IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

MURAD LADAK

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No.

PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Petitioner, Murad Ladak, by and through undersigned counsel, files this emergency motion for a Temporary Restraining Order ("TRO") and/or a Preliminary Injunction. Mr. Ladak, a citizen of Pakistan, seeks an immediate order compelling Respondents to release him from the custody of U.S. Immigration and Customs Enforcement ("ICE"). Mr. Ladak asks this Court to order Respondents to respond within 24 hours and set this matter for an evidentiary hearing.

INTRODUCTION

Petitioner Ladak faces immediate irreparable harm absent this Court's intervention. Even though he has been on an order of supervision ("OSUP") for 15 years, he is now experiencing unlawful prolonged immigration detention and faces a real and imminent threat of removal to a third country in violation of his statutory and constitutional rights. He respectfully asks this Court to order his release, enjoin Respondents from removing him to a third country without affording him his statutory and constitutional rights in re-opened removal proceedings, and enjoin Respondent from removing him to a third country for a punitive purpose and effect.

STATEMENT OF FACTS

Mr. Ladak is a 39-year-old devoted husband to a Lawful Permanent Resident, a loving father to a nine-month-old U.S. citizen child and three stepchildren under 18 years old, and a respected, hardworking member of his community. He has lived in the United States since he was a young child, when he and his family immigrated from Pakistan. For the past 15 years, Mr. Ladak has lived a quiet, law-abiding life under an OSUP. He has never violated his OSUP.

Mr. Ladak's only criminal history is a state charge of credit card abuse from 2006. As a result of this conviction, he was detained by ICE and placed in removal proceedings in 2008. On February 10, 2009, Mr. Ladak has granted voluntary departure under safeguards from an immigration judge ("IJ"). The voluntary departure order was converted to a removal order after Pakistan denied travel documents, and the voluntary departure period expired. No country other than Pakistan was designated for removal by the IJ. Once the removal order became final and then 90-day period ended on September 8, 2009, Mr. Ladak remained in ICE custody for an additional 18 months. Because ICE was unable to obtain the necessary travel documents from Pakistan to facilitate his removal, Mr. Ladak was placed on an OSUP. He has wholly complied with all terms of the OSUP for 15 years.

Mr. Ladak has never tried to evade removal to his home country. In fact, in May of 2018, Mr. Ladak attempted to obtain travel documents on his own by traveling to the Embassy of Pakistan located in Houston, Texas. He applied for a Pakistani passport, but the Embassy deemed his Pakistani birth certificate insufficient proof of his Pakistan citizenship. He does not possess any other documents to show his status as a citizen of Pakistan.

On September 8, 2025, Mr. Ladak reported to ICE for his annual OSUP compliance check-in. Despite his compliance, when he arrived at ICE he was taken into custody by a Deportation Officer ("DO") who informed him that ICE intended to remove him to El Salvador, a country he has zero connection to. Meanwhile, Respondents have not identified any violation of his supervision, or any change in circumstances that would suddenly make his removal to Pakistan reasonably foreseeable. Mr. Ladak remains in custody at the Bluebonnet Detention Center.

LEGAL STANDARD

The purpose of a TRO is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief.[1] To obtain a TRO, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable harm; (3) the threatened injury outweighs any harm the order might cause the defendant; and (4) the injunction will not disserve the public interest.[2]

I. Mr. Ladak Is Likely to Succeed on the Merits of his Claims.

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[1] *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

[2] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

A. Mr. Ladak Is Likely to Succeed on the Merits of His Claim that His Re-Detention is Unconstitutional and Unlawful.

Mr. Ladak is likely to succeed on the merits of his claim that his re-detention violates the Due Process Clause, 8 U.S.C. § 1231(a) and governing regulations.

i. His Detention Violates Due Process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.[3] To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Matthews*, courts weight the following factors:

> (1) the private interest that will be affected by the official action;
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> (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
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> (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[4]

Mr. Ladak addresses the *Matthews* factors in turn.

Private interest. It is undisputed Mr. Ladak has a significant private interest in being free from detention. "The interest in being free from physical detention" is "the most elemental of liberty interests."[5] Moreover, when assessing the private interest, courts

[3] *Demore v. Kim*, 538 U.S. 510, 523 (2003).

[4] *Matthews*, 424 U.S. at 335.

[5] *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

consider the detainee's conditions of confinement, namely, "whether a detainee is held in conditions indistinguishable from criminal incarceration."[6]

Mr. Ladak has been held in ICE detention since September 8, 2025. This re-detention comes after being held in ICE custody for almost two years beginning in 2008. As in *Günaydin*, "he is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement."[7] The first *Matthews* factor supports Mr. Ladak's claim of a Fifth Amendment violation.

Risk of erroneous deprivation. Under this factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks."[8] ICE's re-detention of Mr. Ladak is the only reason that he is currently being detained. If Mr. Ladak is released from custody, ICE has alternatives, too. ICE officials can continue to pursue obtaining travel documents from Pakistan to formally remove him from the country—Mr. Ladak does not need to be in custody for this to happen. This *Matthews* factor weighs in favor of Mr. Ladak, too.

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[6] *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

[7] *Id.*

[8] *Id.* at *8.

Respondents' competing interests. Under this factor, the court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents' interests.[9] Mr. Ladak does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. But he does not need to be detained while ICE works out whether he can be removed. Mr. Ladak does not present a danger to society as evidenced by his over 15 years on OSUP with no issues. Keeping him detained is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither a flight risk nor dangerous. This final factors also weighs in favor of Mr. Ladak.

Because all three *Matthews* factors favor Mr. Ladak's position, this Court should determine that Mr. Ladak is likely to succeed in demonstrating that his re-detention contravenes his due process rights under the Fifth Amendment.[10]

ii. His Detention Violates Governing Regulations.

The INA provides that after a removal order becomes final, the government "shall remove the alien from the [U.S.] within a period of 90 days."[11] This 90-day period is often referred to as the initial removal period and during it, the government "shall detain the alien."[12] In some circumstances, federal immigration authorities can continue to detain an

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[9] *Matthews*, 424 U.S. at 335.

[10] *See Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

[11] 8 U.S.C. § 1231(a)(1)(A).

[12] *Id.* at § 1231(a)(2).

alien beyond the initial removal period. Specifically, section 1231(a)(6) allows the government to detain certain enumerated classes of immigrants—including those ordered removed due to criminal convictions—for more than 90 days.[13]

The Supreme Court, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), rejected the government's position that § 1231(a)(6) permitted indefinite detention following the initial removal period. It held that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem" because it would become punitive.[14] "[G]overnment detention violates [the Fifth Amendment's Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections."[15] The Court held that § 1231(a)(6) "implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal."[16] Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by [§ 1231(a)(6)]."[17] "[F]or the sake of uniform administration in the federal courts," the Court found that post-removal detention was "presumptively reasonable" for the first six months.[18] After that "presumptively reasonable" six-month period ends, once the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably

[13] *Id.* at § 1231(a)(6).

[14] *Zadvydas*, 533 U.S. at 690.

[15] *Id.*

[16] *Id.* at 679.

[17] *Id.* at 699.

[18] *Id.* at 700-01.

foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."[19]

Upon release from custody, a noncitizen subject to a final order of removal must comply with certain conditions of release.[20] The revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with any of the conditions of release,[21] or if, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future."[22]

Upon such a determination by ICE to re-detain, "the alien will be notified of the reasons for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she [will] be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation

[19] *Id.* at 701.

[20] 8 U.S.C. § 1231(a)(3), (6).

[21] 8 C.F.R. § 241.13(i)(1).

[22] *Id.* at § 241.13(i)(2).

of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release."[23]

ICE's decision to re-detain is governed by the factors laid out in 8 C.F.R. § 241.13(f), including "the history of the [noncitizen's] efforts to comply with the order of removal, the history of [ICE's] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question."[24]

Mr. Ladak's re-detention violates these regulations for a litany of reasons.

First, Mr. Ladak's removal to Pakistan is not reasonably foreseeable. Respondents had not requested a travel document from Pakistan before they detained Petitioner. "Respondents intent to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future" or constitute a changed circumstance.[25] Indeed, Mr. Ladak has attempted to obtain travel documents on his own and been unsuccessful.

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[23] *Id.* at § 241.13(i)(3).

[24] *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *see also Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025).

[25] *Phan*, 2025 WL 1993735, *5; *see Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025).

Moreover, the government's unsuccessful efforts in the past to remove Petitioner, which deprived him almost two years of his liberty in immigration detention, make Respondents re-detention of him now, without any likely prospect of removal to Pakistan, even more unreasonable.[26] Moreover, 15 years have gone by since Petitioner was ordered removed, diminishing the prospect of removal even further.[27]

Second, Petitioner can show that Respondents did not comply with the procedural requirements of 8 C.F.R. § 241.13(i) in revoking his release. ICE is required to follow its own regulations.[28] "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."[29]

As discussed, no "changed circumstances" make it significantly likely that Petitioner will be removed in the foreseeable future.[30] ICE did not notify Petitioner of the "reasons for revocation of his [] release," conduct "an initial informal interview promptly after his. . . return to [ICE] custody to afford [him] an opportunity to respond to the reasons for revocation stated in the notification," allow Petitioner to "submit any evidence or

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[26] *See Zadvydas*, 533 U.S. at 701 ("as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink").

[27] *See, e.g., Tadros v. Noem*, No. 25-cv-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) ("Tadros has demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing. . . his removal.").

[28] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established.").

[29] *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

[30] 8 C.F.R. § 241.13(i)(2).

information that he or she believes shows there is no significant likelihood he or she [will] be removed in the reasonably foreseeable future," or provide a written "revocation custody review."[31] Moreover, ICE did not consider the factors in § 241.13(f) that govern the decision to re-detain.

Accordingly, Petitioner is likely to succeed on his claim that his re-detention was unlawful.[32]

B. Petitioner Is Likely to Succeed on the Merits of His Claim That He Is Entitled to Legally Required Procedures Prior to Any Nonpunitive Third Country Removal.

Mr. Ladak is likely to succeed on the merits of his claim that he may not be removed to a third country absent Respondents following the legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required by due process.

In Mr. Ladak's case, no country other than Pakistan meets the criteria for removal under 8 U.S.C. § 1231(b)(2)(A)-(E). Moreover, to remove Petitioner to a third country, the statute requires that the Attorney General—here, an IJ—first determine that it is "impracticable, inadvisable, or impossible" to remove Petitioner to Pakistan and that the designated third country "will accept [Petitioner] into that country."[33] It is the

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[31] *Id.* at § 241.13(i)(3); *see also Phan*, 2025 WL 1993735, at *3.

[32] *See Phan*, 2025 WL 1993735; *Hoac*, 2025 WL 1993771; *Nguyen v. Hyde*, 2025 WL 1725791.

[33] 8 U.S.C. § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii) "indisputably requires the Attorney General to prove that the proposed country of removal is willing to accept the alien"); *see also Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 344 (2005).

IJ, not DHS, that the statute authorizes to designate a third country for removal.[34] Here, to remove Petitioner to a third country would require Respondents to move to reopen Petitioner's 15-year-old removal proceedings to ask an IJ to designate a third country under the statutory process.[35]

Adherence to that process also ensures Petitioner's statutory right to claim protection in immigration court against removal to a third country where he may be persecuted or tortured, a form of protection known as withholding of removal,[36] as well as his right to claim deferral of removal under the Convention Against Torture ("CAT").[37]

Of course, the statutory framework is entirely meaningless without meaningful notice of a third country removal and an opportunity to respond that comports with Fifth Amendment due process.[38] Notice cannot be "last minute" because that would deprive an individual of a meaningful opportunity to apply for fear-based protection from removal.[39]

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[34] 8 U.S.C. § 1231(b)(2)(E)(vii) ("the Attorney General shall remove the alien to. . ."); see also 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge "shall. . .identify for the record a country, or countries in the alternative, to which the alien's removal may be made").

[35] *See, e.g., Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be designated, "the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from" the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings "shall be reopened and a hearing shall be held before the immigration judge so that petitioner may apply for relief from removal" as to a country not designated in prior proceedings).

[36] 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16.

[37] *See* 28 C.F.R. § 200.1 ("A removal order . . . shall not be executed in circumstances that would violate [the CAT]"); 8 C.F.R. §§ 208.17-18; 1208.17-18.

[38] *See D.V.D.*, 145 S. Ct. at 2163 (Sotomayor, J., dissenting) ("[t]he Fifth Amendment unambiguously guarantees that right" to notice of a third country removal so that a noncitizen "learn[s] about it in time to seek an immigration judge's review").

[39] Andriasian v. INS, 180 F.3d 1033, 1041 (9th Cir. 1999).

Individuals must have time to prepare and present relevant arguments and evidence and to seek reopening of their removal case. "[W]ritten notice of the country being designated" is required and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)" must be specified.[40]

Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]."[41]

Respondents' third country removal program skips over these statutory and constitutional procedural protections. According to ICE's July 7 guidance, individuals can be removed to third countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic assurances." Petitioner is likely to succeed on the merits of his claim on this fact alone, because the policy instructs officers to violate the statutory and constitutional requirements. The same is true of the minimal procedures ICE offers when no diplomatic assurances are present. The policy provides no meaningful notice (6-24

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[40] *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) ("All removals to third countries, i.e., removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand." (internal citation omitted)); *Andriasian*, 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed).

[41] *Aden*, 409 F. Supp. 3d at 1019.

hours), instructs officers not to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based claim (6 to 24 hours), let alone reopen removal proceedings. In sum, it directs ICE officers to violate the rights of those whom they seek to subject to the third country removal program.

This is no hypothetical—the DO informed Mr. Ladak that he would be removed to El Salvador upon his arrival to ICE custody earlier this month. He has no connections to El Salvador and is terrified at the prospect of being removed to a country that he has never been to and is notoriously dangerous. Several courts have recently granted individual TROs against removal to third countries under similar circumstances.[42]

C. Petitioner Is Likely to Succeed on the Merits of His Claim That the Constitution Prohibits Punitive Third Country Removals.

Mr. Ladak is likely to succeed on the merits of his claim that the Constitution prohibits him from being subjected to Respondents' punitive third country removal program. The prohibition against imposing punitive measures on an individual subject to a final order of removal is as old as immigration law.[43] In *Wong Wing*, the Supreme Court struck down a provision of the Chinese Exclusion Act that imposed one year of imprisonment at hard labor as an immigration sanction before their deportation.[44] The

[42] *See generally J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to "Cuba, Libya, or any third country in the world absent prior approval from this Court"); *Phan*, 2025 WL 1993735, at *7 (enjoining Respondents from "re-detaining or removing Petitioner to a third country without notice and an opportunity to be heard"); *Hoac*, 2025 WL 1993771, at *7 (same); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

[43] *Wong Win v. United States*, 163 U.S. 228 (1896).

[44] *Id.* at 237.

Court drew a distinction between "deportation," which it described as a sanction for failure to comply with the legal requirements of residency in the U.S. that may be imposed by executive authorities, and "punishment," which may not.[45] The Court held that the government could not attach a punishment to deportation—here, imprisonment—without criminal charges, a judicial trial, and the concomitant protections of the Fifth, Sixth and Eighth Amendments.[46]

The government's third country removal program defies 130 years of constitutional immigration law between civil penalty and infamous punishment.[47] Respondents' third country removal program is designed to punish those it deports by subjecting them to imprisonment upon their arrival in the receiving countries. Respondents' program is not simply about removing individuals to third countries. It is about removing them to be imprisoned upon arrival and paying countries to carry out said imprisonment; selecting countries and overseas prisons (like CECOT and Guantanamo) notorious for cruelty, torture, lawlessness, and other human rights abuses; and broadcasting these third country removals across public media platforms to demonize the deportees and strike extreme fear in the immigrant community that people self-deport. This program is about punitive banishment.

[45] *Id.* at 236-37.

[46] *Id.*

[47] See, e.g., Zadvydas, 533 U.S. at 694.

To determine whether a given sanction constitutes punishment, courts look to intent. If the government's intent is to punish, "that is the end of the inquiry."[48] Here, the government's own statements show intent to deport individuals, particularly those with criminal convictions, into situations of forever confinement or substantial harm.

When the government's intent to punish is unclear, courts move to the second step of the inquiry to determine whether the practices are "so punitive either in purpose or effect as to negate the [government's] intention to deem it civil."[49] To determine punitive purpose or effect, courts often turn to the factors laid out in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963).[50] Those factors are: "[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned."[51]

Under these factors, the government's third country removal program undeniably constitutes punishment, as each factor is met. For example, under the first factor, the

[48] *Am. Civ. Liberties Union of Nevada v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92 (2003)).

[49] *Id.* (quoting *Smith*, 538 U.S. at 92).

[50] *See also Hudson v. United States*, 522 U.S. 93, 99 (1997) ("the factors listed in *Kennedy v. Mendoza-Martinez* [] provide useful guideposts.").

[51] *Mendoza-Martinez*, 372 U.S. at 168-69 (footnotes omitted).

government's practices of deporting people only to have them imprisoned or subjected to other forms of physical harm, is an "affirmative disability or restraint." The "paradigmatic affirmative disability" is the "punishment of imprisonment."[52] Moreover, under this factor, "we inquire how the effects of the [sanction] are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be punitive."[53] There can be no question that being deported to a country to be imprisoned or experience other extreme harm will be felt as a significant and direct disability or restraint.

The second factor is also satisfied. "[D]evices of banishment and exile have throughout history been used as punishment."[54] In 1791, the year the Bill of Rights was ratified, deportation was exclusively used and understood as punishment.[55] Banishment as a form of punishment dates to ancient times and was used on citizens and noncitizens alike.[56]

The fourth factor, whether it promotes the traditional aims of punishment—retribution and deterrence, is also satisfied. The government's own statements make clear that its goals are retribution and deterrence to encourage people to leave the country on

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[52] *Smith*, 538 U.S. at 100.

[53] *Id.* at 99-100.

[54] *Mendoza-Martinez*, 372 U.S. at 168 n.23.

[55] *Fong Yue Ting v. U.S.*, 149 U.S. 698, 740-41 (1893) (Brewer, J. dissenting) (citing President James Madison); *see id.* at 740 ("[I]t needs no citation of authorities to support the proposition that deportation is punishment. Every one knows that to be forcibly taken away from home and family and friends and business and property, and sent across the ocean to a distant land, is punishment, and that oftentimes most severe and cruel.").

[56] Peter L. Markowitz, Deportation is Different, 13 U. Pa. J. Const. L. 1299, 1308-09 (2011) (tracing the use of banishment from medieval England through colonial America).

their own. As DHS Secretary Kristi Noem stated, "President Trump and I have a clear message to criminal illegal aliens: LEAVE NOW. If you do not leave, we will hunt you down, arrest you, and you could end up in this El Salvadorian prison." The Supreme Court has made clear that such "general deterrence" justifications are impermissible absent criminal process.[57]

The program satisfies the third, fifth, sixth and seventh factors too because Respondents have designed this program specifically for those being deported for criminal convictions, there is no logical nonpunitive rationale for deporting people into dangerous conditions of imprisonment or other harm, and the program is designed to be patently excessive in relation to the purpose of simply removing people from the country.

II. Mr. Ladak Faces Immediate and Irreparable Harm.

A movant "must show a real and immediate threat of future or continuing injury apart from any past injury."[58] Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that "[f]reedom from imprisonment . . . lies at the heart of the liberty" protected by the Due Process Clause.[59] Each day Mr. Ladak remains in custody, he is irreparably harmed by the loss of his fundamental liberty, his

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[57] *See Kansas v. Crane*, 534 U.S. 407, 412 (2002) (warning that civil detention may not "become a 'mechanism for retribution or general deterrence'—functions properly those of criminal law, not civil commitment" (quoting *Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J., concurring) (emphasis added)); *see Hendricks*, 521 U.S. at 373 (Kennedy, J. concurring) ("[W]hile Secretary Kristi Noem (@sec_noem), Instagram (Mar. 27, 2025), https://www.instagram.com/p/DHtVvbgsHhh/ incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.").

[58] *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

[59] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

separation from his Lawful Permanent Resident wife, children, and the loss of his ability to provide for his family.

The harm is not merely abstract. Mr. Ladak has already faced about two years in prolonged immigration detention in 2008. Now Mr. Ladak is being indefinitely held again. Absent relief, Mr. Ladak will remain detained in an indefinite and prolonged state, denied his liberty, removed from his livelihood, separated and unable to care for his family, and removed from his community where he belongs.

III. The Balance of Equities and Public Interest Weighs in Mr. Ladak's Favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party."[60] Here, the balance of hardships weighs overwhelmingly in Mr. Ladak's favor. The injury to Mr. Ladak—unconstitutional detention, family separation, and risk to his well-being—is severe and immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.[61]

Conversely, the harm to Respondents is nonexistent. Mr. Ladak is not a danger to the community; he has lived peacefully and productively for decades. He is not a flight risk; he has complied with his OSUP for 15 years. As the Supreme Court noted in *Zadvydas*, the flight risk justification is "weak or nonexistent where removal seems a remote

[60] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

[61] *Id.* at 436 (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *see also Rosa v. McAleenan*, 583 F. Supp. 3d 840 (S.D. Tex. 2019).

possibility."[62] Releasing Mr. Ladak to his OSUP, a status ICE itself deemed appropriate for over 15 years, poses no conceivable harm to the government. Any administrative burden imposed of Respondents by halting re-detention is minimal and far outweighed by the substantial harm Mr. Ladak continues to face.[63] Furthermore, the public interest is served by preserving family unity, especially where U.S. citizen children are involved, and by preventing the waste of taxpayer resources on unlawful and indefinite detention.

IV. Granting Injunctive Relief Would Maintain the Status Quo.

Mr. Ladak seeks injunctive relief to maintain the status quo by barring ICE from removing him to a third county. Several district courts have recently concluded that releasing a re-detained noncitizen who had been on supervised release preserves rather than alters the status quo.[64] The status quo ante litem is "the last uncontested status which preceding the pending controversy." For Mr. Ladak, this would be back out on OSUP where he has been complaint for 15 years. There is no reason to think he would not comply now. Injunctive relief is therefore appropriate.

CONCLUSION

For the foregoing reasons, Petitioner Murad Ladak respectfully requests that the Court immediately grant this amended motion and issue a Temporary Restraining Order

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[62] *Zadvydas*, 533 U.S. at 691.

[63] *See Martinez*, 2025 WL 2598379, at *5.

[64] *Nguyen v. Scott*, 2025 WL 2419288, at *10 (W.D. Wa. Aug. 21, 2025) (citing *Phong Phan v. Moises Beccerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI-RML, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2024) (finding the "moment prior to the Petitioner's likely illegal detention" was the status quo).

and/or Preliminary Injunction ordering his immediate release from ICE custody under his previous Order of Supervision, pending a final resolution of his Petition for a Writ of Habeas Corpus

1. GRANT this Emergency Motion;
2. ISSUE a Temporary Restraining Order immediately ENJOINING and RESTRAINING Respondents, their officers, agents, servants, employees, and all persons in active concert or participation with them, from continuing to detain Mr. Ladak and from removing to any third country (i.e. any country that is not Pakistan) without providing Mr. Ladak, his counsel, and the Court with at least 72-hours' notice of its intent to do so;
3. ORDER Respondents to appear and show cause immediately as to why a Preliminary Injunction should not issue;
4. Set an Emergency Hearing at the Court's Convenience; and
5. GRANT Petitioner such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED,
/s/ Dan Gividen

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Certificate of Service

I hereby certify on September 29, 2025, I filed this document, and a copy was served on counsel for the USA.

/s/ *Dan Gividen*
DAN GIVIDEN
Attorney for Petitioner