Sergio A. Castaneda (State Bar No. 208642)
sergio@castaneda-law.com
Gretchen Gaspari (State Bar No. 202945)
gretchen@castaneda-law.com
CASTANEDA LAW, APC
915 Wilshire Blvd., Suite 700
Los Angeles, CA 90017
Tel: 213.212.2399

Attorney for Petitioner,
MEHRAN AMIRKHANI KHAMSEH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MEHRAN AMIRKHANI KHAMSEH Petitioner, vs. C. LANGILL, in his official capacity, Director for the Los Angeles ICE Field Office; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity, Secretary of the Department of Homeland Security; TODD M. LYONS, in his official capacity, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Custom Enforcement; PAMELA BONDI, in her official capacity, Attorney General of the United States EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; F. SEMAIA, in his official capacity as Warden of Adelanto Detention Facility.	Case No.: 2:25-cv-09955-MCS-DTB *Honorable District Judge Mark C. Scarsi* **EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER; POINTS AND AUTHORITIES; AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; HEARING REQUESTED** Challenge to Unlawful Incarceration: Request for Declaratory and Injunctive Relief

NOTICE OF *EX PARTE* MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. Rule 65(b) and Local Rule 7-19Rule 65-1 of the Local rules of this Court, Petitioner, Mr. Mehran Amirkhani Khamseh ("Mr. Khamseh"), hereby moves this Court, *Ex Parte*, for a temporary restraining order ("TRO") and for issuance of an order to show cause why a preliminary injunction should not issue. More specifically, Mr. Khamseh applies for an order enjoining Respondents Department of Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE"), and Pam Bondi, in her official capacity as the U.S. Attorney General, from moving him to a location outside this judicial district, and for an order for his immediate release until he is afforded a hearing before a neutral adjudicator, as required by the Due Process clause of the Fifth Amendment, to determine whether his removal to Iran is reasonably foreseeable and otherwise whether circumstances have changed such that his continued detention would be justified—that is, whether he poses a danger or a flight risk. Mr. Khamseh additionally seeks to enjoin Respondents from removing him from the United States to any third country to which he does not have a removal order (i.e., any country other than Iran) without first providing him with constitutionally-compliant procedures.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This motion is based on the concurrently-filed Declaration of Sergio Castaneda with accompanying Exhibits in support of Ex-Parte Application for a TRO. As set forth in the Points and Authorities in support of this Application, Mr. Khamseh is entitled to the TRO due to his significant liberty and life interests under the Due Process Clause of the Fifth Amendment in preventing his unlawful continuous incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden, and in preventing his summary removal to a third country, other than Iran, without first providing him with notice and an opportunity to apply for fear-based relief as to that third country.

WHEREFORE, Mr. Khamseh prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from continuously detaining him unless and until he is afforded a hearing before a neutral decisionmaker on the question of whether his detention would be lawful, and enjoining Respondents from removing him to a third country before he is provided with constitutionally-compliant procedures. Petitioner Mr. Khamseh is currently detained at the Adelanto ICE Processing Center which is part of the Los Angeles ICE Field Office, where Respondents likely intend to detain him indefinitely, even though his removal to Iran is not reasonably foreseeable and he is not otherwise a flight risk danger to the community, and where Respondents may seek to summarily remove him to a third country.

Dated: October 27, 2025

Respectfully Submitted

CASTANEDA LAW, APC

By:

Sergio A. Castaneda
Attorney for Mehran Amirkhani Khamseh

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I. INTRODUCTION

Mr. Khamseh, by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") from continuing his detention until he is afforded notice and a hearing before a neutral adjudicator on the questions of whether (1) his removal is reasonably foreseeable and (2) otherwise whether there are changed circumstances showing he is now a danger and a flight risk such this his re-detention would be warranted. At any such hearing the neutral adjudicator must consider whether, in lieu of incarceration, alternatives to detention would mitigate any risk established by Respondents. Mr. Khamseh further seeks to enjoin Respondents from removing him to any third country without first providing him with constitutionally-compliant procedures. Finally, Mr. Khamseh seeks to enjoin Respondents from removing him from the Adelanto ICE Processing Center until his Writ of Habeas Corpus, this TRO and/or a preliminary injunction proceeding has been held, whichever occurs first.

Mr. Khamseh is an Iranian refugee who has lived in the United States, first as a refugee and then as U.S. lawful permanent resident (i.e., a green card holder), up until the early 2000s. Mr. Khamseh has lived in the United States for over forty years now. Although an Immigration Judge ordered his removal on October 4, 2007, ice released him from custody pursuant to Form I-220B, Order of Supervision because the agency could not effectuate his removal to Iran, a country which has historically been extremely hostile to its citizens who have fled to the United States. Since his release, Mr. Khamseh has lived at liberty for over 16 years while complying with all reporting requirements, and reconnecting with his loved ones, including his U.S. citizen fiancée. Further, Mr. Khamseh has never been ordered removed to any third country or notified of such potential removal, even though ICE is currently removing noncitizens to third countries pursuant to a policy that purports to allow the agency to do so without affording the noncitizen any prior notice or procedure contesting their removal to a country they have never known.

Once a noncitizen is released from ICE detention, as Mr. Khamseh was, their re-detention is limited by regulation, statute, and the constitution. By statute and regulation only in specific circumstances (that do not apply here) does ICE have the authority to re-detain a noncitizen previously order removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4()(1)-(2). The ability of ICE to simply re-arrest someone following their release from past detention, however, is further limited by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. Here, this means that, prior to any redetention, Mr. Khamseh must be provided with notice and a hearing before a neutral adjudicator at which DHS bears the burden of justifying his re-detention.

That basic principle—that individuals placed at risk of losing their liberty are entitled to process before the government imprisons them—has particular force here, where Mr. Khamseh was already released from detention in 2007 after findings that his removal was not reasonably foreseeable and that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify his re-arrest. Therefore, at a minimum, in order to continue to detain Mr. Khamseh, the government must first establish before a neutral adjudicator that his removal is (1) reasonably foreseeable, and (2) otherwise that he is a danger to the community or a flight risk, such that his re-incarceration is necessary. During any such hearing, Mr. Khamseh must be afforded the opportunity to present arguments as to why he should not be detained, and the neutral arbiter must consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk established by ICE.

Additionally, Mr. Khamseh has a protected interest not only in his liberty, but also in his life. Here, this means that the government must provide him with constitutionally-complaint procedures prior to any removal to a third country (i.e. any country apart from Iran, which is the only country listed in his removal order): notice and an adequate opportunity to apply for fear based relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as to that third country.

Mr. Khamseh meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court enjoining the government from indefinitely detaining him, unless and until he receives a hearing before a neutral adjudicator, as demanded by the Constitution. At this hearing, the government must bear the burden by clear and convincing evidence to show that (1) his removal is reasonably foreseeable and (2) he is a flight risk or danger to the community. He would also suffer immediate and irreparable harm if removed to a third country where his life could be in danger. For that reason, he also seeks an order enjoining Respondents from removing him to any third country without first being provided with constitutionally complaint procedures providing him adequate notice and an opportunity to demonstrate if his life is in danger or he stands a risk of torture—all of which are demanded by the Constitution. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Petitioner Mr. Khamseh's favor.

II. STATEMENT OF FACTS

Mr. Khamseh is a 60 year-old-man who has lived in the United States with his family for forty-two years. Decl. of Mr. Khamseh ¶ 3. He and his family fled Iran in 1983 after the infamous hostage crisis event. *Id.* Currently, they all live in Santa Barbara, California. *Id.*

From day one, Mr. Khamseh worked hard, owning several businesses throughout the years. Khamseh Decl. ¶ 4. Unfortunately, Mr. Khamseh suffered severe depression in 2004. *Id.* at ¶ 5. This mental illness lasted for six years, and it was during that dark time in his life that Mr. Khamseh experienced most of his problems. *Id.* In 2010, Mr. Khamseh went to prison for vehicular manslaughter. *Id.* at ¶ 6. That is when he turned his life around. He became sober and attended every NA and AA class he could while in prison. *Id.*

When Mr. Khamseh was released from prison, he was a changed man. He remained sober and had a perfect record under parole. *Id.* at ¶ 7. After checking in regularly, Mr. Khamseh missed his March 2025 check in because of the serious medical procedures he was undergoing at the time, preventing him from being able to speak. *Id.* at ¶ 8. Due to those medical procedures, Mr. Khamseh had a bacterial infection at the time he was arrested. *Id.* at ¶ 10. That infection has now spread throughout his mouth, and he is in danger of it causing life-threatening conditions. *Id.* There is currently no available relief for him.

III. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Khamseh overwhelmingly satisfies both standards.

IV. ARGUMENT

A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. See *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Khamseh has been detained for over 120 days without any material change in circumstances and has not received a hearing before a neutral adjudicator, in violation of his due process rights. Without intervention by this Court. Mr. Khamseh will continue to be indefinitely detained. Given that he cannot be deported to Iran, he is also likely to be deported to a third country without notice or an opportunity to apply for fear-based relief.

Mr. Khamseh will continue to suffer irreparable injury if he is detained without due process and separated from his fiancé, step-children, grandkids, and community.

Mr. Khamseh is likely to succeed on the merits of claims set forth below. Any continued detention absent notice and a hearing under the circumstances of this case—where ICE has not established that removal is reasonably foreseeable and that Mr. Khamseh is a flight risk or danger—would be a clear violation of the INA, its implementing regulations, and due process. Alternatively, Mr. Khamseh at least raises "serious questions" going to the merits of his claims and establishes that the balance of hardships tips "sharply" in his favor, as detailed below.

1. Mr. Khamseh is likely to succeed on the merits of his claim that any continued detention would be indefinite and thus would be indefinite and thus unconstitutional, in violation of clear Supreme Court precedent.

Mr. Khamseh is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from continuing to detain him without first providing a pre-deprivation hearing before a neutral adjudicator where the government must demonstrate that his removal is reasonably foreseeable and otherwise that there has been a change in circumstances such that he is now a danger or a flight risk.

Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

ICE did in fact detain Mr. Khamseh on June 24, 2025, years after his final order of removal. He was set to have a custody hearing on September 22, 2025 under INA section 241(a). This hearing never occurred, and Mr. Khamseh has been held since then without any further information. It has been over 120 days, and the only document Mr. Khamseh received is a "Decision to Continue Detention" letter, stating that ICE had determined that he was to remain in custody (the "Letter"). A true and correct copy of the Letter is attached to Sergio A. Castaneda's Declaration. The Letter is undated (presumably because it was well after the 90-day period) and is, for the most part, inaccurate. Additionally, the decision was made without a hearing, and without any input from Mr. Khamseh or his attorneys.

Additionally, post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. /d. at 699-701.[1] After the six month period, if a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. §1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

In light of the Supreme Court limitations imposed on the statutory scheme, the government updated the regulations to be consistent with those constitutionally required limitations on indefinite detention. Under those regulations, detainees are entitled to release even before six months of detention, if removal is not foreseeable. *See* 8 C.F.R. §241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable). Moreover, under the Supreme Court's constitutional limitations on indefinite detention, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas*, 533 U.S. at 701. In this case, Mr. Khamseh was released from ICE detention after the conclusion of the removal period, specifically because his removal was not foreseeable at all. And nothing has changed since 2007. If ICE is permitted to continue his detention, under the possibility he might be

[1] Even where detention meets the Zadvydas standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. See Zadvydas, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community).

removed some day simply because he has a removal order, then he very likely will be detained in ICE custody indefinitely, which is unconstitutional. Although there have been some changes recently, Iran remains hostile to its citizens that fled to the U.S.

2. Mr. Khamseh is likely to succeed on the merits of his claim that any continued detention would be a violation of the regulations.

Mr. Khamseh's continued detention would be separately unlawful because the controlling regulations specify the circumstances that permit such incarceration, and Respondents have not established that circumstances have changed regarding the foreseeability of his removal which is required under those regulations.

By regulation, noncitizens with final removal orders who are released from detention after a post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8 CF.R. § 241.4(j). After an individual has been released on an OSUP, the regulations further specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3). Under regulations, ICE has the authority to re-detain a noncitizen previously ordered removed only in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the foreseeability of removal. 8 US.C. § 1231; 8 CFR. § 241.4(I)(1)-(2); 8 C.F.R. § 241.13(i).

Here, as stated above, Mr. Khamseh has not violated any condition of release, and there are no changed circumstances. Instead, the Letter simply states that "ICE has made such a determination [to continue detention] based upon your status as an alien with a criminal history to include driving under the influence, larceny, fraud, cocaine – sell, shoplifting, drug possession, threat terroristic state offenses, lacking any significant ties to the community, and with an active final order of removal.

Mr. Khamseh served nine years for his crime, and after his release in 2019, he has a perfect record. The criminal history listed in the Letter is inaccurate in many respects. Furthermore, after immigrating here in 1983, the United States has been home to him and his family, and he owns his own successful business. His ties to the community are clearly significant.

3. Mr. Khamseh is Likely to Succeed on the Merits of His Claim that in This Case the Constitution Requires a Hearing Before a Neutral Adjudicator Prior to Any Re-Incarceration by ICE.

Mr. Khamseh is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from continuing his detention without first providing a pre-deprivation hearing before a neutral adjudicator where the government shows that his removal is reasonably foreseeable and demonstrates by clear and convincing evidence that there has been a material change in circumstances such that he is now a danger or a flight risk.

ICE's power to re-arrest a noncitizen who is at liberty is constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). It is well established that individuals released from incarceration have a liberty interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated"). In turn, to protect that interest, on the particular facts of Mr. Khamseh's case, due process requires notice and a hearing, *prior to any re-arrest*, at which he must be afforded the opportunity to advance his arguments as to why he should not be re-detained or to remain in detention. Other courts in this District and in the Eastern District of California have agreed. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018*); Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025)(temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D.

Cal. June 14, 2025)(enjoining ICE from re-detaining Petitioner absent notice and a hearing); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025); *Ortega v. Kaiser*, No. 25-cv-05259, 2025 WL 1771438, *6 (N.D. Cal. June 26, 2025); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025)(holding the Constitution requires a hearing before any re-arrest); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, *1 (N.D.Cal. July 26, 2025); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D.Cal. July 16, 2025); *Guillermo M.R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

Thus, it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is reincarcerated"). In turn, to protect that interest, on the particular facts of Mr. Khamseh's case, due process requires notice and a hearing, *prior to any re-arrest*, and in his case, prior to continuing his detention.

Courts analyze these procedurals due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that protected liberty accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Petitioner Has a Protected Liberty Interest in His Release.

Mr. Khamseh's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 US. at 690.

Since 2007, Mr. Khamseh exercised that freedom under his OSUP. Although he was released under supervision (and thus under government custody, as further demonstrated by his requirement to attend ICE check-ins), he retains a strong liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-detention and continued detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 USS. At 701. *see also Clark v. Martinez*, 543 U.S. 371, 372 (2005) (for the same reasons, the "same [six]-month presumptive detention period applies" to noncitizens found inadmissible, or excludable). In this case, in the absence of a travel document that actually permits Mr. Khamseh's removal to Iran, his removal is not foreseeable at all, let alone reasonably. Therefore, his re-detention and continued would be unconstitutional.

Just as importantly, Mr. Khamseh continued presenting himself before ICE for his regular check-in appointments for the past years, where ICE did not seek to re-arrest him during this time. ICE instead gave him a future date and time to appear again at regular intervals, which he did (except the March 2025 check-in which he missed because of his well-documented medical emergency. Khamseh Decl. ¶ 8). *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him") (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)). For the past years, he was also gainfully employed (owning his own business) and worked hard to reconnect with loved ones.

Individuals—including noncitizens—released from incarceration have a liberty interest in their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that "[i]t is well-established that the due process clause applies to protect immigrants"). This is further reinforced by *Morissey*, in which the Supreme Court recognized the protected liberty rights under the Due Process Clause of a *criminal* detainee who was released on parole from incarceration. 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life"—thus, those released on parole have a protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482.

As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by Morrissey." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (Ist Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 US. at 482). In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

In fact, so fundamental to due process is the concept of liberty that it well-established than an individual maintains a protectable liberty interest where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (Ist Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case] with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Khmaseh's release "enables him to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. And, unlike in these Supreme Court cases, Mr. Khamseh is not a criminal detainee but a civil detainee and thus the due process considerations of his liberty should be even weightier than the courts have already found apply in the criminal context. "[D]ecisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody]," who are "most decidedly entitled to *more* considerate treatment than those who are criminally detained." *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016) *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (emphasis added).

Mr. Khamseh has complied with all conditions of release for over fifteen years. During that time, he has remained sober, established strong personal relationships, and operated his car business. Precedent from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his continued release from detention.

b. Petitioner's Liberty Interest Mandated a Due Process Hearing before any Re-Detention, and Once Released, Mandates such a Hearing Prior to Any Re-Detention

Here, (1) where his detention would be civil, (2) where he has been at liberty for over five years, and for over 23 years before his incarceration, during which time he has diligently complied with ICE's reporting requirements on a regular basis, (3) where his removal is not reasonably foreseeable, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before a neutral adjudicator prior to any re-arrest, and now prior to continued detention.

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner Khamseh's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Khamseh with notice and a hearing *prior* to any re-detention, continued detention and revocation of his release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Mr. Khamseh's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

i. Petitioner's Interest in His Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Khamseh, who have also been released from prior ICE custody and are facing civil (not criminal) detention. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Khamseh retains a truly weighty liberty interest even though he is under supervised release.

What is at stake in this case for Mr. Khamseh is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and| be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 USS. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

Thus, there is clearly a profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

ii. The Government's Interest in Continuing Detention of Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from

Continued Detention Until He is Provided a Hearing is Minimal

The government's interest in detaining Mr. Khamseh without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from continuing his detainment unless and until the government demonstrates by clear and convincing evidence that (1) his removal is reasonably foreseeable and (2) he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr. Khamseh when the Court considers that the process he seeks—notice and a hearing regarding whether his order of release should be revoked because the government can demonstrate not only that his removal is reasonably foreseeable but that he is also a danger or a flight risk—is a standard course of action for the government. Providing Mr. Khamseh with a hearing before this Court (or a neutral decisionmaker) would impose only a *de minimis* burden on the government, because the government routinely provides this sort of review to individuals like Mr.Khamseh, 8 C.F.R. § 241.4(e)-(f), and routinely conducts bond hearings.

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to effectuate removal. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. Khamseh due to alleged dangerousness, or due to a change in the foreseeability of his removal to Iran, as his circumstances have not changed since his release from ICE custody in 2007.

In fact, Mr. Khamseh has always had a removal order since his release from ICE custody in 2007 and has demonstrated that he is not a flight risk because he has continued to appear before ICE on a regular basis for every appointment that has been scheduled. See *Morrissey*, 408 U.S. at 482 ("It is not sophisticated to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom"') (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir.

1971); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 ("the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[ ] to live up to the ... conditions [of release].'") (quoting *Morrissey*, 408 U.S. at 482).

As to flight risk, Mr. Khamseh's post-release conduct in the form of full compliance with his check-in requirements further confirms that he is not a flight risk and that he remains likely to present himself at any future ICE appearances, as he always has done. *Zadvydas*, 533 U.S. at 699 (ICE's interest is to "assure [Mr. Khamseh's] presence at the moment of removal."). The government's interest in detaining Petitioner at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.' *See Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, *2 ("Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that 'things are different now.'"); *Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("The law requires a change in relevant facts, not just a change in [the government's] attitude")(internal quotations omitted).

Moreover, the "fiscal and administrative burdens" that a pre-deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Khamseh does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his release should be revoked and whether he should continue to be detained. Providing Mr. Khamseh with a hearing before a neutral adjudicator regarding his detention is a routine procedure that the government provides to those in immigration detention on a daily basis. At that hearing, the neutral adjudicator would have the opportunity to determine whether his removal is reasonably foreseeable and whether circumstances have changed sufficiently to warrant continued detention. But there is no justifiable reason why Mr. Khamseh should have been re-detained prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

Enjoining Mr. Khamseh's continued detention until ICE (1) moves for a re-determination before a neutral decisionmaker and (2) demonstrates by clear and convincing evidence that Mr. Khamseh's removal is reasonably foreseeable and that he is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

iii. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease that Risk

Providing Mr. Khamseh a pre-deprivation hearing would have decreased the risk of him being erroneously deprived of his liberty. And depriving him now of the same hearing, is unconstitutionally depriving him of his liberty.

Under the process that ICE maintains is lawful—which affords Mr. Khamseh no process whatsoever—ICE can simply continue his detainment indefinitely. The risk that Mr. Khamseh will be erroneously deprived of his liberty is high if ICE is permitted to continue to detain him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 241.4(1), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations are actually insufficient to protect his due process rights, as they permit ICE to unilaterally re-detain individuals, even for an accidental error in complying with the conditions of supervision, for example. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-(f).

By contrast, the procedure Mr. Khamseh seeks—a pre-deprivation hearing to assess whether his removal is reasonably foreseeable and otherwise whether he is a danger or a flight risk—is much more likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral adjudicator, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure removal if reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Khamseh's continued incarceration is warranted.

As the above-cited authorities show, Mr. Khamseh is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral decisionmaker prior to any rearrest, continued detention and/or re-detention by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

2. Mr. Khamseh is Likely to Succeed on the Merits of His Claim that he is Entitled to Constitutionally Adequate Procedures Prior to Any Third Country Removal

Finally, Mr. Khamseh is likely to succeed on the merits of his claim that he must be provided with constitutionally adequate procedures—including notice and an opportunity to respond and apply for fear-based relief—prior to being removed to any third country.

Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. The statute explicitly states that a noncitizen "shall remove the [noncitizen] to the country the [noncitizen] . . .

designates." 8 U.S.C. § 1231(6)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).

As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technician's v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); see also *Black's Law Dictionary* (11th ed. 2019). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

Moreover, prior to any third country removal, ICE must provide Mr. Khamseh with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[2] Currently DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally-adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. Instead, the policy squarely violates the INA because it does not take into account, or *even mention*, an individual's designated country of removal—thereby fully contravening the statutory instruction that DHS must only remove an individual to the designated country of removal. U.S.C. § 1231(b)(2)(A)(ii).

Further, the policy plainly violates the United States' obligations under the Convention Against Torture and principles of due process because it allows DHS to provide individuals with no notice whatsoever prior to removal to a third country, so long as that country has provided "assurances" that deportees from the United States "will not be persecuted or tortured." If, in turn, the country has not provided such an assurance, then

[2] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: https:/Awww.ohchr.org/en/instrumentsmechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

DHS officers must simply inform an individual of removal to that third country, but are not required to inform them of their rights to apply for protection from removal to that country under the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their rights under this binding international treaty, and must affirmatively state a fear of removal to that country in order to receive a fear-based interview to screen for their eligibility for protection under the Convention Against Torture. *Id.* Even so, the screening interview is hardly a meaningful opportunity for individuals to apply for fear-based relief, because the interview happens within 24 hours after an individual states a fear of removal to a recently-designated third country, which hardly provides for any time to consult with an attorney or prepare any evidence for the interview. *Id.* And, in actuality, the screening interview is not a screening interview at all, because USCIS officers under the policy are instructed to determine at this interview "whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal"—which is the standard for protection under the Convention Against Torture that Immigration Judges apply after a full hearing in Immigration Court. *Id.* Then, if the USCIS officer determines that the noncitizen has not met this standard, they will then be removed to the third country to which they claimed, and tried to demonstrate within 24 hours, a fear of persecution or torture. *Id.* Finally, there is no indication that any of this process will occur in an individual's native language, or a language that they understand. *Id.* This is nothing more than a fig leaf of due process meant to deprive individuals of the protection that the law and treaty are supposed to provide them.

Clearly, this policy violates the Convention Against Torture, which instructs that the United States cannot remove individuals to countries where they will face torture, because the policy allows DHS to swiftly remove noncitizens to countries where they very well may face torture if those countries simply provide the United States with "assurances" that deportees will not be tortured. *Id.* Moreover, the policy puts the onus of individuals to be aware of their rights under the Convention Against Torture—which is a treaty that binds the United States government—instead of ensuring that DHS officials make individuals aware of their rights, which would more squarely comport with DHS's obligations under the treaty not to remove individuals to countries where they face torture. *Id.* For similar reasons, the policy also violates principles of due process, because it does not provide individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.* Again, the policy allows individuals to be removed to third countries without any notice or an opportunity to be heard if that country merely promises that deportees will not face torture there, and if individuals are otherwise unaware of their right to seek fear-based relief. *Id.* Multiple district courts have already found this policy cannot be constitutionally applied to individual petitioners. See Hoac, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *JR. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGRx (C.D. Cal. Jul. 14, 2025); *Vaskanyan v. Janecka*, No. 25-cv-1475 (C.D. Cal. June 25, 2025); *Ortega v. Kaiser*, No. 25-cv-5259, 2025 WL 1771438, *6 (N.D. Cal. June 26, 2025). (TRO prohibiting the government from removing petitioner to "any third country in the world absent prior approval from this Court"). The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of Homeland Security*, et al., No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.[3] This is made clear by the Court's decision in *Trump v. J.G.G.*, 604 US. (2025), where the Court explained that the putative class plaintiffs there had to seek relief in individual habeas actions (as opposed to

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[3] The Supreme Court's July 3, 2025 order in U.S. Department of Homeland Security, et al. v. D.V.D., et al.,606U.S.____ (2025) (2025) further reinforces that the Supreme Court only disagrees with the means of a nationwide injunction, and not the underlying substance of the nationwide injunction. There, the Court held that the stay of the preliminary injunction divests remedial orders stemming from that injunction of enforceability, and cited to United States v. Mine Workers, 330 U. S. 258, 303 (1947) for the proposition that: "The right to remedial relief falls with an injunction which events prove was erroneously issued and a fortiori when the injunction or restraining order was beyond the jurisdiction of the court." /d. In any event, the remedial order at issue involved six individuals who had already been removed from the United States to a third country, and is therefore distinct from this case, where Mr. Khamseh remains in the United States and this Court therefore continues to have jurisdiction over his case.

injunctive relief in a class action) against the implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a third country. Regardless, ICE appears to be emboldened and intent to implement its campaign to send noncitizens to far comers of the planet—places they have absolutely no connection to whatsoever—in violation of individuals' due process rights.[4]

Mr. Khamseh's removal to a third country would violate his due process rights unless he is first provided with sufficient notice and a meaningful opportunity to apply for protection under the Convention Against Torture. Intervention by this Court is necessary to protect those rights.

As the above-cited authorities show, Mr. Khamseh is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral decisionmaker prior to any re-arrest, re-incarceration and continued detention by ICE. Alternatively, at the very least, he clearly raises "serious questions" regarding this issue, thus also meriting a TRO pursuant to the Ninth Circuit's sliding-scale approach. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

3. Petitioner Will Suffer Irreparable Harm Absent Injunction Relief

Mr. Khamseh will suffer irreparable harm were he to be deprived of his liberty and subjected to unlawful detention by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in civil ICE custody are held in "prison-like conditions" which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention

[4] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/

facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[5]

Mr. Khamseh has been out of ICE custody for over fifteen years. During that time, he has been reconnecting with his family and. He has been gainfully self-employed at [redacted] He is also an important member of his community, who he has never hesitated to give a helping hand. He has a U.S. citizen fiancée and has become a fatherly figure to her children as well as grandfather to their children. If he were to remain in detention, he would likely lose his business. Detention would irreparably harm not only him, but also his family and community members who rely on him.

Additionally, Mr. Khamseh is suffering from a very dangerous bacterial infection in his mouth. Khamseh Decl. ¶¶ 10 and 11. Staff at the detention center have been unable to stop the infection, and his only real hope is to be treated by the dentist who performed the procedures in the first place. If Mr. Khamseh is not released immediately, there is a real possibility that the infection can turn deadly.

Further, Mr. Khamseh will suffer irreparable harm were he to be removed to a third country without first being provided with constitutionally-compliant procedures to ensure that his right to apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy have reported that they are now stuck in countries where

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[5] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed June 27, 2025).

they do not have government support, do not speak the language, and have no network.[6] Others removed in violation of their prior grant of protection under the Convention Against Torture have reported that they have faced severe torture at the hands of government agents.[7] It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Khamseh from suffering irreparable harm by being subject to unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

4. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

The balance of equities and the public interest undoubtedly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Mr. Khamseh. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring DHS to refrain from continuing detention of Mr. Khamseh unless and until he is provided a hearing before a neutral adjudicator is both de minimis and clearly outweighed by the substantial harm he will suffer if he remains detained. *See Lopez v. Heckler*, 113 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). Similarly, any burden of requiring Respondents not to

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[6] NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available at: https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported- by-the-u-s-are-stuck-in-panama-unable-to-return-home.

[7] NPR, "Abrego Garcia says he was severely beaten in Salvadoran prison" (July 3, 2025), available at: https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prisonbeaten-torture.

remove Mr. Khamseh to any third country is outweighed by the substantial harm he may suffer if removed to a country where he will face persecution or torture. *See id.*

Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting Valle del Sol Inc. v. Whiting, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to continue detention of Mr. Khamseh, and/or to summarily remove him to any third country, in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting Melendres, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.'").

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

V. CONCLUSION

For all the above reasons, this Court should find that Mr. Khamseh warrants a temporary restraining order and preliminary injunction ordering that Respondents refrain from detaining him unless and until he is afforded a hearing before a neutral adjudicator on whether his removal is reasonably foreseeable and further whether it is justified by evidence that he is a danger to the community or a flight risk, and refrain from removing him to any third country without first providing him with constitutionally-compliant procedures.

Dated: October 27, 2025

CASTANEDA LAW, APC

By: ______________________

Sergio A. Castaneda
Attorney for Mehran Amirkhani Khamseh

Sergio A. Castaneda (State Bar No. 208642)
sergio@castaneda-law.com
Gretchen Gaspari (State Bar No. 202945)
gretchen@castaneda-law.com
CASTANEDA LAW, APC
915 Wilshire Blvd., Suite 700
Los Angeles, CA 90017
Tel: 213.212.2399

Attorney for Petitioner,
MEHRAN AMIRKHANI KHAMSEH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MEHRAN AMIRKHANI KHAMSEH Petitioner, vs. C. LANGILL, in his official capacity, Director for the Los Angeles ICE Field Office; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity, Secretary of the Department of Homeland Security; TODD M. LYONS, in his official capacity, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Custom Enforcement; PAMELA BONDI, in her official capacity, Attorney General of the United States EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; F. SEMAIA, in his official capacity as Warden of Adelanto Detention Facility. Respondents.	Case No.: 2:25-cv-09955-MCS-DTB *Honorable District Judge Mark c. Scarsi* **DECLARATION OF MEHRAN AMIRKHANI KHAMSEH IN SUPPORT OF EX PARTE APPLICATION FOR TRO** Hearing Date: Time: Courtroom:

I, Mehran Amirkhani Khamseh, declare as follows:

1. I am the Petitioner in the above-entitled case.

2. I have personal knowledge of the following facts, and, if called as a witness, I could and would competently testify thereto.

3. I was born in Tehran, Iran. In or around [redacted], after the hostage crisis shut down the embassy in Tehran, my family and I escaped Iran and fled to the United States. Upon arriving in the United States, we all lived in Santa Barbara, California. The rest of my family still lives in Santa Barbara and they are US citizens. My mother lives in a nursing home and my father is deceased.

4. From the moment I arrived in the United States, I worked. I've never lived off the government. I've always owned my own businesses, and I was successful and paid my taxes. Currently, I own car company that repairs and sells used cars. I'm losing money that I use to take care of my family every day I'm in detention.

5. Despite my success and despite having my family here with me, I became depressed in 2004. I began self-medicating, and for the next 6 years, I became addicted to drugs.

6. In 2010, I was in a very bad car accident, and unfortunately, there was a loss of life. I spent the next 10 years in prison thinking about that day, and how to honor the victim. I now live with the pain I caused others every day. But I knew the only way to prove how very sorry I was, was to become sober. And that is exactly what I did. I have now been sober for over 15 years. While incarcerated, I took every NA and AA class that was offered. Additionally, I took every educational and instructional class I possibly could, obtaining 13 ASE auto repair certificates.

7. When I was released from prison, I had a perfect record on parole; eventually leading to its termination.

8. After being released from prison, I reported yearly as ordered until March 10, 2025. On that date I was supposed to call in but I was, at the time, going through a serious medical procedure. I was unable to talk for days. For two and half years, I had dental

problems. Finally, I had to have all my teeth removed, and I was in process of having dental implants completed when my call-in date happened.

9. I have known my fiancé, Leticia Speer, for close to 5 years. I love and miss her very much. I also help take care of Ms. Speer's grandchild. We plan on getting married one day, and living out our lives together.

10. Since being detained here at the Adelanto ICE Detention Center (the "Center"), I have been subjected to severe physical and mental abuse. As mentioned, I underwent a serious dental procedure in March of this year. When I was arrested and brought to the Center, I was in the middle of post-operative treatment from my dentist. I currently have no teeth on my bottom gums, just metal tabs. On October 16, 2025, I was taken to Arrowhead Hospital because the hole in the top of my mouth was getting worse. Dr. M. Zachi took x-rays but said there was nothing he could do and that I needed to see my own specialist.

11. Currently, I still have a severe bacterial infection in my gums which has spread to other parts of my mouth. I cannot consume any solid foods, and I require medication and antibiotics. The Center does not have the medical or dental facilities to treat my health problems, and the infection continues to worsen. I don't know how much longer my body can hold up. Additionally, the Center has not given me the proper medications. I do not know if they are simply not equipped to give these medications, or if they are withholding it intentionally. Either way, I'm in constant severe pain, and at times I find it almost impossible to walk.

12. Right now, the thing I'm most proud of is my sobriety. Not only because it's better for my health, but mostly because I can live every day remembering the mistakes I've made, doing better, and reinforcing the person I've become, and the person I want to be. Because Iran has never issued me travel documents, I am currently in an "unremovable" status. I just want to see my family again and resume working in my business. Thank you for your consideration.

I certify under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct.

Executed on October 22, 2025 at Adelanto, California.

Mehran Amirkhani Khamseh

Sergio A. Castaneda (State Bar No. 208642)
sergio@castaneda-law.com
Gretchen Gaspari (State Bar No. 202945)
gretchen@castaneda-law.com
CASTANEDA LAW, APC
915 Wilshire Blvd., Suite 700
Los Angeles, CA 90017
Tel: 213.212.2399

Attorney for Petitioner,
MEHRAN AMIRKHANI KHAMSEH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MEHRAN AMIRKHANI KHAMSEH Petitioner, vs. C. LANGILL, in his official capacity, Director for the Los Angeles ICE Field Office; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity, Secretary of the Department of Homeland Security; TODD M. LYONS, in his official capacity, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Custom Enforcement; PAMELA BONDI, in her official capacity, Attorney General of the United States EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; F. SEMAIA, in his official capacity as Warden of Adelanto Detention Facility. Respondents.	Case No.: 2:25-cv-09955-MCS-DTB *Honorable District Judge Mark C. Scarsi* **DECLARATION OF SERGIO A. CASTANEDA IN SUPPORT OF EX PARTE APPLICATION FOR TRO** Hearing Date: Time: Courtroom:

I, SERGIO A. CASTANEDA, declare under penalty of perjury that:

1. I am an attorney in good standing and admitted to practice before this United States District Court.

2. Attached hereto as Exhibit A is a true and correct copy of an undated letter from the U.S. Immigration and Customs Enforcement, titled "Decision to Continue Detention." Upon information and believe, this letter was handed to Mr. Khamseh.

I declare under penalty of perjury under the laws of the United States of America that all of the above is true and accurate. Executed on October 27, 2025, in Los Angeles, California.

SERGIO A. CASTANEDA

EXHIBIT A

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
300 North Los Angeles Street, Room 2300
Los Angeles CA 90012

U.S. Immigration and Customs Enforcement

KHAMSEH, Mehran Amirkhani
c/o Adelanto ICE Processing Center
10250 Rancho Road Adelanto, CA
92301

A[redacted]

Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed, and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file, consideration of any information you submitted and upon review of the factors for consideration set forth at 8 C.F.R. § 241.4(e), (f), and (g).

As explained below, after such review, ICE has determined to maintain your custody because you have not demonstrated that, ~~if released, you will not be a flight risk~~. In addition, ICE has also determined to maintain you in custody because your immigration history suggest you would be a ~~flight risk if released.~~

ICE has made such a determination based upon your status as an alien with a criminal history to include driving under the influence~~, larceny, burglary, fraud, cocaine - sell,~~ shoplifting, drug possession, threat terroristic ~~state offenses, lacking any significant ties to the community~~, and with an active final order of removal.

Based on the above, you are to remain in ICE custody pending your removal from the United States as ICE is unable to conclude that the factors set forth at 8 C.F.R. § 241.4(e) have been satisfied. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 U.S.C. § 1253(a).

If you have not been released or removed from the United States at the expiration of the three-month period after this 90-day review, jurisdiction of the custody decision in your case will be transferred to the ICE Headquarters (ERO Removal Division), Potomac Center North, 500 12th Street SW, Washington, DC 20536. The ERO Removal Division will thereafter conduct a

[redacted]

custody review and will make a determination regarding whether you will continue to be detained pending removal or may be released.

To assist in the ERO Removal Division custody review, you will be afforded a personal interview. You and your representative who has filed a Form G-28, Notice of Entry of Appearance, if any, will be notified of the date and time of the interview approximately 30 days prior to the scheduled interview date. This interview may be in person or through a video teleconference. If ERO needs to change the date of the interview, ERO will provide notice to you and your representative who has filed a Form G-28, Notice of Entry of Appearance, if any.

You may be accompanied during the interview by a person of your choice, subject to security requirements at the detention facility, as long as this person is able to attend the interview at the scheduled time.

You may submit any additional documentation in English you wish to be considered in support of your release at the time of the interview or via mail service up to five business days prior to the scheduled time of your interview to the following address:

10250 Rancho Road, Adelanto, CA 92301
Attention: Deportation Officer K. Langill

Such documentation should contain a cover letter indicating that the material is submitted in support of your Post Order Custody Review personal interview. An attorney or other person may submit materials on your behalf.

You are required to complete the below information.

I do_____ do not X want a personal interview.

If you do want an interview, please check the appropriate box(es) below:

☐ Check this box if you need an interpreter for your interview.
Language/Dialect: ______________________________

☐ I will be assisted at this interview by a representative of my own choosing.

Name:____

If your representative has not filed a G-28, Notice of Entry of Appearance, on your behalf, you are responsible for notifying any other person you have selected to assist you of the date, time, and location of the interview. The representative must be at least 18 years of age.

You will be sent a separate Notice to Alien of Interview for Review of Custody Status approximately 30 days before the interview is scheduled. If you wish to request additional time to prepare for the interview, you must notify your deportation officer within five business days of