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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OTIS NICHOLAS FFRIEND

Petitioner,

vs.

SERGIO ALBARRAN, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Acting Attorney General of the United States, acting in their official capacities,

Respondents.

Case No.: 3:26-cv-03942-WHO

MOTION AND MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Northern District of California, that Petitioner Otis Nicholas Ffriend will and hereby does move for an ex parte temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b). Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully request that this Court (1) order Petitioner's immediate release from Respondents' custody pending these proceedings and return Petitioner to the status quo before his arrest on May 1, 2026, or, in the alternative, (2) order Petitioner's immediate release from Respondents' custody and, within 14 days, order a pre-deprivation custody hearing before the San Francisco Immigration Court, where Respondents shall bear the burden of proof to show, by clear and convincing evidence that changed circumstances now make Petitioner a danger or a flight risk.

This motion is based on this Notice of Motion and Motion; the supporting declarations, the papers, evidence, and records on file in this action; and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court. This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1).

Petitioner seeks relief at the earliest possible opportunity. As detailed further in the Declaration of Nicole A. Gorney, Counsel for Petitioner emailed Respondents and advised that a Motion for TRO would be forthcoming. Petitioner also emailed Counsel for Respondents a copy of the Memorandum of Points and Authorities shortly before filing it. As of this filing, Respondents have not stipulated to a TRO or a briefing schedule.

DATED: May 1, 2026

VIDAS Legal Services

By:/s/ Nicole A. Gorney
Nicole A. Gorney
Pro Bono Attorney for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Petitioner Otis Nicholas Ffriend has been in the United States since 2022. He entered the United States to seek asylum and on November 13, 2024 was granted CAT Withholding by an Immigration Judge. Since he was ordered removed but granted CAT Withholding, Petitioner has been under an order of supervision (OSUP) with ICE that requires regular in-person and virtual ICE appointments and check-ins. Since his release on OSUP, he has been compliant with all check-in requirements.

A few days before May 1, 2026, Petitioner received a call from ICE. ICE asked for his current residential and employment address. Petitioner complied and gave both addresses in Willits, California.

On May 1, 2026, Petitioner was at his job at the Willits Charter School, where he works as a groundskeeper. Petitioner received another call from ICE, they were at his house. Petitioner again complied, returned home and did not attempt to evade ICE authorities. (Arya Declaration, ¶ 5).

Petitioner was arrested without a warrant and brought to the ICE facility in San Francisco at 630 Sansome Street. Petitioner was arrested and detained without prior warning or any evidence of changed circumstances that would warrant Petitioner a flight risk or a danger to the community.

Once he was in the ICE facility, Petitioner was told by ICE officers he would be processed for removal to Saint Kitts, a country never designated as a country for removal during Petitioner's removal proceedings. Petitioner's case is one of a growing number of cases where ICE unlawfully arrests individuals for a third-country removal without following due process or

the required multi-step process for designating and removing noncitizens to a third country. (Arya Declaration, ¶ 6, 7).

Petitioner's arrest and detention flout the Constitution. The only legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without making any affirmative showing of changed circumstances, the government violated Petitioner's procedural due process rights. At the very least, he was constitutionally entitled to adequate notice and a hearing where the government must properly designate a proposed third country for removal.

As a result of his arrest and detention, Petitioner and his family are suffering irreparable and ongoing harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

In light of this irreparable harm, and because he is likely to succeed on the merits of his due process claims, Petitioner respectfully requests that this Court issue a temporary restraining order ("TRO") immediately releasing from his custody and enjoining the government from re-arresting him absent sufficient notice and a hearing.

To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Petitioner out of this District and removing him from the country until these proceedings have concluded.

FACTUAL BACKGROUND

Petitioner is a native of Jamaica. Petitioner was granted CAT withholding on November 13, 2024 after an immigration judge found it is more likely than not that he would suffer persecution if returned to Jamaica. *See* order of Immigration Judge.

Since his grant of CAT Withholding, Petitioner has been subject to and compliant with an ICE order of supervision. Petitioner has never missed a required appointment. *See* Order of Supervision.

Petitioner has been living at liberty in the United States since 2022. He was living in Willits, California with his U.S. Citizen wife and step-children. Petitioner works as a groundskeeper at a local school in Willits, where he also volunteers with the school and community as a soccer coach. ("#### Dec.") ¶ #.

Petitioner made a good faith effort to comply with all release and supervision terms. Petitioner has not committed any crimes and has no criminal history. Prior to his arrest, Petitioner received a call from ICE and returned home to comply with their orders.

Nothing has transpired since Petitioner's release in 2022 that now makes him a flight risk or danger. His detention is thus not authorized under the Due Process Clause. If Respondents wish to attempt to remove Petitioner to a third country, they must follow the proper process as required by US law.

Petitioner, his family and community suffer serious and ongoing harm while he remains in detention.

ARGUMENT

To warrant a TRO, a movant must show (1) they are "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the

balance of equities tips in [their] favor," and that (4) "an injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)(quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)(noting the analysis for issuing a temporary restraining order and a preliminary injunction is substantially the same). Even if the movant raises only "serious questions" as to the merits of their claims, the court can grant relief if the balance of hardships tips "sharply" in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. All factors here weigh decisively in Petitioner's favor.

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. Petitioner's detention violates substantive due process because he is neither a flight risk nor a danger to the community.

The Due Process Clause applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[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."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him").

The Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called "mandatory" detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) ("Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019)("Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.").

Petitioner is neither a danger nor a flight risk, as proven by DHS' prior decision to release him. Therefore, his detention is both punitive and not justified by a legitimate purpose, violating his substantive due process rights.

When Respondents released Petitioner from custody, that decision represented findings that he was neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.

2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.").

Once a noncitizen is released from custody, federal agents are prohibited from re-arresting them without "evidence of materially changed circumstances — namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal." *Saravia v. Sessions*, 280 F. Supp. 3d at 1197; *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan."); *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *29-30 (N.D. Cal. Sept. 16, 2025).

Here, Petitioner is not a danger. He has no criminal history or any intervening criminal arrests since he was released in 2022 (or ever).

As to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. Petitioner has attended every check-in ever mandated. He even complied this morning when ICE officers called him to inform him they were waiting for him at his home. Any concerns about flight risk would be mitigated by the fact that Petitioner was arrested *while complying with ICE's orders.* Based on statements made by ICE officers today, it seems that Respondents wish to remove Petitioner to Saint Kitts, however, he has not been served with a proper notice or been provided due process as required by the Constitution.

In sum, Petitioner's actions since being released in 2022 demonstrate that he is neither a danger nor flight risk. Indeed, his ongoing compliance for years and community ties compel the conclusion that he is even *less* of a danger or flight risk than when he was originally released. Accordingly, Petitioner's ongoing detention is unconstitutional, and substantive due process principles require his immediate release.

B. The government is violating procedural due process and APA by Attempting Third Country Removal

The Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F. Supp. 1243, 1252 (E.D. Cal. 1994) ("[D]ue process requires that government action falling within the clause's mandate may only be taken where there is notice and an opportunity for hearing."). The INA, FARRA, and implementing regulations further mandate meaningful notice and opportunity to present a fear-based claim to an IJ before ICE deports a person to a third country. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports him to a third country. *See, e.g., Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). He also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Petitioner further has a due process right to not be re-detained because Respondents have no procedural protections to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The APA likewise compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

Petitioner has a protected interest in his life. Thus, prior to any third country removal, he must be provided with constitutionally compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country.

For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate his due process rights. The only remedy of this violation is for this Court to order that he not be

summarily removed to any third country unless and until he is provided constitutionally adequate procedures.

In short, Respondents violated Petitioner's due process rights when they detained him without notice and without a pre-deprivation hearing. Petitioner has not been given proper notice and due process to be removed to a third country.

Here, only an order releasing Petitioner and enjoining re-detention—unless Respondents follow proper procedure as is constitutionally required would be appropriate to return Petitioner to the status quo. *See Doe v. Noem*, __ F. Supp. 3d __, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez*, 2025 WL 1707737, at *4-*5 (ordering petitioner's immediate release as remedy for procedural due process violation).

For the foregoing reasons, Petitioner is likely to succeed on the merits of his claims. But even if the Court disagrees, he presents at least "serious question[s] going to the merits," alongside a "balance of hardships" tipping decidedly in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135.

II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE INJURY ABSENT A TRO

Without a temporary restraining order, Petitioner will suffer immense irreparable injury. Indeed, he faces such injury every day he remains in detention in violation of his Fifth Amendment rights. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation

marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed "by virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time"); *see also, e.g.*, *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018)(recognizing that "[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual" (cleaned up)).

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER'S FAVOR.

When the government is the party opposing the request for emergency relief, the balance of the equities and the public interest merge. *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing constitutional violations and continued additional suffering if the TRO is not granted. *See* Section II, *supra*; *Hernandez*, 872 F.3d at 996 (when "[f]aced with … preventable human suffering, … the balance of hardships tips decidedly in plaintiffs' favor") (internal citation omitted).

The public interest likewise weighs strongly in Petitioner's favor. As another California district court recently concluded, "[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*, 2025 WL 1676854, at *3 (citing *Jorge M. F.*, 2021 WL 783561, at *3). More fundamentally, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134, 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to restore the *status quo ante* that (1) immediately releases him from Respondents' custody and enjoins Respondents from re-detaining him absent further order of this Court; (2) in the alternative, immediately releases him from Respondents' custody and enjoins Respondents from re-detaining him unless they demonstrate at a pre-deprivation hearing, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that his physical custody is required; and (3) prohibits the government from transferring him out of this District and/or removing him from the country until these habeas proceedings have concluded.

DATED: May 1, 2026

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