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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

**MOTION FOR PRELIMINARY
INJUNCTION**

Filed pursuant to [FRCP 65](#)

MOTION FOR PRELIMINARY INJUNCTION

On September 12, 2025, the Court partially granted the Petitioner, Salim Esmail's, (Mr. Esmail or the Petitioner) *ex parte* application for a temporary restraining order (TRO) as to his detention claim and denied the application as to the third-country removal claim. It set various filing deadlines in connection with the preliminary injunction hearing. The Petitioner, through undersigned counsel, submits this motion and memorandum of points and authorities in support of a preliminary injunction. The content is largely the same as the *ex-parte* application for the TRO; however, this motion and supporting memorandum of points and

1 authorities provide supplemental legal argument as to the standing concern as well
2 as updates since the Petitioner was released from custody.

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

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

27 After Mr. Esmail's immigration attorney, Douglas Jalaie (Mr. Jalaie) was
28 retained, Mr. Jalaie contacted SDDO Cordova. SDDO Cordova confirmed that

1 Mr. Esmail was not being detained because of a violation of the OSUP and there
2 was no travel document that had been processed for the Petitioner. Mr. Jalaie
3 urged ICE to release his client because of his serious medical conditions and the
4 need for the Petitioner to be close to his family. SDDO Cordova informed Mr.
5 Jalaie that none of those factors matter because of ICE Headquarters' policy to
6 not release any noncitizen once he is detained. It appears that both the written
7 documentation and the conversation Mr. Jalaie had with ICE, the agency does not
8 intent to comply with its statutory, regulatory, and constitutional obligations to
9 the noncitizens it supervises.

10 On September 12, 2025, the Court partially granted the Petitioner's TRO.
11 The Petitioner supplements his TRO filing with additional argument and updates
12 since his release.

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16
17 Date: 09/17/25

18 Respectfully submitted,

19 /s/ Andres Ortiz

20 Andres Ortiz, Esq.

21 Andres Ortiz Law

22 Attorney for the Petitioner
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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

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

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

14 4. On September 12, 2025, the Court partially granted the Petitioner's TRO.
15 The Petitioner fully agrees with the Court's TRO holding on the detention-related
16 ground. However, he seeks to provide an update to the detention-related matter
17 since the Petitioner was released. Since being released from custody, Mr. Esmail
18 was given several conditions of release that do not have any relation to the facts of
19 this case and others that do not provide specific instruction; so, he cannot
20 reasonably comply with the conditions. *See Exhibit 1-* Order of Supervision Issued
21 September 12, 2025. Given these conditions, there is certainly a fair inference that
22 these new conditions are retaliatory and not based an individualized review of the
23 noncitizen's file. The Court must order the Respondents to provide clear
24 instructions to the Petitioner, that is reasonably related to the facts of this case, so
25 he can continue compliance with the OSUP.

26 5. Second, the Petitioner seeks to further explain his position on the removal
27 without notice claim. In reading the Court's holding, Mr. Esmail will further
28 explain the contours of the Noem Memo that create standing. *See Exhibit 2-*Noem,

1 Kristi, Guidance Regarding Third Country Removals, DHS (Mar. 20, 2025).
2 Specifically, it is important to note there *are* conditions where the noncitizen will
3 be removed without notice or an opportunity to challenge the removal. Mr. Esmail
4 understands the Court’s concern about this claim satisfying the cases and
5 controversies clause. *See* Dckt. 8 at p. 15 (*citing to* Article III of the constitution).
6 However, ICE takes the position that it *will* remove a noncitizen without notice or
7 an opportunity to challenge removal if it receives “credible”, “diplomatic
8 assurances” that the noncitizen will not be tortured upon removal. *See* Noem
9 Memo at 1-2. *See also* *Nguyen v. Scott, et. al*, -- F.Supp.3d.--, 2025 WL 2419288,
10 * 18-20 (W.D. Wash. Aug. 21, 2025). Recently, five foreign nationals, natives of
11 Nigeria and Gambia respectively, were removed to Ghana without notice or an
12 opportunity to articulate a fear of being removed to Ghana. *See D.A., T.L., I.O.,*
13 *D.S., and K.S. v. Noem, et. al*, 1:25-cv-03135 (D.D.C. September 12, 2025)¹. The
14 Petitioner submits that he satisfies the cases and controversies clause because of
15 the unique nature of ICE’s overreach. The *only way* the Petitioner can ensure he
16 has access to a full measure of due process is to ask this Court to mandate he be
17 given notice and an opportunity to challenge the removal.

18 **II. JURISDICTION AND VENUE**

19 6. This Court has jurisdiction under 28 U.S.C. §§ 2241 et seq.; the Declaratory
20 Judgment Act, 28 U.S.C. §§ 2201 et seq.; the All Writs Act, 28 U.S.C. § 1651; and
21 the Fifth Amendment to the United States Constitution. At the time the original
22 petition was filed, this Court had jurisdiction because Mr. Esmail was detained in
23 Los Angeles, California within the territorial jurisdiction of the Court. *See* 28
24 U.S.C. § 82 (“[Los Angeles, California] constitutes one judicial district.”). Mr.
25 Esmail remains in the Central District of California even after his transfer to Eloy,
26 Arizona. *See* 28 U.S.C. § 82 (“Los Angeles, California constitutes one judicial

27
28 ¹ The petition was dismissed for lack of jurisdiction because the noncitizens were
removed before the court could issue the TRO. *See* Dckt. 41, *infra*.

1 district). Because the petition was filed when Mr. Esmail was detained at B18 in
2 Los Angeles, California, it remains the proper court for this petition. *See Johnson*
3 *v. Gill*, 883 F.3d 756, 761 (9th Cir. 2018) (explaining that, despite a transfer of
4 custody, “habeas jurisdiction was proper in the district court [where the petitioner
5 was originally detained] because Johnson filed his petition while incarcerated [in
6 that district]”). Mr. Esmail’s “subsequent transfer” to Eloy, Arizona, in the District
7 of Arizona, “does not destroy the jurisdiction established at the time of filing.” *Id.*
8 (citing *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990)).

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

21 8. The Petitioner is aware and appreciates the court’s concerns about Article III
22 standing. The Court partially denied the TRO because it held the Petitioner may
23 not have standing to bring the claim because harm is not imminent. *See* Dckt. 8 at
24 p. 15 (*citing to* Article III of the constitution). The Court points to the text of the
25 Noem Memo and the representations from SDDO Cordova to suggest that removal
26 without notice is not actual nor imminent. *Id.* at 17 (*citing Lujan v. Defs. of*
27 *Wildlife*, 504 U.S. 555, 560 (1992)). However, the Petitioner hopes that this matter
28 will be viewed through the guidance of *Melendres v. Arpaio*, 695 F.3d 990, 997–98

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1 (9th Cir. 2012). *Melendres* upheld the district court’s finding that the plaintiffs
2 have Article III standing even though there was not a “high” probability that a
3 specific Latino would be unlawfully stopped because of the defendant’s policies
4 and practice. *Id.* (citing *Mayfield v. United States*, 599 F.3d 964, 970–71 (9th Cir.
5 2010) (looking to the government’s policy and pattern of officially sanctioned
6 unlawful behavior to determine standing)). Finally, it agreed standing exists where
7 “the government ‘*ordered or authorized police officers*’ to enforce an
8 *unconstitutional policy*.” *Id.* (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95,
9 106 (1983)).

10 9. The Noem Memo has two tracks when deciding the level of due process it
11 will provide noncitizens who are removed to a third country. The Petitioner
12 believes that **both** tracks are unlawful and warrant Article III standing. This is
13 particularly true when the first track will provide *no notice or opportunity* to
14 challenge removal to a third country.

15 10. Under the first track, “[i]f the United States has received diplomatic
16 assurances from the country of removal that [noncitizens] removed from the
17 United States will not be persecuted or tortured, and if the Department of State
18 believes those assurances to be credible, the [noncitizen] *may be removed without*
19 *the need for further procedures*.” *Nguyen*, 2025 WL 2419288 at *8 (emphasis
20 added). To be clear, these further procedures are notice and an opportunity to
21 challenge removal through constitutional, statutory, and regulatory safeguards. *See*
22 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (“noncitizen must
23 be given sufficient notice of a country of deportation that, given his capacities and
24 circumstances, he would have a reasonable opportunity to raise and pursue his
25 claim for withholding of deportation.”).

26 11. Second, in all other cases, ICE will provide some notice, but not guarantee
27 access to a reasonable fear interview. *Nguyen*, 2025 WL 2419288, at *19 (citing
28 July 9, 2025 ICE Memo). ICE has confirmed this remains its protocol for

1 removing noncitizens to a third country. *Id.*; and *D.A., T.L., I.O., D.S., and K.S. v.*
2 *Noem, et. al*, 1:25-cv-03135, *5 (D.D.C. September 12, 2025) (Dckt. 41) (“Here,
3 Defendants transported Plaintiffs to Ghana with no notice or opportunity to
4 challenge that removal, under what appears to be a hasty and unwritten agreement
5 with Ghana, which has indicated its intention to return Plaintiffs to their home
6 countries where Defendants agree they will almost certainly be persecuted.”).

7 12. “Failing to notify individuals who are subject to deportation that they have
8 the right to apply . . . for withholding of deportation to the country to which they
9 will be deported violates both INS regulations and the constitutional right to due
10 process.” *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999). Several
11 districts have held that the Noem Memo is blatantly unconstitutional, yet ICE
12 continues the practice. *See Nguyen*, 2025 WL 2419288, at *19 (“This policy
13 contravenes Ninth Circuit law, as laid out above. *See Andriasian*, 180 F.3d at
14 1041”); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 387 (D.
15 Mass. 2025 (citing *Andriasian*, 180 F.3d at 1041); and *Delkash v. Noem*, 5:25-cv-
16 01756-HDV-AGR, *1-2 (C.D. Cal. July 14, 2025) (Dckt. 6) (quoting *A.A.R.P. v.*
17 *Trump*, 605 U.S. ---, 145 S. Ct. 1364, 1367 (2025) “no person shall be removed
18 from the United States without opportunity, at some time, to be heard.”).

19 13. Given the fact that the Petitioner is a noncitizen with a removal order, he is
20 subject to ICE’s unlawful policy, “[t]his memorandum clarifies DHS policy
21 regarding the removal of aliens with final orders of removal pursuant to sections
22 240, 241(a)(5), or 238(b) of the Immigration and Nationality Act (INA) to
23 countries other than those designated for removal in those removal orders (third
24 country removals).” *See Exhibit 2*. ICE recently issued updated guidance and
25 stated that it will continue to follow the Neom Memo. *See Exhibit 3*- July 9, 2025
26 ICE Memo. Given ICE’s conduct that may give no notice before the unlawful
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1 removal, it is impossible to predict the government's actions. The harm ICE seeks
2 to inflict on noncitizens without due process is not merely academic. Just two days
3 ago, the District Court for the District of Columbia was forced to dismiss a petition
4 for writ of habeas corpus because ICE executed its unlawful third country removal
5 policy before the court could issue a TRO- despite ICE's admission that the
6 Ghanian government will likely repatriate the noncitizens to their home countries
7 in violation of the law. *See D.A., T.L., I.O., D.S., and K.S. v. Noem, et. al*, 1:25-cv-
8 03135, *15 (D.D.C. September 12, 2025) (Dckt. 41) (“[The Court] is aware of the
9 dire consequences Plaintiffs face if they are repatriated. And it is alarmed and
10 dismayed by the circumstances under which these removals are being carried out,
11 especially in light of the government's cavalier acceptance of Plaintiffs' ultimate
12 transfer to countries where they face torture and persecution. But its hands are
13 tied.”).

14
15 14. Furthermore, as a practical matter this Court must consider the consequences
16 of *not* granting the TRO. As explained in *D.A., T.L., I.O., D.S.*, the petitioners
17 were subject to this plainly unconstitutional policy and the court was powerless to
18 prevent the harm inflicted upon these noncitizens by ICE because of the breakneck
19 speed at which ICE executed its unlawful policy. In other words, if the Court waits
20 for there to be standing, it may too, also be powerless to prevent ICE from
21 implementing its unlawful policy. Thus, *Melendres* and the unconstitutional
22 conduct exception in *Lyons* must be the rubric in which the Court assesses
23 standing.
24

25 15. Under *Melendres*, the petitioners were subject to an unlawful policy. 695
26 F.3d at 997–98. In these circumstances, the operable question is not whether there
27 is a “high” likelihood that the Petitioner will be subject to being unlawfully
28 detained. Rather, the Court must consider whether the noncitizen is subject to an

1 unlawful or unconstitutional policy. In this case, unquestionably, he is. Several
2 districts across the country have routinely agreed. *See Nguyen*, [2025 WL 2419288](#),
3 at *19; *D.A., T.L., I.O., D.S., and K.S. v. Noem, et. al*, 1:25-cv-03135, * 5 (D.D.C.
4 September 12, 2025) (Dckt. 41); *Delkash v. Noem*, 5:25-cv-01756-HDV-AGR, *1-
5 2 (C.D. Cal. July 14, 2025) (Dckt. 6); and *Nadari v. Bondi*, 2:25-cv-07893-JLS-
6 BFM, *5-6 (C.D. Cal. Sept. 3, 2025) (Dckt. 9) (dismissing ICE’s contention that
7 the third-country removal claim was “speculative” and, thus, necessarily, finding
8 jurisdiction to grant the TRO). Given the frequency of these claims, ICE’s uniform
9 stance, and instances where noncitizens have been removed with no warning, there
10 is little serious doubt that ICE has demonstrated a pattern of following an
11 unconstitutional policy. Thus, “standing exists where the [ICE] ‘*ordered or*
12 *authorized [its] officers to enforce an unconstitutional policy.*”

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

17 **III. FACTUAL BACKGROUND**

19 17. The Petitioner omits much of this section because it is duplicative of the
20 facts alleged in the TRO and ICE does not contest the facts alleged. On September
21 12, 2025, the Court partially granted the TRO. Specifically, it held that the Court
22 granted the unlawful detention claim but denied the third-country removal claim.
23 Since being released from custody, Mr. Esmail was given several conditions of
24 release that do not have any relation to the facts of this case and others that do not
25 provide specific instruction; so, he cannot reasonably comply with the conditions.
26 *See Exhibit 1-* Order of Supervision Issued September 12, 2025.

1 **IV. ANALYSIS**

2 18. A preliminary injunction or TRO is appropriate if a plaintiff can show
3 that: (1) he is “likely to succeed on the merits”; (2) he “is likely to suffer
4 irreparable harm in the absence of preliminary relief”; (3) “the balance of equities
5 tips in [his] favor”; and (4) “an injunction is in the public interest.” *Winter v. Nat.*
6 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit’s “sliding
7 scale” approach, a TRO or preliminary injunction is appropriate when, “a plaintiff
8 demonstrates . . . that serious questions going to the merits were raised and the
9 balance of hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild*
10 *Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation
11 omitted).

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

13 **1. Detention Claims**

14 **i. Original Claim**

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

22 20. As discussed in *Johnson v. Guzman Chavez*, there are two periods where the
23 noncitizen may be detained. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527-529
24 (2021). The first period occurs after the noncitizen is arrested *on suspicion of*
25 *being removable* and the noncitizen is not initially released from ICE custody. *Id.*
26 at 527. If the noncitizen is not issued a bond, the noncitizen may apply for a
27 custody redetermination (bond) before the immigration judge. *Id.* In that case, the
28

1 noncitizen is being held to pursuant to 8 U.S.C. § 1226(a).² *Id.* The Supreme Court
2 was clear that this section of the Act covers *only* pre-removal detention:

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

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

11 21. When a noncitizen is ordered removed, 8 U.S.C. § 1231(a) authorizes
12 detention in only two circumstances. “*During* the removal period,” the Attorney
13 General “shall” detain the alien. *See* 8 U.S.C. § 1231(a)(2) (emphasis added).
14 “[*B*]eyond the removal period,” the Attorney General “may” detain an alien who
15 falls within one of three categories specified by the statute [beyond the removal
16 period]. *See* § 1231(a)(6) (emphasis added).” *Johnson*, 594 U.S. at 528. If the
17 government releases the noncitizen during the 8 U.S.C. § 1231(a)(6) period, ICE
18 “shall [] subject [the noncitizen] to the terms of supervision.” In sum, the
19 government *shall* detain a noncitizen during the 90-day removal period 8 U.S.C. §
20 1231(a)(2) and it *may* continue to detain or it *may* release under a mandatory order
21 of supervision after the 90-day removal period. 8 U.S.C. § 1231(a)(6).

22 22. Thus, under the Immigration and Nationality Act (INA), immigration
23 authorities are authorized to detain noncitizens with a final order of removal but
24 the noncitizen’s removal is unlikely. *See* 8 U.S.C. § 1231(a)(6). However, ICE’s
25 ability to detain a noncitizen who cannot be removed is not unlimited. The Fifth
26 Amendment limits a noncitizen’s “post-removal-period detention to a period
27 _____
28

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

1 reasonably necessary to bring about that [noncitizen]’s removal from the United
2 States.” *Zadvydas*, 533 U.S. at 689 (2001). Because of this constitutional
3 limitation, § 1231 “does not permit indefinite detention.” *Id.*

4 23. The noncitizen’s right to remain on an OSUP is not unlimited. The
5 applicable regulations permit ICE to revoke the OSUP if there is a change in
6 circumstances because (1) the noncitizen violated a reasonable term of his
7 supervision or (2) DHS determined there is a *significant likelihood* the noncitizen
8 will be removed in the near future. *See* 8 C.F.R. § 241.13(i)(1), (2); *Ceesay v.*
9 *Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2025); *and Hoac v. Becerra*, No.
10 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025). *If*
11 ICE determines that one of these two conditions are met, it is allowed to re-detain
12 the noncitizen. *Id.* Upon re-detention, ICE must inform the noncitizen or the
13 reason(s) for detention and provide the noncitizen a *prompt* informal interview to
14 rebut the reasons for the revocation. *Ceesay*, 781 F. Supp. 3d at 162-63.
15 Moreover, because of the gravity of revoking supervision, only designated officials
16 can revoke an OSUP. *See* 8 C.F.R. § 241.4(1)(2) *and Ceesay*, 781 F. Supp. 3d at
17 159-62. In sum, before revoking supervision, the government must: (1) have an
18 appropriate official decide revocation is warranted; (2) inform the noncitizen of the
19 specific basis—either a violation of release conditions or a significant likelihood of
20 removal to a third country; and (3) afford the noncitizen a prompt chance to
21 present rebuttal evidence explaining why detention is unwarranted.

22 24. It is well-settled that the agency must follow its regulations. *See United*
23 *States v. Caceres*, 440 U.S. 741, 759 (1979) (“This Court has consistently
24 demanded governmental compliance with regulations designed to safeguard
25 individual interests even when the rules were not mandated by the Constitution or
26 federal statute.”) *and Morton v. Ruiz*, 415 U.S. 199, 235, (1974) (“Where the rights
27 of individuals are affected, it is incumbent upon agencies to follow their own
28 procedures.”). “An agency such as DHS can therefore be bound by its own

1 procedures when they (1) prescribe substantive rules-not interpretive rules, general
2 statements of policy or rules of agency organization, procedure or practice; and (2)
3 conform to certain procedural requirements.” *Jane Doe I v. Nielsen*, 357 F. Supp.
4 3d 972, 1000 (N.D. Cal. 2018).

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

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

23 27. Mr. Jalaie and the Petitioner question whether the unidentified SDDO had
24 the authority to revoke supervision because of an implicit and explicit reason.
25 According to the regulation and caselaw, a specific person revoking supervision
26 must have the authority to do so. *Ceesay* held the person is the field office director
27 or his equivalent. The unidentified SDDO may be a mid-level supervisor, but this
28 person is not a district director or equivalent. Thus, the very text of the regulation

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1 establishes the SDDO is unauthorized to revoke supervision. Next, practically
2 speaking, the person is unidentified. The court cannot evaluate the credentials of
3 the person revoking supervision, because that person is unidentified. For either or
4 both reasons, ICE has not approved the person who revoked supervision was
5 authorized to do so, “this Court cannot conclude that [SDDO] had the authority to
6 revoke release, finds that [Mr. Esmail’s] release was not lawfully revoked, and
7 holds that he is entitled to release on that basis alone.” *Ceesay*, 781 F. Supp. 3d at
8 162.

9 28. Second, Mr. Jalaie and the Petitioner believe that Notice of Revocation of
10 Release did not contain a valid reason to afford the noncitizen sufficient notice of
11 why he was being detained. In a similar case, “the petitioner received a Notice of
12 Revocation of Release, stating generically that officials had reviewed his ‘official
13 alien file’ and determined ‘there are changed circumstances in your case,’
14 including that he was ‘subject to an administratively final order of removal’ and
15 that DHS ‘determined the purpose of your release has been served and it is
16 appropriate to enforce the removal order.’” *Perez-Escobar v. Moniz*, No. 25-cv-
17 11781-PBS, 2025 WL 2084102 *1 (D. Mass. July 25, 2025). The court held this
18 generic language was insufficient under the regulation and to satisfy due process
19 because it failed to provide any specifics about *how the circumstances had been*
20 *changed*. *Id.* *2.

21 29. The OSUP signed by the unidentified SDDO contains a similar albeit worse
22 flaw. Here, the revocation indicates that the supervision is being revoked in
23 consultation with other entities. The letter also states that “[o]n August 1, 2025,
24 HIS [*sic*] Los Angeles received notification from HQ to proceed with [*sic*] custody
25 redetermination in your case.” These two conclusory sentences fall well-short of
26 notifying the Petitioner why he is being detained because it does not cite a valid
27 regulatory reason under 8 C.F.R. § 241.4(l) or 8 C.F.R. § 241.13(i)(1), (2).

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1 Additionally, the notice provides no facts to explain how circumstances changed or
2 what conduct justifies revocation of supervision.

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

12 31. Third, Mr. Esmail's revocation file is missing any proof that the "informal
13 interview" took place. *See* 8 C.F.R. § 241.13(i)(3). Moreover, because the
14 Petitioner was given an insufficient reason to revoke supervision, *assuming*
15 *arguendo*, he received some type of interview, he lacked the necessary notice to
16 enable him to meaningfully respond. *Perez-Escobar*, 2025 WL 2084102, at *2;
17 *and MANUEL DE JESUS DIAZ, Petitioner, v. MINGA WOFFORD Facility Adm'r*
18 *(Warden), Golden State Annex, et. al, Respondents.*, No. 1:25-CV-01079 JLT EPG,
19 2025 WL 2581575, at *9 (E.D. Cal. Sept. 5, 2025) (same). Here, unlike the
20 attachment to Mr. Jalaie's declaration, there is no "Alien Informal Interview Upon
21 Revocation of Order of Supervision Under 8 C.F.R. § 241.4(l); 8 C.F.R. §
22 241.13(i)" form in Mr. Esmail's file. Thus, ICE cannot contend it met its statutory
23 obligation to the Petitioner. Again, even if there is an interview form that is in the
24 file, which was not given to Mr. Esmail or Mr. Jalaie, it would be of little utility
25 because the Petitioner was not informed of the reasons his supervision was
26 revoked. Therefore, he lacks the information needed to rebut the reasons for his
27 detention. Finally, if SDDO Cordova is correct, an interview would be futile
28 because ICE's new policy would prohibit release no matter the reason. Thus, the

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petition should be granted for this reason as well. *Perez-Escobar*, 2025 WL 2084102, at *2.

32. 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 *Cesay* 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.

ii. Updates Since Release

33. The Court agreed with this analysis and the Petitioner wishes to supplement this argument with concerns about the conditions imposed in the most recent OSUP. As discussed in the Court’s memorandum, the government must follow its own regulations. *See* Dckt 8 p. 11 n11. Under the Administrative Procedures Act (APA), a court may hold “unlawful” any agency action that is “not in accordance with the law[,]” is “contrary to constitutional right” or “without observance of procedure required by law.” 5 U.S.C. § 706. Agency action must be set aside if it is “arbitrary [or] capricious,” including where the agency fails to consider important aspects of the problem or lacks a contemporaneous, reasoned explanation. *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43 (1983). “That task involves examining the reasons for agency decisions—or, as the case may be, the absence of such reasons.” *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (*citation omitted*).

34. In this context, when the Field Office Director is reviewing a noncitizen who is subject to prolonged detention’s file, he must consider the factors discussed in 8

1 C.F.R. § 241.4(f) to determine if the noncitizen is suitable for release. If the
2 Service determines that release is appropriate:

3 [I]t “*shall* impose such conditions or special conditions on release as
4 the Service considers appropriate *in an individual case* or cases
5 including but not limited to the conditions of release noted in 8 CFR
6 212.5(c) and § 241.5. An alien released under this section must abide
7 by the release *conditions specified by the Service in relation to his or*
8 *her release* or sponsorship.”

9 See 8 C.F.R. 241.4(j)(1) (emphasis added). Thus, the regulations require ICE to
10 assign conditions of release to the noncitizen that meet his individualized facts and
11 circumstances. *Id.*

12 35. In the matter at bar, when the Petitioner was released, he was assigned four
13 conditions of release that bear no relation the noncitizen’s file. Two of these
14 conditions bear no relation to his personal history and ICE has not explained why
15 they should apply now. The final two are unclear and thus, make it impossible for
16 Mr. Esmail to comply. In addressing the first set of conditions, the Petitioner is
17 now required to (1) register as a sex offender (if applicable) and (2) enter into a
18 sexual deviancy program and enter into a substance abuse program (mandatory).
19 The second set of conditions relate to cooperation in securing a travel document.
20 Specifically, the new conditions state that he must “provide ICE with written
21 copies of requests to Embassies or Consulates requesting the issuance of a travel
22 document” and that he “provide ICE with written responses from the Embassy or
23 Consulate regarding the request.” The first two conditions must be eliminated as
24 the government has provided no basis for adding the new terms and the final two
25 must be clarified. If these terms are not addressed and specifically tailored to the
26 Petitioner’s individualized facts, then the terms are arbitrary and capricious and
27 will inevitably lead to further unlawful detention, despite the Petitioner’s
28 willingness to comply with the terms of supervision

///

1 **1) Conditions Unrelated to the Petitioner's File**

2 36. A review of the notes from the previous supervisions, the parties' agreement
3 on the Petitioner's criminal history, and the reason for removal do not demonstrate
4 any facts or circumstances that indicate the noncitizen is a sexual deviant or that he
5 has a substance abuse problem. Nonetheless, ICE imposed conditions on his
6 release that require him to enter into a sexual deviance program and substance
7 abuse program. See Exhibit 1. Given a lack of facts in the file, it begs the question
8 *why* these conditions are required now. Inconsistent with 8 C.F.R. § 241(j)(1), ICE
9 has not provided any rationale for adding these conditions. Because the agency
10 has not provided any reason or rationale for this change, the Court must examine
11 the *absence* of reasons for its decision. See *Judulang*, 565 U.S. at 53. Here, the
12 new OSUP provided no explanation as to why the new conditions were added.
13 Without a further explanation, ICE cannot articulate why registration is necessary
14 *in this case* to further its regulatory goals. Given the fact that these conditions are
15 stigmatizing, particularly in light of no evidence of their necessity, and the timing
16 of these new conditions, it raises a fair inference that these new conditions are
17 retaliation for filing the habeas petition. Consequently, a new OSUP must be given
18 to the Petitioner that reflects an individual determination based on the
19 individualized factors in this case.

20 **2) Assistance with Securing a Travel Document**

21 37. To be clear, the Petitioner understands that a person on an OSUP must make
22 a good faith effort to assist in securing a travel document. However, the two
23 conditions are written without sufficient specificity to put Mr. Esmail on notice of
24 his responsibilities under the new OSUP. Specifically, the first condition requires
25 the Petitioner to must "provide ICE with written copies of requests to Embassies or
26 Consulates requesting the issuance of a travel document." And the second requires
27 him to "provide ICE with written responses from the Embassy or Consulate
28 regarding the request." Neither of these requirements provide the Petitioner with

1 *any* guidance about *which* consulates or embassies he should be contacting. This
2 lack of instruction puts the Petitioner in an untenable position. Is he required to
3 make an application for a travel document with the Tanzanian consulate, which is
4 barred by law? The Iranian Consulate? Any other recalcitrant consulate? Or is he
5 to make an application with every consulate on earth? The lack of guidance
6 prevents the Petitioner from complying with ICE's OSUP conditions and he must
7 be given clear instructions, so he can continue obeying the conditions set by ICE.

8 **2. Third Country Removal Claim**

9 38. Having established Article III standing, the Petitioner also seeks temporary
10 relief from removal to a third country without ensuring a measure of due process.
11 ICE has recently taken the position that it may not provide any individualized
12 notice to the Petitioner or an opportunity to respond before he is removed to a third
13 country. *See* [Exhibit 2](#). Specifically, ICE has taken the position that it does not need
14 to provide *any notice* to the noncitizen if ICE and the State Department believe a
15 third country's assurances that the noncitizen will not be tortured. *Id.* 1-2.
16 Alternatively, if ICE or the State Department does not believe the assurances that the
17 noncitizen will not be tortured, they will inform, *but not guarantee* an opportunity to
18 seek an individualized fear review.

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

26
27 40. When addressing the blanket assurances, they blatantly violate the applicable
28 regulations, "[t]he Secretary of State may forward to the Attorney General assurances

1 that the Secretary has obtained from the government of a specific country that *an*
2 alien would not be tortured there if *the* alien were removed to that country.” *See* 8
3 C.F.R. § 1208.18(c)(1) (emphases added). It is also doubtful that these blanket
4 assurances would cover non-state actors. Thus, it is possible that despite the
5 “assurances” from the foreign government that the noncitizen will not be tortured,
6 these assurances may do nothing to protect against non-state actors. *See e.g. Cole v.*
7 *Holder*, 659 F.3d 762, 771 (9th Cir. 2011) (“Acquiescence by government officials
8 requires only that they were aware of the torture but remained willfully blind to it, or
9 simply stood by because of their inability or unwillingness to oppose it.” (quotation
10 marks and citations omitted)). Similarly, there is no guarantee that the noncitizen
11 will be screened for his/her fear of return to a third country. There is no straight-
12 faced argument this conduct complies with due process and thus, there is a likelihood
13 of success on the merits for this cause of action as well.

15 41. It is important to note that the Petitioner’s request is in line with several courts,
16 including courts in this jurisdiction, all of them have found the memo
17 unconstitutional. *See e.g. Nguyen*, 2025 WL 2419288; *Delkash v. Noem*, 5:25-cv-
18 01756-HDV-AGR, *1-2 (C.D. Cal. July 14, 2025) (Dckt. 6); and *Nadari v. Bondi*,
19 2:25-cv-07893-JLS-BFM, *5-6 (C.D. Cal. Sept. 3, 2025) (Dckt. 9). ICE has and
20 will continue to implement a policy where the noncitizen will be given no notice or
21 opportunity to challenge removal, if ICE, in its sole, unfettered discretion
22 determines the conditions are right. Given ICE’s blatantly unconstitutional
23 practice, the Petitioner is likely to win on the merits of his claim. *See Nadari v.*
24 *Bondi*, 2:25-cv-07893-JLS-BFM, *5-6 (C.D. Cal. Sept. 3, 2025) (Dckt. 9).

26 ///

27 ///

28
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B. The Petitioner Will Face Irreparable Harm

42. 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).

43. 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

i. Previous Argument

44. 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.

45. 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

1 approximately six “mental breakdowns” over his life and many of those episodes
2 have required his hospitalization. Both the Petitioner and his brother have outlined
3 how difficult it has been to prevent these episodes. But the Petitioner has shown a
4 willingness to follow the treatment plans provided to him to prevent further mental
5 health issues. With the help of an experimental injection therapy called Invega
6 Sustaina, the Petitioner has not had an episode in four years. There is no guarantee
7 Mr. Esmail will have access to the medical treatment that has been instrumental in
8 curbing his episodes over the past four years.

9
10 46. Unfortunately, because the Petitioner is detained 400 miles from his family,
11 there is no guarantee that he will receive the medical care he needs. Moreover, the
12 distance from his family will create a further strain. Dr. Esmail notes that his
13 brother does well before he was detained because he was around his family, an
14 important support network, and it helped to stabilize him. Without access to his
15 family and adequate medical treatment, the Petitioner will surely suffer an
16 irreparable harm in addition to the harm stemming from the constitutional
17 violation.

18 **ii. New Developments Since Leaving Detention**

19
20 47. The new OSUP conditions are unsupported by the Petitioner’s record. ICE
21 has not identified that he has a substance abuse problem nor has it determined that
22 Mr. Esmail is a sexual deviant. Nevertheless, ICE is requiring Mr. Esmail to
23 “register in a sexual deviancy counseling program within 14 days and provide ICE
24 with written proof of such within 30 days. You must provide ICE the name of the
25 program, the address of the program, the duration, and objectives of the program as
26 well as the name of a [*sic*] counselor.” See Exhibit 1. There is no evidence that
27 this is necessary. And surely, enrolling in a sexual deviancy program is
28 stigmatizing, it is even more stigmatizing to someone with his own mental health

1 issues. Likewise, Dr. Esmail noted that his brother was compliant with his
2 treatment plan and there is no evidence of a history of substance abuse. Thus, it is
3 questionable how these stigmatizing requirements are furthering any legitimate
4 objective.

5 48. Similarly, the amorphous requirements to assist with securing a travel
6 document appear to only be setting Mr. Esmail up for failure. He has not been
7 given any instruction as to which consulates he must contact or the timeframe he is
8 required to do so. Failing to give adequate instructions will provide ICE the
9 opportunity to revoke the newest OSUP without good cause. This will result in
10 continued irreparable harm for the reasons articulated in the previous section.
11

12 **2. Mr. Esmail will suffer irreparable harm if removed without due process**

13 49. In addition to the constitutional harm Mr. Esmail would face by not being
14 informed of where he is being removed, he will also face an additional irreparable
15 harm. “Here, the threatened harm is clear and simple: persecution, torture, and
16 death. It is hard to imagine harm more irreparable.” *D.V.D. v. U.S. Dep’t. of*
17 *Homeland Security*, 1:25-cv-10676-BEM *44 (D. Mass., April 24, 2025) (Dckt.
18 64).
19

20 **C. The Final Two Factors Favor the Petitioner**

21 50. In considering the last two factors—balancing the parties’ equities and
22 determination of whether injunctive relief is in the public interest—the Supreme
23 Court has found that these factors merge in immigration cases because
24 Respondents are both the opposing litigants and the public interest representatives.
25 *Nken v. Holder*, 556 U.S. 418, 435 (2009). In cases implicating removal, “there is
26 a public interest in preventing aliens from being wrongfully removed, particularly
27 to countries where they are likely to face substantial harm.” *Id.* at 436. Though
28

1 these interests must be weighed against the public’s “interest in prompt execution
2 of removal orders.” *Id.*

3 51. Further, “the Plaintiff[‘s] likelihood of success on the merits lightens
4 [Defendants’] stated interests.” *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 734
5 (D.C. Cir. 2022). The Supreme Court has confirmed that “our system does not
6 permit agencies to act unlawfully even in pursuit of desirable ends.” *Alabama*
7 *Ass’n of Realtors v. HHS*, 594 U.S. 758, 766 (2021). Like the previous section,
8 these two factors have a slightly different analysis for each factor.
9

10 **1. Unlawful detention**

11 52. When considering the government’s interest in detaining Mr. Esmail without
12 and process, the balance of equities and the public’s interest in the lawful
13 administration of immigration laws is significant. However, “[i]f the government
14 is allowed to eschew these processes, it cannot guarantee the accuracy of the
15 outcome. *Delkash v. Neom*, 5:25-cv-01675-HDV-AGR, * 10 (C.D. Cal. Aug. 28,
16 2025) (Dckt. 18) (*citing Ceesay*, 2025 WL 1284720, at *1, 12 (“Procedure is not
17 mere puffery, a gesture that is irrelevant so long as the result is correct.” “After all,
18 without due process, there is no way to tell whether the result is in fact correct.”).
19 Because the government’s re-detention of Mr. Esmail is illegal under controlling
20 regulatory and constitutional authority, it “cannot reasonably assert that it is
21 harmed in any legally cognizable sense by being enjoined from [statutory and]
22 constitutional violations.” *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).
23 Likewise, it is in the public interest to prevent the further deprivation of Mr.
24 Esmail liberty in violation of due process of law because the incorrect application
25 of controlling law can never be in the public interest. The public has an interest in
26 upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th
27 Cir. 2005) (“Generally, public interest concerns are implicated when a
28

1 constitutional right has been violated, because all citizens have a stake in
2 upholding the Constitution.”). Moreover, the public has an interest in accurate
3 determinations in all legal proceedings, including the decision of whether to detain
4 individuals who are on an order of supervision. The public is also served by
5 avoiding excessive expense on detention and ensuring that the government does
6 not expend its resources to detain individuals unnecessarily.

7 8 **2. Third Country Removal**

9 53. When considering whether the balance of equities tips in the Petitioner’s
10 favor and it is in the public’s interest to prevent a removal without due process.
11 *D.V.D.* found “it likely that these deportations have or will be wrongfully executed
12 and that there has at least been no opportunity for Plaintiffs to demonstrate the
13 substantial harms they might face.” *D.V.D. v. U.S. Dep’t. of Homeland Security*,
14 1:25-cv-10676-BEM *45. Finally, “[a] plaintiff’s likelihood of success on the merits
15 of a constitutional claim also tips the merged third and fourth factors decisively in
16 his favor.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023). This is because
17 “it is always in the public interest to prevent the violation of a party’s
18 constitutional rights” and “[t]he government [] cannot reasonably assert that it is
19 harmed in any legally cognizable sense by being enjoined from constitutional
20 violations.” *Id.* (quotation and citations omitted) *as cited in Nadari v. Bondi*, 2:25-
21 cv-07893-JLS-BFM, *6-7 (C.D. Cal. Sept. 3, 2025) (Dckt. 9). And for these
22 reasons, the final two factors supported the Petitioners’ stance.

23 **V. CONCLUSION**

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

MOTION FOR PRELIMINARY INJUNCTION

- 1
- 2 A) That Mr. Esmail's re-detention violated the Fifth Amendment to the
- 3 Constitution, the INA, and its applicable regulations;
- 4 B) That a preliminary injunction is necessary to ensure that Respondents do not
- 5 continue to violate Esmail's constitutional rights;
- 6 C) That Mr. Esmail be released unless and until he receives adequate notice and
- 7 a hearing to determine the legality of his re-detention;
- 8 D) That the Noem Memo is unlawful as it contravenes the Due Process Clause
- 9 of the Constitution, the Immigration and Nationality Act, and its
- 10 implementing regulations;
- 11
- 12 E) That, ICE is enjoined from removing the Petitioner to a third country without
- 13 first giving him an individualized opportunity to challenge removal through
- 14 a reasonable fear interview;
- 15 F) That, under the particular circumstances of this case, it is proper to waive the
- 16 requirement that Mr. Esmail give an amount of security in connection with
- 17 the issuance of an injunctive order;
- 18 G) That Mr. Esmail is entitled to an award of attorney's fees under the Equal
- 19 Access to Justice Act (EAJA), 28 U.S.C. § 2412; and/or
- 20 H) That this Court grant any other relief it deems necessary and proper.
- 21
- 22

23 DATED: September 12, 2025
24 Long Beach, California

25 Respectfully submitted,

26 /s/ Andres Ortiz

27 Andres Ortiz, Esq.

28 Andres Ortiz Law

Attorney for the Petitioner

MOTION FOR PRELIMINARY INJUNCTION

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 ***MOTION FOR PRELIMINARY INJUNCTION*** are to the best of my knowledge true and correct.

Executed on this 12th 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 *MOTION FOR PRELIMINARY INJUNCTION* 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 12, 2025, for filing and transmittal of Notice of Electronic Filing

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