Karla L. Kraus
Kraus Law Corp
325 W. Washington Street, Suite 2170
San Diego, CA 92103
619 – 230 -1761
(State Bar: #159762)

Attorney for Petitioner

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

In the Matter of

OWEN MUKIIBI KIWANA *Petitioner* vs. CHRISTOPHER G. LAROSE, in his official capacity as Warden of CCA Detention facility, DANIEL BRIGHTMAN, in his official capacity as Field Office Director of the Immigration & Customs Enforcement and Removal Operations San Diego Field Office; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; *Respondents,*	Case No. '25CV3678 JES SBC Agency No. A# [redacted]

MOTION

MOTION AND MEMORANDUM FOR TEMPORARY RESTRAINING ORDER

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Petitioner moves the court for the following relief by way of a temporary restraining order ("TRO"):

a) Issuance of an immediate order barring the Respondents from removing Petitioner from the Southern District Court's jurisdiction, should the Petitioner be present in the State of California at the time such order is issued, without notice to the court and approval by the court;

b) Issuance of an order to show cause why this petition should not be granted within three (3) days.

SUPPORTING MEMORANDUM

I. LEGAL STANDARD

The standard for a TRO is the same as for preliminary injunction. See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

For preliminary relief, a party must show (a) likelihood of success on the merits, (b) likely irreparable harm without preliminary relief, (c) the

balance of equities tips in party, and (d) an injunction is in the public interest. S*tormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20).

An alternative test is if "serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," thereby allowing preservation of the status quo when complex legal questions require further inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134- 35 (9th Cir. 2011).

II. ARGUMENT.

A. Petitioner will likely suffer irreparable harm.

Without a TRO, Petitioner will be transferred out of the jurisdiction of the Southern District of California at the whim of Respondents. This will transfer Petitioner away from his lawyer, his medical doctor and his home, possibly seeking to undermine this court's jurisdiction.

Additionally, Petitioner heavily relies on the support of his United States Citizen mother and uncle, who provide emotional and financial support. He is in low-income housing and will lose his home if transferred out of San Diego, California.

Moreover, relocating Petitioner would substantially impair

him from communicating and assisting counsel. Such constraints would limit counsel's capacity to represent Petitioner effectively. All of these combined impacts constitute irreparable harm. See e.g., *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (describing "separation from family members" and the mental damage concomitant with such separation as irreparable harm) (quotation marks omitted); see also *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013) ("The right to live with and not be separated from one's immediate family is 'a right that ranks high among the interests of the individual' and that cannot be taken away without procedural due process.") (quoting *Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982)).

B. Likely to succeed on the merits.

Due process requires government action not be irrational and arbitrary. *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Here, Petitioner was under an Order of Supervision (OSUP) since the Immigration Judge ordered that his removal to his home country of Uganda be Deferred under under the Convention Against Torture (CAT). The IJ ruled he more likely than not will be tortured upon return to Uganda. That order became final on July 29, 2010.

Since his release from custody in June of 2010, he regularly checked in yearly while on supervision for fifteen years. Unfortunately, he mixed up

his check-in date and missed his appointment. He was taken into custody on October 30, 2025, and remains in CCA, Otay Mesa, California to date.

Petitioner's prolonged custody or custody-like restrictions exceed the limits set by 8 U.S.C. § 1231(a), which governs post-removal-order detention. Although he has a final order of removal to Uganda, he cannot be removed there due to a final order deferring removal under the CAT. The scope of his post-order custody is therefore limited by § 1231(a)(6) and implementing regulations, 8 C.F.R. §§ 241-241.5. Because removal to Uganda is barred and no other removal is foreseeable, Petitioner's continued custody and increased restrictions clearly violate the Due Process Clause (*Zadvydas*, 533 U.S. at 699; *Diouf II*, 634 F.3d at 1086–87).

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court analyzed the due process rights of noncitizens held during and after a removal period. *Zadvydas* concerned a resident noncitizen who could not be deported because none of the relevant countries would accept him. *Id.* at 684. Because indefinite detention without adequate safeguards could violate noncitizens' due process rights, the Supreme Court established a presumption of six months as a reasonable period of detention while an order of removal is carried out. *Id.* at 701. After that period elapses, a noncitizen who "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" must

be released, unless the government can "respond with evidence sufficient to rebut that showing." *Id.*

Here Petitioner was detained for approximately seven months in 2009 – 2010. He was under 'constructive custody' of respondent for approximately fifteen years, attending regular ICE check-in appointments. He is detained in Respondents' custody from October 30, 2025 to the present. A nine-month detention in total and a fifteen - year Order of Supervision exceeds the lawful scope of §1231(a)(6) and the INA.

In the Ninth Circuit, post-order detention may not be prolonged, increased, or reimposed without individualized findings and procedural safeguards (*Diouf II*; *Franco-Gonzalez*, 767 F. Supp. 2d at 1054). Respondents have not made any such showing or filed anything to demonstrate removal to another country (or his home country of Uganda).

Moreover, a civil detainee's confinement is unconstitutional under the Fifth Amendment if his conditions of confinement "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell*, 441 U.S. at 535); *accord Bent v. Barr*, 445 F. Supp. 3d 408, 413-14 (N.D. Cal. 2020). "[P]unitive conditions may be shown (1) where the challenged restrictions are expressly intended to punish, or (2) where the challenged restrictions serve an alternative, non-punitive purpose but are nonetheless excessive in relation to

the alternative purpose, . . . or are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." *Jones*, 393 F.3d at 932, *also Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct. 373, 9 L.Ed. 2d 285 (1963) (recognizing that restraints on liberty other than physical confinement may constitute custody for habeas purposes.).

Respondent's imposition of custody is unwarranted because there has been no change in circumstances. The detention of Petitioner is therefore punitive and excessive in relation to their purpose. There are less harsh methods that were previously in place and that functioned well from his release on or about July 2010, for over fifteen years. The fact he made a mistake on the date of his check-in with ICE should not warrant prolonged detention, especially since Petitioner did show up as soon as he realized his mistake.

C. Balance of equities and public interest tips sharply in favor of a TRO.

The balance of hardships tips substantially in favor of Petitioner. "[I]n addition to the potential hardships facing Plaintiffs in the absence of the injunction, the court 'may consider . . . the indirect hardship to family members.'" *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017), quoting *Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008).

Removal from this jurisdiction would separate Petitioner from his his home and his medical practioners who regulate his schizophrenia. Separation from the San Diego area, where he has lived since he was seven years old, would cause immediate emotional distress. The loss of the economic and emotional support of his mother and uncle, combined with the loss of financial security, would expose Petitioner to anxiety, fear and possible regression in his mental condition.

The merits of the petition weigh the public interest toward a TRO. "Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi,* 422 F.3d 815, 826 (9th Cir. 2005); see also *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations"). "The public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions." *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

III. CONCLUSION

For the above reasons, a TRO should be granted.

Respectfully submitted,

Date: December 18, 2025 /s/ Karla L. Kraus

Attorney for Petitioner

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DECLARATION IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

DECLARATION IN SUPPORT OF MOTION

FOR TEMPORARY RESTRAINING ORDER

Under penalty of perjury, the undersigned does solemnly declare that I am a member of the California State Bar and admitted to practice before this court.

If called upon to testify in this matter, I would be able to give the following evidence:

1. On June 29, 2010, Petitioner, Owen Mukiibi Kiwana, was granted deferral of removal under the Convention Against Torture (CAT) in San Diego, California. (A# [redacted]
2. Since his release on or about July of 2010, he has complied with regular check-in appointments with Respondent's (ICE) under an order of supervision. He has committed no further immigration or criminal offenses since his conviction in 2006.
3. On October 30, 2025, Petitioner was arrested at the ICE Office during a check-in appointment. He missed an appointment and when he discovered his error, he immediately went to the ICE office.
4. At his October 2025 appointment, he was taken into custody at the CCA Detention facility in Otay Mesa, California.

5. The only communication Mr. Mukiibi has had with Respondents is that they were going to remove him to Uganda. This counsel has had no communication with respondents, even though a G-28, letters and phone calls have been made.

6. On December 12, 2025, Mr. Mukiibi's name was listed in a news article, released from a DHS Database, stating he was scheduled to be removed to Uganda. This is the impetus for filing a petition for habeas corpus with the fear he will be removed even though granted deferral of removal under the Convention Against Torture.

7. Mr. Mukiibi was in custody from approximately November 2009 to July 2010. He has been under constructive custody, under OSUP control, since June of 2010 to October 30, 2025. He has been in physical custody at CCA detention Center in Otay Mesa, CA since October 25, 2025.

8. Respondents have not provided Mr. Mukiibi with any formal notice he will be removed to another country, or to Uganda. Nor have respondents contacted this attorney to provide notice of removal to another country.

9. I have conducted an appropriate inquiry into the circumstances of this case, and I believe that all factual allegations contained in the petition for habeas corpus are true.

10. Based on news reports and information shared by other immigration practitioners, there is a significant risk that Respondents will remove Petitioner from the Southern District of California. Doing so would greatly hinder, if not effectively prevent, Petitioner from pursuing a habeas corpus challenge to the legality of his detention.

11. Respondents may also attempt to effectuate Petitioner's immediate removal from the United States, potentially illegally to Uganda or to another country where he holds no citizenship or nationality.

12. Petitioner must remain in San Diego, California and needs to be released from custody to allow him to be reunited with his family.

Date: December 18, 2025

Respectfully submitted,

/s/ Karla L. Kraus

Attorney at Law

Attorney for Petitioner