned to the status quo, which is prior to his unlawful arrest and detention.

For the INA's and FARRA's statutory protections against persecution and torture to be meaningful, there must be a means of accessing those procedures. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). Thus, "no person shall be removed from the United States without opportunity, at some time, to be heard." *A.A.R.P.*, 605 U.S. at 94 (citation modified). The Supreme Court has long applied this principle to people facing removal. *See Yamataya v. Fisher*, 189 U.S. 86, 99–101 (1903) (holding that, even though what Congress provided as to exclusion was "due process of law," the statute must be interpreted to provide "notice and . . . an opportunity to be heard" as to whether a person is in the United States "in violation of law").

Per the Supreme Court, due process requires that a person actually receive notice of their planned removal with sufficient time before it occurs so that the person has a genuine chance to

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seek relief from that removal. *A.A.R.P.*, 605 U.S. at 94–95. "[N]otice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *Id.* at 95.

These principles are well established in the Ninth Circuit in the context of third-country removals. See *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply for . . . withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *Ibarra-Perez v. United States*, --- F.4th ----, No. 24-631, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (affirming "there are restrictions on DHS's removal authority" and DHS "violates [noncitizens'] constitutional right to due process" where it fails to notify them of their right to apply for withholding of removal to the country of removal); see also Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025) (listing cases).

Respondents' policy does not comport with these instructions in any meaningful way. In fact, Respondents seek to bypass the process entirely as to many claimants via diplomatic assurances. As to all others, Respondents' "notice" provides no information about a planned date of removal or about a person's right to apply for protection from that removal. The notice can also be provided mere hours before placement on a plane. Due process demands far more.

Respondents' notice also does not require notice to counsel, which DHS is *required* to provide "[w]henever a person is required" by the immigration regulations to receive notice. 8 C.F.R. §§ 292.5(a), 1292.5(a). Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain

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the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019).

Respondents' policy is also deficient in other ways. The withholding statute, FARRA, and their implementing regulations envision *individualized* consideration of feared persecution or torture. *See* 8 U.S.C. § 1231(b)(3); *id.* (note); 8 C.F.R. §§ 208.31, 1208.16-1208.18. Yet Respondents' policy authorizes the agency to deem all claims invalid simply if a country provides a categorical diplomatic assurance to the United States that no persecution or torture will occur as to all noncitizens removed to it.

Importantly, the regulations concerning withholding of removal do not even permit diplomatic assurances *at all* to satisfy the mandatory withholding protections in the INA. As for CAT claims, the regulations allow diplomatic assurances, but only in *individual* cases. *See* 8 C.F.R. § 1208.18(c)(1); *see also* Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8484 (Feb. 19, 1999) (noting that cases of assurances are meant to be "rare").

In addition, Respondents' diplomatic assurances do not protect against chain refoulment, which ultimately results in the removal of a noncitizen to their country of origin, despite an immigration judge order that the person not be returned to their country of origin.

Similarly, Respondents' policy does nothing to safeguard against persecution or torture by non-state actors. By definition, diplomatic assurances are meaningless where there are *non-*state actors responsible.

Finally, requiring a person to demonstrate full entitlement to withholding or CAT protection in a screening hours after receiving the initial notice about removal to a third country does not provide a meaningful opportunity to be heard. As noted above, in standard § 1229a

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proceedings or in "withholding-only" proceedings before the immigration court, the evidence often includes hundreds of pages of documentation that detail the noncitizen's own testimony, the testimony of witnesses, expert reports, and other country conditions. Expecting a noncitizen to produce such an application mere hours or a day or two after finding out about the new country to which DHS plans to remove them does not provide a person with "sufficient time and information to reasonably be able to contact counsel, file . . . , and pursue appropriate relief." *A.A.R.P.*, 605 U.S. at 95.

Based on the above, Respondents violated Petitioner's due process and Petitioner has a strong likelihood of success on merits of his claim.

II. Prolonged Detention and Likelihood of Success on the Merits

Petitioner also argues that he has a strong likelihood of success on his claim that his prolonged detention violates his Fifth Amendment Constitutional Due Process rights. This Court will find that each of the factors in the multi-factor test adopted by this jurisdiction in *Banda v. McAleenan* for determining whether "prolonged detention under § 1225(b) without a bond hearing violates due process" weighs heavily in the Petitioners favor and his 6-month long detention pending his civil immigration removal is unconstitutionally prolonged in violation of his Fifth Amendment Due Process Rights. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106-07, 1118 (W.D. Wash. 2019).

The Supreme Court held that after the six-month period has passed, and if the alien has not been removed or released, an alien may provide good reason to believe that there is "no significant likelihood of removal in the reasonably foreseeable future," and in response the Government "must furnish evidence sufficient to rebut that showing." *Zadvydas v. Davis,* 533 U.S at 680; *see also See* 8 C.F.R. §241.4 (k)(2)(ii). If an adjudicating Court finds that removal is

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not reasonably foreseeable, the court "should hold continued detention unreasonable and no longer authorized," and if the court finds that removal is foreseeable, the court should consider the risk of the alien's committing further crimes as a factor potentially justifying continued confinement." *Zadvydas v. Davis,* 533 U.S at 700.

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently recognized, this is the "the most elemental of liberty interests." E.A. T.-B., 2025 WL 2402130, at *3 (citation modified); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner had "an exceptionally strong interest in freedom from physical confinement").

Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).

Since the Supreme Court's *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

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To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249- 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

Courts have found that automatic detention pending appeal "after a judicial officer has determined that release [] is appropriate," where the government has made no "showing of dangerousness or flight risk," "renders the continued detention arbitrary" and "raises a

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substantial Fifth Amendment claim." *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025). Although this case arises in the context of a grant of withholding of removal under the INA, the same reasoning applies: "... no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint . . ." *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).

Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. Id. at 477-78; accord Sopo, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez,* 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when the parties could "have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer"); *Sopo*, 825 F.3d at 128; Reid, 819 F.3d at 500.

To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). 38. First, incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. Diouf, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 ("It is clear that

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commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra.*

Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. His interest in liberty and family unity is paramount; the Immigration Judges' interpretation of bond jurisdiction and the subsequent blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying him any opportunity to demonstrate eligibility for release; and the Government has no further interest in ensuring

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appearance because he was granted INA withholding and DHS waived appeal. Accordingly, due process requires release. Respondents cannot show that the continued detention of petitioner is reasonably related to the original purpose.

J.M.C.'s continued detention also violates the Immigration and Nationality Act (INA) and is therefore unlawful. Under INA § 236(a), "[A]n alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." INA § 236(a). By its plain text, the statute authorizes detention only up until the moment a decision is made. Once a decision is rendered, detention authority ends. The adjacent statutory provision governing removal proceedings confirms what qualifies as a "decision": "At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States." INA § 240(c)(1) (emphasis added). Furthermore, neighboring provisions, including INA § 240(c)(3) mandates that "[n]o decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence." And under 8 C.F.R. § 1240.12(a), "the decision shall be concluded with the order of the immigration judge." Taken together, these provisions leave no doubt: once an Immigration Judge concludes proceedings and issues a ruling that a respondent is not to be removed, DHS's detention authority under § 236(a) is extinguished.

The statutory language is clear, and where "a statute's language is plain, the sole function of the courts is to enforce it according to its terms." *Owner–Operator Indep. Drivers v. United Van Lines*, 556 F.3d 690, 693 (8th Cir. 2009). Moreover, courts do not defer to agency interpretation when the text is unambiguous. As the Supreme Court recently confirmed, "[c]ourts, not agencies, will decide 'all relevant questions of law' arising on review of agency action." *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024). Here, the statutory command is straightforward: once an IJ has decided the respondent is not to be removed,

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detention under § 236(a) is no longer authorized. While 8 C.F.R. § 1236.1(b) suggests that the government may detain a respondent "up to the time removal proceedings are completed," that regulation is inconsistent with the statute. It attempts to define the end of proceedings by reference to the entry of a final order of deportation under INA § 101(a)(47)(B)(i), rather than the issuance of a "decision" under INA § 240(c). But that is not how Congress drafted § 236(a). The statute references a "decision," not a final order. When Congress includes particular language in one section of a statute and omits it in another, it is presumed to have done so intentionally. *Kucana v. Holder*, 558 U.S. 233, 249 (2010).

By contrast, INA § 101(a)(47)(B)(i) defines when an "order of deportation" becomes final — namely, "upon… a determination by the Board of Immigration Appeals affirming such order." But § 236(a) does not incorporate that standard. Instead, Congress used a different, earlier marker: the decision of the immigration judge. Thus, even if the BIA were to later reverse the IJ's termination order, that possibility does not revive DHS's detention authority under § 236(a). Statutory authority cannot be preserved through mere speculation about a future administrative reversal. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

INA § 236(a) allows detention only to facilitate the removal process; it does not allow DHS to hold individuals in prolonged civil custody based solely on disagreement with a decision already rendered. Similarly, courts have ruled that automatically stayed release from detention is a violation of the Fifth Amendment. *See Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025) (finding that it "does not require any showing of dangerousness or flight risk. Nor is it subject to immediate review by an immigration judge. It operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized

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justification—renders the continued detention arbitrary as applied. Cf. *Zadvydas*, 533 U.S. at 699–700, 121 S.Ct. 2491 (recognizing that removal must be reasonably foreseeable for continued post-removal detention to remain reasonable); *Bridges*, 326 U.S. 135, 152–53, 65 S.Ct. 1443 (administrative rules are designed to afford due process and to serve as "safeguards against essentially unfair procedures").

Without introducing evidence, the Government has wholly deprived Petitioner of notice and the chance to rebut its case for continued detention. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 ("The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it."). 8 USC 1225 v 1226.

Full removal proceedings under 8 U.S.C. § 1229a are "the standard mechanism for removing inadmissible noncitizens." *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908, at *2 (D.D.C. Aug. 29, 2025); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020) ("The usual removal process involves an evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to show that he or she should not be removed."). These proceedings are initiated by serving the noncitizen with a Form I-862 "notice to appear" in immigration court. 8 U.S.C. § 1229(a)(1). 50. Full removal proceedings "take place before an [immigration judge ("IJ")], an employee of the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop the record in cases before them." *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), —— F.Supp.3d ——, ——, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8 U.S.C. § 1229a(a)(1), (b)(1)). 51. In full removal proceedings, noncitizens have rights to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). "[D]ue to the built in procedures," full

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removal proceedings "typically take[ ] place over the course of multiple hearings," which "allows time for noncitizens to both gather evidence in support of petitions for relief available in immigration court ... and seek collateral relief from other components of [the Department of Homeland Security ("DHS")]." *Coal. for Humane Immigrant Rts.*, —— F.Supp.3d at ——, 2025 WL 2192986, at *3. 52. Accordingly, "[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). If the detainee disagrees with the officer's determination, they "may request a bond hearing before an IJ at any time before a removal order becomes final." Id. at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). The procedural posture progresses and the detainee must then "establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (quoting In re Guerra, 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). Appeal on an adverse decision is available with the BIA. *Id.* at 983 (citing § 236.1(d)(3)).

By contrast, expedited removal proceedings are a "more streamlined ... form of proceeding applicable only to certain noncitizens," whereby removal orders are "usually issued within a few days, if not hours." *Id.* (citation omitted). In expedited removal proceedings, the initial fact finder is an immigration officer, not an IJ. 8 C.F.R. § 235.3(b)(2)(i). The immigration officer asks the noncitizen a series of questions regarding (1) their "identity, alienage, and inadmissibility," and (2) their "intention to apply for asylum" or potential fear of persecution, torture, or return to their country. Id. at § 235.3(b)(2)(i), (b)(4). During this questioning, noncitizens do not have a right to counsel. Id. at § 235.3(b)(2)(i). If the immigration officer determines that the noncitizen is inadmissible under §1182(a)(6)(C) or 1182(a)(7), "the officer

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shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 ... or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). 54. 8 U.S.C. § 1225 enumerates the procedures allowing the government to detain (mandatory detention) certain "applicants for admission." Under § 1225, an "applicant for admission" is a noncitizen "present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). INA § 1225(b)(1) authorizes expedited removal for certain "applicants for admission" in two categories. First, noncitizens "arriving in the United States" that are determined by an immigration officer to be inadmissible due to misrepresentation or failure to meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); see also id. at § 1182(a)(6)(C), (a)(7).

Second, noncitizens that (a) are inadmissible because of misrepresentation or failure to meet documents requirements; (b) have not "been admitted or paroled into the United States"; (c) have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (d) have been designated by the Attorney General for expedited removal. Id. at § 1225(b)(1)(A)(iii). 57. 8 U.S.C. § 1226 "provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). The provision "distinguishes between two different categories" of noncitizens. *Jennings*, 583 U.S. at 297.

These two categories of noncitizens subject to § 1225(b)(1) are subject to mandatory detention "until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals that fall into § 1225(b)(1) are "normally ordered removed 'without further hearing or review'

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pursuant to an expedited removal process" unless claiming asylum or a fear of persecution. Jennings, 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii)).

Noncitizens who are "seeking admission" and not covered by the expedited removal provisions in § 1225(b)(1) are subject to § 1225(b)(2). See *id.* At 287. This category would include, for example, noncitizens who are arriving in the United States, seek admission, and are inadmissible for some reason other than misrepresentation or failure to meet documents requirements. See 8 U.S.C. § 1182(a)(2)–(3). Subject to limited exceptions, the § provides that such noncitizens "shall be detained" for full removal proceedings under § 1229a "if the examining immigration officer determines" that the noncitizen "is not clearly and beyond a doubt entitled to be admitted." *Id.* at § 1225(b)(2)(A).

Under § 1226(a), the "default rule," *id.*, a noncitizen "may be arrested and detained" "[o]n a warrant issued by the Attorney General" if their removal proceedings are pending, 8 U.S.C. § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the government has discretion to release them on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or ... conditional parole." Id. at § 1226(a)(2)(A)–(B). 61. Until this year, DHS has applied § 1226(a) and its discretionary release and review of detention "to the vast majority of noncitizens allegedly in this country without valid documentation"—a practice codified by regulation. *Salcedo Aceros*, 2025 WL 2737503, at *3.

The Government now contends that mandatory detention under § 1225 is the appropriate detention authority for noncitizens, such as petitioner, who have not been admitted or paroled. See *Rodriguez Vasquez v. Bostock*, et al. 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash.

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Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). In recent weeks, several district courts have held that the Government's new, and more expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect on the basis that this reading of the statute would render 1226(c) inoperable or moot. See, e.g., *Rodriguez Vasquez v. Bostock*, et al. 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

The same framework and principles apply here and compel J.M.C.'s immediate release.

II. Other Winter Factors

14. The other Winter factors include—irreparable harm, the balance of equities, and the public interest. *Pham v. Becerra,* No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023). The Ninth Circuit has previously found that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Id* (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)).

Additionally, like in *Pham,* the Petitioner will suffer irreparable harms from continued detention without a bond hearing—including the inability to be with his family, or to provide economic and emotional support to them. The risks of irreparable harm are especially and urgently heightened given the past torture suffered by the Petitioner. The balance of the equities tips in the Petitioner favor "because the administrative burden of a bond hearing is minimal when weighed against these severe hardships." *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (citing *Hernandez v. Sessions*, 872 F.3d 976, 995–96 (9th Cir. 2017)". Additionally, "the imposition of a TRO serves the public interest because it could prevent the "unnecessary detention" of J.M.C., should an IJ determine that he is "neither dangerous nor enough of a flight risk to require detention without bond." *Id.* at 996

Moreover, there is no public interest in the continued detention of Petitioner. Where the

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government is a party to the case, as in this case, the third and fourth *winter* injunction factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As an initial matter, the public interest is served by the protection of constitutional rights. *See Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996). More specifically, the public interest lies in requiring "the Government to ensure compliance with its own laws." *Kostak*, 2025 WL 2472136, at *4. By contrast, as this Court recently held, "the public has no interest in incarcerating people who have no basis to be detained." *Ventura Martinez*, No. 3:25-cv-01445-JE-KDM at *6.

The Petitioner has no criminal history and has no reason to be considered a danger to his community or to national security. Moreover, because Petitioner was granted with a form of immigration relief, he is eligible for work authorization and thus has an incentive to remain in contact and cooperate with immigration authorities in the future.

III. This Court Should Not Require J.M.C. to Provide Security Prior to Issuing a Temporary Restraining Order

17. Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." However, the Court may waive security in its discretion. *Kostak, 2025 WL 2472136, at *4.* This Court should waive security here because Respondents will not incur any costs or damages if relief is granted.

CONCLUSION

18. J.M.C respectfully requests that the Court grant his motion for a temporary restraining order. The Court should find that Petitioner was not provided reasonable or adequate information, access to counsel, or time to prepare a defense to a third country of removal. The

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Court should also find that Petitioner's continued detention is a violation of the Fifth Amendment and that prolonging his detention intensifies the Constitutional Violation, amounting in irreparable harm. There is no public interest in continuing his unlawful detention, and the Respondents have not demonstrated why Petitioner's detention is necessary. Therefore, the Court should enjoin Respondents from continuing to detain Petitioner, including while the Petition for Writ of Habeas Corpus is decided by this Court.

DATED this 3rd of December, 2025.

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