

THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Phong Thanh Nguyen,

*Petitioner,*

v.

Bruce SCOTT, Warden, Northwest ICE  
Processing Center; Camilla WAMSLEY,  
Enforcement and Removal Operations,  
Seattle Field Office Director, U.S.  
Immigration and Customs Enforcement;  
Kristi NOEM, Secretary, U.S. Department  
of Homeland Security; and U.S.  
DEPARTMENT OF HOMELAND  
SECURITY,

*Respondents.*

Civil Case No. 2:25-cv-01398-TMC-SKV

**MOTION FOR PRELIMINARY  
INJUNCTION**

NOTED FOR CONSIDERATION:  
AUGUST 14, 2025

MOTION FOR PRELIMINARY INJUNCTION  
Case No. 2:25-cv-01398-TMC-SKV

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## I. INTRODUCTION

Petitioner Phong Thanh Nguyen (“Petitioner”) faces immediate irreparable harm absent this Court’s intervention. He is experiencing unlawful prolonged immigration detention and, as a pre-1995 Vietnamese refugee with a 25-year-old removal order, he faces a real and imminent threat of removal to a third country in violation of his statutory and constitutional rights. He respectfully asks this Court to order his release, enjoin Respondents from removing him to a third country without affording him his statutory and constitutional rights in reopened removal proceedings, and enjoin Respondents from removing him to a third country for a punitive purpose and effect.

## II. STATEMENT OF FACTS

Petitioner was born on June 6, 1970 in Saigon, Vietnam, and entered the United States on July 25, 1975 as a Vietnam War refugee. Petitioner was in the first wave of refugees evacuated to the U.S. because of his father’s close ties to the American military. Declaration of Nhan Nguyen (“Nhan Decl.”) ¶3. Petitioner and his family settled in the Seattle area, where they still live. He became a lawful permanent resident in 1978. Petitioner lives with and cares for his elderly parents, who are U.S. citizens. *Id.* ¶10. His four siblings are U.S. citizens and lawful permanent residents. And Petitioner has a 32-year-old daughter with a serious medical condition called Prader-Willi Syndrome, a rare and complex genetic disorder, for whom he shares caretaking responsibilities with his co-parent. Declaration of Anita Amantea (“Amantea Decl.”) ¶¶2-4. Her survival quite literally depends on his presence. *Id.* ¶¶9-10.

On December 20, 1999, Petitioner was convicted of second-degree assault (an aggravated felony) for hitting a man with a pool cue during a bar room fight. Decl. of Jennifer Pasquarella (“Pasq. Decl.”) ¶3. When he was released from prison in July 2000, the former Immigration and Nationality Service (“INS”) took him into custody for being removable under 8 U.S.C. § 1227(a)(2)(A)(iii) based on his aggravated felony. Pasq. Decl. ¶5. An immigration judge ordered Petitioner removed on October 4, 2000, but Vietnam refused to accept him. *Id.*; Declaration of Pierre Williams (“Williams Decl.”) ¶3.



1 After six months of detention, in January 2001, Petitioner filed a writ of habeas corpus  
2 seeking his release from immigration custody alleging his removal was not reasonably foreseeable.  
3 In September 2001, a judge ordered him released. Pasq. Decl. ¶4.

4 On August 26, 2003, immigration officials again took Petitioner into custody after he was  
5 convicted of unlawful possession of a weapon and harassment. *Id.* ¶5. After six additional months  
6 of immigration custody, he was again released on January 4, 2004, under an order of supervision  
7 (“OSUP”). *Id.* ¶8. He has been dutifully complying with his supervision requirements, including  
8 timely appearances for all his scheduled check-ins. Declaration of Petitioner (“Pet. Decl.”) ¶7.

9 In June 2025, Petitioner appeared for his annual check-in. *Id.* ¶8. An ICE officer handed  
10 Petitioner paperwork and asked him to complete it and bring it back on July 15, 2025. *Id.* ICE  
11 asked him to complete the self-declaration form from Vietnam but did not explain what the forms  
12 were for. Pet. Decl. ¶8. Vietnam requires this form to process an ICE request so it can issue a travel  
13 document. Pasq. Decl. ¶9. Petitioner complied. Pet. Decl. ¶10. At that check-in on July 15, an  
14 officer told Petitioner to come back the next day with two passport photos. *Id.* When asked, the  
15 officer told Petitioner that the photos would be sent to the Vietnamese Embassy to “see if [he] was  
16 deportable.” *Id.* Petitioner asked the officer if he was deportable, and the officer replied: “Well,  
17 it’s starting to open up.” *Id.*

18 Petitioner complied and returned on July 16 with the passport photos. *Id.* ¶11; Williams  
19 Decl. ¶¶6-7. An ICE officer took Petitioner’s passport photos and then handcuffed and detained  
20 him. Pet. Decl. ¶11. ICE brought Petitioner to the Northwest ICE Processing Center in Tacoma.  
21 After the booking process, a supervisory officer reviewed Petitioner’s history of ICE detention and  
22 supervision and complimented him on his 20-plus year history of OSUP compliance. *Id.* ¶14. The  
23 officer explained that ICE was going to again ask Vietnam to repatriate him and would keep him  
24 detained while they “wait and see if Vietnam will respond and approve it.” *Id.* The supervisor did  
25 not explain why Vietnam would now accept him when it had not previously. *Id.* ¶15. Petitioner  
26 was not given a copy of a notice stating that ICE had revoked his release. *Id.*

On July 29, an ICE deportation officer asked Petitioner to complete and sign Form I-217, “Information for Travel Document or Passport.” *Id.* ¶16; Pasq. Decl. ¶10. After consulting with undersigned counsel, Petitioner completed and signed the form and answered several questions about his connection to Vietnam. Pet. Decl. ¶16; Pasq. Decl. ¶¶10-11. The deportation officer explained to undersigned counsel that ICE had not submitted a travel document request to Vietnam but hoped to submit it that same day. Pasq. Decl. ¶10. After reviewing his voluminous file and asking Petitioner questions, the deportation officer appeared dissatisfied and left Petitioner “with the impression that he did not seem to think there was enough information to satisfy Vietnam” because of Petitioner’s lack of family in Vietnam, an address where he would live, or a birth certificate. Pet. Decl. ¶¶17-20.

ICE did not request travel documents for Petitioner prior to his detention, nor had it done so as of July 29, nearly two weeks into his detention. Pasq. Decl. ¶4; Pet. Decl. ¶10.

On August 1, a deportation officer gave Petitioner a Notice of Revocation of Release, which he was allowed to keep. Pasq. Decl. ¶18. Petitioner was given an opportunity to make a statement to rebut his revocation. *Id.* Petitioner also provided a written statement. *Id.*

#### **A. Vietnam Repatriation History**

Vietnam must issue a passport or other travel document in response to a request from ICE before repatriating a Vietnamese immigrant. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any Vietnamese immigrant with a U.S. removal order. *See id.* In 2008, Vietnam agreed to consider repatriation requests for Vietnamese immigrants who had arrived in the U.S. after July 12, 1995 only. *See id.* Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese immigrants 251 times; Vietnam granted those requests only 18 times. *Id.* at 1087-88.

In November 2020, the U.S. and Vietnam signed a Memorandum of Understanding (“MOU”) that creates a process for deporting pre-1995 immigrants. Pasq. Decl. ¶7. MOU Section 4 obliges the U.S. and Vietnam to consider specific factors before deciding to remove a

1 Vietnamese citizen and before deciding to accept for repatriation a Vietnamese citizen. *Id.* These  
 2 factors are not publicly known, yet they appear to dictate who may be deported to Vietnam. *Id.*  
 3 Pursuant to MOU Section 8, if a person meets the designated criteria, ICE will put together a  
 4 documentation package for Vietnam to include, inter alia, a self-declaration form of the individual  
 5 to be removed, copies of identity and citizenship documents, and copies of the final order of  
 6 removal and any criminal records. *Id.*

7 Between September 2021 and September 2023, Vietnam issued travel documents to only  
 8 four pre-1995 Vietnamese immigrants whom ICE sought to deport. *Id.* ¶11.

9 **B. Repatriation to Vietnam of All Pre-1995 Post-Removal Order Individuals Is Not**  
 10 **Significantly Likely in the Reasonably Foreseeable Future**

11 There are no known changes to Vietnam's policies or procedures for approving travel  
 12 documents for pre-1995 deportees. Declaration of Tin Thanh Nguyen ("T.N. Decl.") ¶8. The  
 13 process to secure a travel document from Vietnam for a pre-1995 immigrant still involves multiple  
 14 steps and can take a long time, requiring interviews and verification by Vietnamese authorities. *Id.*  
 15 ¶¶10-14. It is still discretionary and dependent on individual circumstances, including the  
 16 government's ability to verify an individual's connection to Vietnam and whether they meet the  
 17 criteria for acceptance. While, according to ICE, the Vietnamese government has approved more  
 18 travel documents for pre-1995 individuals in 2025 than ever before, it is unclear how many pre-  
 19 1995 applications are pending, how many have been denied, nor how long the applications take to  
 20 be approved or denied. The experiences of litigants and practitioners in 2025 demonstrate that  
 21 individuals are waiting many months for responses from Vietnam. *Id.* ¶¶10-12, 17; Declaration of  
 22 Glenda Aldana Madrid ("Aldana Decl.") ¶¶6-18. There is no evidence that Vietnam has begun to  
 23 approve all travel documents, nor that it can be done reasonably quickly.

24 Nonetheless, on June 9, 2025, ICE "rescinded its policy of generally finding that pre-1995  
 25 Vietnamese immigrants are not likely to be removed in the reasonably foreseeable future," Pasq.  
 26 Decl. ¶15, and began detaining pre-1995 Vietnamese immigrants at their check-ins in large  
 numbers without first securing their travel documents. T.N. Decl. ¶15. In July, ICE deported two

pre-1995 Vietnamese immigrants to third countries (South Sudan and Eswatini) without first requesting travel documents from Vietnam. Aldana Decl. ¶¶10-11; T.N. Decl. ¶¶19-20.

### C. ICE's New Third Country Removal Policy

On July 9, ICE released a memo instructing staff that ICE may deport a person to a third country not designated on the removal order without providing any notice or an opportunity to be heard if the State Department confirms that it has received diplomatic assurances that individuals will not be persecuted or tortured. Pasq. Decl. ¶2. *There is no mention of assurances that a person will not be arbitrarily or indefinitely imprisoned. Id.*

If no diplomatic assurances are received, officers are instructed to serve on the individual a Notice of Removal ("Notice") that includes the intended country of removal. *Id.* It tells officers not to ask whether the individual is afraid of removal to that country and states that officers should "generally wait at least 24 hours following service of the [Notice] before effectuating removal." *Id.* The memo states that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the [Notice] as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal." *Id.*

The memo states that if the noncitizen "does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the [Notice] within 24 hours, [ICE] may proceed with removal to the country identified on the notice." If the noncitizen "does affirmatively state a fear if removed to the country of removal," then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") to screen for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.* "USCIS will generally screen within 24 hours." *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed, but if it determines that they have met the standard, then ICE may reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT ... [or] designate another country for removal." *Id.*

**D. Punitive Banishment to Third Countries**

Since January 2025, Respondents implemented a policy and practice of removing individuals to third countries, without (1) following the Immigration and Nationality Act (“INA”) procedures for designation and removal to a third country and (2) providing fair notice and an opportunity to contest the removal in immigration court. These removals are unconstitutional and amount to punitive banishment.

Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the New York Times reported that seven countries had agreed to accept deportees who are not their own citizens.<sup>1</sup> Since then, ICE has carried out highly-publicized third country deportations to South Sudan and Eswatini.

The Administration’s third country removal scheme is designed to punish and deter. In an official video, President Donald Trump stated, “[I]f illegal aliens choose to remain in America, they’re remaining illegally, and they will face severe consequences,” such as “significant jail time, ... garnishment of all wages, imprisonment and incarceration, and *sudden deportation in a place and manner solely of our discretion.*”<sup>2</sup> In January, President Trump announced a plan to detain immigrants at the Guantanamo Bay prison in Cuba because “it’s a tough place to get out” and “we don’t want them coming back.”<sup>3</sup>

Later, Secretary of State Marco Rubio announced that El Salvador had agreed to “accept for deportation any illegal alien in the [U.S.] who is a criminal”<sup>4</sup> with the explicit understanding

<sup>1</sup> The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda. Edward Wong et al., *Inside the Global Deal-Making Behind Trump’s Mass Deportations*, NY Times (June 25, 2025), <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html>.

<sup>2</sup> Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> (last visited July 24, 2025).

<sup>3</sup> Benedict Garman & Matt Murphy, *Migrant Tents Removed From Guantanamo Bay, Satellite Images Show*, BBC News (Apr. 17, 2025), <https://www.bbc.com/news/articles/crm3x27vw70o>.

<sup>4</sup> Stefano Pozzebon et al., *El Salvador Offers to House Violent US Criminals and Deportees of any Nationality in Unprecedented Deal*, CNN World (Feb. 4, 2025), <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

1 that “[President Bukele] will put them in his jails.”<sup>5</sup> Respondent DHS Secretary Kristi Noem said,  
 2 “It has been wonderful for us to be able to have somewhere to send the worst of the worst and  
 3 someone to partner with. And we’d like to continue that partnership because it’s been *a powerful*  
 4 *message of consequences*.”<sup>6</sup> President Trump recently spoke about the deterrent effect of the El  
 5 Salvador banishments: “[W]e bring people there and ... they don’t get out.”<sup>7</sup> DHS agreed, posting,  
 6 “Illegal aliens are turning back because they know ... they will ultimately leave in handcuffs.”<sup>8</sup>

7 In April, Secretary of State Rubio stated that the administration is “working with other  
 8 countries ... to send [them] some of the most despicable human beings ... and the further away  
 9 from America, the better, so they can’t come back.”<sup>9</sup> Secretary Noem has publicly threatened  
 10 noncitizens with criminal convictions to “leave America” or “be fined nearly \$1,000 per day,  
 11 imprisoned, and deported.”<sup>10</sup> She stated, “President Trump and I have a clear message to those in  
 12 our country illegally: LEAVE NOW. If you do not self-deport, we will hunt you down, arrest you,  
 13 and deport you.”<sup>11</sup>

14 The Administration has negotiated with countries to have U.S. deportees imprisoned in  
 15 prisons, camps, or other facilities. In February, Panama and Costa Rica took in hundreds of  
 16 deportees from African and Central Asian countries and imprisoned them in hotels, a jungle camp,  
 17  
 18

19 <sup>5</sup> Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any Nationality, Including*  
 20 *Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>.

21 <sup>6</sup> Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El Salvador - April 14, 2025*,  
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22 <sup>7</sup> Roll Call, *White House Press Conference: Press Conference: Donald Trump Hosts a Press Conference at the*  
 23 *White House - June 27, 2025*, at 00:20:29, <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> (last visited July 24, 2025).

24 <sup>8</sup> Homeland Security (@DHSgov), X (June 24, 2025 at 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520>.

25 <sup>9</sup> Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7, 2025),  
<https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations>.

26 <sup>10</sup> Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025), <https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self>.

<sup>11</sup> *Id.* (italics omitted).

1 and a detention center.<sup>12</sup> In Panama, officials confiscated cell phones, denying deportees access to  
 2 their attorneys.<sup>13</sup> Deportees were “guarded like prisoners,” sleeping in structures made from plastic  
 3 sheets and having toilet access only when escorted.<sup>14</sup>

4 The Costa Rican president announced an agreement to receive up to 200 deportees and to  
 5 hold them for up to six weeks before sending them to their home countries, all paid for by the  
 6 U.S.<sup>15</sup> The deportees were held at the Temporary Migrant Care Center (CATEM).<sup>16</sup> Migrants held  
 7 there previously reported sleeping on the ground in tents, being held in cramped quarters like  
 8 prisoners, and sanitation issues.<sup>17</sup> On June 24, a Costa Rican court ordered the release of the  
 9 deportees due to civil rights violations, finding “they had been deprived of their freedom of  
 10 movement without a prior individual ruling, that their communications with the outside had been  
 11 restricted, and that they had not been told about the possibility of applying for refugee status.”<sup>18</sup>

12 In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200 deported  
 13 Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as  
 14  
 15

16 <sup>12</sup> The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal 'Black Hole,'* CBC News  
 17 (Feb. 28, 2025, 6:29 AM), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan  
 18 Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try to Return Them to Their*  
 19 *Countries*, AP World News (Feb. 18, 2025), [https://apnews.com/article/panama-trump-migrants-darien-](https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455)  
 20 [d841c33a215c172b8f99d0aeb43b0455](https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455); Manuel Rueda, *Asylum Seekers Deported by the U.S. Are Stuck in Panama*  
 21 *and Unable to Return Home*, All Things Considered, NPR (May 5, 2025), [https://www.npr.org/2025/05/05/nx-s1-](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)  
 22 [5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home](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).

23 <sup>13</sup> Julie Turkewitz et al, *Migrants, Deported to Panama Under Trump Plan, Detained in Remote Jungle Camp*, N.Y.  
 24 Times (Feb. 19, 2025), [https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock)  
 25 [camp.html?login=smartlock&auth=login-smartlock](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock).

26 <sup>14</sup> Matias Delacroix & Megan Janetsky, *Isolated in 'Harsh Conditions,' Deportee from US Details Legal Limbo in*  
 Panama Camp Near Darien Gap, AP World News (Feb. 22, 2025), [https://apnews.com/article/panama-deportees-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)  
 trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86.

<sup>15</sup> Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President Says*, Reuters (Feb. 19,  
 2025), [https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-](https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/)  
 2025-02-19/.

<sup>16</sup> The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in Costa Rica*, NBC News  
 (Feb. 21, 2025 at 7:37 AM PST), [https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)  
 costa-rica-rcna193148

<sup>17</sup> *Id.*

<sup>18</sup> Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported from US*, BBC News (June 25,  
 2025), <https://www.bbc.com/news/articles/cwyrn42kp7no>.

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1 CECOT.<sup>19</sup> El Salvador's justice minister stated the only way out of CECOT is in a coffin.<sup>20</sup>

2 In May, ICE attempted to deport individuals from Vietnam, Laos, the Philippines, and  
3 Mexico to Libya.<sup>21</sup> The aircraft sat on the runway for hours until the individuals were returned to  
4 a detention center after a court ordered the men not to be deported.<sup>22</sup>

5 On July 4, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South  
6 Sudan.<sup>23</sup> The government of South Sudan euphemistically said in a statement that the deportees  
7 were "under the care of the relevant authorities"<sup>24</sup>—meaning they are imprisoned. They have been  
8 held incommunicado since their deportation was completed. Aldana Decl. ¶18.

9 On July 15, ICE deported five men to Eswatini, including one Vietnamese pre-1995  
10 immigrant. T.N. Decl. ¶19. DHS referred to the men as "so uniquely barbaric that their home  
11 countries refused to take them back."<sup>25</sup> Eswatini government officials have said the men are  
12 imprisoned in solitary confinement and that the U.S. is paying for the costs of their imprisonment.<sup>26</sup>  
13 An Eswatini government official estimated the men would be held for about 12 months.<sup>27</sup>

14  
15  
16 <sup>19</sup> See, e.g., Wong, *supra* note 1; Michael Rios, *What We Know About the El Salvador 'Mega Prison' Where Trump*  
*Is Sending Alleged Venezuelan Gang Members*, CNN (Mar. 17, 2025).

17 <sup>20</sup> Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents Indicate Most Have No Apparent*  
*Criminal Records*, CBS News (Apr. 6, 2025), [https://www.cbsnews.com/news/what-records-show-about-migrants-](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/)  
18 [sent-to-salvadoran-prison-60-minutes-transcript/](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/).

19 <sup>21</sup> Human Rights Watch, *U.S.: Don't Forcibly Transfer Migrants to Libya*, May 9, 2025, [https://www.hrw.org/](https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya)  
[news/2025/05/09/us-dont-forcibly-transfer-migrants-libya](https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya).

20 <sup>22</sup> *Id.*

21 <sup>23</sup> Guardian, *US Judge Clears Path for Eight Immigrants to be Deported to South Sudan*, July 4, 2025,  
<https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted>.

22 <sup>24</sup> Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to Distant Countries*, N.Y. Times  
(July 13, 2025), <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html>; see  
23 also Press Statement, Republic of South Sudan, *Official Statement on the Arrival of Third-Country Nationals and*  
*South Sudanese Deported from the United States of America to South Sudan*, July 8, 2025,  
[https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/)  
[from-the-united-states-of-america-to-south-sudan/](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/).

24 <sup>25</sup> Tricia McLaughlin (@TriciaOhio), X (July 15, 2025), <https://x.com/TriciaOhio/status/1945274627976200206>.

25 <sup>26</sup> Nimi Princewill et al., *'Not Trump's Dumping Ground': Outrage Over Arrival of Foreign US Deportees in Tiny*  
*African Nation*, CNN World (July 18, 2025), [https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-](https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl)  
[deportees-intl](https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl); Rachel Savage et al., *Eswatini opposition attacks US deal as 'human trafficking disguised as*  
*deportation*, The Guardian, Jul. 23, 2025, [https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-](https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees)  
26 [deportees](https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees).

27 <sup>27</sup> *Id.*

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The Administration has handpicked countries known for human rights abuses for third country deportation agreements to scare people in the U.S. into self-deporting or to accept removal to their home countries. For example, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, or to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first.<sup>28</sup> Eswatini is ruled by a monarch, and many of its citizens live on less than four dollars a day.<sup>29</sup> The prison system is overcrowded, with prisoners receiving one meal a day.<sup>30</sup> The U.S. State Department advises Americans to “exercise increased caution in Eswatini due to crime and civil unrest.”<sup>31</sup> And Libya is in the middle of a civil war, with a record of “pervasive long-term arbitrary detention, enforced disappearances of both men and women, killings under torture, and unlawful killings in places of detention.”<sup>32</sup> The United Nations has called Libya’s violations of detainees’ rights “crimes against humanity.”<sup>33</sup>

### III. LEGAL STANDARD

This court may grant a preliminary injunction (“PI”) pursuant to Fed. R. Civ. P. (“FRCP”) 65 if the plaintiff can “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit applies a “sliding scale” approach to the *Winter* standard, where “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiffs can support issuance of a [PI],” so long as the other *Winter* factors are met. *Frailhat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021) (citation omitted). Under this

<sup>28</sup> U.S. Department of State, Travel.State.Gov, *South Sudan Travel Advisory* (Mar. 8, 2025), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html>.

<sup>29</sup> Nimi Princewill et al., ‘Not Trump’s Dumping Ground’: Outrage Over Arrival of Foreign US Deportees in Tiny African Nation, CNN World (July 18, 2025), <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>.

<sup>30</sup> *Id.*

<sup>31</sup> U.S. Department of State, Travel.State.Gov, *Eswatini Travel Advisory* (July 1, 2024), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html>.

<sup>32</sup> Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya*, *supra*, note 26; see Bartlett, *supra*, note 11.

<sup>33</sup> Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya*, *supra*, note 26.

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1 approach, the four *Winter* elements are “balanced, so that a stronger showing of one element may  
 2 offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
 3 (9th Cir. 2011).

#### 4 IV. ARGUMENT

5 This Court should issue a PI because “immediate and irreparable injury” is occurring and  
 6 will continue in the absence of an order.<sup>34</sup> FRCP 65(b). Respondents have re-detained Petitioner  
 7 in violation of his due process and statutory rights and threaten to remove him to a third country  
 8 without following constitutional and statutory procedural protections and in violation of bedrock  
 9 law prohibiting the U.S. from imposing punitive measures on noncitizens ordered removed. This  
 10 Court should order Petitioner’s release and enjoin removal to a third country.

##### 11 A. Petitioner Is Likely to Succeed on the Merits of His Claims.

##### 12 1. Petitioner Is Likely to Succeed on the Merits of His Claim That His Re-Detention Is Unconstitutional and Unlawful.

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

15 Twice, the government has detained Petitioner to remove him to Vietnam, cumulating in a  
 16 year and a half of detention. ICE last released Petitioner on an OSUP 21 years ago, imposing  
 17 certain conditions and promising that “[o]nce a travel document is obtained [by ICE], you [must]  
 18 surrender to the ICE for removal. You will, at that time, be given an opportunity for an orderly  
 19 departure.” Pasq. Decl. ¶8. Petitioner has duly complied with all supervision requirements. He  
 20 lives an established, productive life and plays a vital role as a father, son, and employee.

21 The government now claims it can re-detain Petitioner to try to remove him to Vietnam  
 22 because removals of Vietnamese have “started to open up” and Vietnam has issued more travel  
 23 documents than before. It cannot explain why it should be permitted to re-detain Petitioner before  
 24 even initiating the travel document process with Vietnam. Rather, its decision to re-detain  
 25

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26 <sup>34</sup> Whether the requested relief is a mandatory or prohibitory injunction will be addressed at the hearing. *See* Dkt. 22 at 13.

1 Petitioner is driven by an agency-wide policy change to now assert that pre-1995 Vietnamese  
2 removals are reasonably foreseeable and to super-charge third country removals without affording  
3 any process. The government cannot demonstrate that re-detention in this case is permissible  
4 *without first obtaining the travel document to Vietnam* for several reasons.

5 First, due process does not permit indefinite detention, nor does it permit the deprivation  
6 of liberty without adherence to procedural protections. Here, the government asks this court to  
7 authorize detention again on the off chance that Vietnam will accept Petitioner. The Supreme Court  
8 in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), has made clear that neither the Fifth Amendment  
9 nor 8 U.S.C. § 1231(a) permits detention more than six months where removal is not reasonably  
10 foreseeable. *See id.* (“[a] statute permitting indefinite detention ... would raise a serious  
11 constitutional problem” because it would become punitive). “[A] series of releases and re-  
12 detentions by the government ... in essence results in an indefinite period of detention, albeit  
13 executed in successive ... intervals.” *Chen v. Holder*, No. 6:14-2530, 2015 WL 13236635, at \*2  
14 (W.D. La. Nov. 20, 2015) (ordering release of Chinese man detained for a third time because “ICE  
15 has once again not obtained a travel document for Petitioner, suggesting that removal is not  
16 imminent”). *Zadvydas* would authorize the government to detain Petitioner if it had his travel  
17 documents in hand and a scheduled flight. But it does not authorize the government to restart the  
18 clock, just so it may take another stab at persuading Vietnam to issue a travel document. Even if it  
19 were certain that Vietnam would issue a travel document (it is not), the process to procure it takes  
20 time, detention time that is no longer authorized by the Constitution or the statute.

21 Moreover, Petitioner has a protected liberty interest in remaining in the community on  
22 supervision. *See Zakzouk v. Becerra*, No. 25-cv-06254, 2025 WL 2097470, at \*3 (N.D. Cal. July  
23 26, 2025) (“Courts have previously found that individuals released from immigration custody ...  
24 have a protectable liberty interest in remaining out of custody.”) (citing cases). This liberty cannot  
25 be taken away without notice and a pre-deprivation hearing. The government cannot satisfy the  
26 *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test requiring a pre-detention hearing before

liberty is deprived. *See, e.g., Romero v. Kaiser*, Case No. 22-cv-02508-TSH, 2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022) (entering a PI because Petitioner “raised serious questions going to the merits of his claim that due process requires a hearing before an [immigration judge] prior to re-detention”). Like the Petitioner in *Zakzouk*, after 21 years of supervision, Petitioner Nguyen has a substantial private interest in remaining out of custody, and the risk of erroneous deprivation is high, given the lack of flight risk or danger to the community. The government’s interest, by contrast, is extremely low. The likelihood of Vietnam’s acceptance of Petitioner is uncertain, and there is no legitimate interest in Petitioner’s continued detention as he has not violated his OSUP for 21 years. Indeed, “[c]ivil immigration detention is permissible only to prevent flight or protect against danger to the community.” *Zakzouk*, 2025 WL 2097470, at \*3 (citing *Zadvydas*, 533 U.S. at 690).

Importantly, as the government has no legitimate interest in re-detaining an individual wholly compliant with his supervision requirements for whom removal is not imminent, its only purpose can be punitive, which is impermissible. *See Zadvydas*, 533 U.S. at 690. Accordingly, the Fifth Amendment demands Petitioner’s release and restoration to his prior release conditions. *See id.* at 696 (“The choice ... is not between imprisonment and the alien ‘living at large.’ It is between imprisonment and supervision under release conditions that may not be violated.”) (quotation modified).

**Second**, ICE’s re-detention of Petitioner is not authorized by ICE’s own regulations governing re-detention, and its violation of these regulations warrants Petitioner’s release.

ICE must comply with 8 C.F.R. § 241.13(i) if it wants to revoke a noncitizen’s release for purposes of removal. Relevant here, ICE must make “an individualized determination” at the point of re-detention, *see Kong v. U.S.*, 62 F.4th 608, 619-20 (1st Cir. 2023), as to whether, based on “changed circumstances,” “there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,” 8 C.F.R. § 241.13(i)(2). Following that individualized determination, ICE must give notice of why the noncitizen’s release has been revoked and then

1 promptly conduct an initial informal interview to afford the noncitizen an opportunity to respond  
2 to the reasons for revocation with evidence or information. 8 C.F.R. § 241.13(i)(3). “The  
3 revocation custody review will include an evaluation of any contested facts relevant to the  
4 revocation and a determination whether the facts as determined warrant revocation and further  
5 denial of release.” *Id.*

6 ICE must follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347  
7 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal  
8 proposition that agencies may be required to abide by certain internal policies is well-  
9 established.”). “Where the rights of individuals are affected, it is incumbent upon agencies to  
10 follow their own procedures. This is so even where the internal procedures are possibly more  
11 rigorous than otherwise would be required.” *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

12 Respondents cannot meet the threshold standard because ICE did not make an  
13 individualized determination that it is significantly likely that Petitioner can be removed to  
14 Vietnam in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). Instead, it took Petitioner  
15 into custody because of a global policy change, requiring re-detention. *See supra* II.B; Pasq.  
16 Decl. ¶15. ICE did not review his paperwork or complete the travel document request at the  
17 time of re-detention. When an officer finally reviewed his file and asked Petitioner questions  
18 about his connections to Vietnam two weeks after his re-detention, the officer did not know if  
19 Vietnam would accept him. Pet. Decl. ¶¶19-20. Indeed, Petitioner’s individual circumstances  
20 suggest that repatriation to Vietnam would be difficult, based on known information about  
21 Vietnam’s process and criteria. Petitioner has no Vietnamese birth certificate, no family there,  
22 no place in Vietnam to live or stay, and left Vietnam in 1975. *Id.* ¶18.

23 Leaving aside Petitioner’s facts, Respondents cannot prove that removal to Vietnam is  
24 significantly likely in the reasonably foreseeable future for any pre-1995 Vietnamese citizen.  
25 “Respondents intent to complete a travel document request ... does not make it significantly  
26 likely he will be removed in the foreseeable future” or constitute a changed circumstance.

1 *Phan*, 2025 WL 1993735, at \*5; *see Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526,  
 2 at \*2 (D. Kan. June 17, 2025). Moreover, the process to obtain a travel document from Vietnam  
 3 is lengthy, involving multiple steps, reviews, and approvals that must be completed before  
 4 Vietnam will exercise its discretion to issue travel documents to an individual it deems  
 5 repatriable. T.N. Decl. ¶¶8, 13-14. Reported cases and experience of practitioners in 2025  
 6 reflect significant wait times for Vietnam to process travel document requests. *Id.* ¶¶16-17;  
 7 *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at \*1 (W.D.N.Y. May 2, 2025)  
 8 (detained over two months); *Ambila v. Joyce*, No. 2:25-cv-00267-NT, 2025 WL 1534852, at  
 9 \*1, \*4 (D. Maine May 28, 2025) (detained eight months); *Munoz-Saucedo v. Pittman*, No. CV  
 10 25-2258 (CPO), 2025 WL 1750346, at \*1-2, \*7 (D.N.J. June 24, 2025) (detained 3 months).  
 11 Respondents claim that Vietnam intends to issue travel documents to all U.S. detained  
 12 Vietnamese individuals in less than 30 days, but that not materialized since the 2020 MOU  
 13 was signed. *See Pasq. Decl.* ¶7; T.N. Decl. ¶¶13, 16. The mere existence of the 2020 MOU is  
 14 “not enough to show that a changed circumstance had occurred,” nor is the government’s  
 15 conclusory claim that Vietnam intends to issue travel documents faster than before. *Hoac v.*  
 16 *Becerra*, No. 25-cv-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025); *see*  
 17 *Nguyen*, 2025 WL 1725791, at \*4 (same). Of the 300 cases that practitioners are tracking of  
 18 presently detained pre-1995 Vietnamese individuals, 160 have been held for over 30 days. T.N.  
 19 Decl. ¶16. Removal to Vietnam for any pre-1995 individual for whom the government has not  
 20 yet sought travel documents is not “reasonably foreseeable.”

21 Respondents also cannot prove that removal is “significantly likely.” While the  
 22 government offers statistics that suggest Vietnam is approving more travel documents than  
 23 before, without more information about Vietnam’s criteria for acceptance, Respondents cannot  
 24 show that removal is “significantly likely” here.<sup>35</sup> Nor can they show it is significantly likely  
 25

26 <sup>35</sup> Moreover, 25 years have gone by since Petitioner was ordered removed, diminishing the prospect of removal even further. *See, e.g., Tadros v. Noem*, No. 25-cv-4108-EP, 2025 WL 1678501, at \*3 (D.N.J. June 13, 2025) (“Tadros  
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generally because there is no evidence of Vietnam’s current rate of acceptance of pre-1995 deportees—a rate that would have to be very high to make removal of any pre-1995 person “significantly likely.” *See, e.g., Hoac*, 2025 WL 1993771, at \*4 (adopting the court’s analysis in *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at \*4 (D. Mass. June 20, 2025), and concluding there was “no evidence regarding the percentage of successful requests to Vietnam to demonstrate changed circumstances”); *Phan*, 2025 WL 1993735, at \*4 (same).

ICE’s additional violations of the revocation of release procedures also warrant Petitioner’s release. ICE did not notify Petitioner of the “reasons for revocation of his [ ] release,” conduct “an initial informal interview promptly after his ... return to [ICE] custody to afford [him] an opportunity to respond to the reasons for revocation,” allow Petitioner to “submit any evidence or information that he or she believes shows there is no significant likelihood he or she [will] be removed in the reasonably foreseeable future,” or provide a written “revocation custody review.” 8 C.F.R. § 241.13(i)(3); *see also Phan*, 2025 WL 1993735, at \*3. While a supervisory officer spoke to Petitioner during the booking process and told him that his OSUP was being revoked, the supervisor did not explain why he was being re-detained. Pet. Decl. ¶14. Instead, Petitioner was told that they would detain him while they “wait and see” whether Vietnam would issue a travel document. *Id.* The officer did not explain why ICE thought Vietnam was likely to approve the request, or any specific facts to which Petitioner could meaningfully respond. *Id.* ¶¶14-15. Moreover, while Respondents claim they served a Notice of Revocation of Release on Petitioner on July 16, Petitioner did not receive a copy of that notice. *Id.* ¶15. Indeed, on the day of this brief’s filing, Petitioner called undersigned counsel to inform her that he was given him a copy of the Notice of Revocation of Release that morning for the first time. Even if it had been timely provided to Petitioner (which it was not), as Respondents admit, the Notice on its face fails to satisfy the requirements of the regulation. As Respondents now admits, it inaccurately claims that Petitioner’s

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has demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing ... his removal.”).

case is under review by Vietnam and does not explain why his removal is significantly likely.

Accordingly, as numerous courts have held in recent months, Petitioner is likely to succeed on his claim that his re-detention was unlawful under the governing regulations and release is warranted. *See, e.g., Ceesa*, 2025 WL 1284720; *Phan*, 2025 WL 1993735; *Hoac*, 2025 WL 1993771; *Nguyen v. Hyde*, 2025 WL 1725791.

**Third**, ICE's Release Notification, attached to Petitioner's OSUP, promised Petitioner notice before re-detaining him for removal and that it would ask him to surrender for detention "[o]nce a travel document is obtained." Pasq. Decl. ¶8. This commitment reflects the legal authority to re-detain discussed above, which ICE plainly violates here. As one court recently said: "The idea that ICE would be justified in lying to such people about such a small but profound thing—the freedom to say goodbye. . .—boggles the mind. In such circumstances, a ruse disguised as a promise is not a tool for effective law enforcement—it is manifest cruelty." *Ceesay*, 2025 WL 1284720, at \*23.

No authority authorizes ICE to re-detain Petitioner without first obtaining his travel document. The government should order his release subject to his prior supervision conditions. If travel document are obtained, Petitioner will comply with any legal request to surrender for removal, just as he has complied with every supervision request.<sup>36</sup>

**2. Petitioner Is Likely to Succeed on the Merits of The Claim That He Is Entitled to Procedural Protections Before Nonpunitive Third Country Removal.**

Petitioner is likely to succeed on the merits of his claim that he may not be removed to a third country absent Respondents complying with 8 U.S.C. § 1231(b) and due process.

In Petitioner's case, only Vietnam meets the criteria for removal under 8 U.S.C. § 1231(b)(2)(A)-(E). Removing Petitioner to a third country requires the Attorney General—here,

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<sup>36</sup> The government recently stipulated to not re-detain a pre-1995 Vietnamese individual who feared he would be detained at his next check in, as a resolution to a habeas and TRO motion brought by the individual. The joint stipulation makes clear that the Petitioner will continue to comply with check-in procedures and ICE information requests. Pasq. Decl. ¶14.



1 an immigration judge—to first determine that it is “impracticable, inadvisable, or impossible” to  
 2 remove Petitioner to Vietnam and that the designated third country “will accept [Petitioner].” *Id.*  
 3 § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n.4 (9th Cir. 2004) (8 U.S.C. §  
 4 1231(b)(2)(E)(vii) “indisputably requires the Attorney General to prove that the proposed  
 5 country of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*,  
 6 543 U.S. 335, 344 (2005). The statute authorizes the immigration judge, not DHS, to designate a  
 7 third country for removal. 8 U.S.C. § 1231(b)(2)(E)(vii) (“the Attorney General shall remove the  
 8 alien to ...”); *see also* 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge  
 9 “shall ... identify ... a country, or countries in the alternative, to which the alien’s removal may  
 10 be made”). Here, removing Petitioner to a third country requires Respondents to move to reopen  
 11 Petitioner’s 25-year-old removal proceedings to ask an immigration judge to designate a third  
 12 country under the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th  
 13 Cir. 2014) (unpublished) (holding that “the agency must provide [the noncitizen] with notice and  
 14 an opportunity to reopen his case for full adjudication of his claim of withholding of removal  
 15 from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019)  
 16 (finding that removal proceedings “shall be reopened and a hearing shall be held before the  
 17 immigration judge so that petitioner may apply for relief from removal” to a different country  
 18 not previously designated).

19 Adherence to that process also ensures Petitioner’s statutory right to claim protection in  
 20 immigration court against removal to a third country where he may be persecuted or tortured, a  
 21 form of protection known as withholding of removal, 8 U.S.C. § 1231(b)(3)(A); *see also* 8  
 22 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under the CAT; *see*  
 23 28 C.F.R. § 200.1 (“A removal order ... shall not be executed in circumstances that would  
 24 violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-18.

25 Of course, the statutory framework is entirely meaningless without notice of a third  
 26 country removal and an opportunity to respond that comports with Fifth Amendment due

process. *See U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2163 (2025) (Sotomayor, J., dissenting) (“[t]he Fifth Amendment unambiguously guarantees that right” to notice of a third country removal so that a noncitizen “learn[s] about it in time to seek an immigration judge’s review”). Notice cannot be “last minute” because that would deprive an individual of a meaningful opportunity to apply for fear-based protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). There must be to prepare and present relevant arguments and evidence and to seek reopening of their removal case. “[W]ritten notice of the country being designated” is required and “the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025) (“All removals to third countries, ... must be preceded by written notice to both the non-citizen and the non-citizen’s counsel in a language the non-citizen can understand.” (internal quotation marks and citation omitted)); *Andriasian*, 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country of removal).

Due process also demands that the government “ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen’s response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.

Respondents’ third country removal program skips over these statutory and constitutional procedural protections. According to ICE’s July 7 guidance, individuals can be removed to third countries “without the need for further procedures,” so long as “the [U.S.] has received diplomatic assurances.”<sup>37</sup> Petitioner is likely to succeed on the merits of his claim on this fact alone, because the policy instructs officers to violate the statutory and constitutional

<sup>37</sup> The government claimed in court proceedings—without presenting evidence—that it had diplomatic assurances the deportees to South Sudan would not be persecuted or tortured, but the deportees have been held by the South Sudanese government incommunicado ever since their deportation nearly a month ago. Pasq. Decl. ¶12.

1 requirements. The same is true of the minimal procedures ICE offers when no diplomatic  
 2 assurances are present. The policy provides no meaningful notice (6-24 hours), instructs officers  
 3 *not* to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based  
 4 claim (6-24 hours), let alone reopen removal proceedings. In sum, it directs ICE officers to  
 5 violate the rights of those whom they seek to subject to the third country removal program.

6 Several courts have recently granted individual TROs (which are held to “substantially  
 7 identical”<sup>38</sup> legal standards for PIs) against third countries removals under similar circumstances.  
 8 *See generally J.R. v. Bostock*, No. 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. June 30,  
 9 2025) (immediately enjoining removal to “Cuba, Libya, or any third country in the world absent  
 10 prior approval from this Court”); *Phan*, 2025 WL 1993735, at \*7 (enjoining Respondents from  
 11 “re-detaining or removing Petitioner to a third country without notice and an opportunity to be  
 12 heard”); *Hoac*, 2025 WL 1993771, at \*7 (same); *Vaskanyan v. Janecka*, No. 25-cv-01475-MRA-  
 13 AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025  
 14 WL 1771438 (N.D. Cal. June 26, 2025).

15 **3. Petitioner Is Likely to Succeed on the Merits of His Claim That the**  
 16 **Constitution Prohibits Punitive Third Country Removals.**

17 Petitioner is likely to succeed on the merits of his claim that the Constitution prohibits  
 18 him from being subjected to Respondents’ punitive third country removal program. The  
 19 prohibition against imposing punitive measures on an individual subject to a final order of  
 20 removal is as old as immigration law. *Wong Wing v. United States*, 163 U.S. 228 (1896). The  
 21 Supreme Court in *Wong Wing* struck down a provision of the Chinese Exclusion Act that  
 22 imposed one year of imprisonment at hard labor as an immigration sanction before deportation.  
 23 *Id.* at 237. The Court distinguished “deportation,” described as a sanction for noncompliance  
 24 with U.S. residency legal requirements that may be imposed by executive authorities, from  
 25 “punishment,” which may not. *Id.* at 236-37. The Court held that the government could not

26 <sup>38</sup> *Babaria v. Blinken*, 87 F.4th 963, 976 (9th Cir. 2023), *cert. denied sub nom. Babaria v. Jaddou*, 145 S. Ct. 160 (2024).

1 attach a punishment to deportation (here, imprisonment) without criminal charges, a judicial  
2 trial, and the concomitant protections of the Fifth, Sixth and Eighth Amendments. *Id.*

3 The government's third country removal program defies 130 years of constitutional  
4 immigration law between civil penalty and infamous punishment. *See, e.g., Zadvydas*, 533 U.S.  
5 at 694. Respondents' third country removal program is designed to punish those it deports by  
6 subjecting them to imprisonment upon their arrival in the receiving countries. Respondents'  
7 program is not just about removing individuals to third countries. It is about removing them to be  
8 imprisoned upon arrival and paying countries to carry out said imprisonment; selecting countries  
9 and overseas prisons notorious for cruelty, torture, lawlessness, and other human rights abuses;  
10 and publicly broadcasting these third country removals to demonize deportees and strike extreme  
11 fear in immigrants to entice self-deportation. This program is about punitive banishment.

12 To determine whether a given sanction constitutes punishment, courts look to intent. If  
13 the government's intent is to punish, "that is the end of the inquiry." *Am. Civ. Liberties Union of*  
14 *Nev. v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92  
15 (2003)). Here, the government's own statements show intent to deport individuals, particularly  
16 those with criminal convictions, into situations of forever confinement or substantial harm.

17 When the government's intent to punish is unclear, courts move to the second step of the  
18 inquiry to determine whether the practices are "so punitive either in purpose or effect as to  
19 negate the [government's] intention to deem it civil." *Id.* (quoting *Smith*, 538 U.S. at 92). To  
20 determine punitive purpose or effect, courts often turn to the factors laid out in *Kennedy v.*  
21 *Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963); *see also Hudson v. United States*, 522 U.S. 93,  
22 99 (1997) ("the factors listed in *Kennedy v. Mendoza-Martinez* [citation], provide useful  
23 guideposts"). Those factors are: "[w]hether the sanction involves an affirmative disability or  
24 restraint, whether it has historically been regarded as a punishment, whether it comes into play  
25 only on a finding of scienter, whether its operation will promote the traditional aims of  
26 punishment—retribution and deterrence, whether the behavior to which it applies is already a

1 crime, whether an alternative purpose to which it may rationally be connected is assignable for it,  
 2 and whether it appears excessive in relation to the alternative purpose assigned.” *Mendoza-*  
 3 *Martinez*, 372 U.S. at 168-69 (footnotes omitted).

4 The government’s third country removal program undeniably constitutes punishment  
 5 meets all these factors. Under the first factor, the government’s practices of deporting people  
 6 only to have them imprisoned or subjected to other forms of physical harm, is an “affirmative  
 7 disability or restraint.” The “paradigmatic affirmative disability” is the “punishment of  
 8 imprisonment.” *Smith*, 538 U.S. at 100. And under this factor, “we inquire how the effects of the  
 9 [sanction] are felt by those subject to it. If the disability or restraint is minor and indirect, its  
 10 effects are unlikely to be punitive.” *Id.* at 99-100. Undoubtedly, deportation to be imprisoned or  
 11 suffer other extreme harm will be felt as a significant and direct disability or restraint.

12 The second factor is also satisfied. “[D]evices of banishment and exile have throughout  
 13 history been used as punishment.” *Mendoza-Martinez*, 372 U.S. at 168 n.23. In 1791, the year  
 14 the Bill of Rights was ratified, deportation was *exclusively* used and understood as punishment.  
 15 *Fong Yue Ting v. United States*, 149 U.S. 698, 740-41 (1893) (Brewer, J. dissenting) (citing  
 16 President James Madison); *see id.* at 740 (“[I]t needs no citation of authorities to support the  
 17 proposition that deportation is punishment. Every one knows that to be forcibly taken away from  
 18 home and family and friends and business and property, and sent across the ocean to a distant  
 19 land, is punishment, and that oftentimes most severe and cruel.”).

20 The fourth factor, whether it promotes the traditional aims of punishment—retribution  
 21 and deterrence—is also satisfied. The government’s own statements make clear that its goals are  
 22 retribution and deterrence to encourage people to leave the country on their own. DHS Secretary  
 23 Noem stated, “President Trump and I have a clear message to criminal illegal aliens: LEAVE  
 24 NOW. If you do not leave, we will hunt you down, arrest you.”<sup>39</sup> The Supreme Court has made  
 25 clear that such “general deterrence” justifications are impermissible absent criminal process. *See*

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<sup>39</sup> Secretary Kristi Noem (@sec\_noem), Instagram (Mar. 27, 2025), <https://www.instagram.com/p/DHtVvbgHhh/>  
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1 *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (warning that civil detention may not “become a  
 2 ‘mechanism for retribution or *general deterrence*’—functions properly those of criminal law, not  
 3 civil commitment” (quoting *Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J.,  
 4 concurring) (emphasis added)).

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

10 **B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.**

11 “It is well established that the deprivation of constitutional rights ‘unquestionably  
 12 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting  
 13 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation of a constitutional right  
 14 is involved, most courts hold that no further showing of irreparable injury is necessary.”  
 15 *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (citing 11A Charles Alan Wright  
 16 et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). “Unlawful detention certainly  
 17 constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages.”  
 18 *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

19 Here, the irreparable harm to Petitioner and his family is severe. He has already been  
 20 unreasonably deprived of a year and a half of his life in prolonged immigration detention  
 21 following the issuance of his removal order. Absent relief, Petitioner will remain detained in an  
 22 indefinite and prolonged state, denied his liberty, removed from his livelihood,<sup>40</sup> separated from  
 23 and unable to provide critical care and support to his medically vulnerable child and his elderly  
 24 parents, and removed from his family and community where he belongs.

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<sup>40</sup> See generally Declaration of William A. Lilleness.

**C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner’s Favor.**

The final two factors for a PI—the balance of hardships and public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with such a conflict between financial concerns and preventable human suffering.” *Hernandez*, 872 F.3d at 996 (citing *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Here, the balance of hardships tips in Petitioner’s favor. Petitioner faces weighty hardships: deprivation of his liberty and removal to a third country where he is likely to suffer imprisonment or other serious harm. “[T]he [government] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). And it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens “from being wrongfully removed, particularly to countries where they are likely to face substantial harm”). Accordingly, the balance of hardships and the public interest overwhelmingly favor emergency relief to ensure Petitioner’s freedom and prevent unlawful third country removal.

**D. The All Writs Act Confers Broad Power to Preserve the Integrity of Court Proceedings.**

Besides qualifying for a PI, this is a textbook case for use of the All Writs Act, which provides courts with a powerful tool to “maintain the status quo by injunction pending review of an agency’s action through the prescribed statutory channels.” *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (citation omitted); 28 U.S.C. § 1651(a); *California v. M&P Inv.*, 46 F. App’x 876, 878 (9th Cir. 2002) (unpublished) (finding Act should be broadly construed to “achieve all rational ends of law” (citing *Adams v. United States*, 317 U.S. 269, 273 (1942))).

**V. CONCLUSION**

For the foregoing reasons, the Court should immediately grant Petitioner’s PI.

1 Dated: August 1, 2025

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