

1 Lina Baroudi (Cal. State Bar #269610)
2 LAW OFFICE OF LINA BAROUDI
3 2680 S. White Rd., Ste. 151
4 San Jose, CA 95148-2079
5 T: (408) 300-2655
6 lina@linalaw.com

7 *Attorney for Petitioner-Plaintiff*
8 Azmy Abdelraauf El-Ghazaly

9
10 **UNITED STATES DISTRICT COURT**
11
12 **EASTERN DISTRICT OF CALIFORNIA**
13

14 AZMY ABDELRAAUF EL-GHAZALY,

15 Petitioner-Plaintiff,

16 v.

17 CHRISTOPHER CHESTNUT, Warden of
18 California City Detention Center;

19 SERGIO ALBARRAN, Acting Director, San
20 Francisco Field Office, U.S. Immigration and
21 Customs Enforcement;

22 TODD LYONS, Acting Director, U.S. Immigration
23 and Customs Enforcement;

24 KRISTI NOEM, Secretary of the U.S. Department
25 of Homeland Security,

26 PAM BONDI, Attorney General of the United
27 States,

28 Respondents-Defendants.

No.

**MOTION FOR URGENT
TEMPORARY RESTRAINING ORDER**

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION**

Request for Immediate Release

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local rules of this Court, Petitioner hereby moves this Court for an order that Defendants Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), Pam Bondi, in her official capacity as the U.S. Attorney General, and Christopher Chestnut, in his official capacity as Warden at California City Detention Facility in California City, California be enjoined from continuing to detain Petitioner-Plaintiff Azmy Abdelraauf El-Ghazaly ("Mr. El-Ghazaly"), immediately releasing Mr. El-Ghazaly and, following his release, be enjoined from re-detaining him without first providing him with a hearing before a neutral adjudicator, as required by the Due Process clause of the Fifth Amendment. Mr. El-Ghazaly 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 Saudi Arabia) 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 Lina Baroudi, Declaration of Lina Baroudi in Support of the Petition for Writ of Habeas Corpus. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful detention, where that detention appears indefinite and which was imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order requiring ICE to immediately release him from custody (to enjoin the unlawful ongoing detention), enjoining Respondents from re-detaining him before providing him a hearing before a

1 neutral adjudicator prior to any re-detention, and enjoining Respondents from removing him to any
2 third country without first providing him with constitutionally-compliant procedures. The only
3 mechanism to ensure that he is not continuously unlawfully detained in violation of his due process
4 rights is a temporary restraining order from this Court.

5
6 Undersigned counsel emailed Civil Chief Edward Olsen and the general email box of the
7 civil division for the United States Attorney's Office for the eastern District of California on
8 November 21, 2025 at 2:24pm notifying them that both a habeas petition and motion for a temporary
9 restraining order would be filed today.

10
11 Dated: November 21, 2025

Respectfully Submitted,

12 /s/Lina Baroudi

Lina Baroudi

13 *Attorney for Petitioner-Plaintiff*

14 Azmy Abdelraauf El-Ghazaly

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1 **I. INTRODUCTION**

2 Incredibly, Petitioner-Plaintiff, Azmy Abdelraauf El-Ghazaly (“Mr. El-Ghazaly” or
3 “Petitioner-Plaintiff”), was released from the custody of Respondents-Defendants twenty-three years
4 ago, when the Federal Public Defender’s Office filed a petition for writ of habeas corpus in the U.S.
5 District Court for the Northern District of California (No. 5:02-cv-03515-JF), arguing that his
6 continued detention violated *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), because removal was not
7 reasonably foreseeable.¹ Shortly after that petition was filed, Respondents-Defendants released Mr.
8 El-Ghazaly on a \$25,000 bond and issued him an Order of Supervision (“OSUP”), with which he has
9 been fully complying since August 23, 2002.
10

11 On October 14, 2025, Mr. El-Ghazaly appeared for a routine ICE check-in appointment at
12 Dallas, Texas, at which time he was taken into custody and transferred to the California City
13 Detention Facility. Unable to find an attorney to take his case until now, Mr. El-Ghazaly has been in
14 the custody of Respondents-Defendants for over one month, without having received a revocation of
15 his release, without ever having violated his OSUP, and without notice of changed circumstances
16 regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8
17 C.F.R. § 241.13(i).
18

19 By and through his undersigned counsel, Mr. El-Ghazaly hereby files this motion for a
20 temporary restraining order and preliminary injunction to enjoin the DHS and ICE from his ongoing
21 immigration detention in its custody and seeking his *immediate release* from custody. Mr. El-
22

23
24 ¹ The agency that detained Mr. El-Ghazaly, the Immigration and Naturalization Service (“INS”) was dissolved in March 2003 pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. Its functions were transferred to the newly created Department of Homeland Security (DHS), with immigration-related responsibilities divided primarily among U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).
25
26
27

1 Ghazaly also seeks an order enjoining Respondents from re-detaining him unless and until he is
2 afforded notice and a hearing before neutral adjudicator prior to any future re-detention where DHS
3 bears the burden of demonstrating that his removal is reasonably foreseeable and otherwise whether
4 circumstances have changed such that his re-detention would be justified (i.e. whether he poses a
5 danger or is a flight risk), and where the neutral adjudicator must further consider whether, in lieu of
6 detention, alternatives to detention exist to mitigate any risk that DHS may establish, as well as an
7 order enjoining Respondents from removing him to any third country without first providing him
8 with constitutionally-compliant procedures.

10 Undersigned counsel was able to speak with her client for the first time today, three days
11 after notifying Respondents-Defendants that she is his new attorney and two days after requesting an
12 urgent legal visit with him. He confirmed the details of his case and also learned that he is in
13 isolation at the detention center because he contracted COVID in the detention center. Mr. El-
14 Ghazaly requests immediate release, as he is sick, he is the sole financial supporter for his spouse
15 and two minor children in Dallas, Texas, from whom he has been separated for over one month, and
16 his detention is not justified.

18 Mr. El-Ghazaly is a stateless Palestinian who has lived in the United States more than 35
19 years. He has been reporting to ICE on a monthly, then yearly, basis since his Order of Supervision
20 was issued by ICE more than 23 years ago, after a petition for habeas corpus was filed on his behalf,
21 and the payment of a \$25,000 bond. As was determined 23 years ago, Mr. El-Ghazaly cannot be
22 deported to Saudi Arabia, Egypt, Israel, Jordan, or Palestine. Thus, Mr. El-Ghazaly's detention is
23 both unconstitutional because it is indefinite, and illegal because he was not provided any pre-
24 deprivation hearing or notice of revocation of his release before his recent detention by ICE.

26 Because the likelihood of his removal is not reasonably foreseeable, his detention by ICE

1 must be held unlawful as it is limitless in duration. He has also never been ordered removed to any
2 third country or notified of such potential removal. Mr. El Ghazaly's detention is both
3 unconstitutional because it is indefinite, and illegal because it does not comport with the regulations
4 or due process, and he was otherwise not provided any pre-deprivation hearing or revocation of
5 release before his recent detention by ICE. Based on these circumstances, he raises four ways in
6 which his ongoing detention is unlawful and must be enjoined, and as well requests an injunction
7 against removal to a third country in case that is in the offing:
8

9 First, pursuant to 8 C.F.R. § 241.4(l) and § 241.13(i), a noncitizen released on an Order of
10 Supervision must be provided notice of the reasons for the revocation. *See* 8 C.F.R. §§ 241.4(l)(1),
11 241.13(i)(3). Furthermore, the governing regulations require the reasons to be given "upon
12 revocation." 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). On information and belief, Mr. El-Ghazaly was
13 not provided a notice indicating that his release had been revoked when he was detained on October
14 14, 2025.
15

16 Second, once a noncitizen is so released, their re-detention is limited by regulation, statute
17 and the constitution. By statute and regulation, only in specific circumstances (that do not apply
18 here) does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C. §
19 1231; 8 C.F.R. §§ 241.4(l)(1)-(2). The ability of ICE to simply arrest someone following their
20 release on OSUP, however, is further limited by the Due Process Clause because it is well-
21 established that individuals released from incarceration have a liberty interest in their freedom. In
22 turn, due process requires that Mr. El-Ghazaly be released from unlawful re-detention because he
23 was not provided notice and a hearing before a neutral adjudicator.
24

25 Third, following his release, the same principles must apply, such that in the future Mr. El-
26 Ghazaly be provided with notice and a hearing, prior to any re-detention, at which DHS bears the
27

1 burden of justifying his re-detention (to a neutral adjudicator who is not part of ICE or DHS or the
2 Department of Justice) and at which Mr. El-Ghazaly will be afforded the opportunity to advance
3 hisher arguments as to why he should not be re-detained.

4 Fourth, the Supreme Court has limited the potentially indefinite post-removal order detention
5 to a maximum of six months, because removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533
6 U.S. 678, 701 (2001). Because Mr. El-Ghazaly is a stateless individual who does not have
7 citizenship or a travel document from any country, his removal is not reasonably foreseeable in this
8 case, and the government has not provided him with notice, evidence, or an opportunity to be heard
9 on this issue before arbitrarily and unilaterally detaining him. Thus, his continued detention is
10 indefinite and thus unconstitutionally prolonged, and the only remedy is his immediate release.
11

12 Mr. El-Ghazaly meets the standard for a temporary restraining order. He will continue to
13 suffer immediate and irreparable harm stemming from his unlawful re-detention absent an order
14 from this Court enjoining the government from further unlawful detention by ordering his immediate
15 release from detention, and enjoining future re-detention unless and until he receives a hearing
16 before a neutral adjudicator. He would also suffer immediate and irreparable harm if removed to a
17 third country where his life could be in danger. For that reason, he also seeks an order enjoining
18 Defendants from removing him to any third country without first being provided with
19 constitutionally-compliant procedures providing his adequate notice and an opportunity to
20 demonstrate if his life is in danger or he stands a high risk of torture – all of which are demanded by
21 the Constitution. Since holding federal agencies accountable to constitutional demands is in the
22 public interest, the balance of equities and public interest are also strongly in Mr. El-Ghazaly favor.
23

24
25 **II. STATEMENT OF FACTS AND THE CASE**

26 Mr. El-Ghazaly was born  in the Gaza Strip. At that time, although
27 Egypt administered Gaza, it never annexed Gaza and did not confer its citizenship on the Palestinian
28

1 population. As a result, individuals born at that time, like Mr. El-Ghazaly, are considered stateless
2 Palestinians, typically relying on Egyptian-issued Palestinian travel documents that functioned only
3 as identity and movement papers, not nationality. After the 1967 Six-Day War, Israel took control of
4 Gaza, and Palestinians remained without a sovereign citizenship, instead becoming part of the
5 Israeli-maintained Palestinian population registry.
6

7 When he was just six months old, Mr. El-Ghazaly moved with his family to Saudi
8 Arabia, where he spent the next twenty-four years.

9 On June 25, 1990, Mr. El-Ghazaly entered the U.S. on a tourist visa, using an Egyptian
10 travel document. The asylum office declined to grant his asylum application and referred him to the
11 immigration court, with the issuance of an Order to Show Cause. On October 8, 1997, he was
12 granted voluntary departure by an Immigration Judge ("IJ"), with an alternative order of removal to
13 Saudi Arabia, which went into effect when he failed to depart. Mr. El-Ghazaly appealed the IJ's
14 decision to the Board of Immigration Appeals but, because his former counsel failed to file a brief,
15 the appeal was dismissed on January 4, 1999. On March 9, 1999, the former Immigration and
16 Naturalization Service ("INS") issued a warrant of deportation; Mr. El-Ghazaly has a final order of
17 deportation.²
18

19 On October 16, 2001, Mr. El-Ghazaly was indicted for violation of 18 U.S.C. §922(g)(5).
20 He was subsequently released on a \$50,000 bail but taken into INS custody due to his final order of
21 removal. On information and belief, the charge against Mr. El-Ghazaly was dismissed and he does
22 not have any convictions.
23

24
25
26 ² The INS was dissolved in March 2003 pursuant to the Homeland Security Act of 2002, Pub. L.
27 No. 107-296, 116 Stat. 2135. Its functions were transferred to the newly created Department of
28 Homeland Security (DHS), with immigration-related responsibilities divided primarily among
U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement
(ICE), and Customs and Border Protection (CBP).

1 Mr. El-Ghazaly was taken into INS custody on April 18, 2002, which began the 90-day
2 removal period under 8 U.S.C. 1231(a)(1)(A), subjecting Mr. El-Ghazaly to mandatory detention.

3 Saudi Arabia, Egypt, Israel, and Palestine informed Mr. El-Ghazaly's former counsel that
4 they were not willing to accept him for deportation. Since those countries do not recognize Mr. El-
5 Ghazaly as a citizen, nor will issue a passport to him, Mr. El-Ghazaly is a stateless Palestinian
6 without a travel document. Despite his cooperation in attempting to obtain a travel document, Mr.
7 El-Ghazaly has not been successful.

9 On July 27, 2002, the Federal Public Defender's Office filed a petition for writ of
10 habeas corpus with the U.S. District Court for the Northern District of California, seeking to compel
11 Mr. El-Ghazaly's release under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

12 On or around August 23, 2002, Mr. El-Ghazaly was released from ICE custody pursuant to
13 the posting of a \$25,000 bond. Upon his release, he was issued an Order of Supervision, with which
14 he has been complying for the past 23 years. On September 23, 2002, the District Court dismissed
15 Mr. El-Ghazaly's habeas petition, as he had been released from INS custody.

17 On October 29, 2009, Mr. El-Ghazaly married his U.S. citizen spouse, who filed a
18 Form I-130, Petition for Alien Relative on his behalf; that petition was approved on February 25,
19 2015. On March 30, 2003, Mr. El-Ghazaly filed a motion to reopen his deportation proceedings in
20 order allow him to adjust his status to that of a lawful permanent resident based on his approved
21 petition and to reapply for asylum on the basis of worsening country conditions in Gaza.

23 On October 14, 2025, Mr. El-Ghazaly appeared for a routine ICE check-in appointment in
24 Dallas, Texas. At that time, he was taken into custody and transferred to the California City
25 Detention Facility. His former attorney promptly filed an emergency motion for a stay of deportation
26 with the Board, where his 2023 motion to reopen remained pending. Rather than rule on his motion
27

1 for a stay of removal, the Board issued a decision on October 20, 2025 denying his motion to reopen
2 and ordering him removed from the U.S.

3 For the last twenty-five years, Mr. El-Ghazaly has been living his life in the U.S.,
4 checking in with ICE monthly and then yearly. He is married to a U.S. citizen and has four U.S.
5 citizen children, two of whom are minors. He is the sole financial supporter for his wife and two
6 minor children.
7

8 On November 18, 2025, undersigned counsel entered her appearance as counsel for Mr. El-
9 Ghazaly via the ICE Enforcement and Removal Operations online system.³ On Friday, November
10 21, 2025, undersigned counsel spoke to Mr. El-Ghazaly and learned that he has been (and continues
11 to be) in isolation at the detention center because he contracted COVID in custody.
12

13 Upon information and belief, Mr. El-Ghazaly did not receive a Revocation of Release to
14 from ICE, nor was his bond cancelled, nor was he informed that he had somehow violated the terms
15 of his release. Instead, he was told that ICE would be *attempting* to obtain a travel document on his
16 behalf.

17 In recent months, ICE has engaged in highly publicized arrests of individuals who
18 presented no flight risk or danger, often with no prior notice that anything regarding their status was
19 amiss or problematic, whisking them away to faraway detention centers without warning.
20

21 **III. LEGAL STANDARD**

22 Mr. El-Ghazaly is entitled to a temporary restraining order if he establishes that he is “likely
23 to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
24 that the balance of equities tips in [he] favor, and that an injunction is in the public interest.” *Winter*
25 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush &*
26

27 ³ <https://www.ice.gov/eroefile>
28

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 Mr. El-Ghazaly 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. El-Ghazaly overwhelmingly satisfies both standards.

IV. ARGUMENT

A. MR. EL-GHAZALY 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. El-Ghazaly’s continuous, indefinite detention violates his due process rights, and so too did his detention prior to receiving a hearing before a neutral adjudicator. Mr. El-Ghazaly has already suffered irreparable injury in the form of incarceration and will continue to suffer irreparable injury each day he remains detained without due process.

The Court should enjoin further detention because Mr. El-Ghazaly is likely to succeed on the merits of claims one, two, and three below, and should enjoin removal to a third country other than Saudi Arabia without the constitutionally required procedures, because he is likely to succeed on the merits claim four below. Mr. El-Ghazaly asks the Court to grant all or part of the requested injunction.

1. Mr. El-Ghazaly is Likely to Succeed on the Merits of His Claim That, in Violation of Clear Supreme Court Precedent, His Detention is Unconstitutional Because it is Indefinite.

First, Mr. El-Ghazaly is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from detaining him because he is stateless without travel documents and, therefore, his indefinite detention would be unconstitutional because there is no end in sight. 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. 8 U.S.C. § 1231(a)(1)(A); § 1231(a)(1)(B). Here, Mr. El-Ghazaly was detained during the 90-day removal period.

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 certain 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.

1 The Supreme Court has addressed the fact that the statute is silent regarding the limits on
2 post-final order detention, and as definitively held that such detention has the potential to be
3 indefinite and such indefinite detention would be unconstitutional. Thus, there must be constitutional
4 limits on post-final order detention. Specifically, the Supreme Court held that post final order
5 detention is only authorized for a “period reasonably necessary to secure removal,” a period that the
6 Court determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a
7 detainee provides “good reason” to believe that his removal is not significantly likely in the
8 reasonably foreseeable future, “the Government must respond with evidence sufficient to rebut that
9 showing.” *Id.* at 701. If the government cannot do so, the individual must be released.

11 In light of the Supreme Court limitations imposed on the statutory scheme, the government
12 updated the regulations to be consistent with those constitutionally required limitations on indefinite
13 detention. Under those regulations, detainees are entitled to release even before six months of
14 detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing
15 release after ninety days where removal not reasonably foreseeable). Moreover, under the Supreme
16 Court’s constitutional limitations on indefinite detention, as the period of post-final-order detention
17 grows, what counts as “reasonably foreseeable” must conversely shrink. *Zadvydas* at 701. In this
18 case, Mr. El-Ghazaly was placed on an OSUP specifically because his removal was not
19 foreseeable at all. And nothing has changed. If ICE is permitted to continue detaining him now,
20 under the possibility he might be removed somewhere, someday, simply because he has a removal
21 order, then he very likely will be detained in ICE custody essentially forever. In the absence of
22 actually obtaining a travel document from a country that will accept Mr. El-Ghazaly, his removal is
23 not foreseeable at all, let alone reasonably. *See Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal.
24 July 16, 2025) (“Respondents have not provided any details about why a travel document could not
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1 be obtained in the past, nor have they attempted to show why obtaining a travel document is more
2 likely this time around.”); *Liu v. Carter*, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025) (finding
3 that the respondents had not shown that removal was reasonably foreseeable where they did not
4 provide evidence why seeking travel documentation was more likely to be successful this time
5 around or describe other actions taken to make the petitioner’s removal more likely). Therefore, re-
6 detention is unconstitutional.
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8 **2. Mr. El-Ghazaly is Likely to Succeed on the Merits of His Claim That His**
9 **Detention is Unlawful Because it is in Violation of the Regulations.**

10 Mr. El-Ghazaly’s re-detention is separately unlawful because the controlling regulations
11 specify the circumstances that permit his detention, and Respondents have not established that
12 circumstances have changed regarding the foreseeability of his removal which is required under
13 those regulations.

14 By regulation, noncitizens with final removal orders who are released from detention after a
15 post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8 C.F.R. §
16 241.4(j). After an individual has been released on an OSUP, the regulations further specify that ICE
17 cannot revoke such an order without cause or adequate legal process. 8 C.F.R. §§ 241.13(i)(2)-(3).
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19 Under the regulations, ICE has the authority to re-detain a noncitizen previously ordered
20 removed only in specific circumstances, such as where an individual violates any condition of
21 release or there are changed circumstances regarding the reasonable foreseeability of removal. 8
22 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i). Here, there is no evidence of
23 changed circumstances in the record. The fact that Respondents have announced that they are
24 attempting to obtaining a travel document for Mr. El-Ghazaly is not a sufficient changed
25 circumstance, especially where they have not indicated to which country they intend to remove him.
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3. Mr. El-Ghazaly is Likely to Succeed on the Merits of His Claim That Due Process Requires That He Should Have Been Afforded a Hearing Before a Neutral Adjudicator Prior to Any Detention by ICE, and He is Entitled to Such a Hearing Prior to Any Future Re-Detention.

Mr. El-Ghazaly is likely to succeed on his claim that fundamental principles of due process require that he cannot be detained by ICE without first being provided a pre-deprivation hearing before a neutral adjudicator where the government shows that his removal is reasonably foreseeable and that circumstances have changed since his release in 2002, including that Mr. El-Ghazaly is now a danger or a flight risk.

Even if ICE had fully complied with the procedures set forth in the controlling regulations, ICE's regulatory authority to unilaterally re-detain Mr. El-Ghazaly is proscribed by the Due Process Clause because 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. El-Ghazaly's case, due process required notice and a hearing, prior to any arrest, at which he was afforded the opportunity to advance his arguments as to why he should not be re-detained. This never occurred.

Courts analyze these procedural 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 interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). The Due Process Clause of the Constitution prevents Respondents from arresting Mr. El-Ghazaly without providing a pre-deprivation hearing before a neutral adjudicator where the government 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.

1 The Due Process Clause applies to “all ‘persons’ within the United States, including
2 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*
3 *v. Davis*, 533 U.S. 678, 693 (2001). “The touchstone of due process is protection of the individual
4 against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including
5 “the exercise of power without any reasonable justification in the service of a legitimate government
6 objective.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

8 “Freedom from imprisonment – from government custody, detention, or other forms of
9 physical restraint – lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.
10 To comply with substantive due process, the government’s deprivation of an individual’s liberty
11 must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil, not
12 criminal,” and “nonpunitive in purpose and effect,” must be justified by either (1) dangerousness or
13 (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.
14 2017) (“[T]he government has no legitimate interest in detaining individuals who have been
15 determined not to be a danger to the community and whose appearance at future immigration
16 proceedings can be reasonably ensured by a lesser bond or alternative conditions.”). When these
17 rationales are absent, immigration detention serves no legitimate government purpose and becomes
18 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v. Indiana*,
19 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the government’s interests
20 in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135,
21 at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may “succeed
22 on his Fifth Amendment claim if he demonstrates either that the government acted with a punitive
23 purpose or that it lacks any legitimate reason to detain him”).
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Courts analyze these procedural 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 interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Mr. El-Ghazaly Has a Protected Liberty Interest in His Release

Mr. El-Ghazaly's liberty from immigration custody, a form of civil detention, 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, supra*, 533 U.S. at 690.

For more than thirteen years, Mr. El-Ghazaly has exercised that freedom under his release from ICE custody in August 2002. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding incarceration. *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 U.S. at 701. Because of Mr. El-Ghazaly's statelessness, his removal is not foreseeable at all, let alone reasonably. Therefore, any detention is unconstitutional.

Just as importantly, Mr. El-Ghazaly has been presenting himself before ICE for his regular check-in appointments for the past twenty-three years, where ICE did not seek to arrest him during this time. ICE instead gave him a future date and time to appear again each year, which he did. For the past twenty-three years, he has also devoted himself to his family, including being the sole financial support of his wife and two minor children. Individuals – including noncitizens – released from incarceration have a liberty interest in their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing

1 the liberty interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting
2 that “[i]t is well-established that the due process clause applies to protect immigrants”). This is
3 further reinforced by *Morrissey*, in which the Supreme Court recognized the protected liberty rights
4 under the Due Process Clause of a criminal detainee who was released on parole from incarceration.
5 408 U.S. at 481-82. The Court noted that, “subject to the conditions of his parole, [a parolee] can be
6 gainfully employed and is free to be with family and friends and to form the other enduring
7 attachments of normal life”—thus, those released on parole have a protected liberty interest, even
8 where that liberty is subject to conditions. *Id.* at 482. *See also Young v. Harper*, 520 U.S. at 152
9 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have
10 a protected liberty interest requiring pre-deprivation process); *Gagnon, supra*, 411 U.S. at 781-82
11 (holding that individuals released on felony probation have a protected liberty interest requiring pre-
12 deprivation process). In fact, so fundamental to due process is the concept of liberty that it is even
13 well established that an individual maintains a protectable liberty interest where the individual
14 obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864,
15 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
16 considerations support the notion that an inmate released on parole by mistake, because he was
17 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the
18 mistaken release was not his fault, and he had appropriately adjusted to society, so it “would be
19 inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal
20 quotation marks and citation omitted). Here, when this Court “compar[es] the specific conditional
21 release in [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,” it is
22 clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*,
23 Mr. El-Ghazaly’s release “enables [him] to do a wide range of things open to persons” including to
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1 live with his family, financially support his family, take care of his physical health, and “be with
2 family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S.
3 at 482. Moreover, Mr. El-Ghazaly is not a criminal detainee, but a civil detainee, and thus the due
4 process considerations of his liberty should be even weightier than the courts have already found
5 apply in the criminal context. Precedent from the Supreme Court and the Ninth Circuit make clear
6 that he has a strong liberty interest in his continued release from detention.
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8 **b. Mr. El-Ghazaly’s Liberty Interest Mandated a Due Process Hearing**
9 **Before any Detention and, Once Released, Mandates Such a Hearing**
10 **Prior to Any Re-Detention.**

11 Mr. El-Ghazaly asserts that, here, (1) where his detention is civil, (2) where he has diligently
12 complied with ICE’s reporting requirements for more than two decades, and (3) where on
13 information and belief ICE officers would arrest Mr. El-Ghazaly merely to fulfill an arrest quota
14 because his removal is not reasonably foreseeable and potentially indefinite, due process mandates
15 that he is required to receive notice and a hearing before a neutral adjudicator prior to any re-arrest.

16 “Adequate, or due, process depends upon the nature of the interest affected. The more
17 important the interest and the greater the effect of its impairment, the greater the procedural
18 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
19 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
20 “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient
21 administration of” its immigration laws in order to determine what process he is owed to ensure that
22 ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in
23 *Mathews v. Eldridge*, 424 U.S. 319, 332-35 (1976) this Court must consider three factors in
24 conducting its balancing test: “first, the private interest that will be affected by the official action;
25 second, the risk of an erroneous deprivation of such interest through the procedures used, and the
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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*, 424 U.S. at 335. 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 was required to provide Mr. El-Ghazaly with notice and a hearing prior to any re-incarceration and revocation of his OSUP. *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 [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

i. Mr. El-Ghazaly'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 v. District of Columbia*, 864 F.3d 671 (D.C. Cir. 2017) and *Johnson, supra* – 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. El-Ghazaly, who have also been placed on an OSUP in lieu of custody 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. El-Ghazaly, as a civil detainee, retains a truly weighty liberty interest even though he was under conditional release prior to his re-arrest. What is at stake in this case for Mr. El-Ghazaly 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 U.S. 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).

ii. The Government's Interest in Keeping Mr. El-Ghazaly in Custody is Low and the Burden on the Government to Release Him from Custody is Minimal

The government's interest in keeping Mr. El-Ghazaly in detention 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 releasing him from custody. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process Petitioner seeks – release from civil custody after ICE had already released him more than two decades ago, and where nothing in the interim has changed to warrant re-detention after —is a standard course of action for the government. Providing Mr. El-Ghazaly with a future hearing before a neutral adjudicator to determine whether his removal is reasonably foreseeable and if there is otherwise evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely conducts these reviews for individuals in Petitioner's same circumstances. 8 C.F.R. § 241.4(e)-(f).

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 ensure a noncitizen's appearance at immigration proceedings. *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 countries of the removal order, is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. El-Ghazaly due to alleged dangerousness, or due to a change in the foreseeability of his removal. Moreover, Mr. El-Ghazaly has always had a removal order since before his release, and yet is not a flight risk because he has continued to appear before ICE as requested for each and every appointment that has been scheduled. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a

1 person's justifiable reliance in maintaining his conditional freedom so long as he abides by the
2 conditions on his release, than to his mere anticipation or hope of freedom") (quoting *United States*
3 *ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971). What has changed,
4 however, is that ICE has a new policy to make a minimum number of arrests each day under the new
5 administration – but that does not constitute a material change in circumstances or increase the
6 government's interest in detaining him.⁴

8 Moreover, as discussed previously, nothing has changed regarding the lack of foreseeability
9 of his removal from the U.S. Keeping him free from custody until ICE assesses and demonstrates to
10 a neutral adjudicator that Mr. El-Ghazaly is actually a flight risk or danger to the community, or that
11 his detention is not going to be indefinite, is far less costly and burdensome for the government than
12 keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to
13 the public of immigration detention are 'staggering': \$158 each day per detainee, amounting to a
14 total daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996.

16 **iii. Without Release from Custody, the Risk of an**
17 **Erroneous Deprivation of Liberty is High**

18 Releasing Mr. El-Ghazaly from civil custody, and ensuring he is provided a pre-deprivation
19 hearing in the future, would decrease the risk of him being erroneously deprived of his liberty.
20 Before he can be lawfully detained, he must be provided with a hearing before a neutral adjudicator
21 at which the government is held to show that his detention will not be indefinite (that is, his removal
22 is reasonably foreseeable), or that the circumstances have changed since his release in 2002 such that
23 evidence exists to establish that he is a danger to the community or a flight risk.

26 ⁴ See "Trump officials issue quotas to ICE officers to ramp up arrests," Washington Post
27 (January 26, 2025), available at:
28 <https://www.washingtonpost.com/immigration/2025/01/26/icearrests-raids-trump-quota/>.

Under the process that ICE maintains is lawful – which affords Mr. El-Ghazaly no process whatsoever – ICE can simply re-detain him at any point if the agency desires to do so, as ICE did on October 14, 2025. Mr. El-Ghazaly has already been erroneously deprived of his liberty when he was recently detained, and the risk he will continue to be deprived is high if ICE is permitted to keep him in detention after making a unilateral decision to detain him. The regulation at 8 C.F.R. § 241.4(l) permits ICE to unilaterally re-detain individuals, even for an accidental error in complying with the conditions, 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. El-Ghazaly – seeks release from custody, and that he be provided a future hearing in front of a neutral adjudicator prior to any re-detention at which the government will establish that his detention will not be indefinite, or otherwise that the circumstances have changed since his release in 2002 to justify his detention – 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 IP*”), 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, as here, removal is not actually foreseeable. Accordingly, alternatives to detention must be considered – including releasing him under the conditions of his existing OSUP – in determining whether Mr. El-Ghazaly’s detention is warranted.

4. Mr. El-Ghazaly 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. El-Ghazaly 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 – 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 countries of removal. The statute explicitly states that a noncitizen “shall remove the [noncitizen] to the country the [noncitizen] . . . designates.” 8 U.S.C. § 1231(b)(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* 8 U.S.C. § 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 Technicians 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. El-Ghazaly 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

1 binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or
2 Degrading Treatment or Punishment.⁵

3 Currently, DHS has a policy of removing or seeking to remove individuals to third countries
4 without first providing constitutionally adequate notice of third country removal, or any meaningful
5 opportunity to contest that removal if the individual has a fear of persecution or torture in that
6 country. *See LB Decl. at Exh. A (DHS Policy Regarding Third Country Removal)*. Instead, the
7 policy squarely violates the INA because it does not take into account, or *even mention*, an
8 individual's designated countries of removal – thereby fully contravening the statutory instruction
9 that DHS must only remove an individual to the designated countries of removal. U.S.C. §
10 1231(b)(2)(A)(ii).
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12 Further, the policy plainly violates the United States' obligations under the Convention
13 Against Torture and principles of due process because it allows DHS to provide individuals with no
14 notice whatsoever prior to removal to a third country, so long as that country has provided
15 "assurances" that deportees from the United States "will not be persecuted or tortured." *Id.* If, in
16 turn, the country has not provided such an assurance, then DHS officers must simply inform an
17 individual of removal to that third country, but are not required to inform them of their rights to
18 apply for protection from removal to that country under the Convention Against Torture. *Id.* Rather,
19 noncitizens instead must already be aware of their rights under this binding international treaty, and
20 must affirmatively state a fear of removal to that country in order to receive a fear-based interview to
21 screen for their eligibility for protection under the Convention Against Torture. *Id.* Even so, the
22 screening interview is hardly a meaningful opportunity for individuals to apply for fear-based relief,
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26 ⁵ United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading
27 Treatment or Punishment (Dec. 10, 1984), available at:
28 [https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-against-torture-and-](https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading)
[other-cruel-inhuman-or-degrading](https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading).

1 because the interview happens within 24 hours after an individual states a fear of removal to a
2 recently-designated third country, which hardly provides for any time to consult with an attorney or
3 prepare any evidence for the interview. *Id.* And, in actuality, the screening interview is not a
4 screening interview at all, because USCIS officers under the policy are instructed to determine at this
5 interview “whether the alien would more likely than not be persecuted on a statutorily protected
6 ground or tortured in the country of removal” – which is the standard for protection under the
7 Convention Against Torture that immigration judges apply after a full hearing in Immigration Court.
8 *Id.* Then, if the USCIS officer determines that the noncitizen has not met this standard, they will then
9 be removed to the third country to which they claimed, and tried to demonstrate within 24 hours, a
10 fear of persecution or torture. *Id.* Finally, there is no indication that any of this process will occur in
11 an individual’s native language. *Id.* This is nothing more than a fig leaf of due process meant to
12 deprive individuals of the protection that the law and treaty are supposed to provide them.
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15 Clearly, this policy violates the Convention Against Torture, which instructs that the United
16 States cannot remove individuals to countries where they will face torture, because the policy allows
17 DHS to swiftly remove noncitizens to countries where they very well may face torture if those
18 countries simply provide the United States with “assurances” that deportees will not be tortured. *Id.*
19 Moreover, the policy puts the onus of individuals to be aware of their rights under the Convention
20 Against Torture — which is a treaty that binds the United States government — instead of ensuring
21 that DHS officials make individuals aware of their rights, which would more squarely comport with
22 DHS’s obligations under the treaty not to remove individuals to countries where they face torture. *Id.*
23 For similar reasons, the policy also violates principles of due process, because it does not provide
24 individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.* Again, the
25 policy allows individuals to be removed to third countries without any notice or an opportunity to be
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1 heard if that country merely promises that deportees will not face torture there, and if individuals are
2 otherwise unaware of their right to seek fear-based relief. *Id.*

3 The U.S. District Court for the District of Massachusetts previously issued a nationwide
4 preliminary injunction blocking such third country removals without notice and a meaningful
5 opportunity to apply for relief under the Convention Against Torture. *D.V.D., et al. v. U.S.*
6 *Department of Homeland Security, et al.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S.
7 Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025,
8 just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide
9 injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only
10 disagreement with the nature, and not the substance, of the nationwide preliminary injunction.⁶ This
11 is made clear by the Court's decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025), where the Court
12 explained that the putative class plaintiffs there had to seek relief in individual habeas actions (as
13 opposed to injunctive relief in a class action) against the implementation of Proclamation No. 10903
14 related to the use of the Alien Enemies Act to remove non-citizens to a third country. Regardless,
15 ICE appears to be emboldened and intent to implement its campaign to send noncitizens to far
16 corners of the planet – places they have absolutely no connection to whatsoever – in violation of
17 individuals' due process rights.
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22 ⁶ The Supreme Court's July 3, 2025 order in *U.S. Department of Homeland Security, et al. v.*
23 *D.V.D., et al.*, 606 U. S. ____ (2025) further reinforces that the Supreme Court only disagrees
24 with the means of a nationwide injunction, and not the underlying substance of the nationwide
25 injunction. There, the Court held that the stay of the preliminary injunction divests remedial
26 orders stemming from that injunction of enforceability, and cited to *United States v. Mine*
27 *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." *Id.* 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. El-Ghazaly remains in the United
States and this Court, therefore, continues to have jurisdiction over his case.

1 Mr. El-Ghazaly's removal to a third country would violate his due process rights unless he is
2 first provided with sufficient notice and a meaningful opportunity to apply for protection under the
3 Convention Against Torture; accordingly, intervention by this Court is necessary to protect those
4 rights.

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6 **5. Mr. El-Ghazaly will Suffer Irreparable Harm Absent Injunctive Relief**

7 Mr. El-Ghazaly will suffer irreparable harm if he is deprived of his liberty and subjected to
8 indefinite detention by immigration authorities without being provided the constitutionally adequate
9 process (a future pre-deprivation hearing before a neutral adjudicator prior to re-detention) that this
10 motion for a temporary restraining order seeks. Detainees in civil ICE custody are held in "prison-
11 like conditions" which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193,
12 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has
13 a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it
14 enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat'l Ctr. for Immigrants*
15 *Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized
16 in "concrete terms the irreparable harms imposed on anyone subject to immigration detention"
17 including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens
18 imposed on detainees and their families as a result of detention, and the collateral harms to children
19 of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).
20 Finally, the government itself has documented alarmingly poor conditions in ICE detention centers.
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23 Indeed, Mr. El-Ghazaly had back surgery in 2004 and spent his first two days in ICE custody
24 sleeping on a concrete floor. He has also contracted COVID due to the conditions in the detention
25 center. Meanwhile, during his twenty-three years on OSUP, he married a U.S. citizen and had four
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1 U.S. citizen children, two of whom are minors. He is the sole financial supporter for his wife and
2 two minor children, who are alone in Dallas, Texas, waiting for him to come home.

3 Further, Mr. El-Ghazaly will suffer irreparable harm were he to be removed to a third
4 country without first being provided with constitutionally-compliant procedures to ensure that his
5 right to apply for fear-based relief is protected. Individuals removed to third countries under DHS's
6 policy have reported that they are now stuck in countries where they do not have government
7 support, do not speak the language, and have no network.⁷ Others removed in violation of their prior
8 grant of protection under the Convention Against Torture have reported that they faced severe
9 torture at the hands of government agents.⁸ It is clear that "the deprivation of constitutional rights
10 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
11 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is
12 necessary to prevent Mr. El-Ghazaly from suffering irreparable harm from an unlawful and unjust
13 detention, and by being summarily removed to any third country where he may face persecution or
14 torture.
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17 **6. The Balance of Equities and the Public Interest Favor Granting the**
18 **Temporary Restraining Order**

19 The balance of hardships strongly favors Mr. El-Ghazaly. His detention is potentially
20 indefinite, and his summary removal to any third country where he may face persecution or torture
21 would violate the INA, binding international treaty, and his due process rights. The government
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24 ⁷ NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May
25 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>.

26 ⁸ NPR, "Abrego Garcia says he was severely beaten in Salvadoran prison" (July 3, 2025),
27 available at: <https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture>.

1 cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See*
2 *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

3 Further, any burden imposed by requiring the Respondents to release Mr. El-Ghazaly from
4 custody (and provided notice and a hearing before a neutral adjudicator to any future re-detention) is
5 both *de minimis* and clearly outweighed by the substantial harm he will suffer as long as he
6 continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s
7 interest lies on the side of affording fair procedures to all persons, even though the expenditure of
8 governmental funds is required.”). Similarly, any burden of requiring Respondents not to remove
9 Mr. El-Ghazaly to any third country is outweighed by the substantial harm he may suffer if removed
10 to a country where he will face persecution or torture. *See id.*

11 Finally, a temporary restraining order is in the public interest. First and most importantly, “it
12 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of
13 federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v.*
14 *Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006,
15 1029 (9th Cir. 2013)). If a temporary restraining order is order is not entered, the government would
16 effectively be granted permission to detain Mr. El-Ghazaly, and/or to summarily remove him to any
17 third country, in violation of the requirements of Due Process. “The public interest and the balance
18 of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act*
19 *Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996
20 (“The public interest benefits from an injunction that ensures that individuals are not deprived of
21 their liberty and held in immigration detention because of bonds established by a likely
22 unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally,
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1 public interest concerns are implicated when a constitutional right has been violated, because all
2 citizens have a stake in upholding the Constitution.”).

3 **IV. CONCLUSION**

4 For all the above reasons, Mr. El-Ghazaly warrants a temporary restraining order that
5 Respondents immediately release him from custody, not re-detain him unless he is afforded notice
6 and a hearing before an neutral adjudicator on whether his detention is not indefinite, and further
7 whether it is justified by evidence that he is a danger to the community or a flight risk, and not
8 remove him to any third country without first providing him with constitutionally-compliant
9 procedures.
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11
12 Dated: November 21, 2025

Respectfully submitted,

13 /s/ Lina Baroudi

14 Lina Baroudi
15 LAW OFFICE OF LINA BAROUDI
16 2680 S. White Rd., Ste. 151
17 San Jose, CA 95148-2079
18 T: (408) 300-2655
19 lina@linalaw.com

20 *Attorney for Petitioner-Plaintiff*
21 Azmy Abdelraauf El-Ghazaly
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