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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

M.T.M.,

Petitioner,

v.

TONYA ANDREWS, in her official
capacity as Facility Administrator of
Golden State Annex Detention
Facility,

SERGIO ALBARRAN, in his
official capacity as Acting Field
Office Director of the Immigration
and Customs Enforcement,
Enforcement and Removal
Operations, San Francisco,

No. 2:25-cv-08208-SRM-PD

**MOTION FOR SECOND
PRELIMINARY INJUNCTION**

Judge: Serena R. Murillo

1 KRISTI NOEM, in her official
2 capacity as Secretary of the
Department of Homeland Security;
and

3 PAM BONDI, in her official
4 capacity as Attorney General of the
United States

5
6 *Respondents.*

7 Petitioner M.T.M., by and through his undersigned counsel, hereby moves for
8 a preliminary injunction enjoining Respondents from continuing to detain him and
9 ordering his release from immigration detention. This motion is based upon Federal
10 Rule of Civil Procedure 65, Local Rule 65, the incorporated memorandum of points
11 and authorities, and the simultaneously filed Amended Petition for Writ of Habeas
12 Corpus, including its accompanying Exhibits, as well as any further information
13 presented to the Court in connection with this application.

14
15 Respectfully submitted,
16 Dated: October 6, 2025 /s/ Pirzada Ahmad
17 **Counsel for Petitioner**
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1	<u>TABLE OF CONTENTS</u>	
2	<u>INTRODUCTION</u>	7
3	<u>LEGAL FRAMEWORK</u>	9
4	I. Withholding of Removal Relief	9
5	II. Statutory and Constitutional Constraints on Post-Removal Detention ..	10
6	III. Requirements for and Likelihood of Lawful Third-Country Removal ..	12
7	<u>STATEMENT OF FACTS</u>	14
8	I. M.T.M.’s Immigration and Custody Status	14
9	II. Respondents Concede M.T.M. Cannot Be Removed to Various	
10	Countries	18
11	III. M.T.M. Has Strong Fear-Based Claims	19
12	IV. Conditions Reported at Golden State Annex Detention Facility	20
13	<u>LEGAL STANDARD</u>	21
14	<u>ARGUMENT</u>	22
15	I. M.T.M. Is Likely to Succeed on the Merits of His <i>Zadvydas</i> Claims	
16	Because His Removal Is Not Reasonably Foreseeable	22
17	II. Absent Immediate Relief, M.T.M. will Suffer Irreparable Harm	26
18	III. The Public Interest and Equities Favor Granting Relief	27
19	IV. No Security Is Appropriate for an Indigent Petitioner	28
20	<u>CONCLUSION</u>	28

21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases	Page(s)
<i>All. for the Wild Rockies v. Cottrell</i> , <u>632 F.3d 1127</u> (9th Cir. 2011)	22, 24
<i>Barajas-Romero v. Lynch</i> , <u>846 F.3d 351</u> (9th Cir. 2017)	10
<i>D.A. v. Noem</i> , No. 1:25-cv-03135 (D.D.C. Sep. 14, 2025)	9, 20, 24
<i>D.V.D. v. DHS</i> , <u>778 F. Supp. 3d 355, 388</u> (D. Mass. Apr. 18, 2025)	19
<i>Diaz v. Kaiser</i> , No. 3:25-cv-05071, <u>2025 WL 1676854</u> (N.D. Cal. June 14, 2025).....	26
<i>Hernandez v. Sessions</i> , <u>872 F.3d 976</u> (9th Cir. 2017)	9, 22, 26, 27
<i>Hoac v. Becerra</i> , No. 2:25-CV-01740, <u>2025 WL 1993771</u> (E.D. Cal. July 16, 2025)	12, 25
<i>J.R. v. Bostock</i> , No. 2:25-CV-01161, <u>2025 WL 1810210</u> (W.D. Wash. June 30, 2025).....	17
<i>Jama v. ICE</i> , <u>543 U.S. 335</u> (2005)	12
<i>Johnson v. Guzman Chavez</i> , <u>594 U.S. 523, 537</u> (2021)	8, 10, 12, 22
<i>Jorgensen v. Cassiday</i> , <u>320 F.3d 906</u> (9th Cir. 2003)	28
<i>Leiva-Perez v. Holder</i> , <u>640 F.3d 962</u> (9th Cir. 2011)	27
<i>Melendres v. Arpaio</i> , <u>695 F.3d 990</u> (9th Cir. 2012)	27

1	<i>Misirbekov v. Venegas,</i>	
2	No. 1:25-CV-00168, <u>2025 WL 2201470</u> (S.D. Tex. Aug. 1, 2025)	24, 27
3	<i>Munoz-Saucedo v. Pittman,</i>	
4	No. 25-2258-CPO, <u>2025 WL 1750346</u> (D.N.J. June 24, 2025)	13, 23
5	<i>Nadarajah v. Gonzales,</i>	
6	<u>443 F.3d 1069</u> (9th Cir. 2006)	<i>passim</i>
7	<i>Navas v. INS,</i>	
8	<u>217 F.3d 646</u> (9th Cir. 2000)	10
9	<i>Nguyen v. Scott,</i>	
10	No. 2:25-CV-01398, <u>2025 WL 2419288</u> (W.D. Wash. August 21, 2025) ..	12, 25
11	<i>Phan v. Becerra,</i>	
12	No. 2:25-CV-01757, <u>2025 WL 1993735</u> (E.D. Cal. July 16, 2025)	26, 27
13	<i>Pimentel v. Dreyfus,</i>	
14	<u>670 F.3d 1096</u> (9th Cir. 2012) (per curiam)	21
15	<i>Save Our Sonoran, Inc v. Flowers,</i>	
16	<u>408 F.3d 1113</u> (9th Cir. 2005)	28
17	<i>Vaskanyan v. Janecka,</i>	
18	No. 5:25-CV-01475-MRA-AS, <u>ECF No. 27</u> (C.D. Cal. July 18, 2025)	12, 25
19	<i>Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.,</i>	
20	<u>758 F.3d 1069</u> (9th Cir. 2014)	21
21	<i>Winter v. Nat. Res. Def. Council, Inc.,</i>	
22	<u>555 U.S. 7</u> (2008)	21
23	<i>Zadvydas v. Davis</i>	
24	<u>533 U.S. 678</u> (2001)	<i>passim</i>
25	<i>Zepeda v. I.N.S.,</i>	
26	<u>753 F.2d 719</u> (9th Cir. 1983)	27
27	Statutes	
28	<u>8 U.S.C. § 1231</u>	<i>passim</i>

1	Immigration and Nationality Act § 241 (INA).....	7, 10, 17
2	INA § 212(d)(5).....	17
3	Other Authorities	
4	<u>8 C.F.R. § 208.33(a)</u>	10
5	<u>8 C.F.R. § 1241.1</u>	10, 16
6	<u>8 CFR § 212.5(b)(1)</u>	17
7	88 Federal Register 31314 (May 16, 2023).....	10

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INTRODUCTION

1
2 1. The Supreme Court in *Zadvydas v. Davis* held that “indefinite
3 detention” of a non-citizen in removal proceedings is unconstitutional. 533 U.S. 678
4 (2001). Civil detention must be “nonpunitive in purpose and effect,” and the “Due
5 Process Clause applies to ‘all persons’ within the United States, including aliens,
6 whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 690,
7 693–94. Accordingly, post-removal detention is only statutorily and constitutionally
8 permissible for “a period reasonably necessary to bring about the [non-citizen]’s
9 removal from the United States.” *Id.* at 689. After six months of post-removal
10 detention, if there is “good reason to believe that there is no significant likelihood of
11 removal in the reasonably foreseeable future,” a non-citizen’s continued detention is
12 presumptively unlawful, and the Government must provide sufficient evidence to
13 rebut that presumption. *Id.* at 701.

14 2. Petitioner M.T.M. is a 32-year-old citizen and national of Senegal who
15 was repeatedly violently persecuted in Senegal by the Mouride Brotherhood, a
16 religious-political group with significant power in West Africa, because he was
17 perceived as gay and expressed political opinions in support of gay individuals’
18 human rights. *See* Exhibit 1 (Asylum and Withholding of Removal Application) at
19 20–24 (M.T.M.’s Asylum Declaration).¹ M.T.M. had no choice but to leave Senegal
20 out of fear for his life, ultimately entering the United States, where he was
21 immediately detained. *Id.* On February 11, 2025, an immigration judge (IJ) granted
22 M.T.M. withholding of removal to Senegal under § 241(b)(3) of the Immigration and
23 Nationality Act (INA) because M.T.M. established he would likely be tortured and/or
24 persecuted if deported there on the basis of a protected status related to sexual
25 orientation. Exhibit 4 (Release Request) at 11–15 (Exhibit B to Release Request:
26 Order of IJ Granting Withholding of Removal).

27
28 ¹ The exhibits cited herein are attached to M.T.M.’s Amended Petition for a Writ of Habeas Corpus.

1 3. Department of Homeland Security (DHS), Immigration and Customs
2 Enforcement (ICE), have now detained M.T.M. for more than 19 months, including
3 almost eight months since he won Senegal withholding relief. While M.T.M.’s award
4 of relief preserves ICE’s authority under 8 U.S.C. § 1231 to lawfully remove him to
5 a third country, Congress, as held in *Zadvydas*, established concrete limits to ICE’s
6 authority to detain immigrants while it tries to effectuate a lawful removal.

7 4. It is incredibly unlikely that M.T.M. will ever be lawfully removed to a
8 third country, let alone significantly likely that he will be removed in the reasonably
9 foreseeable future. *See Zadvydas*, 533 U.S. at 701. Empirically, ICE has managed to
10 remove very few non-citizens granted withholding relief to third countries. *See*
11 *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021) (“alternative-country removal
12 is rare”); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (recognizing
13 a grant of withholding of removal relief “is a powerful indication of the improbability
14 of his foreseeable removal, by any objective measure”). As to M.T.M., Respondents
15 have failed to provide notice of any progress that has been made over the past almost
16 eight months to effectuate a third-country removal. Rather, Respondents appear to
17 concede they have been unable to remove M.T.M. to at least seven third countries, if
18 not several more. Even if Respondents secured a third country’s permission for
19 M.T.M.’s removal, M.T.M. would likely succeed on a fear-based claim barring
20 removal to that country for either the same sexual orientation-related reasons or out
21 of fear of repatriation to Senegal by that third country.

22 5. ICE recently tried to unlawfully and secretly remove M.T.M. to Ghana
23 while actively denying him his statutory and constitutional rights. *See ECF No. 34*
24 (TRO Order) at 2, 6–10 (recounting M.T.M.’s experience and Ghana’s country
25 conditions); *ECF No. 39* (PI Order) at 2 (incorporating TRO Order). An Eastern
26 District Court’s and this Court’s lightning-quick efforts halted that injustice, probably
27 saving M.T.M.’s life. Ghana’s persecution of homosexuality and those who support
28 LGBTQ rights is both well-documented and getting worse. *See ECF No. 35*

(Supplement ISO PI) at 2–5. Underscoring the danger here, DHS recently deported 14 West African immigrants to Ghana without any real opportunity to allege fear-based claims, despite at least five having withholding-style relief and DHS knowing Ghana would repatriate all 14 to their origin countries. *See* Exhibit 9 (PBS Article Re: Immigrants Deported from U.S. to Ghana Are Sent Home); ECF No. 2-1, *D.A. vs. Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 12, 2025). M.T.M. likely would have suffered the same unlawful and inhumane fate but for the Court’s efforts.

6. Now that Respondents are preliminarily enjoined from again denying M.T.M. his procedural rights in connection with a third-country removal, M.T.M. almost certainly would succeed in winning withholding relief from Ghana if Respondents ever properly notice such a removal. Therefore, Respondents cannot rebut the presumption that M.T.M.’s continued detention is unlawful by pointing to their prior Ghana efforts or by simply showing “‘good faith efforts to effectuate . . . deportation continue.’” *Zadvydas*, 533 U.S. at 702 (statutorily rejecting such a standard).

7. Ninth Circuit precedent favors release at the preliminary injunction stage because “unlawful detention certainly constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). Accordingly, if M.T.M. establishes he is likely to succeed on the merits of his *Zadvydas* claims, then he must be immediately released because “‘the status quo . . . is exactly what will inflict the irreparable injury.’” *Id.* (citation omitted).

LEGAL FRAMEWORK

I. Withholding of Removal Relief

8. Non-citizens in removal proceedings may seek three forms of relief based on a fear of returning to their home country: asylum, withholding of removal, and Convention Against Torture (CAT) relief. While asylum relief requires establishing a fear of persecution that is “well-founded,” i.e., subjectively genuine

1 and objectively reasonable, the standard for earning withholding of removal is more
2 demanding and requires establishing it is “more likely than not” (i.e. 50%+) that your
3 life or freedom would be threatened. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*,
4 846 F.3d 351, 359 (9th Cir. 2017); *Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000).

5 9. Usually, individuals who enter the country without inspection and assert
6 a fear of removal to their origin country can apply for all three forms of relief. Under
7 former President Biden’s Circumvention of Lawful Pathways Final Rule, individuals
8 who entered without inspection from May 11, 2023 through May 11, 2025, and
9 through a country other than their origin country—i.e. individuals from countries
10 other than Mexico who entered through the southern border—became presumptively
11 ineligible for asylum. *See* 88 Federal Register 31314, (May 16, 2023); 8 C.F.R. §
12 208.33(a).

13 10. When an IJ grants a non-citizen withholding relief, the IJ issues a
14 removal order and simultaneously withholds that order with respect to the country
15 for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See*
16 *Johnson*, 594 U.S. at 531–32. Relevant here, an “order of removal made by the
17 immigration judge . . . shall become final . . . upon waiver of appeal.” 8 C.F.R. §
18 1241.1. When a non-citizen has final withholding relief, they cannot be removed to
19 the country for which they demonstrated a sufficient likelihood of persecution or
20 torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2).

21 **II. Statutory and Constitutional Constraints on Post-Removal Detention**

22 11. 8 U.S.C. § 1231 governs the detention of non-citizens “during” and
23 “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)–(6). The “removal period”
24 begins once a non-citizen’s removal order “becomes administratively final,” e.g.
25 upon waiver of appeal. *Id.* § 1231(a)(1)(B). The removal period lasts for 90 days,
26 during which ICE “shall remove the [non-citizen] from the United States” and “shall
27 detain the [non-citizen]” as it carries out the removal. *Id.* § 1231(a)(1)–(2). If ICE
28 does not remove the non-citizen within the 90-day removal period, the non-citizen

1 “may be detained beyond the removal period” if they meet certain specified criteria.
2 *Id.* § 1231(a)(6) (emphasis added).

3 12. To avoid “indefinite detention” that would raise “serious constitutional
4 concerns,” the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an
5 implicit time limit. 533 U.S. at 682. The Court held that § 1231(a)(6) authorizes
6 detention only for “a period reasonably necessary to bring about the [non-citizen]’s
7 removal” because “[f]reedom from imprisonment—from government custody,
8 detention, or other forms of physical restraint—lies at the heart of the liberty that [the
9 Due Process] Clause protects.” *Id.* at 689. “Congress previously doubted the
10 constitutionality of detention for more than six months” and, therefore, six months of
11 post-removal order detention is considered “presumptively reasonable.” *Id.* at 701.
12 After six months of detention, if there is “good reason to believe that there is no
13 significant likelihood of removal in the reasonably foreseeable future, the
14 Government must respond with evidence sufficient to rebut that showing.” *Id.* See
15 also *Nadarajah*, 443 F.3d (holding same). For detention to remain reasonable, “as
16 the period of prior postremoval confinement grows, what counts as the ‘reasonably
17 foreseeable future’ conversely would have to shrink.” *Id.* If the Government fails to
18 carry its burden, then “the court should hold continued detention unreasonable and
19 no longer authorized by statute.” *Id.* at 699–701.

20 13. *Zadvydas* claims “challenge the extent of the Attorney General’s
21 authority under the post-removal-period detention statute [and] the extent of that
22 authority is not a matter of [executive] discretion.” *Id.* at 688. The Supreme Court
23 rejected the idea that “a federal habeas court would have to accept the Government’s
24 view about whether the implicit statutory limitation is satisfied in a particular case,”
25 because it is the “federal courts authority to” determine whether there is presently
26 statutory (and constitutional) authorization for continued post-removal detention. *Id.*
27 at 699. In devising the six-month burden-shifting framework, the Court took
28 “appropriate account of the greater immigration-related expertise of the Executive

1 Branch, of the serious administrative needs and concerns inherent in the necessarily
2 extensive INS efforts to enforce this complex statute, and the Nation's need to 'speak
3 with one voice' in immigration matters." *Id.* at 700–01. Therefore, the statutory
4 inquiry is an evidentiary one on the "significant likelihood of removal in the
5 reasonably foreseeable future," not a referendum on executive discretion. *Id.* at 701.

6 14. Courts throughout the Ninth Circuit have repeatedly relied upon
7 *Zadvydas* in ordering immigrants' release. *See, e.g., Vaskanyan v. Janecka*, No. 5:25-
8 CV-01475-MRA-AS, ECF No. 27 (C.D. Cal. July 18, 2025) (ordering release three
9 weeks after entry of TRO); *Hoac v. Becerra*, No. 2:25-CV-01740, 2025 WL 1993771
10 (E.D. Cal. July 16, 2025) (ordering release on PI); *Nguyen v. Scott*, No. 2:25-CV-
11 01398, 2025 WL 2419288 (W.D. Wash. August 21, 2025) (same).

12 **III. Requirements for and Likelihood of Lawful Third-Country Removal**

13 15. While ICE is authorized to remove non-citizens with withholding relief
14 to alternative countries, the removal statute specifies restrictive criteria for
15 identifying appropriate countries. Non-citizens may be removed, for instance, to the
16 country "of which the [non-citizen] is a citizen, subject, or national," the country
17 "from which the [non-citizen] was admitted to the United States," or a country "in
18 which the [non-citizen] resided" before the United States. 8 U.S.C. § 1231(b)(2)(D)–
19 (E). Importantly, ICE may not remove non-citizens to other countries unless it is
20 "impracticable, inadvisable, or impossible to remove the [non-citizen] to each
21 country described in a previous clause of" 8 U.S.C. § 1231(b)(2)(E). Further, the
22 same fear-based protections that may bar removal to a non-citizen's origin country
23 also apply to third countries. *See 8 U.S.C. § 1231(b)(3)(A); Jama v. ICE*, 543 U.S.
24 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in
25 the country designated under § 1231(b)(2), they have a number of available
26 remedies").

27 16. Ultimately, as the Supreme Court found, "alternative-country removal
28 is rare" for several reasons. *Johnson*, 594 U.S. at 537. First, countries routinely reject

1 acceptance of any third-country deportations from the United States presumably
2 because such non-citizens have no ties or connections to those third countries. *See*,
3 *e.g.*, Exhibit 14 (NPR Article Re: Nigeria pushes back on U.S. deportation demands)
4 (Nigeria publicly rejecting the Government’s ask for Nigeria to accept deportees
5 from third countries); Exhibit 22 (Reuters Article Re: Palau lawmakers reject US
6 request to accept third-country refugees).

7 17. Second, the Ninth Circuit has held that given how rarely withholding of
8 removal and similar CAT relief is awarded, the award of such relief “is a powerful
9 indication of the improbability of [those non-citizens’] foreseeable removal, by any
10 objective measure,” recognizing another obstacle to third-country removals is that
11 similar fear-based relief could be awarded as to a third country. *Nadarajah*, 443 F.3d
12 1081 (ordering release on *Zadvydas* claim).

13 18. Third, publicly available data on third-country removals demonstrates
14 how rare such removals are because of these obstacles. As Justice Breyer explained,
15 “[s]tudies have also found that, once withholding-only relief is granted, the [non-
16 citizen] is ordinarily not sent to another, less dangerous country. Rather, the [non-
17 citizen] typically remains in the United States for the foreseeable future.” *Johnson*,
18 594 U.S. at 552–53 (Breyer, J., dissenting). In 2017, “only 1.6% of noncitizens
19 granted withholding-only relief were actually removed to an alternative country.” *Id.*
20 More recently, a District of New Jersey Court found that “deportation data from fiscal
21 years 2020 through 2023 . . . appears to show that in those years, ‘ICE removed . . .
22 only five non-citizens granted withholding or CAT relief to alternative countries.’”
23 *Munoz-Saucedo v. Pittman*, No. 25-2258-CPO, 2025 WL 1750346, at *6–7 (D.N.J.
24 June 24, 2025). That Court held that “Respondents [including DHS Secretary Noem]
25 seemingly recognize the low success rate” and “the data . . . supports the general
26 inference that removal for this particular class of detainees is substantially more
27 difficult.” *Id.*

28 19. Against this backdrop of extremely limited opportunities for third-

country removals, the Government has publicly repeatedly said it is prioritizing immigrants with criminal records for third-country deportations:

- To “justif[y]” a recent unlawful third-country deportation to South Sudan, ICE Acting Director Todd Lyons pointed to the deportees’ criminal records: “These are the ones that you don’t want in your community. These are the ones that we prioritize every day.” Exhibit 10 (NPR Article Re: The White House Is Deporting People to Countries They’re Not From).
- On June 19, 2025, Tom Homan, the Government’s official “Border Czar,” said: “We’re prioritizing public safety threats and national security threats. That is our priority.” Exhibit 11 (New York Times Article Re: An Interview With Trump’s Border Czar, Tom Homan). On third-country deportations: “If it’s a significant public safety threat and their country won’t take them back, well, they’re not staying here.” *Id.*
- On June 23, 2025, DHS issued a press release: “DHS can finally exercise its undisputed authority to deport criminal illegal aliens—who are not wanted in their home country—to third countries that have agreed to accept them.” Exhibit 12 (DHS – DHS Releases Statement on Major Victory for Trump Administration).
- On July 21, 2025, Lyons reiterated as to third-country deportations: “Prime example, if we had a country that won’t take a homicide suspect back, and **under the Supreme Court ruling of *Zadvydas*, we don't hold punitively, so we can only hold someone for six months to effectuate their removal** . . . my main focus, like I said, is the safety and security in the United States.” Exhibit 13 (CBS – Transcript: Acting ICE director Todd Lyons on Face the Nation) at 14 (emphasis added).

STATEMENT OF FACTS

I. M.T.M.’s Immigration and Custody Status

20. Petitioner M.T.M. was born in Senegal on  1993 and is a

1 Senegalese citizen. Ex. 1 at 21–24.

2 21. The Mouride Brotherhood is a religious-political group with significant
3 influence throughout West Africa that violently enforces a fundamentalist
4 interpretation of Islamic law, especially concerning homosexuality, which is also
5 generally condemned in Senegal. *Id.* Gay Senegalese individuals and their allies are
6 ostracized and persecuted, living in fear of violence and death. *Id.*

7 22. From 2016 until he fled Senegal, M.T.M. co-owned and managed a
8 clothing store. *Id.* M.T.M. is a strong believer in fundamental human rights for all,
9 regardless of gender, sexual orientation, or religion. *Id.* In Senegal, he was an
10 advocate for equal rights and practiced as much in welcoming all customers to his
11 business. *Id.*

12 23. Perceived as gay and being an LGBTQ advocate, M.T.M. was seen by
13 the Brotherhood as a threat to their interpretation of Islamic principles. *Id.* On
14 February 12, 2023, the Brotherhood brutally assaulted M.T.M. and customers at his
15 store because they perceived them as gay and/or LGBTQ advocates. *Id.* M.T.M. was
16 badly beaten, left bleeding, and survived only because others brought him to a clinic.
17 *Id.* On December 31, 2023, the Brotherhood launched another attack on M.T.M. and
18 customers at his store. *Id.* They again brutally assaulted M.T.M., leaving him with
19 severe injuries and threatening to both burn his store down and kill him. *Id.*

20 24. Following the second assault, the Brotherhood continuously harassed
21 and threatened M.T.M. over the phone, warning him that they would kill him if they
22 saw him again. *Id.* M.T.M. went into hiding more than 150 miles away with the aid
23 of his brother and a friend. *Id.*; Exhibit 2 (Asylum Application Evidence Supplement)
24 at 15 (M.T.M.’s Brother Declaration), 23 (M.T.M. Friend Declaration). But the
25 Brotherhood continued to hunt M.T.M. down, harassing his friends and relatives to
26 reveal his whereabouts so the Brotherhood could murder M.T.M. *Id.*

27 25. M.T.M. had no choice but to flee Senegal and the Brotherhood’s sphere
28 of influence in West Africa out of fear for his life. Ex. 1 at 21–24. Even after M.T.M.

1 left Senegal, the Brotherhood continued to pressure his relatives and friends for
2 information about M.T.M.'s whereabouts, vowing to track him down and kill him.
3 *Id.*

4 26. From Senegal, M.T.M. took a long, winding journey in the search of
5 refuge. *Id.* He went from Senegal to Morocco, Spain, El Salvador, Nicaragua,
6 Honduras, Guatemala, and Mexico, from which he then entered the United States on
7 February 8, 2024. *Id.* at 7 (I-589 Application).

8 27. Upon entering the United States, DHS promptly detained M.T.M. and
9 he expressed a fear of return to Senegal, seeking asylum. Exhibit 3 (DHS Asylum
10 Application Evidence) at 5. DHS placed M.T.M. in an ICE detention facility in
11 California. Ex. 1 at 9. M.T.M. was eventually brought to Golden State Annex
12 Detention Facility (GSA), where he is currently detained. Ex. 4 at 17–20 (M.T.M.
13 Release Request Declaration).

14 28. On February 11, 2025, an IJ granted M.T.M. withholding of removal to
15 Senegal under the INA because M.T.M. would likely be tortured and/or persecuted
16 if deported there on the basis of a protected status related to sexual orientation. *Id.* at
17 12. M.T.M. was ordered removed to, and his removal withheld from, Senegal. *Id.*
18 M.T.M.'s removal order became final on February 11, 2025,² when the IJ's order was
19 entered because all parties waived the right to appeal. *Id.* at 15. See 8 C.F.R. § 1241.1.

20 29. Given the evidentiary standard required for withholding relief is much
21 more stringent than the standard for asylum, M.T.M. likely would have qualified for
22 asylum had he entered the United States through the southern border before May 11,
23 2023 or after May 11, 2025—i.e., when President Biden's Circumvention of Lawful
24 Pathways rule was not in effect. *Supra* ¶ 9.

25 30. Months ago, soon after winning final withholding relief, M.T.M. was
26 informally told by an ICE officer that ICE would attempt to remove him to El

27 ² Undersigned counsel previously incorrectly represented that the removal order
28 became final on March 11, 2025, when the customary appeal period expired.

1 Salvador or Morocco—two countries that M.T.M. traveled through prior to the
2 United States—or Benin. Ex. 4 at 4. M.T.M. is not a citizen of and has no connection
3 to any third country. Ex. 4 at 17.

4 31. On August 26, 2025, M.T.M.’s immigration counsel submitted a request
5 to ICE for immediate release in accord with INA § 241(a)(3), INA § 212(d)(5), and
6 DHS policy. Ex. 4. The request explained M.T.M. is not a flight risk and is committed
7 to complying with any supervision order. *Id.* at 3. M.T.M.’s sponsor is his friend, a
8 U.S. citizen and a resident of New York. *Id.* His sponsor declared that he would be
9 willing to provide for and support M.T.M. comprehensively as M.T.M. acclimates to
10 life in the United States if released. *Id.* at 21–22 (Signed Sponsor Letter). M.T.M. has
11 no criminal record in any country and has never had any dealings with drugs,
12 firearms, or violence. *Id.* at 18.

13 32. The release request explained that M.T.M.’s lawful removal does not
14 seem to be imminent in part because M.T.M. fears removal to the informally
15 identified countries and demanded ICE comply with its obligations to provide him
16 with sufficient notice and meaningful opportunity to pursue a fear-based claim upon
17 a proper third-country designation. *Id.* at 4–5.

18 33. The request further demanded release for urgent humanitarian reasons
19 pursuant to INA § 212(d)(5), which provides that parole “would generally be
20 justified” for individuals “who have serious medical conditions in which continued
21 detention would not be appropriate.” *Id.* See 8 CFR § 212.5(b)(1). M.T.M. has
22 “serious mental and physical health conditions” relating, in part, to the persecution
23 he endured in Senegal. Ex. 4 at 4. He “has thoughts of death and suicide, which he
24 has spoken to the detention facility officials about.” *Id.* at 4, 18–19. A licensed social
25 worker found M.T.M.’s psychological symptoms are “highly consistent with
26 symptoms of Post-Traumatic Stress Disorder and Major Depressive Disorder.” *Id.* at
27 4, 30–42 (Psychological Evaluation). Since arriving in detention, M.T.M. has also
28 experienced increasing eyesight issues that have not been sufficiently treated at GSA.

1 *Id.* at 4, 18–19. Further, M.T.M.’s counsel relayed studies showing “increased length
2 of imprisonment . . . directly exerts harm” and “detention lasting 6 months of longer
3 . . . [results in] even higher rates of poor [health], mental illness, and PTSD.” *Id.* at
4 4, 43–53 (Study on Health Harms in Immigration Detention).

5 34. To this day, M.T.M.’s immigration counsel has not received a response
6 from ICE on M.T.M.’s Release Request. Exhibit 5 (Affidavit of Madhavi Narayanan)
7 at 3.

8 35. On or around August 28, 2025, Respondents attempted to unlawfully
9 remove M.T.M. to Ghana without providing mandatory due process protections. *See*
10 ECF Nos. 34, 39. Following this Court’s Order, ICE returned M.T.M. to GSA, where
11 he remains detained.

12 **II. Respondents Concede M.T.M. Cannot Be Removed to Various**
13 **Countries**

14 36. The fact that Respondents attempted to unlawfully remove M.T.M. to
15 Ghana is noteworthy because Ghana is not a third country that ICE was authorized
16 to remove him to under 8 U.S.C. § 1231(b)(2)(E)(i)–(vi), e.g. M.T.M. did not reside
17 in Ghana at any point before entering the United States. Again, ICE may remove
18 M.T.M. to a third country not authorized under 8 U.S.C. § 1231(b)(2)(E)(i)–(vi) only
19 if it is “impracticable, inadvisable, or impossible to remove [M.T.M.] to each country
20 described in” 8 U.S.C. § 1231(b)(2)(E)(i)–(vi). 8 U.S.C. § 1231(b)(2)(E)(vii). As
21 DHS is aware from M.T.M.’s Asylum Application, M.T.M. traveled through
22 Morocco, Spain, El Salvador, Nicaragua, Honduras, and Guatemala prior to entering
23 Mexico and the United States. Ex. 1 at 7. Therefore, ICE’s attempted removal of
24 M.T.M. to Ghana appears to be an admission that ICE tried to but could not remove
25 M.T.M. to, at least, Morocco, Spain, El Salvador, Nicaragua, Honduras, Guatemala,
26 or Mexico because it would have been “impracticable, inadvisable, or impossible” to
27 do so. 8 U.S.C. § 1231(b)(2)(E)(vii).

28 37. Notably, months ago, an ICE officer informally, without any type of

1 written notice, told M.T.M. that ICE was attempting to remove him to El Salvador,
2 Morocco, or Benin. Ex. 4 at 4. Because of the Ghana removal attempt, we can assume
3 ICE failed in its efforts as to El Salvador and Morocco (among others). Given the
4 Ghana removal attempt, it appears ICE failed in its efforts as to Benin as well. That
5 is unsurprising given the Government approached Benin to accept third-country
6 deportees months ago, but to date, counsel has been unable to find public reporting
7 evidencing Benin has accepted *any* such third-country deportees. Ex. 14 (“The U.S.
8 has also reportedly approached . . . Benin”).

9 **III. M.T.M. Has Strong Fear-Based Claims**

10 38. Regardless, once provided with proper notice of removal to a consenting
11 third country, M.T.M.’s immigration counsel is prepared to represent him in a fear-
12 based claim for relief from removal. Ex. 5 at 4–5. M.T.M.’s protected status relating
13 to sexual orientation could subject him to persecution in any number of third
14 countries. *See D.V.D. v. DHS*, 778 F. Supp. 3d 355, 388 (D. Mass. Apr. 18, 2025)
15 (“Listing all the countries in the world as to which an individual might have a
16 reasonable fear is also impractical: doing so would potentially require, for example,
17 a person with a same-sex sexual orientation to list, at least, all 64 countries where
18 such an orientation is illegal”).

19 39. Since it appears none of the countries ICE informally identified months
20 ago (or the other countries M.T.M. traveled through before the United States) are still
21 being considered, M.T.M. will briefly address Ghana only. In a recent report, the
22 State Department determined Ghana is plagued by “significant human rights issues”
23 including “acts of violence, criminalization, and other abuses based on sexual
24 orientation, gender identity or expression, or sex characteristics.” Exhibit 15 (2023
25 Ghana State Department Country Report) at 2, 25; ECF No. 34 at 8–9. Same-sex
26 sexual conduct has been criminalized in Ghana since at least 1960 and subject to
27 prison terms of three years. Exhibit 16 (Human Rights Watch Article Re: Ghana:
28 Supreme Court Upholds Colonial-Era Anti-LGBT Law) (“violence against LGBT

1 people is prevalent, and persecution has escalated in recent years”). Ghanaian
2 lawmakers recently introduced a bill that would increase the penalty for same-sex
3 sexual acts from three years in prison to five, while also imposing jail time for the
4 “willful promotion, sponsorship, or support of LGBTQ+ activities.” Exhibit 17
5 (Reuters Article Re: Ghana Lawmakers Reintroduce Anti-LGBTQ+ Legislation).
6 Regardless of whether adopted, the “bill intensifies a crackdown on the rights of
7 LGBTQ+ people and those accused of ‘promotion’ of sexual and gender minority
8 rights.” *Id.* (“Past polling has shown a lack of tolerance for LGBTQ people in
9 Ghana”).

10 40. Equally troubling, Ghana repatriated all 14 West African third country
11 deportees recently deported there from the United States to their home countries. Ex.
12 9. At least 5 of those deportees had “either withholding of removal under the
13 Immigration and Nationality Act or deferral of removal under [CAT].” ECF No. 2-1
14 at 1–3, *D.A. vs. Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 12, 2025). DHS allegedly
15 knew that Ghana would repatriate them: “One plaintiff was told by an officer while
16 en route to Ghana that he would arrive in Ghana and then Ghana would send him to
17 his country of origin, and then I believe another officer told a Ghanaian official in
18 the presence of one of the plaintiffs something to the same effect.” ECF No. 32-3 at
19 7, *D.A. v. Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 14, 2025).

20 41. Based on the few other countries that have recently accepted third-
21 country removals, M.T.M. would also likely succeed on the claim that other third
22 countries would similarly repatriate him to Senegal where he would face torture
23 and/or persecution. *See, e.g.*, Exhibit 18 (New York Times Article Re: Eswatini
24 Repatriating Deportees).

25 **IV. Conditions Reported at Golden State Annex Detention Facility**

26 42. The California Department of Justice recently published a report on
27 GSA, finding:

- 28 • “The quality of mental health care was impacted by the quality of

1 psychotherapy, inconsistent documentation . . . , lack of non-medication
2 interventions, and inadequate medication management.

- 3 • Mental health and medical staff did not engage in appropriate treatment
- 4 planning . . .
- 5 • Suicide prevention and interventions were insufficient . . .
- 6 • Detainees were over-disciplined, including punishment for making
- 7 complaints.”

8 Exhibit 19 (Cal DOJ ICE Detention Facilities Report) at 53.

9 43. DHS’s Office of Inspector General also issued a report on GSA, finding
10 “facility staff did not always provide timely action of medical grievances and did not
11 properly record paper grievances” and that GSA “Did Not Comply with Cleanliness
12 and Sanitation Standards.” Exhibit 20 (DHS OIG Results of an Unannounced
13 Inspection) at 5, 8. *See also* Exhibit 21 (Guardian Article Re: More than 60 ICE
14 detainees on hunger strike over ‘inhumane’ living conditions) (protesting “medical
15 neglect, poor food quality . . . food poisoning, unavailability of water . . . , unpalatable
16 tap water, a working wage of \$1 a day and unsanitary conditions”).

17 44. GSA’s deplorable conditions continue to cause M.T.M. immense
18 suffering and injury as he remains indefinitely detained. Ex. 4 at 18–19. *Supra* ¶ 33.

19 **LEGAL STANDARD**

20 45. M.T.M. is entitled to a preliminary injunction if he establishes: “(1) a
21 likelihood of success on the merits, (2) that [he] will likely suffer irreparable harm in
22 the absence of preliminary relief, (3) that the balance of equities tip in [his] favor,
23 and (4) that the public interest favors an injunction.” *Wells Fargo & Co. v. ABD Ins.*
24 *& Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014) (citing *Winter v. Nat. Res.*
25 *Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). The Ninth Circuit has adopted a “sliding
26 scale” approach wherein “the elements of the preliminary injunction test are
27 balanced, so that a stronger showing of one element may offset a weaker showing of
28 another.” *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012) (per curiam)

(citations omitted). Thus, a preliminary injunction may issue where “serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

46. Further, the Ninth Circuit has held that “[m]andatory injunctions, while subject to a higher standard than prohibitory injunctions, are permissible when ‘extreme or very serious damage will result’ that is not ‘capable of compensation in damages,’ and the merits of the case are not ‘doubtful.’” *Hernandez*, 872 F.3d at 999 (citation omitted) “Mandatory injunctions are most likely to be appropriate when ‘the status quo . . . is exactly what will inflict the irreparable injury upon complainant.’” *Id.* (citation omitted) (“Those requirements are met here. First unlawful detention certainly constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages. Second, the merits of this case are not ‘doubtful’ in our opinion—Plaintiffs’ likely success follows directly from . . . *Zadvydas*”).

ARGUMENT

I. M.T.M. Is Likely to Succeed on the Merits of His *Zadvydas* Claims Because His Removal Is Not Reasonably Foreseeable

47. Here, M.T.M. easily meets his burden of proof to “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” shifting the burden to the Government to “respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701.

48. First, as the Supreme Court and Ninth Court have both found, publicly available data establishes that it is simply unlikely that ICE can successfully remove a non-citizen with withholding relief like M.T.M. to a third country. *See Johnson*, 594 U.S. at 537 (“alternative-country removal is rare”). Despite the current administration’s efforts, few countries ever accept any third-country deportations from the United States. *See, e.g.*, Ex. 14 (Nigeria rejecting); Ex. 22 (Palau rejecting). Moreover, the Ninth Circuit found that the rare award of withholding-style relief “is

1 a powerful indication of the improbability of [those non-citizens'] foreseeable
2 removal, by any objective measure.” *Nadarajah*, 443 F.3d 1081 (ordering release).
3 Historically, ICE managed to remove less than two percent of non-citizens granted
4 withholding relief to third countries. *Id.* at 552–53 (Breyer, J., dissenting). From 2020
5 to 2023, ICE removed only five non-citizens with such relief to third countries, and
6 Respondent DHS Secretary Noem has “seemingly recognize[d] the low success rate.”
7 *Munoz-Saucedo*, 2025 WL 1750346, at *7.

8 49. Second, recognizing that there are very few opportunities for third-
9 country removals, the Government has made repeated public statements that it is
10 prioritizing non-citizens with criminal records for third-country removals. *Supra* ¶
11 19. M.T.M. has no criminal record in any country. Ex. 4 at 18.

12 50. Third, while ICE attempted to unlawfully remove M.T.M. to Ghana,
13 ICE to date has provided no formal written notice or evidence of any efforts to
14 remove M.T.M. to a third country, including in the prior TRO and PI briefing. Unlike
15 many *Zadvydas* cases as discussed below, here Respondents have failed to provide
16 notice of any progress that has been made over the past almost eight months to
17 effectuate M.T.M.’s removal since his withholding grant became final. Without any
18 evidence of progress, M.T.M.’s continued detention has become indefinite, with no
19 reasonably foreseeable plan for his removal.

20 51. Fourth, ICE has already apparently failed in their efforts to remove
21 M.T.M. to at least Morocco, Spain, El Salvador, Nicaragua, Honduras, Guatemala,
22 Mexico, and, likely, Benin. *Supra* ¶¶ 36–37. ICE’s unlawful attempt to remove
23 M.T.M. to Ghana indicates that it was “impracticable, inadvisable, or impossible to
24 remove” M.T.M. to, at least, the first seven countries, evidencing the unlikelihood of
25 lawful removal. 8 U.S.C. § 1231(b)(2)(E).

26 52. Fifth, even if Respondents secured permission from a third country,
27 M.T.M. would likely succeed on a fear-based claim depending on the country.
28 M.T.M. could again have strong claims that he is entitled to mandatory statutory

1 withholding relief because his life or freedom would be threatened on the basis of a
2 protected status related to sexual orientation and political opinion. 8 U.S.C. §
3 1231(b)(3)(A). See *Nadarajah*, 443 F.3d at 1081–82 (“relief under withholding of
4 removal is mandatory”). For example, M.T.M. is almost certainly unremovable to
5 Ghana because, there, homosexuality (and soon, possibly, LGBTQ advocacy) is
6 criminalized and LGBTQ individuals and their advocates are routinely persecuted.
7 Ex. 17. *Supra* ¶¶ 39–40.

8 53. As part of fear-based protections, Respondents are barred from
9 deporting M.T.M. to a third country that would repatriate him to Senegal, and there
10 is strong evidence that Respondents have recently deported non-citizens to third
11 countries that repatriate them to their origin countries, including notably here, Ghana.
12 See, e.g., Ex. 18 (Eswatini repatriating deportees); Ex. 9 (Ghana repatriating
13 deportees). See also *D.A. vs. Noem*, No. 1:25-cv-03135, ECF No. 2-1 at 1–3 (D.D.C.
14 Sep. 12, 2025) (DHS deported at least five non-citizens with withholding or deferral
15 relief to third country Ghana despite knowing Ghana would repatriate them); *id.*, ECF
16 No. 32-3 at 7 (D.D.C. Sep. 14, 2025) (same); *Misirbekov v. Venegas*, No. 1:25-CV-
17 00168, 2025 WL 2201470, at *1 (S.D. Tex. Aug. 1, 2025) (finding “Petitioner is
18 likely to be successful on the merits” in part because “attempts to remove Petitioner
19 to third countries are likely to fail since such action would likely result in him being
20 extradited to Kyrgyzstan and facing political persecution”).

21 54. On the totality of this evidence, M.T.M. easily meets his burden of
22 demonstrating a likelihood of success on the merits of his due process and statutory
23 *Zadvydas* claims, or at least, serious questions going to the merits. *All. for the Wild*
24 *Rockies*, 632 F.3d at 1131. Indeed, he need only show “good reason to believe there
25 is no significant likelihood of removal in the reasonably foreseeable.” *Zadvydas*, 533
26 U.S. at 701. Conversely, Respondents’ evidentiary burden to rebut M.T.M.’s
27 showing increases with each passing day in detention. *Id.* (“as the period of prior
28 postremoval confinement grows, what counts as the ‘reasonably foreseeable future’

1 conversely would have to shrink”).

2 55. The Supreme Court explained that Respondents cannot satisfy their
3 burden by simply establishing “good faith efforts to effectuate . . . deportation
4 continue” because “this standard would seem to require [a non-citizen] seeking
5 release to show the absence of *any* prospect of removal—no matter how unlikely or
6 unforeseeable—which demands more than our reading of the statute can bear.” *Id.* at
7 702. *See Nguyen*, 2025 WL 2419288, at *3 (“Courts in [the Ninth] circuit have
8 regularly refused to find Respondents’ burden met where Respondents have offered
9 little more than generalizations regarding the likelihood that removal will occur”).

10 56. For example, Judge Almadani recently held: “at best, the government
11 has shown that ‘good faith efforts’ to effectuate . . . deportation continue” when it
12 provided evidence that it was “pursuing the possibility of removing Petitioner to
13 [third-country] Armenia” and that “ICE now expects to receive an answer from the
14 Armenian consulate within approximately two weeks.” *Vaskanyan*, 2025 WL
15 2014208, at *5; *id.*, ECF No. 27 (ordering release three weeks after entry of TRO).
16 An Eastern District Court similarly found Respondents failed to meet their burden
17 even though they showed “a pending updated travel document request,” “a ‘2020
18 treaty memorandum of understanding’” from the foreign country, and that removals
19 to that country “have occurred recently.” *Hoac*, 2025 WL 1993771 (ordering release
20 on PI). Likewise, in *Nguyen*, the Government provided several declarations showing
21 Vietnam had not formally denied any ICE request for a travel document in 10 months,
22 had not taken more than 30 days to issue a travel document in 6 months, and had
23 recently accepted “a meaningful increase in the total number of removals compared
24 to historical practice.” 2025 WL 2419288, at *15–18. But because the Government
25 did not provide sufficient evidence individualized to the petitioner, the Court held it
26 failed to carry its burden. *Id.* at *18. These cases offer guidance on what is *not*
27 sufficient for the Government to carry its evidentiary burden, demanding
28 Respondents show even more here.

1 57. Ultimately, the Due Process Clause and INA require that M.T.M. be
2 immediately released because his removal is not reasonably foreseeable. *See*
3 *Zadvydas*, 533 U.S. at 700–01 (describing release as the appropriate remedy). There
4 is no “sufficiently strong special justification for indefinite civil detention” under any
5 statute or law. *Id.* Further, this Court also need not analyze whether M.T.M. poses a
6 danger to the community or a flight risk. Flight risk is already baked into the
7 *Zadvydas* reasonable foreseeability analysis, *see id.* at 690 (observing that the
8 “justification . . . [of] preventing flight . . . is weak or nonexistent where removal
9 seems a remote possibility at best”), and dangerousness cannot unilaterally justify
10 indefinite civil detention barring “special circumstances,” which does not include the
11 non-citizen’s “removable status itself.” *Id.* at 691. But M.T.M. has no criminal record
12 and is not a flight risk because he has a willing sponsor and will comply with any
13 conditions of supervision. *Ex. 4.* at 3, 17–18, 21–22. Moreover, significant equities
14 favor M.T.M.’s release, including his serious medical conditions that continue to
15 deteriorate under dire detention conditions. *Supra* ¶¶ 33, 42–44.

16 58. Lastly, this Court is free to impose conditions on release to mitigate any
17 potential concerns regarding flight risk or danger. *See Zadvydas*, 533 U.S. at 700
18 (“[T]he [non-citizen]’s release may and should be conditioned on any of the various
19 forms of supervised release that are appropriate in the circumstances.”).

20 **II. Absent Immediate Relief, M.T.M. will Suffer Irreparable Harm**

21 59. The Ninth Circuit has specifically recognized “irreparable harms” are
22 “imposed on anyone subject to immigration detention.” *Hernandez*, 872 F.3d at 995
23 (“unlawful detention certainly constitutes ‘extreme or very serious’ damage, and that
24 damage is not compensable in damages”). *See also Diaz v. Kaiser*, No. 3:25-cv-
25 05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (holding same); *Nguyen*,
26 2025 WL 2097979, at *3 (same); *Phan v. Becerra*, No. 2:25-CV-01757, 2025 WL
27 1993735 at *5 (E.D. Cal. July 16, 2025) (same). The *Hernandez* Court also explained
28 that, as here, “evidence of subpar medical and psychiatric care in ICE detention

1 facilities” “highlight in more concrete terms” some of the “irreparable harms”
2 imposed on immigration detainees. 872 F.3d at 995.

3 60. Accordingly, each day M.T.M. remains in detention constitutes
4 irreparable harm because it “is well established that the deprivation of constitutional
5 rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d
6 990, 1002 (9th Cir. 2012) (citation omitted). Further, his continued detention
7 exacerbates his serious medical conditions, including those relating to his physical
8 and mental health. *Supra* ¶¶ 33, 42–44.

9 **III. The Public Interest and Equities Favor Granting Relief**

10 61. The balance of the equities and the public interest strongly favor release.
11 These two factors “merge where, as is the case here, the government is the opposing
12 party.” *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (citation omitted).

13 62. First, “it is always in the public interest to prevent the violation of a
14 party's constitutional rights.” *Melendres*, 695 F.3d at 1002 (citation omitted). In
15 response, the Government “cannot reasonably assert that it is harmed in any legally
16 cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*,
17 753 F.2d 719, 727 (9th Cir. 1983).

18 63. Second, the Ninth Circuit has recognized “[t]he costs to the public of
19 immigration detention are ‘staggering,’” and “[s]upervised release programs cost
20 much less by comparison.” *Hernandez*, 872 F.3d at 996. See *Phan*, 2025 WL
21 1993735, at *6 (citing same in ordering release on PI).

22 64. Lastly, in “comparison to the persecution Petitioner would face,
23 Respondent would suffer little to no harm if Petitioner's Motion were granted.”
24 *Misirbekov*, 2025 WL 2201470, at *2. Injunctive relief “would impose little to no
25 prejudice on the Government, which is free at any time to execute the removal order
26 by” lawfully re-detaining and deporting M.T.M., whose release, again, could be
27 subject to any appropriate supervisory conditions. *J.R. v. Bostock*, No. 2:25-CV-
28 01161, 2025 WL 1810210 at *4 (W.D. Wash. June 30, 2025).

1 **IV. No Security Is Appropriate for an Indigent Petitioner**

2 65. A district court “has discretion as to the amount of security required, if
3 any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). No security is
4 appropriate where there is no quantifiable harm to the restrained party and where the
5 order is in the public interest. *Save Our Sonoran, Inc v. Flowers*, 408 F.3d 1113, 1126
6 (9th Cir. 2005). Due to his prolonged detention, M.T.M. is indigent. Accordingly, the
7 Court should again not require him to post security. ECF No. 34 at 11.

8 **CONCLUSION**

9 M.T.M. respectfully requests this Court grant his Motion for a Second
10 Preliminary Injunction by enjoining Respondents’ continued detention of M.T.M.
11 and ordering his immediate release, subject to appropriate supervisory conditions.
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2 Dated: October 6, 2025

Respectfully submitted,

/s/ Pirzada Ahmad

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Counsel for Petitioner

VERIFICATIONS PURSUANT TO 28 U.S.C. § 2242 AND LR 83-16.2

I am submitting this verification concurrently on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition in a language accessible to Petitioner. Based on those discussions, I hereby verify that the factual statements made in this Motion for Second Preliminary Injunction are true and correct to the best of my and Petitioner's knowledge.

Executed on this 6th day of October 2025 in New York, NY.

Respectfully submitted,
Dated: October 6, 2025 /s/ Pirzada Ahmad
Counsel for Petitioner

I, Petitioner, have discussed with my counsel the events described in this Motion for Second Preliminary Injunction and verify that the factual statements therein are true and correct to the best of my knowledge.

Executed on this 6th day of October 2025 in McFarland, CA.

Dated: October 6, 2025 /s/ M.T.M.
Petitioner

CERTIFICATE OF COMPLIANCE WITH LR 11-6.2

The undersigned, counsel of record for Petitioner, certifies that the memorandum of points and authorities contains 6,999 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 6, 2025

Respectfully submitted,

/s/ Pirzada Ahmad

Counsel for Petitioner