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

Salim Esmail, Petitioner, v. Kristi Noem, Secretary of the Department of Homeland Security; et. al, Respondents.	Case No.: 2:25-cv-08325-WLH-RAO ***EX-PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER** Filed pursuant to FRCP 65 and L.R. 7-19 and 65.1

APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Undersigned counsel files this *ex parte* application for a temporary restraining order (TRO) on behalf of the Petitioner Salim Esmail (Mr. Esmail) because he was detained, 17 years after winning his deferral of removal petition under the UN Convention Against Torture (CAT), in excess of Immigration and Customs Enforcement's (ICE) constitutional, statutory, and regulatory authority. Mr. Salim was once a promising student; he graduated from UCLA in 1988 and was accepted to medical school when he had a mental breakdown and suffered a conviction that placed him in removal proceedings. He was granted (CAT) and placed on an order of supervision. Since leaving immigration custody, the Petitioner has been diagnosed with HIV and Bipolar Disorder. He has struggled to find the right therapeutic support. However, in the past few years he has maintained some level of homogeneity. Unfortunately, that was disrupted when ICE revoked Mr. Esmail's order of supervision (OSUP) without lawful reason and detained him in Arizona, far from the support system he desperately needs.

On September 2, 2025, the Petitioner was detained at his ICE check-in. He was provided a letter titled Notice of Revocation of Release. According to the document, an unidentified officer, with the officer "SDDO" informed the Petitioner his OSUP was being revoked "based on a review of [his] file, [his] personal interview and orders provided by ICE HQ to HIS personnel affecting the attest." This rationale is not one of the two regulatory reasons a noncitizen can have his supervision revoked. *See* 8 C.F.R. § 241.13(l)(1), (2). Furthermore, it is questionable whether he was *actually* afforded a "prompt" informal interview where the Petitioner was given the opportunity to rebut the reasons for his re-detention. Finally, it is also doubtful that the unidentified SDDO officer was authorized to revoke the supervision.

After Mr. Esmail's immigration attorney, Douglas Jalaie (Mr. Jalaie) was retained, Mr. Jalaie contacted SDDO Cordova. SDDO Cordova confirmed that Mr. Esmail was not being detained because of a violation of the OSUP and there was no travel document that had been processed for the Petitioner. Mr. Jalaie urged ICE to release his client because of his serious medical conditions and the need for the Petitioner to be close to his family. SDDO Cordova informed Mr. Jalaie that none of those factors matter because of ICE Headquarters' policy to not release any noncitizen once he is detained. It appears that both the written documentation and the conversation Mr. Jalaie had with ICE, the agency does not intent to comply with its statutory, regulatory, and constitutional obligations to the noncitizens it supervises. Thus, judicial intervention is needed.

The TRO must be granted to maintain the status quo during the pendency of the petition.

Date: 09/09/25

Respectfully submitted,

/s/ Andres Ortiz
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1. The Petitioner, Salim Esmail (Mr. Esmail) is a citizen of Tanzania. His family fled Tanzania in 1973, when the Petitioner was seven-years-old. Mr. Esmail and his family eventually settled in California. Mr. Esmail attended Madison Elementary School. After that, he attended the Crossroads School in Santa Monica, California. He graduated from UCLA with a double major in economics and biology in 1988. Afterwards, the Petitioner was admitted to medical school at SUNY; he finished medical school in 1993. The same year Mr. Esmail had a mental breakdown and was convicted of attempted murder. He served 17 years in prison and upon release was referred to immigration court. At the conclusion of proceedings in 2008, he was granted deferral of removal under CAT. Mr. Esmail was released from immigration custody and he was placed on an order of supervision (OSUP). At some point, the Petitioner was diagnosed with bipolar disorder and HIV. He has sought the assistance of his friends and family to help him cope with these serious conditions.

2. Mr. Esmail was re-detained on September 2, 2025. Upon detention, Mr. Esmail received a document stylized as a Notice of Revocation of Release. The document was signed by an unidentified "SDDO" officer. This letter informed the Petitioner that he was being detained "based on a review of your file, your personal interview and orders provided by ICE HQ to HIS [*sic*] personnel affecting the arrest." However, the document did not provide a notification of the reason the supervision was revoked, as required by 8 C.F.R. § 241.13(l)(3). When Mr. Esmail's immigration counsel, Douglas Jalaie (Mr. Jalaie) inquired as to the reason for the detention, Supervisory Detention and Deportation Officer (SDDO) Cordova informed counsel that there was a new policy from headquarters to detain all noncitizens once they enter ICE custody regardless of a reason that might justify

release. Additionally, ICE did not provide any evidence that the regulatory mandated interview took place where the Petitioner was provided an opportunity to explain why he should not be detained.

3. At this point the Petitioner does not know if ICE is attempting to remove him to a third country. However, *assuming arguendo*, the government seeks to remove the Petitioner to a third country, it has not established *why it is necessary* to detain him without any process. Furthermore, even if it is presumed that ICE seeks removal to a third country, it has not informed Mr. Esmail to which country it hopes remove him. In failing to do so, he is without an opportunity to provide a country-specific explanation of his fear of being removed to that country. ICE has taken the position that, under certain circumstances, it will not provide the petitioner notice or an opportunity to articulate an individualized fear of removal to a specific third country. Consequently, extraordinary intervention is necessary.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. §§ 2241 et seq.; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the United States Constitution. At the time the original petition was filed, this Court had jurisdiction because Mr. Esmail was detained in Los Angeles, California within the territorial jurisdiction of the Court. *See* 28 U.S.C. § 82 ("[Los Angeles, California] constitutes one judicial district."). Mr. Esmail remains in the Central District of California even after his transfer to Eloy, Arizona. *See* 28 U.S.C. § 82 ("Los Angeles, California constitutes one judicial district). Because the petition was filed when Mr. Esmail was detained at B18 in Los Angeles, California, it remains the proper court for this petition. *See Johnson v. Gill*, 883 F.3d 756, 761 (9th Cir. 2018) (explaining that, despite a transfer of custody, "habeas jurisdiction was proper in the district court [where the petitioner was originally detained] because Johnson filed his petition while incarcerated [in that district]"). Mr. Esmail's "subsequent transfer" to Eloy, Arizona, in the District

of Arizona, "does not destroy the jurisdiction established at the time of filing." *Id.* (citing *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990)).

5. ICE may claim that this court lacks jurisdiction to hear this motion. It will likely argue that 8 U.S.C. § 1252(g) bars this court's review. However, no court has agreed with the government's position because, "[Mr. Esmail] is challenging his detention on statutory and constitutional process grounds rather than challenging the order of removal itself." *See Delkash v. Neom*, 5:25-cv-01675-HDV-AGR, *6 (C.D. Cal. Aug. 28, 2025) (Dckt. 18) (order granting motion for preliminary injunction). Further, "Supreme Court has held that "habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal period detention." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *see also Marquez v. I.N.S.*, 346 F.3d 892, 896 (9th Cir. 2003) (holding the district court has jurisdiction over a habeas claim where the petitioner claims detention violates substantive and procedural due process rights)." *Id.*

6. Venue under 28 U.S.C. § 1391(e) and Local Civil Rule 83-8.2 because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this district.

III. FACTUAL BACKGROUND

7. The Petitioner was born on [redacted] 1966, in Tanzania. *See* Exhibit 1- Declaration of the Petitioner. His family and he arrived in the United States in 1973. *See* Exhibit 1. Mr. Esmail attended elementary and middle school/high school in or around Santa Monica California. *Id.* After excelling in primary and secondary school, Mr. Esmail graduated from UCLA with a double major in economics and biology. *Id.* He completed medical school at SUNY in 1993. *Id.* Unfortunately, the Petitioner suffered a "mental breakdown" and was convicted of attempted murder. *Id.* He was sentenced to 17 years in prison. *Id.* It appears that Mr. Esmail was diagnosed with bipolar disorder since he was in prison and he had

been taking Zyprexin since his diagnosis. *Id.* He has also been diagnosed with HIV and has been under the constant care and supervision by his medical team. *Id.*

8. After his prison term, the Petitioner was referred to immigration court for removal. *See* Exhibit 1 and Exhibit 2- Order from the Immigration Court Granting Deferral of Removal under CAT. On or about August 18, 2008, Mr. Esmail was ordered removed, but he was granted Deferral of Removal under CAT. *Id.* The government is forbidden from removing the Petitioner to Tanzania. *Id.* On or about October 21, 2011, the Petitioner was placed on an OSUP. *See* Exhibit 1 and Exhibit 3- OSUP and Check-In History. For nearly 14 years, the Petitioner complied with his OSUP. *Id.* ICE did not document any violations of the OSUP issued to him on October 21, 2011. *Id.*

9. Since being released from custody, the Petitioner has suffered several mental "breakdowns" that necessitated hospitalization at UCLA until his condition stabilized. *See* Exhibit 1. Mr. Esmail notes that he has not suffered a mental breakdown in four years. *Id.* After his last breakdown, he received an experimental therapy called Invega Sustaina. *Id.* He has received monthly injections of Invega Sustaina since then. *Id.* The Petitioner's brother, Dr. Adil Esmail (Dr. Esmail) believes that "[o]ver the course of treatment, [Mr. Esmail] has demonstrated commendable adherence to prescribed medication and therapeutic interventions. However, the nature of bipolar disorder necessitates a stable and supportive environment, particularly during periods of transition or stress, which can exacerbate symptoms." *See* Exhibit 4- Email from Adil Esmail, MD to Douglas Jalaie. Dr. Esmail further notes, "[o]ne of the most critical components of [Mr. Esmail]'s stability has been the ongoing support of close family members, who play an essential role in monitoring medication compliance, recognizing early signs of mood changes, and providing emotional grounding. The proposed immigration transfer would significantly disrupt this support system, as it would

geographically separate [Mr. Esmail] from family members who are integral to his care. *Id.*

10. On September 2, 2025, the Petitioner was arrested by ICE at his routine check-in. *See* Exhibit 1 and Exhibit 5- Notice of Revocation of Release. The notice informed the Petitioner who was involved in revoking the supervision: "[t]his decision has been made [*sic*] based on a review of [his] file, [his] personal interview and orders provided by ICE HQ to HIS[1] [*sic*] personnel affecting the attest." *See* Exhibit 5. The decision did not reference a regulation of factual allegation that led to the custody redetermination. *Id.* Further, the notice informed Mr. Esmail that he would be given a prompt informal interview where he could challenge the decision. However, the notice packet only contains a Notice of Revocation of Release letter and a certificate of service. *Id.* It does not contain an interview sheet where the notes of the interview are memorialized.

11. Mr. Jalaie was retained by the Petitioner's family to represent the noncitizen in his immigration matters. *See* Exhibit 6- Declaration Mr. Jalaie and Redacted Revocation of Supervision Packet. Once retained, Mr. Jalaie spoke with SDDO Cordova to inquire why his client was re-detained after he was free for nearly 14-years. *Id.* ¶ 5. He noted that ICE had never revoked Mr. Esmail's supervision, that his client has serious medical issues, and that ICE had unsuccessfully tried to remove his client to a third country in the past. *Id.* ¶ 5. SDDO Cordova explained that ICE Headquarters had issued a new policy that required the ERO to detain all noncitizens who enters ICE custody. *Id.* ¶ 6. The ERO officer confirmed that it did not have a travel document for Mr. Esmail. *Id.* ¶ 6. Mr. Jalaie asked SDDO Cordova to transfer his client to Adelanto, California. *Id.* ¶ 6. He explained that because of his client's mental health issues, he needed to be close to his family and

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[1] The unidentified SDDO officer likely meant HSI, Microsoft Word autocorrects HSI to HIS. Additionally, it does not appear there is a subgroup or organization of ICE that uses HIS as its initials.

his client would wait in B18 for a bed to open up in Adelanto. *Id.* ¶ 6. SDDO Cordova informed Mr. Jalaie that ERO had control over his transfer and would allow Mr. Esmail to wait in B18 until a bed became available in Adelanto. *Id.* ¶ 6. Later that day, Mr. Esmail was transferred to the detention center in Eloy, Arizona-a detention center 400 miles from Los Angeles. *Id.* ¶ 6.

12. Under all available accounts, Mr. Esmail is being held in Eloy, against his will for an unknown reason, or if SDDO Cordova is correct, a reason that violates the regulations. ICE has failed to articulate a reason or a process that was followed, which it is detaining Mr. Esmail. Given the government's position that it can summarily remove a noncitizen to a third country without notice or process and because the government has provided no information about why Mr. Esmail has been detained, there is a very real risk that the Petitioner will (1) be detained indefinitely or (2) be removed without any due process. Both are blatantly unconstitutional and deserving of this court's use of its authority to grant the TRO.

IV. ANALYSIS

13. A preliminary injunction or TRO is appropriate if a plaintiff can show 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. Nat. Res. Def. Council, Inc.*, 555. U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding scale" approach, a TRO or preliminary injunction is appropriate when, "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation omitted).

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A. The Petitioner is Likely to Win on the Merits of His Application

1. Detention Claims

14. In considering the first factor, Mr. Esmail is likely to win on the merits of his habeas petition on his first two claims that he was unlawfully detained. As discussed in *Zadvydas v. Davis*, civil detention violates the Due Process Clause except "in certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." 533 U.S. at 690 (citations omitted).

15. As discussed in *Johnson v. Guzman Chavez*, there are two periods where the noncitizen may be detained. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527-529 (2021). The first period occurs after the noncitizen is arrested *on suspicion of being removable* and the noncitizen is not initially released from ICE custody. *Id.* at 527. If the noncitizen is not issued a bond, the noncitizen may apply for a custody redetermination (bond) before the immigration judge. *Id.* In that case, the noncitizen is being held to pursuant to 8 U.S.C. § 1226(a).[2] *Id.* The Supreme Court was clear that this section of the Act covers *only* pre-removal detention:

> Section 1226 provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." § 1226(a). Section 1231, by contrast, authorizes detention "when an alien is ordered removed" and enters the "removal period," which begins on "[t]he date the order of removal becomes administratively final." §§ 1231(a)(1)(A)–(B), (2).

Id. at 534. Thus, once a removal order is issued, 8 U.S.C. § 1226(a) no longer applies.

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[2] Or possibly 8 C.F.R. § 1226(c), the difference is irrelevant here.

16. When a noncitizen is ordered removed, 8 U.S.C. § 1231(a) authorizes detention in only two circumstances. "*During* the removal period," the Attorney General "shall" detain the alien. *See* 8 U.S.C. § 1231(a)(2) (emphasis added). "*[B]eyond* the removal period," the Attorney General "may" detain an alien who falls within one of three categories specified by the statute [beyond the removal period]. *See* § 1231(a)(6) (emphasis added)." *Johnson*, 594 U.S. at 528. If the government releases the noncitizen during the 8 U.S.C. § 1231(a)(6) period, ICE "shall [] subject [the noncitizen] to the terms of supervision." In sum, the government *shall* detain a noncitizen during the 90-day removal period 8 U.S.C. § 1231(a)(2) and it *may* continue to detain or it *may* release under a mandatory order of supervision after the 90-day removal period. 8 U.S.C. § 1231(a)(6).

17. Thus, under the Immigration and Nationality Act (INA), immigration authorities are authorized to detain noncitizens with a final order of removal but the noncitizen's removal is unlikely. *See* 8 U.S.C. § 1231(a)(6). However, ICE's ability to detain a noncitizen who cannot be removed is not unlimited. The Fifth Amendment limits a noncitizen's "post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." *Zadvyda*s, 533 U.S. at 689 (2001). Because of this constitutional limitation, § 1231 "does not permit indefinite detention." *Id.*

18. The noncitizen's right to remain on an OSUP is not unlimited. The applicable regulations permit ICE to revoke the OSUP if there is a change in circumstances because (1) the noncitizen violated a reasonable term of his supervision or (2) DHS determined there is a *significant likelihood* the noncitizen will be removed in the near future. *See* 8 C.F.R. § 241.13(i)(1), (2); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2025); *and Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025). *If* ICE determines that one of these two conditions are met, it is allowed to re-detain the noncitizen. *Id.* Upon re-detention, ICE must inform the noncitizen or the

reason(s) for detention and provide the noncitizen a *prompt* informal interview to rebut the reasons for the revocation. *Ceesay*, 781 F. Supp. 3d at 162-63. Moreover, because of the gravity of revoking supervision, only designated officials can revoke an OSUP. *See* 8 C.F.R. § 241.4(l)(2) *and Ceesay*, 781 F. Supp. 3d at 159-62. In sum, before revoking supervision, the government must: (1) have an appropriate official decide revocation is warranted; (2) inform the noncitizen of the specific basis—either a violation of release conditions or a significant likelihood of removal to a third country; and (3) afford the noncitizen a prompt chance to present rebuttal evidence explaining why detention is unwarranted.

19. It is well-settled that the agency must follow its regulations. *See United States v. Caceres*, 440 U.S. 741, 759 (1979) ("This Court has consistently demanded governmental compliance with regulations designed to safeguard individual interests even when the rules were not mandated by the Constitution or federal statute.") *and Morton v.* Ruiz, 415 U.S. 199, 235, (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."). "An agency such as DHS can therefore be bound by its own procedures when they (1) prescribe substantive rules-not interpretive rules, general statements of policy or rules of agency organization, procedure or practice; and (2) conform to certain procedural requirements." *Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018).

20. Courts have uniformly held that "[r]ules matter. Hearings matter" and that the remedy for failing to adhere to the regulations governing revoking supervision warrants immediate release from custody. *See Delkash v. Neom*, 5:25-cv-01675-HDV-AGR (C.D. Cal. Aug. 28, 2025) (Dckt. 18) (granting motion for preliminary injunction); *Hoac*, 2025 WL 1993771, at *7; *Ceesay*, 781 F. Supp. 3d at 170. In this case, the Petitioner has established that his supervision was revoked in violation of all three regulatory safeguards.

21. First, according to *Ceesay*, ICE has not established that the unidentified SDDO who signed the revocation notice was an authorized person to revoke supervision. 781 F. Supp. 3d at 159-62. Ceesay argued that the Assistant Field Office Director, Darius Robinson was not a designated official who was authorized to revoke the OSUP. *Id.* The court held that under 8 C.F.R. § 241.4(l)(2) that the "Executive Associate Commissioner *shall have the authority*" to revoke an OSUP. *Id.* at 160 (emphasis added). The court then parsed the history of this position and held that under the modern orientation of immigration law, the "Executive Associate Commissioner" is the equivalent to the Field Office Director. *Id.* at 161. As the notice and Mr. Jalaie's declaration note, the revocation is signed by an unidentified SDDO.

22. Mr. Jalaie and the Petitioner question whether the unidentified SDDO had the authority to revoke supervision because of an implicit and explicit reason. According to the regulation and caselaw, a specific person revoking supervision must have the authority to do so. *Ceesay* held the person is the field office director or his equivalent. The unidentified SDDO may be a mid-level supervisor, but this person is not a district director or equivalent. Thus, the very text of the regulation establishes the SDDO is unauthorized to revoke supervision. Next, practically speaking, the person is unidentified. The court cannot evaluate the credentials of the person revoking supervision, because that person is unidentified. For either or both reasons, ICE has not approved the person who revoked supervision was authorized to do so, "this Court cannot conclude that [SDDO] had the authority to revoke release, finds that [Mr. Esmail's] release was not lawfully revoked, and holds that he is entitled to release on that basis alone." *Ceesay*, 781 F. Supp. 3d at 162.

23. Second, Mr. Jalaie and the Petitioner believe that Notice of Revocation of Release did not contain a valid reason to afford the noncitizen sufficient notice of why he was being detained. In a similar case, "the petitioner received a Notice of

Revocation of Release, stating generically that officials had reviewed his 'official alien file' and determined 'there are changed circumstances in your case,' including that he was 'subject to an administratively final order of removal' and that DHS 'determined the purpose of your release has been served and it is appropriate to enforce the removal order.'" *Perez-Escobar v. Moniz*, No. 25-cv-11781-PBS, 2025 WL 2084102 *1 (D. Mass. July 25, 2025). The court held this generic language was insufficient under the regulation and to satisfy due process because it failed to provide any specifics about *how the circumstances had been changed. Id.* *2.

24. The OSUP signed by the unidentified SDDO contains a similar albeit worse flaw. Here, the revocation indicates that the supervision is being revoked in consultation with other entities. The letter also states that "[o]n August 1, 2025, HIS [*sic*] Los Angeles received notification from HQ to proceed with [*sic*] custody redetermination in your case." These two conclusory sentences fall well-short of notifying the Petitioner why he is being detained because it does not cite a valid regulatory reason under 8 C.F.R. § 241.4(l) or 8 C.F.R. § 241.13(i)(1), (2). Additionally, the notice provides no facts to explain how circumstances changed or what conduct justifies revocation of supervision.

25. Moreover, Mr. Jalaie's conversation with SDDO Cordova also appears to provide an unlawful reason for re-detention. Specifically, SDDO Cordova indicated that there was a new Headquarters' policy that instructed the officers to detain all noncitizens who come into custody. To the extent this is not mere puffery to silence Mr. Jalaie, this policy clearly runs afoul of the re-detention regulations. Consequently, "ICE's conclusory explanation for revoking [Mr. Esmail's] release did not offer him adequate notice of the basis for the revocation decision such that he could meaningfully respond at the post-detention informal interview." *Perez-Escobar*, 2025 WL 2084102, at *2 (quotations altered).

26. Third, Mr. Esmail's revocation file is missing any proof that the "informal interview" took place. *See* 8 C.F.R. § 241.13(i)(3). Moreover, because the Petitioner was given an insufficient reason to revoke supervision, *assuming arguendo*, he received some type of interview, he lacked the necessary notice to enable him to meaningfully respond. *Perez-Escobar*, 2025 WL 2084102, at *2; *and MANUEL DE JESUS DIAZ, Petitioner, v. MINGA WOFFORD Facility Adm'r (Warden), Golden State Annex, et. al, Respondents.*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *9 (E.D. Cal. Sept. 5, 2025) (same). Here, unlike the attachment to Mr. Jalaie's declaration, there is no "Alien Informal Interview Upon Revocation of Order of Supervision Under 8 C.F.R. § 241.4(l); 8 C.F.R. § 241.13(i)" form in Mr. Esmail's file. Thus, ICE cannot contend it met its statutory obligation to the Petitioner. Again, even if there is an interview form that is in the file, which was not given to Mr. Esmail or Mr. Jalaie, it would be of little utility because the Petitioner was not informed of the reasons his supervision was revoked. Therefore, he lacks the information needed to rebut the reasons for his detention. Finally, if SDDO Cordova is correct, an interview would be futile because ICE's new policy would prohibit release no matter the reason. Thus, the petition should be granted for this reason as well. *Perez-Escobar*, 2025 WL 2084102, at *2.

27. Given this blatant violation of Mr. Esmail's constitutional, statutory, and regulatory rights, at a minimum, immediate release is necessary to maintain the status quo while further litigation is pending. *See Phong Phan, Petitioner, v. Moises Beccerra, Respondent,* No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025). Indeed, the *Ceesay* held that ICE's failure to follow its regulatory obligations when revoking an order of supervision is grounds for immediate release. The same standard should be applied here and this court must find a substantial likelihood Mr. Esmail will succeed on the merits of this claim.

2. Third Country Removal Claim

28. The Petitioner also seeks temporary relief from removal to a third country without ensuring a measure of due process. ICE has recently taken the position that it may not provide any individualized notice to the Petitioner or an opportunity to respond before he is removed to a third country. *See* Exhibit 7- Noem, Kristi, Guidance Regarding Third Country Removals, DHS (Mar. 30, 2025). Specifically, ICE has taken the position that it does not need to provide *any notice* to the noncitizen if ICE and the State Department believe a third country's assurances that the noncitizen will not be tortured. *Id.* 1-2. Alternatively, if ICE or the State Department does not believe the assurances that the noncitizen will not be tortured, they will inform, *but not guarantee* an opportunity to seek an individualized fear review.

29. Under these guidelines, neither ICE nor the State Department articulate how these "assurances" could cover every possible reason a person might seek protection under the Convention Against Torture. Similarly, if the noncitizen is being removed to a country where the government has doubts about the non-torture assurances, the ICE agents will not ask the noncitizens if they fear being removed to the third country. Essentially, ICE is forcing the noncitizen to assert a right he may not know that he has.

30. When addressing the blanket assurances, they blatantly violate the applicable regulations, "[t]he Secretary of State may forward to the Attorney General assurances that the Secretary has obtained from the government of a specific country that *an* alien would not be tortured there if *the* alien were removed to that country." *See* 8 C.F.R. § 1208.18(c)(1) (emphases added). It is also doubtful that these blanket assurances would cover non-state actors. Thus, it is possible that despite the "assurances" from the foreign government that the noncitizen will not be tortured, these assurances may do nothing to protect against non-state actors. *See e.g. Cole v.*

Holder, 659 F.3d 762, 771 (9th Cir. 2011) ("Acquiescence by government officials requires only that they were aware of the torture but remained willfully blind to it, or simply stood by because of their inability or unwillingness to oppose it." (quotation marks and citations omitted)). Similarly, there is no guarantee that the noncitizen will be screened for his/her fear of return to a third country. There is no straight-faced argument this conduct complies with due process and thus, there is a likelihood of success on the merits for the third cause of action as well.

B. The Petitioner Will Face Irreparable Harm

31. In considering the second factor, "[i]t is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1162 (C.D. Cal. 2018) (citation omitted). Where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)). To be sure, "unlawful detention certainly constitutes 'extreme or very serious'" injury which "is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

32. By violating Mr. Esmail's constitutional rights, he is suffering an irreparable injury. Further, the Petitioner is suffering specific harms related to his specific causes of action. Specifically, Mr. Esmail suffers from very serious mental health and physical conditions. His family has discussed the Petitioner's need to be close to his family due to these conditions as well as to receive proper medical treatment.

1. Mr. Esmail's unlawful detention is causing him irreparable harm

33. In addition to the irreparable harm caused by the constitutional violation, the Ninth Circuit has recognized the "irreparable harms imposed on anyone subject to

immigration detention," including "subpar medical and psychiatric care in ICE detention facilities." *Hernandez*, 872 F.3d at 995.

34. Mr. Esmail and his brother have outlined the Petitioner's serious medical conditions. The Petitioner has been diagnosed with HIV and requires treatment. Additionally, the Petitioner was diagnosed with bipolar disorder and at times, he has completely disassociated from reality. The Petitioner has suffered approximately six "mental breakdowns" over his life and many of those episodes have required his hospitalization. Both the Petitioner and his brother have outlined how difficult it has been to prevent these episodes. But the Petitioner has shown a willingness to follow the treatment plans provided to him to prevent further mental health issues. With the help of an experimental injection therapy called Invega Sustaina, the Petitioner has not had an episode in four years. There is no guarantee Mr. Esmail will have access to the medical treatment that has been instrumental in curbing his episodes over the past four years.

35. Unfortunately, because the Petitioner is detained 400 miles from his family, there is no guarantee that he will receive the medical care he needs. Moreover, the distance from his family will create a further strain. Dr. Esmail notes that his brother does well before he was detained because he was around his family, an important support network, and it helped to stabilize him. Without access to his family and adequate medical treatment, the Petitioner will surely suffer an irreparable harm in addition to the harm stemming from the constitutional violation.

2. <u>Mr. Esmail will suffer irreparable harm if removed without due process</u>

36. In addition to the constitutional harm Mr. Esmail would face by not being informed of where he is being removed, he will also face an additional irreparable harm. "Here, the threatened harm is clear and simple: persecution, torture, and

death. It is hard to imagine harm more irreparable." *D.V.D. v. U.S. Dep't. of Homeland Security*, 1:25-cv-10676-BEM *44 (D. Mass., April 24, 2025) (Dckt. 64).

C. The Final Two Factors Favor the Petitioner

37. In considering the last two factors—balancing the parties' equities and determination of whether injunctive relief is in the public interest—the Supreme Court has found that these factors merge in immigration cases because Respondents are both the opposing litigants and the public interest representatives. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In cases implicating removal, "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Id*. at 436. Though these interests must be weighed against the public's "interest in prompt execution of removal orders." *Id.*

38. Further, "the Plaintiff['s] likelihood of success on the merits lightens [Defendants'] stated interests." *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 734 (D.C. Cir. 2022). The Supreme Court has confirmed that "our system does not permit agencies to act unlawfully even in pursuit of desirable ends." *Alabama Ass'n of Realtors v. HHS*, 594 U.S. 758, 766 (2021). Like the previous section, these two factors have a slightly different analysis for each factor.

1. Unlawful detention

39. When considering the government's interest in detaining Mr. Esmail without and process, the balance of equities and the public's interest in the lawful administration of immigration laws is significant. However, "[i]f the government is allowed to eschew these processes, it cannot guarantee the accuracy of the outcome. *Delkash v. Neom*, 5:25-cv-01675-HDV-AGR, * 10 (C.D. Cal. Aug. 28, 2025) (Dckt. 18) (*citing Ceesay*, 2025 WL 1284720, at *1, 12 ("Procedure is not

mere puffery, a gesture that is irrelevant so long as the result is correct." "After all, without due process, there is no way to tell whether the result is in fact correct."). Because the government's re-detention of Mr. Esmail is illegal under controlling regulatory and constitutional authority, it "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Likewise, it is in the public interest to prevent the further deprivation of Mr. Esmail liberty in violation of due process of law because the incorrect application of controlling law can never be 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) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). Moreover, the public has an interest in accurate determinations in all legal proceedings, including the decision of whether to detain individuals who are on an order of supervision. The public is also served by avoiding excessive expense on detention and ensuring that the government does not expend its resources to detain individuals unnecessarily.

2. <u>Third Country Removal</u>

40. When considering whether the balance of equities tips in the Petitioner's favor and it is in the public's interest to prevent a removal without due process. *D.V.D.* found "it likely that these deportations have or will be wrongfully executed and that there has at least been no opportunity for Plaintiffs to demonstrate the substantial harms they might face." *D.V.D. v. U.S. Dep't. of Homeland Security*, 1:25-c10676-BEM *45. And for this reason, the final two factors supported the Petitioners' stance.

V. <u>THE COURT MAY ISSUE A TEMPORARY RESTRAINING ORDER</u>

41. Finally, as set forth *supra*, Mr. Esmail asks this Court to find that he has complied with the requirements of Rule 65, Fed.R.Civ.P., ***<u>for the purposes of granting a Temporary Restraining Order</u>***. Pursuant to Rule 65(b)(1), this Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if (1) specific facts in an affidavit . . . clearly show that immediate and irreparable injury, loss or damage will result to the petitioner before the adverse party can be heard in opposition; and (2) the Petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

42. In the TRO exhibits, Mr. Esmail has provided his declaration that outlines his physical and the mental health challenges he suffers as well as the lengths he has taken to manage his "mental breakdowns." *See* <u>Exhibit 1</u>. Likewise, Dr. Esmail outlines his brother's compliance with a treatment plan and the need to have the Petitioner close to his family. SDDO Cordova also told Mr. Jalaie that the Petitioner would be transferred to Adelanto, California, so the noncitizen could be closer to his family and later that day, he was moved to Arizona. The Petitioner needs his family and his strict treatment regimen to mitigate against any complications with both his bipolar disorder and his HIV treatment, which if not properly dealt with, could be deadly. Finally, he fears being removed to a third country without notice or an opportunity to receive an individualized hearing about his fear to be forcibly removed to an unknown land. Both of these causes of actions demonstrate an immediate and unrepairable harm.

43. Here, Mr. Esmail respectfully submits that he attempted to provide sufficient notice to the Respondents. At 10:48 a.m. on September 9, 2025, undersigned counsel called the public facing AUSA number 213-894-2400. *See* <u>Exhibit 8</u>- Declaration from Undersigned Counsel at ¶ 5. The call was fielded by an operator

who transferred him to the Civil Intake Department, but no one picked up. *Id.* at ¶ 5. He was unable to leave a message and was transferred again to the operator. *Id.* Undersigned counsel left a message with the operator explaining the nature of the suit and a request to speak with the attorney following the case. *Id.* After several additional attempts, undersigned counsel was unable to speak with anyone from the U.S. Attorney's Office prior to filing the TRO.

44. Finally, the Petitioner emailed a copy of this motion to the Habeas inbox at USACAC.Habeas@usdoj.gov shortly before filing this petition. *Id.*

45. While proper service may not have been made on all Respondents' counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met.

VI. CONCLUSION

For the foregoing reasons, this Court should hold that Mr. Esmail is likely to succeed on the merits of his pending Petition for Writ of Habeas Corpus, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that the requested restraining order is in the public interest. Specifically, Mr. Esmail requests this Court to enter the following findings and orders:

A) That Mr. Esmail's re-detention violated the Fifth Amendment to the Constitution, the INA, and its applicable regulations;

B) That a temporary restraining order is necessary to ensure that Respondents do not continue to violate Esmail's constitutional rights;

C) That Mr. Esmail be released unless and until he receives adequate notice and a hearing to determine the legality of his re-detention;

D) That, if Mr. Esmail is to be removed to a third country, that he be informed of ICE's intention to do so and that he receive an individualized opportunity to challenge removal through a reasonable fear interview;

E) That, under the particular circumstances of this case, it is proper to waive the requirement that Mr. Esmail give an amount of security in connection with the issuance of an injunctive order;

F) That Mr. Esmail is entitled to an award of attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and/or

G) That this Court grant any other relief it deems necessary and proper.

DATED: September 9, 2025
Long Beach, California

Respectfully submitted,

/s/ Andres Ortiz
Andres Ortiz, Esq.
Andres Ortiz Law
Attorney for the Petitioner

VERIFICATION

I, Andres Ortiz, hereby declare under penalty of perjury of the laws of the State of California and the United States that the facts alleged in the foregoing ***Ex-Parte Application for Temporary Restraining Order*** are to the best of my knowledge true and correct.

Executed on this 9th day of September, 2025 in Long Beach, CA.

By: *s/Andres Ortiz*
Andres Ortiz, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Ex-Parte Application for Temporary Restraining Order* in *Salim Esmail v. Noem et. al*, with the Clerk of the Court for the Central District of California by using the appellate CM/ECF September 9, 2025, for filing and transmittal of Notice of Electronic Filing

/s/ Andres Ortiz
Andres Ortiz, Esq.
Attorney for Petitioner