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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

O.S.S., an adult,

Petitioner,

v.

JULIO HERNANDEZ, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and TODD BLANCHE, Acting Attorney General of the United States,

Respondents.

Case No. 3:26-cv-00796-IM

Agency No: [redacted]

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND TO PRESERVE STATUS QUO

Expedited Order Requested

Petitioner, O.S.S., through counsel, respectfully moves this Honorable Court for an Order that will preserve the status quo of his immigration case and prevent Respondents from detaining or removing him until the Court rules on the merits of his petition for a writ of habeas corpus filed April 22, 2026 (ECF 1-1).[1] **Petitioner respectfully asks this Court to issue an immediate interim order preventing the Government and Respondent Immigration and Customs Enforcement (ICE) from detaining or removing him out of this district until this Court can rule on the instant Motion for a Temporary Restraining Order.** In support of this Motion, counsel states as follows:

I. Introduction

Petitioner seeks emergency relief from this Court. The Government notified him via a notice filed with the court (ECF 4) at 9:44 PM on April 22, 2026, that the Department of Homeland Security (DHS) intends to revoke his Order of Supervision (OSUP) at his April 23, 2026, check-in (ECF 4 at 2), notwithstanding Petitioner's compliance and the irreparable harm that will result. The Government further indicate that DHS has "obtained a travel document for Petitioner from the Government of Laos" and that "[a]lthough the Petition for Writ of Habeas Corpus was filed in anticipation of being taken into custody, DHS intends to take Petitioner into custody in order to execute Petitioner's removal order and remove Petitioner to Laos." *Id.*

Although Petitioner has been stripped of his Lao citizenship, is deemed stateless or "apatrid" under Lao law, *see* ECF 1-1 at ¶¶ 47-58, and will be subjected to mandatory confinement under "harsh and life threatening" conditions by the Lao government for an

[1] Similar orders have been entered in habeas cases in this District, e.g. *S.K. v. Hernandez*, No. 3:26-cv-00774, Dkt. 4 (D. Or. 2026); *B-P- v. Hernandez*, No. 26-cv-450, Dkt. 4 (D. Or. 2026).

indefinite period if returned to that country,[2] Respondents have informed him of their intent to remove him without affording him even minimal due process. Furthermore, Petitioner has had minimal opportunity to consult with counsel, avail himself of legal remedies, or to make arrangements considering his serious medical conditions.

Petitioner does not challenge the authority of the federal government to remove him. He challenges the manner by which the Government is attempting to re-detain him in pursuit of removal and its failure to adhere to the due process rights that protect all people residing in the United States, including Petitioner. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). These violations threaten the gravest of harms. The Government provided Petitioner no advance notice that now—after nearly a lifetime in the United States—it intends to effectuate his removali Instead, without any advance warning, it is attempting to detain him at a regularly scheduled check in today, April 23, 2026, and intends to keep him detained until his removal, whenever that might be, denying him any opportunity to prepare for a safe departure considering his medical conditions. Such actions will endanger his life and health and threaten far graver harm if he is removed without any preparation and advance warning to Laos.

Despite multiple rulings by courts throughout the Ninth Circuit condemning this practice, the Government asserts authority to arbitrarily detain a person who has been compliant on supervision for years without any notice or independent check on its unilateral decision. *See Vo v. Scott* , 26-cv-135-JNW (W.D. Wash. Feb. 17, 2026); *Ledesma Gonzalez v. Bostock*, 25-cv-01404-JNW-GJL, 2025 WL 2841574, at *7 (W.D. Wash. Oct. 7, 2025); A*slan v. Wamsley, et al.*,

[2] U.S. Embassy in Laos, *Laos 2023 Human Rights Report* at 4, available at https://la.usembassy.gov/wp-content/uploads/sites/142/2024/10/LAOS-2023-HUMAN-RIGHTS-REPORT_FINAL-1.pdf (last visited April 23, 2026).

25-cv-02698-JNW, 2026 WL 238675, at *3 (W.D. Wash. Jan. 29, 2026); *Tessema v. Bondi*, 25-cv-2330-JNW-MLP, 2025 WL 4033288, at *1 (W.D. Wash. Dec. 11, 2025), *report and recommendation adopted*, 25-cv-2330-JNW-MLP, 2026 WL 84922 (W.D. Wash. Jan. 12, 2026); *Zakzouk v. Becerra*, No. 25-cv-06254, 2025 WL 2097470, at *3 (N.D. Cal. July 26, 2025) (citing cases).

Due process, however, always constrains the authority of the government in the exercise of its detention and removal authority. Indeed, the procedural due process interests of Petitioner, who has resided in the United States since he was seven years old, could not be stronger, requiring sufficient notice to enable him to pursue his legal claims and make arrangements to ensure his medical needs and grave disabilities are accommodated.

This Court should order an immediate stay preventing any detention or transfer out of district or removal pending resolution of this TRO motion. As Petitioner is filing this motion on an emergency basis, Petitioner respectfully requests the opportunity to present additional briefing and factual evidence should the Court find that helpful.

II. Facts

Petitioner incorporates by reference the facts laid out in his petition. ECF 1-1.

III. Law and Argument

A. Petitioner has made the showing necessary to warrant an order preventing his detention and removal and further delay is not in the public interest.

The Court may provide interim legal relief when the movant establishes four factors: "[1] 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." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

The standard for granting a preliminary injunction and a temporary restraining order are "substantially identical." *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). Here, each factor weighs in Petitioner's favor and warrants issuance of a temporary restraining order.

1. **The Petitioner is likely to succeed on the merits of his habeas petition because his detention and removal violate his procedural due process rights and are the result of an arbitrary and capricious agency decision, or, at a minimum, he has raised serious questions on the merits of these claims.**

Of the factors necessary to win interim relief, "[l]ikelihood of success on the merits is a threshold inquiry and is the most important factor." *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (citation and quotation omitted). For the reasons set forth in detail in Petitioner's Petition for Writ of Habeas Corpus (ECF 1), Petitioner is likely to succeed on the merits of his Administrative Procedure Act (APA), due process, and Convention Against Torture (CAT) claims.

Administrative Procedure Act

Under the APA, a court shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). Here, the Respondents' decision to arrest and incarcerate Petitioner with less than 24 hours notice is arbitrary and capricious. *See* ECF 1-1 at ¶¶ 73–86.

Procedural Due Process

The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas* , 533 U.S. at 693. Immigration detention is a form of civil confinement and "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Here, Petitioner's procedural due process rights will be violated when Respondents detain him without adequate notice or an opportunity to be heard. *See* ECF 1-1 at ¶¶ 87–98.

Petitioner had a procedural due process right to notice and a hearing before being suddenly arrested and re-detained. As this Court and district courts throughout this circuit have found, "individuals released from immigration custody. . . have a protectable liberty interest in remaining in the community on supervision." *See Zakzouk*, No. 25-cv-06254, 2025 WL 2097470, at *3 (citing cases). Notice and a predeprivation hearing are required before the government can revoke a noncitizen's release on an Order of Supervision. *See Mbunga v. Bondi*, 26-cv-113-TMC, 2026 WL 323056, at *3 (W.D. Wash. Feb. 6, 2026); *Rodriguez v. Bostock*, 802 F.Supp.3d 1297, 1320 (W.D. Wash. 2025) ("district courts in this circuit have also looked to precedent from criminal cases to identify the liberty protections required of the government in immigration detention") (citing *Ortega v. Bonnar*, 415 F.Supp. 3d 963, 969 (N.D. Cal. 2019); *Bello Chacon v. Hermosillo*, 25-cv-2299-TMC, 2025 WL 356266, at *3 (W.D. Wash. Dec. 12, 2025); *Ramirez Tesara v. Wamsley*, 800 F.Supp.3d 1130, 1135 (W.D. Wash. 2025); *Vo v. Scott*,

26-cv-135-JNW (W.D. Wash. Feb. 17, 2026); *Ledesma Gonzalez v. Bostock*, 25-cv-01404-JNW-GJL, 2025 WL 2841574, at *7 (W.D. Wash. Oct. 7, 2025); *Aslan v. Wamsley, et al.*, 25-cv-02698-JNW, 2026 WL 238675, at *3 (W.D. Wash. Jan. 29, 2026); *Tessema v. Bondi*, 25-cv-2330-JNW-MLP, 2025 WL 4033288, at *1 (W.D. Wash. Dec. 11, 2025), report and recommendation adopted, 25-cv-2330-JNW-MLP, 2026 WL 84922 (W.D. Wash. Jan. 12, 2026).

Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), factors, the private interest affected here could not be stronger. "[Noncitizens] who have resided for more than a decade in this country. . . have a strong liberty interest in remaining in the United States since 1988 when he was seven years old. He knows no other home. Moreover, he has lived subject to a "dormant" removal order for seven years that the United States did not execute, duly complied with his order of supervision, has built a settled life, and has no connections to Laos. *See Chhoeun v. Marin*, 442 F.Supp.3d 1233, 1236 (C.D. Cal. 2020) (describing long dormant removal orders of Cambodian nationals on OSUPs). The Government cannot claim that Petitioner's liberty interest is not at its apex. Indeed, "immigrants have due process rights after final removal orders issue." *Chhoeun v Marin*, 442 F.Supp.3d 1233, 1247 (C.D. Cal. 2020). Petitioner could not know that he was living on borrowed time during the many years that the United States did not execute his removal order. As the court observed in *Chhoeun*,

> [t]hat Petitioner[] invested in and became [a] productive member[] of United States communities notwithstanding [his] removal order[] is to be commended. Because [he] did so, instead of wallowing in limbo while waiting to be removed, [he] made our country better—and deepened [his] interest in remaining here. For the government to now deny [his] strong ties and commitment to this country is. . . deeply troubling.

Id. at 1246.

Moreover, Petitioner's ability to address his medical issues and permanent disabilities, depends on stable and consistent health care.

The risk of erroneous deprivation absent notice sufficient to provide Petitioner time to seek legal relief and get his affairs in order is significant, considering he otherwise is facing a lifetime of banishment, which has long been recognized as the most serious of consequences. *See, e.g. Bridges v. Wixon*, 326 U.S. 135, 154 (1945) ("That deportation is a penalty—at times a most serious one—cannot be doubted. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standard of fairness."); *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (deportation may result in the loss "of all that makes life worth living").

Sufficient notice that there was a change in circumstance and that the Government now believed it could remove Petitioner would have ensured that he was not deprived of his rights and ability to pursue claims to relief from deportation, claims that only exist now that Laos has begun accepting U.S. deportations for the first time under coercive pressure from the Trump administration. Petitioner's sudden detention without any notice at all hobbles any chance of Petitioner having the time or ability to seek any protection against removal.

Moreover, due to Petitioner's severe and disabling medical conditions which did not exist at the time the removal order was entered, Petitioner has additional bases to challenge his removal. At a minimum, Petitioner requires time to make accommodations for his medical care in the event he must be removed.

A hearing is also required before Petitioner's re-detention. It is no consequence that the Government claims that it now has a travel document for Petitioner. That fact, if true, should be established at a hearing. Indeed, "factual disputes related to the justification for [] arrest and re-detention should be resolved at a pre-deprivation hearing, rather than resolved after the fact by this Court." *Mbunga*, 2026 WL 323056, at *3 (quoting *Yildirim v. Hermosillo*, 25-cv-2696-KKE, 2026 WL 111358, at *4 (W.D. Wash. Jan. 15, 2026) (cleaned up).

Finally, the government's interest, by contrast, is extremely low. Indeed, "[c]ivil immigration detention is permissible only to prevent flight or protect against danger to the community." *Zakzouk*, 2025 WL 2097470, at *3 (citing *Zadvydas*, 533 U.S. at 690). It has also been seven years since Petitioner was ordered removed. As the court noted in *Chhoeun*, the government has no legitimate claim that it is burdened by a slight delay of the execution of Petitioner's removal order when it "waited years or decades to execute these removal orders." 442 F. Supp. 3d at 1249.

The cure for the Government's violations of Petitioner's procedural due process rights is maintenance of the status quo and Petitioner's continued release from custody with sufficient time to pursue claims to relief from removal. If such claims fail, this time will enable Petitioner to prepare for his deportation to Laos in a manner that preserves his health and well-being and does not threaten his life. "Once a [constitutional] right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Roman v. Wolf*, 977 F.3d 935, 942 (9th Cir. 2020), quoting *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (internal quotations omitted). *See also Brown v. Plata*, 563 U.S. 493, 511 (2011) ("Courts may not allow

constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration").

Substantive Due Process

The INA provides that after a removal order becomes final, the government "shall remove the alien from the [U.S.] within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This 90-day period is often referred to as the initial removal period and during it, the government "shall detain the alien." *Id.* § 1231(a)(2). In some circumstances, federal immigration authorities can continue to detain an alien beyond the initial removal period under section 1231(a)(6). In *Zadvydas*, the Supreme Court interpreted the detention statute, 8 U.S.C. § 1231(a)(6), in light of the Due Process Clause and held that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem" because it would become punitive. 533 U.S. at 690. "[G]overnment detention violates [the Fifth Amendment's Due Process Clause] unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances. . . where a special justification, such as a harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* Civil immigration detention, the Court said, is only authorized for the limited purpose of flight risk or a danger to the community. *Id.* The Court held that section 1231(a)(6) "implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal." *Id.* at 679. Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by [section 1231(a)(6)]." *Id.* at 699. "[F]or the sake of uniform administration in the federal courts," the Court found that post-order detention was "presumptively reasonable" for the first six months. *Id.* at 700–01.

Here, Petitioner's re-detention violates substantive due process for several reasons.

First, there is and was no authority under the statute for re-detention after the removal period expired. *Zadvydas* dealt with the initial removal period, not with re-detention. Rather, the statute requires mandatory supervision after the removal period expires, subject to regulations. 8 U.S.C. § 1231(a)(3). Those regulations set forth the circumstances under which ICE may revoke a person's supervision, which, as established above, were not met here. 8 C.F.R. § 241.13(i)(1-3). *See Tran v. Bondi*, 2025 WL 3140462, at *3 (W.D. Wash. Nov. 10, 2025) (analyzing legality of re-detention under the regulation because although Petitioner had not been cumulatively held six months or more, the removal period had long since expired); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (discussing burden shifting in 8 C.F.R. § 241.13(i)(2) and explaining that *Zadvydas* dealt with the initial removal period, not with re-detention long after the removal period).

Second, there is no evidence that it is significantly likely in the reasonably foreseeable future that Petitioner will be removed at the time of his prospective detention. Indeed, the Government has made no such claims or avowals. If civil immigration detention may only be used for the limited non-punitive purpose of effectuating removal, then arresting and detaining a person without any imminent travel date is not limited, *it is punitive*. *Zadvydas*, 533 U.S. at 690, 699 (detention can only be for the "narrow nonpunitive" purpose of securing a person's removal "at the moment" of removal). The Government has used detention for the expansive purpose of punitive confinement. *Id.* at 699 ("Reasonableness" is measured "in terms of the statute's basic purpose": "assuring the [noncitizen's] presence *at the moment* of removal.").

Petitioner is likely to succeed on the merits of his claim that he may not be removed to a Laos absent Respondents complying with 8 U.S.C. § 1231(b) and due process. Over the past few hours, Petitioner has learned that Laos has issued him a "travel document" and that the Government intends to detain him for the purpose of effectuating his removal. As established, Laos does not consider him a citizen or a national and if deported, he will be mandatorily confined under punitive conditions and only released (after an indefinite period) if he has a "sponsor." Even if released from military confinement, he will have extremely limited access to health care, minimal economic and political rights, live under restrictive supervision, and not be permitted to leave the country. Moreover, this marks the first time in his entire life that removal to Laos is an actual possibility. It was not at the time he was ordered removed seven years ago.

These marked and extreme changes in circumstances require the opportunity to claim protection in immigration court against removal to a country where he may be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C. § 1231(b)(3)(A), *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under the CAT. *See* 28 C.F.R. § 200.1 ("A removal order … shall not be executed in circumstances that would violate [the CAT]"); 8 C.F.R. §§ 208.17-18, 1208.17-18.

Petitioner cannot claim protection against any of these new circumstances without removal proceedings being reopened, and he cannot reopen removal proceedings if the Government spirits him away with no notice before he can do so. "The Fifth Amendment requires that ICE provide a meaningful opportunity for petitioner's claim of fear to be heard. 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). "[T]he Government cannot avoid its obligation to provide due process 'in the context of removal proceedings,' by skipping such proceeding entirely and simply whisking noncitizens off the street and onto buses or planes out of the country." *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2162 (2025) (Sotomayor, J., dissenting) (internal citation omitted). Indeed, "Congress expressly provided noncitizens with the right not to be removed to a country where they are likely to be tortured or killed." *Id.* The "right to be heard before being condemned to suffer grievous loss of any kind. . . is a principle basic to our society." *Id.,* quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (cleaned up).

Notice cannot be "last minute" because that would deprive an individual of a meaningful opportunity to apply for fear-based protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). "[L]ast 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." *Najjar v. Lynch*, 630 Fed. App'x. 724 (9th Cir. 2016). There must be time to prepare and present relevant arguments and evidence and to seek reopening of their removal case. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) ("All removals to third countries, ... must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand." (internal quotation marks and citation omitted)); *Andriasian*, 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country of removal).

Indeed, as Judge Lasnik held in *Aden v. Nielsen*, the "Fifth Amendment's procedural protections are a limitation on government action that applies throughout the deportation process, whether during *or after* removal proceedings." 409 F.Supp.3d at 1010 (emphasis added). In *Aden,* as here, Petitioner was not told until after he had been taken back into custody without explanation that he would be deported to Somalia—a country he thought he could not be removed to—and that travel documents had been obtained. *Id.* By then, as in this case, there was no time to seek to reopen removal proceedings and pursue a claim for withholding of deportation. *Id.* The Court held that due process required that ICE reopen removal proceedings to permit the petitioner to apply for relief from removal. *Id.* ("the removal proceedings shall be reopened and a hearing shall be held before the immigration judge so that the petitioner may apply for relief from removal"). *See also Nguyen v. Scott*, 2025 WL 2419288, at *19 ("Petitioner is likely to succeed on his claim that removal to a third country under ICE's current policy, without meaningful notice and reopening of his removal proceedings for a hearing, would violate due process."); *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished) (holding that "the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from" the third country).

At the very least, Petitioner has raised serious questions going to the merits of his claims. A temporary restraining order may issue on a showing that there are "serious questions going to the merits—a lesser showing than likelihood of success on the merits" when the "balance of hardships tips sharply in the Plaintiff's favor, and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (cleaned up). At a minimum, Petitioner has demonstrated that there are serious questions going to the merits of his

claims. And as demonstrated below, the balance of the hardship tips sharply in favor of Petitioner.

2. Petitioner will suffer irreparable harm absent injunctive relief.

It is beyond dispute that "[d]eprivation of physical liberty by detention constitutes irreparable harm." *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018) (*citing Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)); *see also Rodriguez v. Robbins*, 715 F.3d 1127, 1144-45 (9th Cir. 2013) (needless immigration detention constitutes irreparable harm). In *Hernandez*, the Ninth Circuit acknowledged "the irreparable harms imposed on anyone subject to immigration detention" in addition to the restriction on liberty, which include "subpar medical and psychiatric care in ICE detention facilities" and "the economic burdens imposed on detainees and their families as a result of detention." 872 F.3d at 995. As the Ninth Circuit held, in the absence of interim relief, "harms such as these will continue to occur needlessly on a daily basis." *Id.*

Petitioner's liberty is at risk of being restrained indefinitely. Every day that a person is detained is a significant injury. *See Rosales-Mireles v. United States*, 585 U.S. 129, 139–40 (2018) ("'Any amount of actual jail time' is significant, and 'has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration.'") (cleaned up). Furthermore, as Petitioner's detention is a deprivation of his due process rights, that too "'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The irreparable harm factor weighs heavily in Petitioner's favor.

3. The balance of equities tips in Petitioner's favor and the public has no interest in his unnecessary detention.

Because the Respondent is a government entity, "the third and fourth factors—the balance of equities and the public interest—'merge.'" *Fellowship of Christian Athletes*, 82 F.4th 664, 695 (9th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002. "[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Hernandez*, 872 F.3d at 994; *see also* U.S. Immigration and Customs Enforcement, Directive No. 11002.1, § 6.2 (Jan. 4, 2010) (ICE directive that when a noncitizen is found to have a credible fear of future persecution and is neither a flight risk nor danger to the community, the individual should be paroled into the community "on the basis that his or her continued detention *is not in the public interest*.") (emphasis added).[3] The Respondents have not alleged that Petitioner is a danger to the community, nor is there any basis to do so. Moreover, by checking in with ICE officials each time he has been directed and maintaining compliance with his OSUP, Petitioner has demonstrated that he will appear at any court appearances or ICE check ins.

Additionally, "'[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering.'" *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, *3 (N.D. Cal. June 14, 2025) (granting temporary restraining order enjoining respondents from

[3] Available at https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf, (last visited April 23, 2026).

detaining petitioner without notice and hearing) (quoting *Jorge M.F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, *3 (N.D. Cal. March 1, 2021)). The government has no legitimate countervailing interest in detaining people without due process. *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 U.S. Dist. LEXIS 132841, at *10 (S.D.N.Y. July 13, 2025) ("There is no dispute" that "ICE is required to adhere to the basic principles of due process" in exercising its "statutory, discretionary authority to detain noncitizens like Chipantiza-Sisalema under 8 U.S.C. § 1226(a)").

4. The Court has jurisdiction to issue, and should issue, the temporary restraining order promptly to prevent irreparable harm.

Pursuant to 28 U.S.C. § 2241, federal courts have habeas jurisdiction to determine whether a person is held in violation of the laws or Constitution of the United States. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *INS v. St. Cyr,* 533 U.S. 289, 301 (2001), *superseded on other grounds by statute as stated in Patel v. U.S. Att'y Gen.*, 971 F.3d 1258, 1270 (11th Cir. 2020). Habeas corpus is a "speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination." *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–738 (9th Cir. 1954). "[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion) (citing U.S. Const., art. I, § 9, cl. 2).

Federal courts have routinely exercised habeas jurisdiction over claims regarding the unlawfulness of immigrant detention, including pre- and post-removal order detention and in the context of inadmissibility. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (federal courts have jurisdiction to hear challenges to mandatory detention under § 1226(c)); *Zadvydas v. Davis*, 533

U.S. 678, 687 (2001) (despite changes to immigration law, habeas remains "untouched as the basic method for obtaining review of continued *custody after* a deportation had become final") (emphasis in original); *Clark v. Martinez*, 543 U.S. 371 (2005) (taking jurisdiction over habeas petition of an immigrant held on inadmissibility grounds).

Furthermore, the Supreme Court recently clarified that when a petitioner's "claims for relief necessarily imply the invalidity of their confinement and removal … their claims fall within the core of the writ of habeas corpus and thus *must* be brought in habeas." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (emphasis added) (internal quotations omitted). Although a United States District Court generally lacks subject matter jurisdiction to review orders of removal, *see* 8 U.S.C. § 1252(a)(1), (g), it does generally have jurisdiction over habeas petitions. *See* 28 U.S.C. § 2241(a); *see also Hamdi*, 542 U.S. at 525.

The writ is available to Petitioner as he is physically in the United States, under DHS supervision, and challenging his prospective unlawful detention. Petitioner is not asking this Court to review any final order of removal, but, rather, is asking this Court to review the means of his detention and removal, which is the core of habeas and squarely within this Court's jurisdiction.

CONCLUSION

For the foregoing reasons, the Court should issue an immediate interim order preventing the Government and ICE from detaining or removing him out of this district until this Court can rule on the instant Motion for a Temporary Restraining Order. The Court should further issue a temporary restraining order preserving the status quo of Petitioner's immigration case and preventing his detention and removal in violation of the APA, due process, and CAT. Petitioner

further requests the Court order the Government to promptly notify ICE of this order to ensure compliance and prevent irreparable harm.

Dated: April 23, 2026.

s/ Susan F. Wilk
Susan F. Wilk, WA SBN 28250

/s/ Kara A. Sagi
Kara A. Sagi, AZ SBN 032250