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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUAN G.S.,

Petitioner-Plaintiff,

v.

Sergio ALBARRAN, Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security;

Lance SCHROYER, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Markwayne MULLIN, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

Todd BLANCHE, in his Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No.

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

Challenge to Unlawful Detention Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

IMMIGRATION HABEAS CASE

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, as soon as he may be heard, Petitioner-Plaintiff will and hereby does move, pursuant to Civil L.R. 7-1 and 65-1, for a temporary restraining order, directing that he not be detained pending further order of this Court. This motion is supported by the following Memorandum of Points and Authorities, and by his Petition for Writ of Habeas Corpus/Complaint for Injunctive and Declaratory Relief and supporting exhibits, dated July 2, 2026. Undersigned counsel hereby declares and certifies that on July 2, 2026, prior to filing this motion with the Court, he emailed Civil Division Pamela Johann at the U.S. Attorney's Office for the Northern District of California to advise him that Petitioner-Plaintiff is filing this motion for a temporary restraining order. That email also contained copies of (1) Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief (2) Motion for Temporary Restraining Order, (3) Declaration of Juan G.S., and Declaration of Sean Lai McMahon and Exhibits in Support of Complaint/Petition and Motion for Temporary Restraining Order, (4) Proposed Order on Motion for TRO, and (5) Proposed Summons.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner-Plaintiff Juan G.S. ("Juan," or "Petitioner"), by and through his undersigned counsel ("Counsel"), brings this ex parte motion for a temporary restraining order ("TRO") to enjoin Respondent-Defendants U.S. Immigration and Customs Enforcement ("ICE") from re-detaining him while he proceeds with his claims before this Court.

Juan has been ordered to report in person at the San Francisco ICE Field Office on July 7, 2026. At his last check-in with ICE on June 16, 2026, his Deportation Officer ("DO") told him that he planned to remove him to a third country—that is, a country not designated for removal by an Immigration Judge ("IJ"). *See* Exh. A, Declaration of Juan G.S. ("J.G.S. Decl.") ¶ 33. He told

Juan that he was empowered to remove him to Africa if he wanted, but that Juan should instead buy a plane ticket to Guatemala, El Salvador, or Mexico and bring it to his July 7 check-in. *Id.* ¶ 34. When Juan expressed his fear of removal, he was told that if he didn't bring a plane ticket showing he was leaving the United States, he would be re-detained at his check-in. *Id.* Juan fears that the DHS will re-detain him at this check-in, or at another time, while they attempt to find a third country to which they can remove him.

II. STATEMENT OF FACTS

Juan G.S. is a fifty-year-old LGBTQ Honduran man with HIV. Exh. A ¶¶ 1, 16. He has no immediate family in Honduras—five of his siblings live in San Francisco, and two others live in Europe. *Id.* ¶ 1. His 26 nieces and nephews are all U.S. citizens, and his siblings are mostly U.S. citizens and permanent residents. *Id.* ¶¶ 1, 25. He was granted withholding of removal under 8 U.S.C. § 1231(b)(3) by an immigration judge in May 2022, when the IJ found he was more likely than not to suffer persecution on account of his sexual orientation in Honduras. *Id.* ¶ 21; Declaration of Sean Lai McMahon ("McMahon Decl.") ¶ 17.

Growing up in Honduras, others identified Juan as gay since he was a child, and [redacted]. Exh. A ¶ 2. He first entered the United States in 1998, when he was 22 years old. *Id.* ¶ 3. He was granted Temporary Protected Status ("TPS"), and allowed to live and work legally in the United States. *Id.* In 2006, Juan sustained two misdemeanor convictions, for Cal. P.C. 245(a)(1) and V.C. 23152(a) (DUI). *See* McMahon Decl. ¶¶ 10-11. He regrets his actions of over two decades ago and strives to be better each day. Exh. A ¶ 4. As a result of his convictions, he lost his TPS status in 2008, and was ordered removed *in absentia* by an immigration judge in 2009. McMahon Decl. ¶ 7; Exh. A ¶¶ 5-6.

In July 2009 in Honduras, Juan was [redacted]. Exh. A ¶ 7. Then, when he sought help from the police, police detained him for three days, [redacted]. *Id.* ¶¶ 8-10. When he was finally released to his brother, Juan had been so viciously brutalized that the doctor he saw insisted he attempt to report what had happened. *Id.* ¶¶ 11-12. After making a complaint, men in uniform visited Juan and his brother at their home late at night, [redacted]. *Id.* ¶¶ 13-14. Juan fled Honduras for the United States. *Id.* ¶ 15.

In September 2009, Juan attempted to enter the U.S. without inspection at the southern border, and was apprehended by Border Patrol. McMahon Decl. ¶ 7. He was not asked whether he feared removal to Honduras, and was instead remanded to criminal custody for prosecution for illegal entry under 8 U.S.C. § 1325. *Id.* ¶¶ 7, 13. Juan spent 60 days in custody for violation of § 1325, and was then removed to Honduras in December 2009. *Id.* Fearing for his life, Juan immediately fled Honduras again, and reentered the United States successfully in about January 2010. Exh. A ¶ 17. Because of his prior deportation, Juan is ineligible for asylum and eligible only for withholding of removal under 8 U.S.C. § 1231(b)(3) or protection under the Convention Against Torture ("CAT"). McMahon Decl. ¶ 8.

Juan attempted to find safety and rebuild his life. In December 2013, while driving on the freeway in Nebraska, Juan was pulled over in a traffic stop. Exh. A ¶ 18; McMahon Decl. ¶ 8. Police in Nebraska then handed Juan over to ICE. Exh. A ¶ 18. ICE reinstated Juan's prior order of removal, and for the first time, asked whether he was afraid of returning to Honduras. *Id.* ICE then released Juan on a Form I-220B Order of Supervision ("OSUP"). *Id.*; Exh. B (2013 OSUP).

The OSUP sets forth numerous restrictions on Juan's liberty, including that he appear for any and all in-person appointments when instructed by ICE, not travel outside of San Francisco, CA for more than 48 hours without receiving approval from ICE, and update his address and employment status within 48 hours of any change. Exh. B. Since January 2014—for 12 years—Juan has had to appear for an in-person check-in appointment at ICE's San Francisco Field Office location at least once per year. Exh. A ¶ 30; McMahon Decl. ¶ 18. Later, his OSUP terms would be modified to state that he should not leave the state of California without informing ICE. Exh. C (2026 OSUP). In 2014, Juan was arrested following an argument and was remanded on a parole violation. McMahon Decl. ¶ 14. ICE did not re-detain Juan after this incident. Exh. A ¶ 19; McMahon Decl. ¶ 15. In the subsequent 12 years, Juan has had no arrests or other contact with the criminal system. *Id.*

Juan was in immigration removal proceedings for many years; and on May 23, 2022, an IJ granted Juan withholding of removal under 8 U.S.C. § 1231(b)(3), finding he was more likely than not to suffer persecution on account of his sexual orientation if he was returned to Honduras. Exh. D (IJ Order Granting Withholding of Removal); McMahon Decl. ¶ 17. He continued to check-in with ICE each year under the terms of his OSUP. Exh. A ¶ 30; McMahon Decl. ¶ 18.

Juan has established deep roots in the San Francisco community in his nearly three decades here. Almost all of his family lives here. Exh. A ¶ 25. He has worked as a server at restaurants around the city for decades, most recently starting a new job at a restaurant in the Ferry Building in San Francisco. *Id.* ¶ 23. He has paid taxes for many years. *Id.* He receives HIV treatment at San Francisco General Hospital, and just began a new course of HIV treatment in June 2026. *Id.* ¶ 26. His treatment program is for a one year term, and cannot be discontinued prior to completion of the course. *Id.* He also receives psychiatric treatment for his depression and recurring nightmares.

Id. Juan continues to live with the memory of the abuse he suffered every day, and often has involuntary thoughts and nightmares about what happened. *Id.* ¶¶ 16, 26. He has close connections with the nonprofit organization Shanti in San Francisco, which provides a peer community of LGBTQ individuals and people with HIV, who have become like a family to Juan. *Id.* ¶ 27. They also provide him with a social worker, and referrals to other services. *Id.* He lives with his two dogs. *Id.* ¶ 28.

Juan has had an extremely challenging year. He was in a loving same-sex relationship with the same partner for twelve years, until his partner passed away last year. Exh. A ¶ 24. Also last fall, his mother, with whom he lived, passed away. *Id.* ¶ 28. Approximately four months ago, there was a fire in Juan's apartment, where he had lived since 2005. *Id.* He is currently living in a hotel temporarily until his apartment is repaired. *Id.* Meanwhile, he continues to deal every day with the reality of his HIV diagnosis, and his recurrent depression and nightmares from the [redacted] he suffered in Honduras. *Id.* ¶¶ 16, 26.

Against this tragic backdrop, ICE has threatened to upend Juan's life once again. At a routine ICE check-in on June 16, 2026, Juan's Deportation Officer ("DO") informed him that he planned to remove him to a third country, and that he should return with a plane ticket for El Salvador, Guatemala, or Mexico. Exh. A ¶¶ 33-34. When Juan stated that he was afraid to go to those countries, the DO ignored him and stated that he was empowered to send him to Africa if he didn't cooperate. *Id.* ¶ 34. He stated that if Juan did not return with a plane ticket himself, he would be arrested on his July 7 check-in date. *Id.* Juan's OSUP has a note stating "NRD with removal plans / alternate country," for the date July 7, 2026. Exh. C.

Beginning in the early days of the Trump administration, the federal government launched a campaign to detain and deport large numbers of noncitizens. On January 25, 2025, Trump

administration directed senior ICE officials to increase arrests to meet daily quotas of seventy-five arrests per day.[1] In the past year, numerous noncitizens in the San Francisco area and across the country who have appeared as instructed at ICE check-ins have been detained or re-detained by ICE without process. As a result, there has been an avalanche of decisions in this District and in courts across the country, granting habeas relief to individuals re-detained by ICE at check-ins though they are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable. *See, e.g.*, *Hashemi v. Noem*, No. 2:25-cv-10335-HDV-SP, Dkt. 15 (C.D. Cal. Nov. 19, 2025); *Sarah Bruno Reyes v. Christopher LaRose et al.*, No. 25-cv-2969-JLS-JLB, 2025 WL 3204733 (S.D. Cal. Nov. 17, 2025); *J.L.R.P. v. Wofford*, No. 1:25-CV-01464-KES-SKO, 2025 WL 3190589, at *4 (E.D. Cal. Nov. 14, 2025); *Yan-Ling v. Todd Lyons et al.*, No. 1:25-CV-01412-KES-CDB, 2025 WL 3123793, at *3 (E.D. Cal. Nov. 7, 2025); *Khan v. Noem*, No. 1:25-CV-01411-EPG-HC, 2025 WL 3089352, at *10 (E.D. Cal. Nov. 5, 2025); *Hoang v. Santa Cruz*, No. 25-2766-JGB-JCX, 2025 WL 3141857, at *4 (C.D. Cal. Oct. 28, 2025); *Zakzouk v. Becerra* (*Zakzouk II*), No. 25-CV-06254-KAW, 2025 WL 2899220 (N.D. Cal. Oct. 10, 2025); *Esmail v. Noem* ("*Esmail I*"), No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030590 (C.D. Cal. Sept. 12, 2025); *Esmail v. Noem* ("*Esmail II*"), No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030589 (C.D. Cal. Sept. 26, 2025); *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *9 (E.D. Cal. Aug. 20, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Nguyen v. Scott*, 791 F.Supp.3d 703, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass.

[1] Nick Miroff and Maria Sacchetti, "Trump officials issue quotas to ICE officers to ramp up arrests," Washington Post (Jan. 26, 2025), https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

2025); *Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *4 (W.D. Wash. Nov. 17, 2025); *Yee S. v. Bondi*, No. 25-CV-02782 (JMB/DLM), 2025 WL 2879479 (D. Minn. Oct. 9, 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025).

ICE has also escalated efforts to remove noncitizens with final orders of removals to "third countries," i.e., countries that the IJ never designated as potential countries for removal during the noncitizen's removal proceedings. *See, e.g.*, *Bruno Reyes v. LaRose*, 2025 WL 3204733, at *2 ("Petitioner was not provided any notice of the reasons for her revocation [of release] beyond the agent stating, 'the laws have changed.'"); *Zakzouk v. Becerra* (*Zakzouk I*), No. 25-CV-06254-RFL, 2025 WL 2097470, at *3 (N.D. Cal. July 26, 2025), at *2 ("Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that "things are different now.").

On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy memo stating some non-citizens will be deported to third countries with *no* notice or opportunity to respond: "If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures." *See* Exh. E (July 2025 Third Country Removal Memo). If ICE does not receive diplomatic assurances, ICE's new standard procedure is not to affirmatively ask whether the non-citizen is afraid of being removed to the third country, and to remove them to the third country in as few as 24 hours after serving the notice of removal. If the non-citizen affirmatively states a fear if removed to the third country, USCIS screens the non-citizen within 24 hours and unless the noncitizen—without any mention of counsel—establishes they "would more likely than not be persecuted on a

statutorily protected ground or tortured in the country of removal," remove them as soon as possible. *Id.* The policy does not mention any process for presenting testimony or evidence or obtaining additional review.

Applying this policy, the U.S. has deported noncitizens to countries across the globe to which they have no connection, with no notice or process. Advocates and news outlets report that people who were previously granted fear-based relief were deported to third countries, then subjected to chain refoulment and sent to the very places that U.S. courts determined they would likely face torture.[2] *See, e.g.*, *D.A. vs. Noem*, No. 1:25-cv-03135, ECF No. 2-1 at 1–3 (D.D.C. Sep. 12, 2025) (explaining that DHS deported at least five non-citizens with withholding or deferral relief to third country Ghana despite knowing Ghana would repatriate them); *id.*, ECF No. 32-3 at 7 (D.D.C. Sep. 14, 2025) ("One plaintiff was told by an officer while en route to Ghana that he would arrive in Ghana and then Ghana would send him to his country of origin, and then I believe another officer told a Ghanaian official in the presence of one of the plaintiffs something to the same effect"); *Misirbekov v. Venegas,* No. 1:25-CV-00168, 2025 WL 2201470, at *1 (S.D. Tex. Aug. 1, 2025) ("Petitioner is likely to be successful on the merits of his [*Zadvydas*] habeas corpus petition . . . [in part because] attempts to remove Petitioner to third countries are likely to fail since such action would likely result in him being extradited to Kyrgyzstan and facing political persecution").

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[2] "Immigrants deported from U.S. to Ghana are sent home, where lawyers say some could face torture," PBS News (Sept. 15, 2025), https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture; "Eswatini Says It Will Repatriate Migrants Deported By U.S.," New York Times (Jul. 16, 2025), https://www.nytimes.com/2025/07/16/world/africa/eswatini-trump-migrants-deportation.html; "Trump Wants to Make Deportation Deals. Autocrats Are Ready to Listen," New York Times (Apr. 4, 2026) ("The United States has already cut deals with the strongman leaders of Cameroon and Rwanda. Migrants are being detained under an arrangement with Equatorial Guinea, an autocracy where torture is systemic. Others are being held in Eswatini, a monarchy with a history of human rights abuses, and South Sudan, which is teetering on civil war.").

NGOs have specifically identified cases of Hondurans—like Juan—being chain refouled to Honduras from El Salvador and Guatemala, and other Latin Americans being chain refouled from Mexico. *See* "Banished By Bargain: Third Country Deportation Watch," Refugees International (last visited Jul. 1, 2026), available at https://www.refugeesinternational.org/statements-and-news/human-rights-first-and-refugees-international-third-country-deportation-watch-details-scope-secrecy-and-human-toll-of-third-country-transfer-agreements/ (documenting incidents in a spreadsheet and case stories report, describing chain refoulement of third country deportees from the United States in Costa Rica, El Salvador, Ghana, Guatemala, Honduras, Mexico, Panama, Poland, and Uzbekistan). In other words, current evidence suggests the countries identified by Juan's Deportation Officer as likely third countries for his removal have prior document incidents of returning people like Juan to their countries of origin—where an IJ found they were likely to be persecuted or tortured—contrary to U.S. statute and treaty obligations.

An increasing number of courts across the country have enjoined Respondents-Defendants from effectuating unlawful third-country removals without adhering to mandatory statutory and constitutional protections. *M.T.M. v. Andrews* (*M.T.M. I*), 2025 WL 4058220 at *3 ((C.D. Cal. Sep. 11, 2025) (granting additional third country removal process and finding "[d]ecisions from the Ninth Circuit spanning decades are indicative of Petitioner's likelihood of success" in demonstrating DHS's third country removal process is unlawful); *M.T.M. v. Andrews* ("*M.T.M. II*"), No. 2:25-cv-08208-SRM-DSR, 2026 WL 1195758, at *7 (C.D. Cal. Mar. 7, 2026); *A.A.M. v. Andrews (A.A.M. II)*, No. 25-cv-1514-DC-DMC, 2026 WL 1266280 at *2 (E.D. Cal. May 8, 2026) ("Respondents do not cite, and the court is not aware of, any authority finding that USCIS's third country removal policy meets constitutional muster."); *Vaskanyan v. Janecka*, 2025 WL 2014208,

at *6–9 (C.D. Cal. Jun. 25, 2025) (holding "Petitioner's removal to a third country without due process . . . is likely to result in irreparable harm" and enjoining Petitioner's removal to a third country without constitutional protections); *Nadari v. Bondi*, No. 2:25-CV-07893-JLS-BFM, ECF No. 9 (C.D. Cal Sep. 3, 2025); *id.*, ECF No. 12 (C.D. Cal. Sep. 10, 2025); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025); *Nguyen*, 791 F.Supp. 3d at 733 (W.D. Wash. July 25, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Misirbekov,* 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1, 2025); *Hoac*, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025).

III. ARGUMENT

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a TRO, Juan must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Even if he does not show a likelihood of success on the merits, the Court may still grant a TRO if Juan raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

A. Juan Is Likely To Succeed On The Merits of His Claim that His Re-Detention Without a Pre-Deprivation Hearing Would Violate His Substantive and Procedural Due Process Rights, the Immigration and Nationality Act, and Regulations

The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."

Hernandez, 872 F.3d at 990 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). In "our society, liberty is the norm," and detention is the "carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987); *see also Zadvydas*, 533 U.S. at 690.

1. Juan's Removal to a Third Country Is Not Reasonably Foreseeable and Thus His Re-Detention Is Unwarranted

First, Juan's removal is not reasonably foreseeable. The INA authorizes the detention of noncitizens who have been issued a final order of removal, as in this case. 8 U.S.C. § 1231. The Act directs ICE to remove a noncitizen "within a period of 90 days" following a final order of removal, known as the "removal period." 8 U.S.C. § 1231(a)(1)(A). The Supreme Court has found, "if removal is not reasonably foreseeable . . . continued detention [is] unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699-700.

Here, given the due process clause, the INA, FARRA, and its implementing regulations, Juan's removal is not reasonably foreseeable. Juan's removal proceedings concluded in May 2022, when he was granted withholding of removal under 8 U.S.C. § 1231(b)(3). To date, the government has not proven that a third country will accept Juan, nor has the government provided Juan an opportunity to present a claim for withholding of removal under 8 U.S.C. § 1231(b) or under the CAT as to any third country of removal, a process which cannot begin until an additional removal country is properly designated—and which is required by law. *See* Section III(B), *infra.* These multi-step processes—which include administrative and judicial appellate review—could take years. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

In the past year, in instances where the federal government has detained individuals already granted fear-based protection—purportedly to remove them to a third country—the government has not made a showing that those individuals *can* be removed to a third country. *See, e.g.*, *Esmail I*, 2025 WL 3030590, at *3; *Yee S.*, 2025 WL 2879479, at *1; *Tadros v. Noems*, Case No.

25CV4108 (EP), 2025 WL 1678501 (D.N.J., June 13, 2025). These individuals have languished in detention in the meantime. *See id.*

Where detainees held for third-country removal have challenged their detention, courts have regularly found that ICE's mere desire to remove a noncitizen to a third country was insufficient to show that removal was reasonably foreseeable—and ordered release from detention. *See, e.g.*, *M.T.M. II*, 2026 WL 1195758, at *7 (C.D. Cal. Mar. 7, 2026) (finding that Respondent affirmations that they had been "actively pursuing" and were "attempting to remove" petitioner to a third country were insufficient because they could not "obtain a declaration regarding the willingness of the noticed third countries to accept Petitioner's removal and any specified time frame for removal"); *Nguyen*, 796 F.Supp. 3d at 725 ("Courts in [the Ninth] Circuit have regularly refused to find Respondents' burden [of showing reasonable foreseeability of removal] met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur"); *Vaskanyan*, 2025 WL 2014208, at *5 ("at best, the government has shown that 'good faith efforts to effectuate . . . deportation continue,'" thus removal was not reasonably foreseeable); *Dao v. Bondi*, No. 2:25-CV-02340-LK, 2026 WL 18626, at *4-5 (W.D. Wash. Jan. 2, 2026) (removal not reasonably foreseeable where ICE prepared travel document to be forwarded to Vietnam); *Nguyen v. Andrews*, No. 1:26-cv-00015-DAD SCR, 2026 WL 263058, at *5-6 (E.D. Cal. Feb. 2, 2026) (removal not reasonably foreseeable despite ICE declaration that Vietnam was "likely" to issue travel documents within the next 3 months); *Huan v. Noem*, No. 26-CV-512 JLS (DEB), 2026 WL 412609, at *3 (S.D. Cal. Feb. 13, 2026) (removal not reasonably foreseeable where ICE sent a request for removal to the Chinese government); *Pham v. Warden*, No. 1:25-CV-1873 DC AC, 2026 WL 673404, at *5 (E.D. Cal. Mar. 10, 2026) (removal not reasonably foreseeable where ICE averred that it "completed a travel document request and will submit it to

the Government of Vietnam soon"); *Vu v. Dosanj*, No. 26-cv-00013 MWJS-RT, 2026 WL 594740, at *3 (D. Haw. Mar. 3, 2026; (removal not reasonably foreseeable where ICE was "actively engaging the Government of Vietnam in pursuit of a travel document").

Like these similarly situated petitioners, Juan faces imminent re-detention because ICE seeks to remove him to a third country; but ICE has not demonstrated that any third country is willing to accept him, allowed an IJ to designate that country for removal, and afforded him the opportunity to seek withholding of removal and CAT relief as to a designated third country, as required by law. *C.f.* Section III(B), *infra*. Thus, they cannot show his removal is reasonably foreseeable as required to justify his re-detention.

2. Substantive Due Process Requires that Respondents Show Juan Is a Flight Risk or Danger to Re-Detain Him—Which They Cannot

Moreover, because immigration detention is civil and non-punitive, substantive due process requires that detention must be justified by a permissible purpose and must be "reasonably related" to that purpose. *Zadvydas*, 533 U.S. at 690-91; *See, e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 320-21 (1982) ("[W]e upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.") (regarding civil mental health commitment); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979) (regarding pre-trial detainees).

The two permissible regulatory goals for immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690-91. Where civil detention is not related to a permissible regulatory goal, is "excessive in relation to" a permissible regulatory goal, or is "employed to achieve objectives that could be accomplished" with "alternative and less harsh methods," the detention violates substantive due process. *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th Cir. 2004).

Here, Juan does not pose a danger or flight risk that warrants post-final-order custody, regardless of whether his removal can be effectuated within a reasonable period of time. In December 2013—twelve and a half years ago—DHS released Juan on an OSUP before the end of the ninety day "removal period," necessarily determining that he did not pose a flight risk or danger—a finding that has been reaffirmed each time he appeared for his check-ins and was not taken into custody. *See Singh v. Andrews*, 803 F.Supp.3d 1035, 1041 n.1 (E.D. Cal. July 11, 2025) ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him") (cleaned up).

Nor could ICE possibly find that he was now a flight risk or danger, as no aggravating circumstances have changed in his case in over a decade. Juan has not had any encounter with police since 2014, twelve years ago. Exh. A ¶ 19. He has checked in with ICE over ten times since then, without incident. Exh. A ¶¶ 19, 30; McMahon Decl ¶ 18. He pays taxes regularly. Exh. A ¶ 23. He has been gainfully employed for decades. *Id.* He maintains a close network of family and friends, as well as community through his peer support program at Shanti. *Id.* ¶¶ 24-28. He was granted withholding of removal by an IJ in 2022, due to the extreme risk of persecution he faces as a gay and HIV positive Honduran man. Exh. D; McMahon Decl. ¶ 17. Respondents cannot reasonably argue that there has been "a change in relevant facts, not just a change in [the government's] attitude," that warrants re-detention. *See Singh v. Andrews*, 803 F.Supp.3d 1035, 1047 (internal quotations omitted).

3. Juan Has a Procedural Due Process Right to a Hearing Before Deprivation of his Liberty on Supervised Release

a. Juan Has a Protected Liberty Interest in His Conditional Release

Due process also protects Juan's ongoing liberty interest and constrains ICE's power to re-detain a noncitizen on supervised release. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997);

Gagnon v. Scarpelli, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. 2025) ("even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody he has a protected liberty interest in remaining out of custody").

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.*; *see also, e.g.*, *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). When analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (cleaned up). *See also*, *e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated").

Courts have overwhelmingly applied the *Morrissey* analysis to noncitizens on conditional release and finding they possessed a protected liberty interest in their release. *See, e.g.*, *Cordero Pelico v. Kaiser*, No. 25-CV-07286-EMC, 2025 WL 2822876, at *6 (N.D. Cal. Oct. 3, 2025); *see also, e.g.*, *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Guillermo M.R. v. Polly*

Kaiser, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at *10 (N.D. Cal. June 30, 2025); *Khan v. Noem*, No. 1:25-CV-01411-EPG-HC, 2025 WL 3089352, at *6 (E.D. Cal. Nov. 5, 2025); *Yang*, 2025 WL 2791778, at *10; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

Juan has complied with all conditions of release for over a decade. Exh. A ¶¶ 19, 30. Since Juan was released from ICE detention on an OSUP, he has rebuilt his life, been granted withholding of removal, maintained full-time employment, and connected with friends and community. *Id.* ¶¶ 23-28. Overwhelming precedent makes clear that he has a strong liberty interest in his continued release from detention.

b. Juan's Liberty Interest Mandates a Hearing Before a Neutral Adjudicator Prior to Any Re-Arrest

If a petitioner identifies a protected liberty interest, the Court must then determine what process is due. "The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Juan's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357.

Under the due process test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Importantly, the Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

Here, the *Mathews* factors establish that Juan is entitled to a hearing before a neutral adjudicator prior to any re-detention. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Zakzouk I*, 2025 WL 2097470, at *3 (enjoining ICE from re-detaining a noncitizen with a final order of removal absent notice and a pre-deprivation hearing); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *8 (N.D. Cal. Aug. 6, 2025); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025); *Pinchi*, 2025 WL 2084921, at *1; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025); *see also, e.g.*, *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

First, Juan G.S.'s private interest in his liberty is profound. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Zadvydas*, 533 U.S. at 690. Under *Morrissey* and its progeny, individuals on supervised release have a liberty interest that is "valuable." *Morrissey*,

408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-detained—apply with even greater force to individuals like Juan, who have been released pending *civil* removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Here, Juan retains a truly weighty liberty interest even though he is under conditional release.

Second, Respondents' interest in detaining Juan without a due process hearing is low, and the burden on Respondents to refrain from re-detaining him unless and until he is provided with a hearing that comports with due process is minimal.

In Juan's case, ICE cannot plausibly assert that it has a sudden interest in detaining Juan due to alleged dangerousness or flight risk, or due to a change in the foreseeability of his removal, as his circumstances have not changed since he was granted withholding of removal in May 2022. ICE determined that Juan did not present a danger or flight risk when it released him on an OSUP in December 2013, and has implicitly affirmed this determination at each subsequent check in the more than twelve years since his release. Juan has lived and worked lawfully for the past twelve years and has only deepened his ties to his family and community. He has fully complied with the terms of his supervision, and has had no contact with the criminal system since 2014. Exh. A ¶¶ 19, 30. To date, ICE has not demonstrated that a third country will accept Juan for removal, nor allowed an Immigration Judge to designate a new country of removal and allowed Juan to present

testimony and evidence in support of a fear claim as to that country, as required by statute, regulations, and due process. Exh. A ¶ 34. Rather, ICE simply informed Juan they intended to remove him to a third country and would likely detain him for that purpose. *Id.* ¶¶ 33-34. That ICE has a new policy does not constitute a material change in circumstances or increase the government's interest in detaining him. *See Singh v. Andrews*, 803 F.Supp.3d 1035, 1047 ("The law requires a change in relevant facts, not just a change in [the government's] attitude.") (internal quotations omitted).

Third, the risk of an erroneous deprivation of liberty is high if ICE can unilaterally re-detain Juan without a hearing before a neutral adjudicator. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). Due process also requires consideration of alternatives to detention at any hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Hernandez*, 872 F.3d at 990-91.

Further, due process requires that at any hearing, Respondents must bear the burden of proof by clear and convincing evidence to show the necessity of a noncitizen's re-detention. In similar cases, district courts have found that the Due Process Clause requires the government to bear the burden, both in the pre- and post-deprivation habeas context. *See Khan v. Noem*, 2025 WL 3089352, at *10; *Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO, 2025 WL 2230521, at *7

(E.D. Cal. Aug. 4, 2025); *Singh v. Andrews*, 803 F.Supp.3d 1035, 1048; *Perera v. Jennings*, 598 F.Supp.3d 736, 746-47 (N.D. Cal. 2022); *Pham v. Becerra*, 717 F.Supp.3d 877 (N.D. Cal 2024).

B. Juan Is Likely to Succeed on the Merits of His Claim That He May Not Be Removed to a Third Country Without Adequate Notice and Opportunity to Apply for Fear-Based Relief Under the INA and Under the CAT

Juan is likely to succeed on the merits of his claim that Respondents-Defendants' Third Country Removal Policy is unlawful as applied to him, as have many other petitioners in the past year. Summary third country removal by ICE under its Third Country Removal policy violates the INA, regulations, and due process. *See, e.g.*, *A.A.M. v. Andrews (A.A.M. II)*, No. 25-cv-1514-DC-DMC, 2026 WL 1266280 at *2 (E.D. Cal. May 8, 2026) ("Respondents do not cite, and the court is not aware of, any authority finding that USCIS's third country removal policy meets constitutional muster.").

It is plain under statute and regulations that Juan must be provided a meaningful opportunity to apply for fear-based protection prior to removal to a third country. Removal to any country designated under 8 U.S.C. § 1231(b)(2) is "subject to" restrictions on removal set forth in 8 U.S.C. § 1231(b)(3)(A), a form of protection of removal known as withholding of removal. *See* 8 U.S.C. § 1231(b)(2). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). *See also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a *mandatory* protection, meaning it cannot be denied to eligible individuals in the exercise of discretion. Similarly, protection under the CAT is mandatory if the applicant demonstrates a likelihood of torture if removed to the designated country of removal. *See* FARRA (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Courts repeatedly have held that individuals cannot be removed to

a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004).

Accordingly, any summary third country removal process fails to comport with the statutory obligations set forth by Congress in the INA, the CAT, and due process. Numerous district courts have already found as much. *See Hoac*, 2025 WL 1993771, at *7; *Phan*, 2025 WL 1993735, at *7; *J.R. v. Bostock*, No. 2:25-cv-01161-JNW2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025); *M.T.M. I*, 2025 WL 4058220 at *3; *A.A.M. v. Andrews* (*A.A.M. I*), 815 F.Supp. 3d. 1124, 1138 (C.D. Cal. 2025); *Vaskanyan*, 2025 WL 2014208, at *6 ("third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings.").

Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Ibarra-Perez v. United States*, 154 F.4th 989, 995 (9th Cir. 2025) ("DHS must also notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported; otherwise, DHS violates their constitutional right to due process.") (cleaned up). The Ninth Circuit has held that "[f]ailing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian,* 180 F.3d at 1041 (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *see also Najjar v. Lynch*, 630 Fed. App'x. 724 (9th Cir. 2016)

("last 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."). In practice, 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. Wa. 2019).

An opportunity to present a fear-based claim is only meaningful if the noncitizen is afforded adequate review before an immigration judge. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances" and ordering reopening); *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation."); *Esmail II*, 2025 WL 3030589, at *6; *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *5 (N.D. Cal. Aug. 6, 2025); *see also A.A.M. v. Andrews (A.A.M. II)*, No. 25-cv-1514-DC-DMC, 2026 WL 1266280 at *2 (E.D. Cal. May 8, 2026) ("Respondents do not cite, and the court is not aware of, any authority finding that USCIS's third country removal policy meets constitutional muster."); *A.A.M. I*, 815 F.Supp. 3d at 1137 ("the court finds Petitioner has a protected liberty interest in having an immigration judge review USCIS's determination on his fear-based claim regarding removal to [a third country]."); *Pacheco v. Baltazar*, No. 26-cv-01176-PAB, 2026 WL 1223414, at *4 (D. Col. May 5, 2026) ("[M]any courts have found that ICE's third-country removal policies violate the constitutional right to due process. . . Accordingly, the Court will require respondents to provide petitioner with notice and an opportunity to challenge his removal before removing him to a third country."); *Pao Moua v. Warden*, No. 1:26-cv-02562-

TLN-DMC, 2026 WL 1158841, at *3 (E.D. Cal. Apr. 29, 2026) (ordering the government to comply with additional procedures before noncitizen petitioner can be removed to third country); *Douangdala v. Bondi*, No. 2:26-cv-00963-DGE, 2026 WL 1113383, at *4 (W.D. Wash. Apr. 24, 2026) (same); *Perez Canet v. Blanche*, No. 2:26-cv-00223-APG-NJK, 2026 WL 1091763, at *4 (same); *Vishal v. Chestnut*, No. 1:25-CV-01469-SAB-HC, 2025 WL 3511815, at *6 (E.D. Cal. Dec. 8, 2025) (noting "[m]ultiple courts have found the government's third country removal policy violates due process and is contrary to Ninth Circuit precedent" and concurring (citing cases)); *Giebashvili v. Noem*, No. 25-cv-3432 BJC VET, 2026 WL 114422, at *3; *Nguyen*, 796 F. Supp. 3d at 728.

In sum, Juan is likely to prevail on the merits of his claim that Respondents-Defendants cannot remove him to a third country without affording him meaningful notice and an opportunity to be heard on any fear claim as to that country.

C. Juan Will Suffer Irreparable Harm Absent Injunctive Relief

Re-detention is imminent and will harm Juan. Given Respondents-Defendants' pattern of detaining individuals with final orders of removal—including those, like Juan, who have been granted protection from removal—and the fact that Juan's Deportation Officer told him he would be detained on July 7 for third country removal, there is every reason to believe ICE will re-detain him on that date. Thus, a TRO is necessary.

First, "any loss of liberty is fundamental and substantial." *Perera v. Jennings*, No. 21-CV-04136-BLF, 2021 WL 2400981, at *5 (N.D. Cal. June 11, 2021) As described *supra*, freedom from physical confinement is one of the most precious liberties an individual possesses, including individuals—like Juan—on supervised release. *Morrissey*, 408 U.S. at 482. The Ninth Circuit has recognized "irreparable harms imposed on *anyone* subject to immigration detention," including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed

on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995 (emphasis added). This is particularly the case here, as Juan has significant mental and physical health issues for which he is unlikely to receive sufficient treatment in ICE custody. Juan takes psychiatric medication due to his traumatic history of [redacted]. *See* Exh. A ¶¶ 16, 26. He is also HIV positive and just began a new treatment, which he must adhere to and complete over the course of the next year. These conditions are likely to be exacerbated in ICE detention, as the Ninth Circuit has recognized that detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016); *c.f. Gomez Ruiz v. ICE*, No. 3:25-cv-09757-MMC, 2026 WL 851980 at *7 ("The Court finds Plaintiffs have established they are likely to succeed on their claim that medical care at CCDF [an ICE detention facility in California] violates the Fifth Amendment"); *Doe v. Chestnut*, – F. Supp. 3d –, 2025 WL 3240400, *22 (E.D. Cal. Nov. 20, 2025) (conditions in ICE detention are "inherently harsh.").

Second, "it is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Hernandez*, 872 F.3d at 995-96 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) (internal quotation marks omitted). Thus, a finding that Juan is likely to succeed on the merits of his due process claim also means that he has "carried [his] burden as to irreparable harm." *Hernandez*, 872 F.3d at 995.

D. The Balance of Equities and the Public Interest Favor Granting a TRO

The balance of equities and public interest tip sharply in Juan's favor. Juan faces deprivation of the most fundamental liberty a person possesses and the loss of his ability to be connected to his siblings, nieces, nephews, and his LGBTQ community in Shanti, who are the center of his life. The government, on the other hand, will not suffer harm from an injunction that simply requires it to comply with the Constitution. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir.

1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Even if there are fiscal costs associated with providing a pre-deprivation hearing, when faced with "a conflict between financial concerns and preventable human suffering," the Ninth Circuit has "little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). This Court should do the same.

The temporary restraining order Juan requests is in the public interest. The public has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public is also served by ensuring that the government does not expend its resources to detain individuals unnecessarily, and without adequate process. *See Hernandez*, 872 F.3d at 996 (noting "staggering" costs of immigration detention); *Lopez*, 713 F.2d at 1437 ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

IV. Conclusion

For the foregoing reasons, Juan G.S. respectfully requests this Court enter a TRO enjoining ICE from re-detaining him pending further order of this Court.

Dated: July 2, 2026

Respectfully submitted,

/s/ Sean Lai McMahon
Sean Lai McMahon

Pro Bono Attorney for Juan G.S.

Executed on this July 2, 2026, in San Francisco, California.

/s/ Sean Lai McMahon
Sean Lai McMahon