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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of **Yonathan Donaldo Santos Zelaya** *Petitioner,* v. **DANIEL BRIGHTMAN *et al.*,** *Respondents*	**Case No. 3:25-cv-3489-LL-DLL** **REPLY IN SUPPORT OF PETITIONER'S HABEAS PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

Petitioner, Yonathan Donaldo Santos Zelaya, filed a habeas petition and a motion for temporary restraining order (TRO). ECF Nos. 1 and 2. In response to Respondents' opposition to both (see ECF No. 6), Petitioner respectfully submits this reply and requests that the Court grant interim relief and the petition.

Before addressing the legal arguments, Petitioner highlights the scope and nature of the relief requested. Although the Petition described Petitioner's current ISAP supervision for context, the requested relief is not limited to any specific program or condition. The Petition seeks to prevent imminent threats to Petitioner's liberty, including potential detention and third-country removal, which are post hoc, discretionary, and unpredictable. This Court's intervention is necessary to preserve Petitioner's liberty and prevent irreparable harm, regardless of the supervision program in place.

II. LEGAL ARGUMENTS

A. Procedural Due Process Is Required

Respondents' sworn declaration indicates that ICE operates under "standard guidance" in effectuating third-country removals, including procedures for notice and timing of removal. ICE's "standard guidance" appears to be internal and unpublished. Due process requires clear, publicly accessible procedures, particularly when the government seeks to deprive an individual of liberty or remove them from the country. The alleged guidance cited by Respondents fails this test, leaving Petitioner vulnerable to arbitrary and irreversible action.

B. TRO Is Procedural, Not Substantive

Petitioner does not seek to relitigate the prior withholding grant. Instead, this motion addresses procedural protections necessary to ensure that removal or detention is not executed in a manner that prejudices Petitioner's rights or violates due process. The TRO is necessary to maintain the status quo while the Court resolves the habeas petition.

C. Claims and Requests Are Not Barred by 8 U.S.C. § 1252

Respondents' reliance on 8 U.S.C. § 1252(g) to defeat subject matter jurisdiction is misplaced. Section 1252(g) is a narrow jurisdiction-stripping provision that applies only to claims "arising from" the Attorney General's discrete decisions to commence proceedings, adjudicate cases, or execute removal orders, and does not bar review of collateral constitutional or procedural claims.

Petitioner does not challenge the commencement of proceedings, the adjudication of his immigration case, or the execution of a valid removal order. To the contrary, Petitioner was granted protection under the Convention Against Torture, and his claims concern the procedural safeguards required before any threatened detention or third-country removal, including the absence of notice, the lack of a pre-deprivation process, and the imminent risk of irreparable harm. Such claims fall outside the scope of § 1252(g).

Moreover, Respondents concede that Petitioner has not been served with written notice of any intent to effectuate third-country removal. Where no removal decision has been executed—and where the relief sought is prospective and

procedural rather than substantive—§ 1252(g) does not divest this Court of jurisdiction.

D. This Petition and TRO Are Ripe

Respondents argue that this case is not ripe because Petitioner has not yet been detained, served with notice of third-country removal, or referred for a reasonable fear interview. ECF No. 6 at 12. However, these arguments misunderstand both the nature of injunctive relief and the government's own asserted authority. Respondents' declarant confirms that ICE may effectuate third-country removal within hours of notice under undefined "exigent circumstances." ECF No. 6, Exhibit 1 St Clair-Guerrero Decl. at page 4, ¶ 20.

The law does not require Petitioner to wait until he is detained or removed—events that would cause irreparable harm—before seeking judicial protection. A case is ripe where the government asserts authority to act on short notice and withholding review would force an individual to suffer irreparable harm before obtaining judicial relief. *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967); *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc). Removal and detention constitute paradigmatic irreparable injuries. *Nken v. Holder*, 556 U.S. 418, 435 (2009). ICE's own declaration confirms it may effectuate third-country removal within hours under undefined circumstances, rendering post-hoc review meaningless. *See East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779–80 (9th Cir. 2018).

The Ninth Circuit has held that a plaintiff satisfies the injury-in-fact requirement where he faces a realistic danger of sustaining a direct injury. *See*

Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29; *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc).

Respondents rely on *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000), to suggest this case is hypothetical. In fact, this is a live case or controversy: ICE has already altered Petitioner's custodial status, placing him on ISAP with GPS monitoring and multiple reporting requirements after more than a decade of minimal supervision. The threat of detention or third-country removal is immediate, concrete, and particularized, and liberty is already restrained. Courts routinely find live controversies and ripeness in precisely this context. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 770–71 (9th Cir. 2018).

E. Petitioner Established Entitlement to Injunctive Relief

Petitioner has established that he is entitled to a TRO. Petitioner agrees with Respondents that "[t]o prevail on a motion for temporary restraining order, a petitioner must "[1] establish that he is likely to succeed on the merits, [2] that he is likely to "suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." (ECF No. 6 at 5). Petitioner satisfies these requirements.

a. Petition is Likely to Succeed on the Merits

Respondents assert that a change of circumstances resulted in the modification to Petitioner's conditions of supervision, specifically that he was

"arrested for felony robbery and conspiracy in April 2024 by Chula Vista Police," which "violated a term of his prior OSUP, which prohibited Petitioner from engaging in criminal activity after his release from ICE custody." (ECF No. 6 at 7)

That characterization is inaccurate. The OSUP language states, "That you do not commit any crimes while on this Order of Supervision." A violation therefore occurs only if Petitioner commits a crime—not upon an arrest, allegation, or unproven accusation. Respondents have submitted no evidence that Petitioner committed any crime, nor do they contend that any conviction occurred. Absent such evidence, Respondents' assertion cannot justify escalation of supervision or support their opposition to injunctive relief.

Respondents also fail to note that no criminal charges were filed following Petitioner's contact with law enforcement. Petitioner does not dispute that contact occurred; rather, he contests Respondents' legal conclusion that such contact alone creates a presumption of criminal activity sufficient to constitute a violation of the OSUP.

The principle that an arrest does not create a presumption of criminal activity is a cornerstone of U.S. law, anchored in the constitutional right to the presumption of innocence. This principle is synonymous with the prosecution's burden of proving guilt beyond a reasonable doubt in a fair trial.

Moreover, the trier of fact, whether it be a judge or jury, is forbidden from drawing any inference of guilt from the mere fact that a defendant has been charged with a crime or arrested. The case must be decided solely on the evidence presented during the trial.

In *Herrera v. Collins*, the Supreme Court held that the constitutional presumption of innocence disappears *after* a defendant has been afforded a fair trial and convicted of the offense for which they were charged, explicitly linking the presumption to the period *before* or *during* the trial process. (*Herrera v. Collins*, 506 U.S. 390, 399 (1993)). Here, there has been no trial, indeed, no charges have even been filed.

The Court has jurisdiction and has also focused on the distinction between the factual basis for an arrest (probable cause) and the level of proof required for conviction (beyond a reasonable doubt), reinforcing that the former is a lower standard and not a determination of guilt itself. *See Brinegar v. United States*, 338 U.S. 160, 175-6 (1949) ("The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt.' And this 'means less than evidence which would justify condemnation' or conviction, as Marshall, C.J., said for the Court more than a century ago in *Locke v. United States*, 7 Cranch 339, 348, 3 L.Ed. 364. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." citations omitted); *In re Winship*, 397 U.S. 358, 361 (1970) ("The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The 'demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, (though) its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as

1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt." Citations omitted).

In essence, an arrest indicates that law enforcement had probable cause to believe a crime was committed, not that the individual is guilty. Accordingly, the assertion that a mere arrest alone creates a presumption of criminal activity lacks merit because such a legal conclusion contradicts an important cornerstone of our criminal justice system.

The timing of Respondents' assertion of an OSUP violation further undermines its credibility. The purported OSUP "violation" allegedly occurred in April 2024, yet ICE conducted a subsequent in-person check-in on November 14, 2024—more than six months later—and permitted Petitioner to remain at liberty without any additional supervision. Petitioner then attended another check-in on November 14, 2025, representing another full year without incident. Respondents identify no intervening conduct that would explain why this long-dormant allegation now suddenly justifies escalation of supervision. Such delayed enforcement underscores that the asserted "violation" is a post hoc rationale rather than a contemporaneous basis for ICE's actions.

Accordingly, Petitioner's due process rights will be violated should the asserted change of circumstances warrant increased conditions or re-detention after a grant of protection under the Convention Against Torture and years of supervised release.

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b. Petitioner Has Shown He Will Experience Irreparable Harm Absent this Court's Intervention.

Petitioner agrees that "[t]o prevail on his request for interim injunctive relief, Petitioner must demonstrate immediate threatened injury." ECF 6 at 12 (citations omitted).

In addition to the irreparable harm identified in the initial petition, including separation from his children and potential transfer out of the jurisdiction, the significant ambiguity and unpredictable timing of ICE's third-country removal practices create an imminent risk to Petitioner. Respondents claim that Petitioner will receive notice and a chance to consult counsel, but the timing rules are unclear and internally defined, at best. The 24-hour waiting period, or six-hour exigent rule, does not guarantee meaningful opportunity to assert rights. This ambiguity creates real and immediate risk of irreparable harm, justifying injunctive relief.

Respondents assert that a "possibility" of irreparable harm is insufficient, citing *Winter*, 555 U.S. 7, 22, and that detention alone does not constitute irreparable injury, citing *Reyes v. Wolf*, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021). Here, however, the threat to Petitioner is neither speculative nor routine. ICE has already escalated supervision on a post hoc basis - imposing GPS monitoring, multiple check-ins over a compressed period, and home visits - without any contemporaneous triggering event or explanation. This after-the-fact escalation underscores the absence of predictable standards and demonstrates that Petitioner's liberty may be further curtailed, or converted into detention or removal, on short notice and without process. Respondents' own declarant

confirms that third-country removal may occur within hours of notice, rendering the harm imminent and irreversible. Courts routinely recognize that threatened removal or detention under such circumstances constitutes irreparable harm. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779–80 (9th Cir. 2018); *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011).

Respondents' argument that Petitioner's alleged harm is speculative relies on a selective reading of the St Clair-Guerrero Declaration. While Respondents emphasize that ICE normally provides written notice and a referral to an asylum officer if a fear claim is raised, the declarant explicitly acknowledges that, in "exigent circumstances," ICE may execute a removal order six or more hours after service of notice." St Clair-Guerrero Decl. ¶ 20. This expedited time frame leaves no practical opportunity for Petitioner to meaningfully assert or pursue a fear-based claim and demonstrates that the risk of removal is immediate and concrete, not hypothetical. Moreover, ICE's guidance is internal and discretionary, providing no enforceable guarantee of process, which further underscores the urgency of judicial intervention. Courts have repeatedly held that threatened removal or detention under such circumstances constitutes irreparable harm sufficient to justify injunctive relief. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779–80 (9th Cir. 2018); *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011).

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c. The Balance of Equities Tips Sharply in Petitioner's Favor

The balance of the equities and the public interest strongly favor granting Petitioner's requested relief. These two "merge where, as is the case here, the government is the opposing party." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (*citing Nken v. Holder*, 556 U.S. 418, 435 (2009)). At its core, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citation omitted).

Respondent asserts the basis of Petitioner's recent treatment and the reason he cannot succeed on the merits is because "Petitioner has repeatedly violated the law," citing petitioner's arrest and his two unlawful entries. (ECF No. 6 at 14.) This argument is disingenuous for three reasons. First, this description without greater context suggests that ICE was unaware of petitioner's two prior unlawful entries and upon becoming aware of them, decided to impose greater restrictions upon his person, including the threat of being re-detained. This is not the case. Petitioner's entries and exits are familiar with all parties, including the IJ that granted him a $1,500 bond.

Second, Respondents' reliance on Petitioner's April 2024 arrest—without charges or a conviction—does not outweigh Petitioner's substantial liberty interests. Mere questioning by law enforcement, without any ensuing criminal charges, cannot justify heightened supervision or the deprivation of due process protections. Where the government identifies no *actual* criminal conduct or an adjudicated violation, the equities favor preserving Petitioner's liberty rather than permitting further escalation based on unproven allegations.

Third, if Petitioner's April 9, 2024 arrest were truly the basis for the change in supervision, ICE would have acted contemporaneously. Instead, Petitioner reported for an in-person check-in on November 14, 2024—more than six months later—and was instructed to return the following year. Respondents identify no intervening conduct or changed circumstances that would explain the sudden escalation of supervision well over a year later. This unexplained delay underscores the discretionary and opaque nature of ICE's enforcement decisions and weighs strongly in favor of preserving the status quo while this Court reviews the merits.

Because Respondents rely on internal guidance that is neither published nor binding, Petitioner cannot predict or meaningfully challenge the consequences of ICE's actions. Respondents' own declarant confirms that removal may occur within hours of notice and does not clarify whether the expression of fear would result in continued liberty, detention, or immediate removal. This uncertainty, created by Respondents' discretionary and opaque procedures, renders the risk of sudden detention and removal real and imminent, not speculative, and warrants judicial intervention to preserve the status quo. Enjoining ICE from effectuating removal while the habeas petition is pending harms no one, but protects Petitioner from irreparable injury, including removal to an unknown country where his fear claims may arise. The public interest favors adherence to due process and lawful procedures.

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III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant Petitioner's motion for injunctive relief and grant Petitioner's habeas petition.

Date: December 29, 2025

Respectfully submitted,

/s/ Rose M. Thompson
Rose M. Thompson
Attorney at Law

Attorney for Petitioner