

GREEN | EVANS-SCHROEDER, PLLC

130 W. Cushing Street

Tucson, AZ 85718

Tel. (520) 882-8852

Fax (520) 882-8843

Jesse Evans-Schroeder | Arizona Bar No. 027434

Email: jesse@arizonaimmigration.net

Ami Hutchinson | Arizona Bar No. 039150

Email: ami@arizonaimmigration.net

Attorneys for Petitioner

Thai Quang Quach

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Thai-Quang Quach,

Petitioner-Plaintiff,

v.

Luis Rosa, Jr., Warden at Central
Arizona Florence Correctional Complex;

John Cantu, Field Office Director,
Phoenix Field Office, U.S. Immigrations
and Customs Enforcement; U.S.
Department of Homeland Security;

Todd Lyons, Acting Director,
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;

Kristi Noem, Secretary, U.S. Department
of Homeland Security;

Pamela Bondi, Attorney General of the
United States;

Respondents-Defendants.

Case No. 2:25-CV-02937-JJT-JFM

**MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF**

**POINTS AND AUTHORITIES
IN SUPPORT OF MOTION
FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Petitioner hereby moves this Court for an order that Defendants Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”), Pamela Bondi, in her official capacity as the U.S. Attorney General, and Luis Rosa, Jr., in his official capacity as Warden of the Central Arizona Correctional Complex in Florence, Arizona, be enjoined from continuing to detain Petitioner-Plaintiff Thai-Quang Quach (“Mr. Quach”) in custody, and, following his release, be enjoined from re-detaining him without first providing him with a hearing before an Immigration Judge prior to any future re-detention, as required by the Due Process clause of the Fifth Amendment. Petitioner additionally seeks to enjoin Respondents from removing Petitioner from the U.S. to any third country to which he does not have a removal order (i.e. any country other than Vietnam) 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. 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 re-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 preliminary injunction enjoining ICE from continuing to detain him (to enjoin the unlawful ongoing

1 detention), enjoining Respondents from re-detaining him before providing him a hearing
2 before an Immigration Judge prior to any re-detention, and enjoining Respondents from
3 removing him to any third country without first providing him with constitutionally
4 compliant procedures. The only mechanism to ensure that he is not continuously
5 unlawfully detained in violation of his due process rights is preliminary injunctive relief
6 from this Court.
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9 Dated: September 19, 2025

Respectfully Submitted,

10
11 /s/Ami Hutchinson

12 Ami E. Hutchinson

13 Attorney for Petitioner-Plaintiff
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1
2 **I. INTRODUCTION**

3 Petitioner-Plaintiff Thai-Quang Quach (“Mr. Quach”), by and through
4 undersigned counsel, hereby files this motion for preliminary injunctive relief to enjoin
5 the U.S. Department of Homeland Security’s (“DHS”) Immigration and Customs
6 Enforcement (“ICE”) from continuing his ongoing immigration detention in its custody
7 and immediately release him. Mr. Quach also seeks an order enjoining Respondents from
8 re-detaining him unless and until he is afforded notice and a hearing before an
9 Immigration Judge prior to any future re-detention where DHS bears the burden of
10 demonstrating that his removal is reasonably foreseeable and otherwise whether
11 circumstances have changed such that his re-detention would be justified (i.e. whether he
12 poses a danger or a flight risk), and where the Immigration Judge must further consider
13 whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS
14 may establish, as well as an order enjoining Respondents from removing him to any third
15 country without first providing him with constitutionally-compliant procedures.
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19 Mr. Quach is a citizen of Vietnam who has lived in the United States, first as a
20 refugee and then as a U.S. lawful permanent resident, since approximately 1983, when
21 he was four years old. Although he was ordered removed on April 8, 2003, he was
22 released from detention due to ICE’s inability to execute his removal. He has been
23 reporting to ICE on a regular basis since his release from detention over twenty years
24 ago. Mr. Quach is not subject to removal to Vietnam under a binding repatriation
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1 agreement,¹ and thus his re-detention by ICE must be held unlawful as it is limitless in
2 duration. He has also never been ordered removed to any third country or notified of such
3 potential removal. Mr. Quach's detention is both unconstitutional because it is indefinite,
4 and illegal because it does not comport with the regulations, and he was otherwise not
5 provided any pre-deprivation hearing before his recent detention by ICE. Based on these
6 circumstances, he raises three ways in which his ongoing detention is unlawful and must
7 be enjoined, and as well requests an injunction against removal to a third country in case
8 that is in the offing:
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11 First, once a noncitizen is released, their re-detention is limited by regulation,
12 statute and the Constitution. By statute and regulation, only in specific circumstances
13 (that do not apply here) does ICE have the authority to re-detain a noncitizen previously
14 ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability of ICE to
15 simply re-arrest someone following their release from detention, however, is further
16 limited by the Due Process Clause because it is well-established that individuals released
17 from incarceration have a liberty interest in their freedom. In turn, due process requires
18 that he be released from unlawful re-detention because he was not provided notice and a
19 hearing before an Immigration Judge (as a neutral adjudicator).
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23 Second, following his release, the same principles must apply, such that in the
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26 ¹ See U.S. Department of State, "Repatriation Agreement Between the United States
27 of America and Vietnam" (Jan. 22, 2008), available at: [https://www.state.gov/wp-](https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf)
28 [content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf](https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf) ("Vietnamese citizens are
not subject to return to Vietnam under this Agreement if they arrived in the United States
before July 12, 1995....").

1 future he be provided with notice and a hearing, *prior to any re-detention*, at which DHS
2 bears the burden of justifying his re-detention (to a neutral adjudicator such as an
3 Immigration Judge who is not part of ICE or DHS) and at which Mr. Quach will be
4 afforded the opportunity to advance his arguments as to why he should not be re-detained.
5

6 Third, the Supreme Court has limited the potentially indefinite post-removal order
7 detention to a *maximum* of six months, because removal is not reasonably foreseeable.
8 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because the United States and Vietnam
9 have an agreement not to remove Vietnamese individuals who entered the United States
10 before July 12, 1995,² Mr. Quach's removal is not reasonably foreseeable in this case,
11 and the government has not provided him with notice, evidence, or an opportunity to be
12 heard on this issue before arbitrarily and unilaterally re-detaining him. His continued
13 detention is indefinite and thus unconstitutionally prolonged, and the only remedy is his
14 immediate release.
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16
17 Mr. Quach meets the standard for preliminary injunctive relief. He will continue
18 to suffer immediate and irreparable harm stemming from his unlawful re-detention absent
19 an order from this Court enjoining the government from further unlawful detention by
20 ordering his release from detention, and enjoining future re-detention unless and until he
21 receives a hearing before an Immigration Judge. He would also suffer immediate and
22 irreparable harm if removed to a third country where his life could be in danger. For that
23 reason, he also seeks an order enjoining Respondents from removing him to any third
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28 ² *Supra* note 1.

1 country without first being provided with constitutionally-compliant procedures
2 including adequate notice and an opportunity to demonstrate if his life is in danger or he
3 is likely to face torture—all of which are demanded by the Constitution. Since holding
4 federal agencies accountable to constitutional demands is in the public interest, the
5 balance of equities and public interest are also strongly in Mr. Quach's favor.
6

7
8 **II. STATEMENT OF FACTS AND CASE**

9 Mr. Quach first entered the United States in 1983 at the age of four as a refugee,
10 along with his parents and five older siblings. Exhibit ("Exh.") 1 (Declaration of
11 Petitioner). His father was an airborne captain who fought alongside U.S. forces during
12 the Vietnam War. *Id.* Mr. Quach later became a U.S. lawful permanent resident. *Id.*
13

14 On October 17, 2000, Mr. Quach was convicted in Santa Clara County,
15 California, for the offense of kidnapping in violation of California Penal Code § 207(a).
16 Exh. 1; Exh. 3 (Abstract of Judgment). He was sentenced to three years of imprisonment
17 and released on supervised probation from incarceration in or around 2003. *Id.* Mr. Quach
18 recalls that the public defender who represented him in Santa Clara County advised him
19 to plead no contest to the charge and did not advise him of the immigration consequences
20 of the conviction. Exh. 1.
21

22 After his release from state custody in 2003, Mr. Quach was detained by
23 ICE and underwent removal proceedings while detained. *Id.* He did not have an attorney
24 in Immigration Court, but he recalls that an immigration official told him he was not
25 eligible for any form of relief from removal. *Id.* He does not remember anyone asking
26 him whether he was afraid to return to Vietnam during his removal proceedings in 2003.
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1 *Id.* However, he has been afraid to return to Vietnam since the day he left, due to his
2 father's status as a high-ranking officer who fought alongside U.S. forces. *Id.* He further
3 recalls that an officer informed him that the United States was not removing people to
4 Vietnam, so if he "signed for [his] deportation, he would be released." *Id.* Mr. Quach was
5 ordered removed by an Immigration Judge in Imperial, California, on April 8, 2003. *Id.*;
6 *see also* Exh. 4 (EOIR ECAS printout). At that time (and currently to this day), he was
7 covered by the agreement between Vietnam and the U.S. government that he could not
8 be repatriated to Vietnam by reason of having entered the United States before July 1995.³
9

10
11 Mr. Quach could not be removed to Vietnam, and as such, his continued
12 detention by ICE would be indefinite and unconstitutionally prolonged if he were to
13 remain in ICE detention. Therefore, consistent with Supreme Court law, in 2003 he was
14 released from ICE custody after and placed on an Order of Supervision ("OSUP"),
15 requiring him to attend regular check-in appointments at an ICE office. The OSUP also
16 permitted Mr. Quach to apply for work authorization. 8 C.F.R. § 241.5. His check-ins
17 began at three-month intervals, and they were later reduced to an annual basis. Exhibit 1.
18 Mr. Quach advised ICE each time he changed addresses, and his most recent OSUP
19 established a routine of annual check-ins at the Phoenix, Arizona ICE office. *Id.*; *see also*
20 Exh. 7 (Order of Supervision, dated October 26, 2016).
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24 For the past twenty-two years, Mr. Quach has complied with the terms of
25 his OSUP by checking in at the appropriate ICE office on a regular basis. Exh. 1. In the
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28 ³ *See supra* n. 1.

1 meantime, Mr. Quach deepened his family and community ties. Upon his release from
2 ICE custody, he ran Victory Outreach, a home in San Jose, California, for men who were
3 struggling to get back on their feet. *Id.* Many of his family members moved to Arizona,
4 and he followed them to the Phoenix area in 2005. *Id.* In 2006, he moved to Colorado
5 with one of his brothers to run a shop together. *Id.* He returned to Arizona in 2016, after
6 he divorced his first wife. *Id.*

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9 Mr. Quach met his wife, Chanel, in 2017, and began to help her raise her
10 daughters, who were then one and three years old. *Id.* Mr. Quach married Chanel, who is
11 a U.S. citizen, in 2023. *Id.* Both of Chanel's parents died when she was young, and she
12 suffers from chronic fatigue, as well as a type of anemia that requires a special diet and
13 medication. *Id.* Mr. Quach is the primary breadwinner in the household, and he also helps
14 around the house by cooking for Chanel and the children. *Id.* In 2024, Mr. Quach made
15 a down payment of \$130,000.00 on a house for his family in Glendale, Arizona, but
16 Chanel is now struggling to make the mortgage payments without his income. *Id.* Before
17 his detention, Mr. Quach supported his family by working long hours – sometimes up to
18 82 hours per week – as a nail technician at Belmont Nail & Spa at the Biltmore Hotel. *Id.*

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21 Mr. Quach has also maintained a strong relationship with his parents, as
22 well as his siblings and their families, throughout the years. Mr. Quach's parents, who
23 are now U.S. citizens, are retired and living in Mesa, Arizona. *Id.* His sister, Katie, owns
24 a nail salon in Scottsdale, and her son is in the U.S. Army Special Forces. *Id.* Two of his
25 brothers also live in Arizona, and one of them suffered a stroke a few years ago and can
26 no longer walk. *Id.* Another brother resides in Colorado. *Id.* All of his siblings are U.S.
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1 citizens. *Id.* Mr. Quach also has over 25 nieces and nephews, as well as some great-nieces
2 and great-nephews. *Id.*

3
4 On May 1, 2025, ICE, without prior notice or a hearing, took Petitioner into
5 custody during a routine check-in appointment. The only explanation provided to Mr.
6 Quach regarding the reason for his detention was that his OSUP “had been revoked based
7 on new policy” and “because of the Trump administration.” Exh. 1. Mr. Quach recalls
8 signing a piece of paper at the time of his re-detention, but he does not recall what the
9 paper said, and he did not receive a copy of any written documentation indicating that his
10 Form I-220B OSUP was revoked, withdrawn, or otherwise cancelled. *Id.* There is no
11 evidence of any other change relevant to his detention status, removability, or criminal
12 record. *Id.* Mr. Quach remains afraid to return to Vietnam, as he has been since he left
13 that country when he was a young child. *Id.* In addition to his fear on account of his
14 family relationship to his father, a high-ranking military officer who fought alongside
15 American forces, Mr. Quach fears that he will be harmed because of extensive tattoos
16 that he got while living in the United States. *Id.*

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20 Mr. Quach sought a stay of removal by filing Form I-246 with ICE, but on June
21 27, 2025, ICE rejected his application for a stay for “Incomplete Information.” Exh. 5
22 (Form I-246, Application for Stay of Deportation or Removal). Mr. Quach believes ICE
23 thought the request for a stay was not complete because he does not have a Vietnamese
24 passport. *See* Exhibit 1.

25
26 On July 30, 2025, CoreCivic security called Mr. Quach and took him across the
27 street from the detention facility to the Florence Service Processing Center, where an
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1 agent took his photograph and told him they were working on travel documents. Exhibit
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3 1. However, no custody status review occurred at that time. *Id.* ICE informed Senator
4 Ruben Gallego in response to a status inquiry that Mr. Quach was scheduled for custody
5 status reviews on August 6 and August 29, 2025. Exh. 2 (Copy of Email Exchange
6 Between Senator Ruben Gallego and ICE Office of Congressional Relations). However,
7 Mr. Quach never heard anything about an August 6 or August 29 review, and no reviews
8 were conducted in August. Exh. 1. On September 2, 2025, Mr. Quach was taken to meet
9 with ICE, and an agent gave him a piece of paper indicating that his custody status review
10 was now scheduled for September 30, 2025. Exh. 1.
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12 **III. LEGAL STANDARD**

13
14 Petitioner is entitled to preliminary injunctive relief if he establishes that he is
15 “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of
16 preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is
17 in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even
18 if Petitioner does not show a likelihood of success on the merits, the Court may still grant
19 relief if he raises “serious questions” as to the merits of his claims, the balance of
20 hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied.
21 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in
22 more detail below, Petitioner overwhelmingly satisfies both standards.
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2 **IV. ARGUMENT**

3 **A. PETITIONER WARRANTS PRELIMINARY INJUNCTIVE**
4 **RELIEF⁴**

5 A temporary restraining order should be issued if “immediate and irreparable
6 injury, loss, or irreversible damage will result” to the applicant in the absence of an order.
7 Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent
8 irreparable harm before a preliminary injunction hearing is held. *See Granny Goose*
9 *Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City,*
10 *415 U.S. 423, 439 (1974).* Mr. Quach’s continuous, indefinite detention violates his due
11 process rights, and so too did his re-detention prior to receiving a hearing before an
12 Immigration Judge. Mr. Quach has already suffered irreparable injury in the form of
13 incarceration and will continue to suffer irreparable injury each day he remains detained
14 without due process.
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17 The Court should enjoin further detention because Mr. Quach is likely to succeed
18 on the merits of claims one, two, and three below, and should enjoin removal to a third
19 country other than Vietnam without the constitutionally required procedures, because he
20 is likely to succeed on the merits claim four below. Mr. Quach asks the Court to grant all
21 or part of the requested injunction.
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25 ⁴ Counsel for Petitioner has conferred with counsel for Respondents and advised of
26 the present motion. The parties have agreed to extend Respondents’ time to respond to
27 both the Habeas and the present motion until October 14, 2025. Thus, Respondents have
28 received notice, and this motion is styled as a motion for preliminary injunction.
Nonetheless, Petitioner argues that the standard for a Temporary Restraining Order has
likewise been met.

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

First, Mr. Quach is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-detaining Mr. Quach because he cannot be deported to Vietnam, and therefore his indefinite detention is 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. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

ICE did in fact detain Mr. Quach during that removal period, following his administratively final order of removal. During that entire removal period, ICE was not able to remove him to Vietnam.

If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather,

1 it is constrained by the constitutional requirement that detention “bear a reasonable
2 relationship to the purpose for which the individual [was] committed.” *Zadvydas v.*
3 *Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order
4 detention statute is to effectuate removal (and not to be punitive), detention bears no
5 reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.
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8 The Supreme Court has addressed the fact that the statute is silent regarding the
9 limits on post-final order detention and has definitively held that such detention has the
10 potential to be indefinite and such indefinite detention would be unconstitutional. Thus,
11 there must be constitutional limits on post-final order detention. Specifically, the
12 Supreme Court held that post-final order detention is only authorized for a “period
13 reasonably necessary to secure removal,” a period that the Court determined to be
14 presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee
15 provides “good reason” to believe that his or her removal is not significantly likely in the
16 reasonably foreseeable future, “the Government must respond with evidence sufficient
17 to rebut that showing.” *Id.* at 701. If the government cannot do so, the individual must be
18 released.
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21 In light of the Supreme Court limitations imposed on the statutory scheme, the
22 government updated the regulations to be consistent with those constitutionally required
23 limitations on indefinite detention. Under those regulations, detainees are entitled to
24 release even before six months of detention, as long as removal is not reasonably
25 foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where
26 removal not reasonably foreseeable). Moreover, under the Supreme Court’s
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1 constitutional limitations on indefinite detention, as the period of post-final-order
2 detention grows, what counts as “reasonably foreseeable” must conversely shrink.
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4 *Zadvydas* at 701.

5 In this case, Mr. Quach was released from ICE detention after the conclusion of
6 the 90-day removal period, specifically because his removal was not foreseeable at all.
7 And nothing has changed, save that Mr. Quach has now surpassed the presumptively
8 reasonable 6-month period for ICE to secure his removal. If ICE is permitted to re-detain
9 him now, under the possibility he might be removed some day simply because he has a
10 removal order, then he very likely will be detained in ICE custody essentially forever.
11

12 Here, Mr. Quach’s detention is unconstitutional because it is indefinite. Per the
13 authority of binding international agreement, because Mr. Quach is a Vietnamese refugee
14 who entered the United States prior to July 12, 1995, he cannot be repatriated to
15 Vietnam.⁵ There is no evidence that Vietnam would violate the terms of that agreement
16 in Mr. Quach’s case. Thus, Mr. Quach’s removal is not reasonably foreseeable in this
17 case, and the government has not provided him with notice, evidence, or an opportunity
18 to be heard on this issue either before arbitrarily re-detaining him or since his re-
19 detention. His continued detention without any reasonably foreseeable end point is thus
20 unconstitutionally prolonged in violation of clear Supreme Court precedent. *Id.*
21 Moreover, Mr. Quach has already served time in ICE detention before he was released in
22 2003, and an additional 90 days since his re-detention: Therefore, he may—and under
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28 ⁵ See *supra* n.1.

1 these circumstances, must—be released. 8 C.F.R. § 241.13(b)(1); *see also Quoc Chi*
2 *Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16,
3 2025); *Phong Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS
4 136000 (E.D. Cal. July 16, 2025); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR,
5 2025 U.S. Dist. LEXIS 133521 (E.D. Cal. July 14, 2025); *Karem Tadros v. Noem*, No.
6 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025).

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9 **2. Petitioner is Likely to Succeed on the Merits of His Claim That**
10 **his Re-Detention is Unlawful Because it is in Violation of the**
11 **Regulations.**

12 Mr. Quach’s re-detention is separately unlawful because the controlling
13 regulations specific the circumstances that permit his re-detention, and Respondents have
14 not established that circumstances have changed regarding the foreseeability of his
15 removal which is required under those regulations.

16 By regulation, non-citizens with final removal orders who are released from
17 detention after a post-order custody review are subject to an Order of Supervision
18 (“OSUP”), which is documented on Form I-220B. 8 C.F.R. § 241.4(j). After an individual
19 has been released on an order of supervision, the regulations further specify that ICE
20 cannot revoke such an order without cause or adequate legal process. 8 C.F.R. §
21 241.13(i)(2)-(3).
22

23 In this case, Mr. Quach was released on an Order of Supervision. It specified the
24 conditions imposed on him, and it is uncontested that he complied with all of those
25 conditions.
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1 Under the regulations, ICE has the authority to re-detain a noncitizen previously
2 ordered removed *only* in specific circumstances, such as where an individual violates any
3 condition of release or there are changed circumstances regarding the reasonable
4 foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. §
5 241.13(i). On information and belief, Mr. Quach has not violated his OSUP. Further, he
6 has not been provided any evidence of changed circumstances, nor any assurance that
7 Respondents ever properly followed the regulatory procedures to re-detain him based on
8 changed circumstances. *Id.*; 8 C.F.R. § 241.13(i) (requiring notice of the reason for
9 revocation of release, and an interview at which an individual has an opportunity to
10 respond to the reasons given for revocation and submit evidence and information on his
11 behalf, including to show that there is no significant likelihood of removal in the
12 reasonably foreseeable future).

16 Mr. Quach has not received any review of his custody status, and the only evidence
17 he has of any efforts by ICE to obtain a travel document is from a single meeting with
18 CoreCivic security on July 30, 2025, at which an agent took his photograph and told him
19 they were working on travel documents. Exhibit 1. Mr. Quach does not have a Vietnamese
20 passport or birth certificate. *Id.* ICE informed Senator Ruben Gallego in response to a
21 status inquiry that Mr. Quach was scheduled for custody status reviews on August 6, and
22 August 29, 2025. Exh. 2. However, Mr. Quach never heard anything about an August 6
23 or August 29 review, and no reviews were conducted in August. Exh. 1. On September
24 2, 2025, Mr. Quach was taken to meet with ICE, and an agent gave him a piece of paper
25 indicating that his custody status review was now scheduled for September 30, 2025.
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1 Exhibit 1. There is no evidence of a change in the policy of the government of Vietnam
2 with regard to the binding treaty that controls repatriation.
3

4 Thus, Mr. Quach's detention is further unlawful because Respondents squarely
5 violated the controlling regulations in re-detaining him.
6

7 **3. Petitioner is Likely to Succeed on the Merits of His Claim That**
8 **Due Process Requires That He Should Have Been Afforded a**
9 **Hearing Before an Immigration Judge Prior to Any Re-**
10 **Detention by ICE, and he is Entitled to Such a Hearing Prior**
11 **to Any Future Re-Detention.**

12 Mr. Quach is also likely to succeed on his claim that fundamental principles of
13 due process require that he cannot be re-detained by ICE without first being provided a
14 pre-deprivation hearing before an Immigration Judge where the government shows that
15 his removal is reasonably foreseeable and that circumstances have changed since his
16 release in 2003, including that Mr. Quach is now a danger or a flight risk.

17 ICE failed to follow the controlling regulations in re-detaining Mr. Quach, but
18 even if they had complied with the procedures set forth in those regulations, ICE's
19 regulatory authority to unilaterally re-detain Mr. Quach is proscribed by the Due Process
20 Clause because it is well-established that individuals released from incarceration have a
21 liberty interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671,
22 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that
23 freedom is lawfully revocable—has a liberty interest that entitles him to constitutional
24 due process before he is re-incarcerated"). In turn, to protect that interest, on the particular
25 facts of Mr. Quach's case, due process required notice and a hearing, *prior to any re-*
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1 *arrest*, at which he was afforded the opportunity to advance his arguments as to why he
2 should not be re-detained. This never occurred. *See Quoc Chi Hoac v. Becerra*, 2025 U.S.
3 Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025); *Phong Phan v.*
4 *Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000 (E.D. Cal. July
5 16, 2025); *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS
6 133521 (E.D. Cal. July 14, 2025); *Karem Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S.
7 Dist. LEXIS 113198 (D.N.J. June 13, 2025).

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9
10 Courts analyze these procedural due process claims in two steps: (1) whether there
11 exists a protected liberty interest, and (2) the procedures necessary to ensure any
12 deprivation of that protected liberty interest accords with the Constitution. *See Kentucky*
13 *Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

14
15 **a. Petitioner Has a Protected Liberty Interest in His**
16 **Release**

17 Mr. Quach's liberty from immigration custody, a form of civil detention, is
18 protected by the Due Process Clause: "Freedom from imprisonment—from government
19 custody, detention, or other forms of physical restraint—lies at the heart of the liberty
20 that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21
22 For over twenty years preceding his re-detention on May 1, 2025, Mr. Quach
23 exercised that freedom under his prior release from ICE custody in 2003. He thus retained
24 a weighty liberty interest under the Due Process Clause of the Fifth Amendment in
25 avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v.*
26 *Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483
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1 (1972). Moreover, the Supreme Court has recognized that post-removal order detention
2 is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*,
3 533 U.S. at 701. In this case, in the absence of a repatriation agreement that actually
4 permits Mr. Quach's removal to Vietnam, his removal is not foreseeable at all, let alone
5 reasonably. Therefore, his continued detention is unconstitutional.
6

7
8 Just as importantly, for a period of more than two decades, Mr. Quach continued
9 presenting himself before ICE for his regular check-in appointments, where ICE did not
10 seek to re-arrest him. ICE instead gave him a future date and time to appear again at
11 regular intervals, which he did. For the past twenty years, he was also gainfully
12 employed; he nurtured deep and lasting connections with his large extended family of
13 U.S.-citizen parents, siblings, nieces, and nephews; and he married a U.S. citizen with
14 whom he manages a household as the primary breadwinner and homeowner in Glendale,
15 Arizona.
16

17
18 Individuals—including *noncitizens*—released from incarceration have a liberty
19 interest in their freedom. *Id.* at 696 (recognizing the liberty interest of noncitizens on
20 OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that “[i]t is well-
21 established that the due process clause applies to protect immigrants”). This is further
22 reinforced by *Morrissey*, in which the Supreme Court recognized the protected liberty
23 rights under the Due Process Clause of a *criminal* detainee who was released on parole
24 from incarceration. 408 U.S. at 481-82. The Court noted that, “subject to the conditions
25 of his parole, [a parolee] can be gainfully employed and is free to be with family and
26 friends and to form the other enduring attachments of normal life”—thus, those released
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1 on parole have a protected liberty interest, even where that liberty is subject to conditions.
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3 *Id.* at 482. *See also Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in
4 a pre-parole program created to reduce prison overcrowding have a protected liberty
5 interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82
6 (holding that individuals released on felony probation have a protected liberty interest
7 requiring pre-deprivation process).
8

9 In fact, so fundamental to due process is the concept of liberty that it is even well-
10 established that an individual maintains a protectable liberty interest where the individual
11 obtains liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607
12 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982)
13 (noting that due process considerations support the notion that an inmate released on
14 parole by mistake, because he was serving a sentence that did not carry a possibility of
15 parole, could not be re-incarcerated because the mistaken release was not his fault, and
16 he had appropriately adjusted to society, so it “would be inconsistent with fundamental
17 principles of liberty and justice” to return him to prison) (internal quotation marks and
18 citation omitted).
19
20

21 Here, when this Court “compar[es] the specific conditional release in
22 [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,” it
23 is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in
24 *Morrissey*, Mr. Quach’s release “enables him to do a wide range of things open to
25 persons” who have never been in custody or convicted of any crime, including to live at
26 home, work with his community, and “be with family and friends and to form the other
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1 enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Moreover, Mr. Quach
2 *is not a criminal detainee, but a civil detainee, and thus the due process considerations*
3 *of his liberty should be even weightier than the courts have already found apply in the*
4 *criminal context.* Unlike in *Morrissey*, the conditions on Petitioner’s release from
5 criminal custody have long since expired, as he was released in 2003, subject to a period
6 of only three years of parole. *See* Exhibit 3. The only remaining conditions on Petitioner’s
7 release, such as appearing for check-ins and keeping ICE advised of his address, were
8 incident to his release from ICE custody in 2003
9

10
11 Since his release in 2003, which came after approximately three years of
12 incarceration and a subsequent period of time in ICE custody, Mr. Quach has rebuilt his
13 life, including by reconnecting with his parents and siblings, maintaining consistent and
14 long-term employment, owning a home, and marrying his wife, a U.S. citizen, and raising
15 her children alongside her. Precedent from the Supreme Court and the Ninth Circuit
16 makes clear that he has a strong liberty interest in his continued release from detention.
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19
20 **b. Petitioner’s Liberty Interest Mandated a Due Process**
21 **Hearing Before any Re-Detention, and Once Released,**
22 **Mandates Such a Hearing Prior to Any Re-Detention**

23 Mr. Quach asserts that, here, (1) where his detention is civil, (2) where he has
24 diligently complied with ICE’s reporting requirements on a regular basis for over twenty
25 years, and (3) where on information and belief ICE officers arrested Mr. Quach merely
26 to fulfill an arrest quota because his removal is not reasonably foreseeable and potentially
27 indefinite, due process mandates that he was required to receive notice and a hearing
28

1 before an Immigration Judge prior to any re-arrest.

2
3 “Adequate, or due, process depends upon the nature of the interest affected. The
4 more important the interest and the greater the effect of its impairment, the greater the
5 procedural safeguards the [government] must provide to satisfy due process.” *Haygood*
6 *v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S.
7 at 481-82). This Court must “balance [Petitioner’s] liberty interest against the
8 [government’s] interest in the efficient administration of” its immigration laws in order
9 to determine what process he is owed to ensure that ICE does not unconstitutionally
10 deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*,
11 this Court must consider three factors in conducting its balancing test: “first, the private
12 interest that will be affected by the official action; second, the risk of an erroneous
13 deprivation of such interest through the procedures used, and the probative value, if any,
14 of additional or substitute procedural safeguards; and finally the government’s interest,
15 including the function involved and the fiscal and administrative burdens that the
16 additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at
17 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).
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21 The Supreme Court “usually has held that the Constitution requires some kind of
22 a hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*,
23 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where post-
24 deprivation remedies are “the only remedies the State could be expected to provide” can
25 post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at
26 985. Moreover, only where “one of the variables in the *Mathews* equation—the value of
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1 predeprivation safeguards—is negligible in preventing the kind of deprivation at issue”
2 such that “the State cannot be required constitutionally to do the impossible by providing
3 predeprivation process,” can the government avoid providing pre-deprivation process. *Id.*

4 Because, in this case, the provision of a pre-deprivation hearing was both possible
5 and valuable to preventing an erroneous deprivation of liberty, ICE was required to
6 provide Mr. Quach with notice and a hearing *prior* to any re-incarceration and revocation
7 of his OSUP. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*
8 *v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinerman*, 494 U.S. at 985; *see also*
9 *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th
10 Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings
11 may not constitutionally be held in jail pending the determination as to whether they can
12 ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of
13 [Petitioner’s] liberty” and required a pre-deprivation hearing before an Immigration
14 Judge, which ICE failed to provide.

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19 **i. Petitioner’s Interest in His Liberty is Profound**

20 Under *Morrissey* and its progeny, individuals conditionally released from serving
21 a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482.
22 In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact
23 free of physical confinement, even if that freedom is lawfully revocable, has a liberty
24 interest that entitles him to constitutional due process before he is re-incarcerated—apply
25 with even greater force to individuals like Mr. Quach, who have also been released from
26 with even greater force to individuals like Mr. Quach, who have also been released from
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1 prior ICE custody and are facing civil (not criminal) detention. Parolees and probationers
2 have a diminished liberty interest given their underlying convictions. *See, e.g., United*
3 *States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874
4 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
5 parolee cannot be re-arrested without a due process hearing in which they can raise any
6 claims they may have regarding why their re-incarceration would be unlawful. *See*
7 *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Quach, as a
8 civil detainee, retains a truly weighty liberty interest even though he was under
9 conditional release prior to his re-arrest.
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13 What is at stake in this case for Mr. Quach is one of the most profound individual
14 interests recognized by our legal system: whether ICE may unilaterally nullify a prior
15 release decision and be able to take away his physical freedom, i.e., his “constitutionally
16 protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203
17 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always
18 been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*,
19 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from
20 imprisonment—from government custody, detention, or other forms of physical
21 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper*
22 *v. Oklahoma*, 517 U.S. 348 (1996).
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24

25 **ii. The Government’s Interest in Keeping Petitioner in**
26 **Detention is Low and the Burden on the Government**
27 **to Release Him from Custody is Minimal**
28

1 The government's interest in keeping Mr. Quach in detention without a due
2 process hearing is low, and when weighed against his significant private interest in his
3 liberty, the scale tips sharply in favor of releasing him from custody. It becomes
4 abundantly clear that the *Mathews* test favors Petitioner when the Court considers that
5 the process Petitioner seeks—release from civil custody after ICE *already* released Mr.
6 Quach from civil detention over *twenty years ago* and where nothing in the interim has
7 changed to warrant re-detention after —is a standard course of action for the government.
8 Providing Mr. Quach with a future hearing before an Immigration Judge to determine
9 whether his removal is reasonably foreseeable and if there is otherwise evidence that he
10 is a flight risk or danger to the community would impose only a *de minimis* burden on
11 the government, because the government routinely conducts these reviews for individuals
12 in Petitioner's same circumstances. 8 C.F.R. § 241.4(e)-(f).
13

14 As immigration detention is civil, it can have no punitive purpose. The
15 government's only interests in holding an individual in immigration detention can be to
16 prevent danger to the community or to ensure a noncitizen's appearance at immigration
17 proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made
18 clear that indefinite detention of noncitizens who cannot be removed to the country of the
19 removal order, is unconstitutional. In this case, the government cannot plausibly assert
20 that it had a sudden interest in detaining Petitioner due to alleged dangerousness, or due
21 to a change in the foreseeability of his removal to Vietnam, as his circumstances have not
22 changed since his release from ICE custody in 2003.
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2 Moreover, Mr. Quach has always had a removal order--since before his release--
3 and yet he is not a flight risk because he has continued to appear before ICE on a regular
4 basis for every appointment that has been scheduled over a period of more than twenty
5 years. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance
6 to a person’s justifiable reliance in maintaining his conditional freedom so long as he
7 abides by the conditions on his release, than to his mere anticipation or hope of
8 freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d
9 1079, 1086 (2d Cir. 1971)).
10

11 Thus, as to the factor of flight risk, Mr. Quach’s post-release conduct in the form
12 of full compliance with his check-in requirements further confirms that he is not a flight
13 risk and that he remains likely to present himself at any future ICE appearances, as he
14 always has done. What has changed, however, is that ICE has a new policy to make a
15 minimum number of arrests each day under the new administration – but that does not
16 constitute a material change in circumstances or increase the government’s interest in
17 detaining him.⁶ Moreover, as discussed previously, nothing has changed regarding the
18 lack of foreseeability of his removal to Vietnam.
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21 Release from custody until ICE assesses and demonstrates to a more neutral
22 Immigration Judge that Mr. Quach is actually a flight risk or danger to the community,
23 or that his detention is not going to be indefinite, is far *less* costly and burdensome for
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27 ⁶ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington*
28 *Post* (January 26, 2025), available at:
<https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 the government than keeping him detained. As the Ninth Circuit noted in 2017, which
2 remains true today, “[t]he costs to the public of immigration detention are ‘staggering’:
3 \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez*
4 *v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).
5

6
7 **iii. Without Release from Custody, the Risk of an**
8 **Erroneous Deprivation of Liberty is High**

9 Releasing Mr. Quach from civil custody and ensuring he is provided a pre-
10 deprivation hearing in the future, would decrease the risk of him being erroneously
11 deprived of his liberty. Before he can be lawfully detained, he must be provided with a
12 hearing before an Immigration Judge at which the government is held to show that his
13 detention will not be indefinite (that is, his removal is reasonably foreseeable), or that the
14 circumstances have changed since his release in 2003 such that evidence exists to
15 establish that he is a danger to the community or a flight risk.
16

17 Under the process that ICE maintains is lawful—which affords Mr. Quach no
18 process whatsoever—ICE can simply re-detain him at any point if the agency desires to
19 do so, as ICE did on May 1, 2025. Mr. Quach has already been erroneously deprived of
20 his liberty when he was detained at his routine check-in appointment, and the risk he will
21 continue to be deprived is high if ICE is permitted to keep him detention after making a
22 unilateral decision to re-detain him. Pursuant to 8 C.F.R. § 241.4(l), revocation of release
23 on an OSUP is at the discretion of the Executive Associate Commissioner. It is unknown
24 in this case who made the determination to re-detain Mr. Quach here. Thus, the
25 regulations are insufficient to protect his due process rights, as they permit ICE to
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1 unilaterally re-detain individuals, even for an accidental error in complying with the
2 conditions, for example. After re-arrest, ICE makes its own, one-sided custody
3 determination and can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-
4 (f).
5

6 By contrast, the procedure Mr. Quach seeks—release from custody, and that he
7 be provided a future hearing in front of an Immigration Judge prior to any re-detention at
8 which the government that his detention will not be indefinite, or otherwise that the
9 circumstances have changed since his release in 2003 to justify his detention—is much
10 more likely to produce accurate determinations regarding these factual disputes. *See*
11 *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate
12 judgments depending on credibility of witnesses and assessment of conditions not subject
13 to measurement” are at issue, the “risk of error is considerable when just determinations
14 are made after hearing only one side”). “A neutral judge is one of the most basic due
15 process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir.
16 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30
17 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty
18 under *Mathews* can be decreased where an Immigration Judge, rather than ICE alone,
19 makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-
20 92 (9th Cir. 2011).
21

22 Due process also requires consideration of alternatives to detention at any custody
23 redetermination hearing that may occur. The primary purpose of immigration detention
24 is to ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is
25

1 not reasonably related to this purpose if, as here, removal is not actually foreseeable.
2 Accordingly, alternatives to detention must be considered in determining whether Mr.
3 Quach's re-detention is warranted.
4

5 **4. Petitioner is Likely to Succeed on the Merits of His Claim That**
6 **he is Entitled to Constitutionally Adequate Procedures Prior to**
7 **Any Third Country Removal.**

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

11 Under the INA, Respondents have a clear and non-discretionary duty to execute
12 final orders of removal only to the designated country of removal. The statute explicitly
13 states that a noncitizen “shall remove the [noncitizen] to the country the [noncitizen] . . .
14 designates.” 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen
15 does not designate the country of removal, the statute further mandates that DHS “shall
16 remove the alien to a country of which the alien is a subject, national, or citizen. *See id.*
17 § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).
18

19 As the Supreme Court has explained, such language “generally indicates a
20 command that admits of no discretion on the part of the person instructed to carry out the
21 directive,” *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661
22 (2007) (quoting *Ass’n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d
23 1150, 1153 (D.C. Cir. 1994)); *see also Black’s Law Dictionary* (11th ed. 2019).
24 Accordingly, any imminent third country removal fails to comport with the statutory
25 obligations set forth by Congress in the INA and is unlawful.
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2 Moreover, prior to any third country removal, ICE must provide Mr. Quach with
3 sufficient notice and an opportunity to respond and apply for fear-based relief as to that
4 country, in compliance with the INA, due process, and the binding international treaty:
5 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
6 Punishment.⁷ Currently, DHS has a policy of removing or seeking to remove individuals
7 to third countries without first providing constitutionally adequate notice of third country
8 removal, or any meaningful opportunity to contest that removal if the individual has a
9 fear of persecution or torture in that country.⁸
10

11 Instead, the policy squarely violates the INA because it does not take into account,
12 *or even mention*, an individual's designated country of removal—thereby fully
13 contravening the statutory instruction that DHS must only remove an individual to the
14 designated country of removal. 8 U.S.C. § 1231(b)(2)(A)(ii).
15

16 Further, the policy plainly violates the United States' obligations under the
17 Convention Against Torture and principles of due process because it allows DHS to
18 provide individuals with *no notice whatsoever* prior to removal to a third country, so long
19 as that country has provided "assurances" that deportees from the United States "will not
20 be persecuted or tortured." *Id.* If, in turn, the country has not provided such an assurance,
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24 ⁷ United Nations, Convention Against Torture and Other Cruel, Inhuman or
25 Degrading Treatment or Punishment (Dec. 10, 1984), 1465 U.N.T.S. 85, 113; S. Treaty
26 Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984).

27 ⁸ Catholic Legal Immigration Network, "Updates on Third Country Removals and
28 the D.V.D. Litigation," June 26, 2025, available at:
<https://www.cliniclegal.org/resources/removal-proceedings/updates-third-country-removals-and-dvd-litigation>.

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

1 the United States cannot remove individuals to countries where they will face torture,
2 because the policy allows DHS to swiftly remove noncitizens to countries where they
3 very well may face torture if those countries simply provide the United States with
4 “assurances” that deportees will not be tortured. *Id.* Moreover, the policy puts the onus
5 of individuals to be aware of their rights under the Convention Against Torture—which
6 is a treaty that binds the United States *government*—instead of ensuring that DHS
7 officials make individuals aware of their rights, which would more squarely comport with
8 *DHS’s obligations* under the treaty not to remove individuals to countries where they face
9 torture. *Id.* For similar reasons, the policy also violates principles of due process, because
10 it does not provide individuals with notice or any meaningful opportunity to apply for
11 fear-based relief. *Id.* Again, the policy allows individuals to be removed to third countries
12 without any notice or an opportunity to be heard if that country merely promises that
13 deportees will not face torture there, and if individuals are otherwise unaware of their
14 right to seek fear-based relief. *Id.*; see also *J.R. v. Bostock*, No. 2:25-cv-01161-JNW,
15 2025 U.S. Dist. LEXIS 124229 (W.D. Wash. June 30, 2025) (TRO prohibiting the
16 government from removing petitioner to “any third country in the world absent prior
17 approval from this Court”).

18
19 The U.S. District Court for the District of Massachusetts previously issued a
20 nationwide preliminary injunction blocking such third country removals without notice
21 and a meaningful opportunity to apply for relief under the Convention Against Torture.
22 *D.V.D., et al. v. U.S. Department of Homeland Security, et al.*, No. 25-10676-BEM (D.
23 Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government’s

1 motion to stay the injunction on June 23, 2025, just before the Court published *Trump v.*
 2 *Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme
 3 Court's order, which is not accompanied by an opinion, signals only disagreement with
 4 the nature, and not the substance, of the nationwide preliminary injunction.⁹ This is made
 5 clear by the Court's decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025), where the Court
 6 explained that the putative class plaintiffs there had to seek relief in individual habeas
 7 actions (as opposed to injunctive relief in a class action) against the implementation of
 8 Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-
 9 citizens to a third country. Regardless, ICE appears to be emboldened and intent to
 10 implement its campaign to send noncitizens to far corners of the planet—places they have
 11 absolutely no connection to whatsoever—in violation of individuals' due process rights.¹⁰

12 Mr. Quach's removal to a third country would violate his due process rights unless
 13 he is *first* provided with sufficient notice and a meaningful opportunity to apply for

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 19 ⁹ The Supreme Court's July 3, 2025, order in *U.S. Department of Homeland*
 20 *Security, et al. v. D.V.D., et al.*, 606 U. S. ____ (2025) (2025) further reinforces that the
 21 Supreme Court only disagrees with the means of a nationwide injunction, and not the
 22 underlying substance of the nationwide injunction. There, the Court held that the stay of
 23 the preliminary injunction divests remedial orders stemming from that injunction of
 24 enforceability, and cited to *United States v. Mine Workers*, 330 U. S. 258, 303 (1947) for
 25 the proposition that: "The right to remedial relief falls with an injunction which events
 26 prove was erroneously issued and *a fortiori* when the injunction or restraining order was
 27 beyond the jurisdiction of the court." *Id.* In any event, the remedial order at issue
 28 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. Quach remains in the United
 States and this Court therefore continues to have jurisdiction over his case.

¹⁰ CBS News, "Politics Supreme Court lets Trump administration resume
 deportations to third countries without notice for now" (June 24, 2025), available at:
[https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-](https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/)
[deportations-to-third-countries-without-notice/](https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/).

1 protection under the Convention Against Torture. Mr. Quach's request for a stay of
2 removal has been rejected, *see* Exhibit 5, and intervention by this Court is necessary to
3 protect those rights.
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5 **5. Petitioner Will Suffer Irreparable Harm Absent Injunctive**
6 **Relief**

7 Mr. Quach would suffer irreparable harm if he were to remain deprived of his
8 liberty and subjected to continued and indefinite detention by immigration authorities
9 without being immediately released and provided the constitutionally adequate process
10 (a future pre-deprivation hearing before an Immigration Judge) that this motion for
11 preliminary injunctive relief seeks. Detainees in civil ICE custody are held in "prison-
12 like conditions" which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d
13 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail
14 awaiting trial has a detrimental impact on the individual. It often means loss of a job; it
15 disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33
16 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th
17 Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable
18 harms imposed on anyone subject to immigration detention" including "subpar medical
19 and psychiatric care in ICE detention facilities, the economic burdens imposed on
20 detainees and their families as a result of detention, and the collateral harms to children
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1 of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. Finally, the
2 government itself has documented alarmingly poor conditions in ICE detention centers.¹¹
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4 Mr. Quach has been out of ICE custody for well over twenty years. During that
5 time, he has reconnected with his parents and many siblings, all of whom are U.S.
6 citizens. He has remained gainfully employed with work authorization, and prior to his
7 detention he was working long hours as a nail technician to support his U.S.-citizen wife
8 and her two young daughters, whom he is raising as his own. During the four months of
9 renewed detention, his wife has struggled to continue her own employment, make
10 mortgage payments on the family home, raise her children, and care for her own fragile
11 health, as she suffers from debilitating anemia and chronic fatigue. Mr. Quach’s
12 continued detention rips him from his family, and imperils the family’s economic and
13 emotional well-being.
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16 Moreover, if Mr. Quach remains detained in an immigration jail, his health could
17 be endangered. On September 15, 2023, Florence Immigrant and Refugee Rights Project
18 reported “often-egregious delays in specialty medical care” at ICE’s Arizona Detention
19 Centers, including Florence, along with complaints about “excessive deprivations” of
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24 ¹¹ See, e.g., DHS, Office of Inspector General (“OIG”), Summary of Unannounced
25 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (violations of
26 health and safety standards; staffing shortages affecting suicide watch, and detainees held
27 in unauthorized restraints, without being allowed time outside their cell,). U.S. Dep’t of
28 Homeland Security Office of Inspector General, OIG-24-23, Results of an Unannounced
Inspection of ICE’s Golden State Annex in McFarland, California (Sept. 24, 2024),
available at [https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-
Sep24.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf).

1 clothing, blankets, and food for individuals with mental health issues.¹² In an August 20-
 2 22, 2024 report, ICE’s own Office of Professional Responsibility found that the Florence
 3 Detention Center was in compliance with only 10 of 17 Performance-Based National
 4 Detention Standards, and the facility’s compliance had “trended downward” since the
 5 prior inspection in February 2024.¹³

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 8 Further, Mr. Quach will suffer irreparable harm were he to be removed to a third
 9 country without first being provided with constitutionally-compliant procedures to ensure
 10 that his right to apply for fear-based relief is protected. Individuals removed to third
 11 countries under DHS’s policy have reported that they are now stuck in countries where
 12 they do not have government support, do not speak the language, and have no network.¹⁴
 13 Others removed in violation of their prior grant of protection under the Convention
 14 Against Torture have reported that they faced severe torture at the hands of government
 15 agents.¹⁵ It is clear that “the deprivation of constitutional rights ‘unquestionably
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19 ¹² Florence Immigration and Refugee Rights Project, Report on Immigration
 20 Detention Complaints, October 2022 – March 2023, available at [https://firrp.org/wp-](https://firrp.org/wp-content/uploads/2023/09/2023-09-15_Florence-Project-Report-on-ICE-Detention-Complaints_Oct-2022-March-2023.pdf)
 21 [content/uploads/2023/09/2023-09-15_Florence-Project-Report-on-ICE-Detention-](https://firrp.org/wp-content/uploads/2023/09/2023-09-15_Florence-Project-Report-on-ICE-Detention-Complaints_Oct-2022-March-2023.pdf)
 22 [Complaints_Oct-2022-March-2023.pdf](https://firrp.org/wp-content/uploads/2023/09/2023-09-15_Florence-Project-Report-on-ICE-Detention-Complaints_Oct-2022-March-2023.pdf).

23 ¹³ ICE Office of Professional Responsibility, Florence Service Processing Center
 24 Compliance Inspection, 2024-005-362 (August 20-22, 2024), available at
 25 [https://www.ice.gov/doclib/foia/odo-compliance-](https://www.ice.gov/doclib/foia/odo-compliance-inspections/florenceSPC_FlorenceAZ_Aug20-22_2024.pdf)
 26 [inspections/florenceSPC_FlorenceAZ_Aug20-22_2024.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/florenceSPC_FlorenceAZ_Aug20-22_2024.pdf).

27 ¹⁴ NPR, “Asylum seekers deported by the U.S. are stuck in Panama unable to return
 28 home (May 5, 2025), available at: [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)
[5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-](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)
[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).

¹⁵ NPR, “Abrego Garcia says he was severely beaten in Salvadoran prison” (July 3,
 2025), available at: [https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-](https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture)
[salvador-prison-beaten-torture](https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture).

1 constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
2 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, preliminary injunctive relief
3 is necessary to prevent Mr. Quach from suffering irreparable harm by remaining in
4 unlawful and unjust detention, and by being summarily removed to any third country
5 where he may face persecution or torture.
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8 **6. The Balance of Equities and the Public Interest Favor**
9 **Granting the Temporary Restraining Order**

10 First, the balance of hardships strongly favors Mr. Quach. His detention is
11 potentially indefinite, and his summary removal to any third country where he may face
12 persecution or torture would violate the INA, binding international treaty, and Mr.
13 Quach’s due process rights. The government cannot suffer harm from an injunction that
14 prevents it from engaging in an unlawful practice. *See Zepeda v. INS*, 753 F.2d 719, 727
15 (9th Cir. 1983).
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17 Further, any burden imposed by requiring the Respondents to release Mr. Quach
18 from custody (and provided notice and a hearing before an Immigration Judge prior to
19 any future re-detention) is both *de minimis* and clearly outweighed by the substantial
20 harm he will suffer as long as he continues to be detained. *See Lopez v. Heckler*, 713 F.2d
21 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair
22 procedures to all persons, even though the expenditure of governmental funds is
23 required.”). Similarly, any burden of requiring Respondents *not* to remove Mr. Quach to
24 any third country is outweighed by the substantial harm he may suffer if removed to a
25 country where he will face persecution or torture. *See id.*
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2 Finally, preliminary injunctive relief is in the public interest. First and most
3 importantly, “it would not be equitable or in the public’s interest to allow [a party] . . . to
4 violate the requirements of federal law, especially when there are no adequate remedies
5 available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014)
6 (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If
7 preliminary relief is not entered, the government would effectively be granted permission
8 to detain Mr. Quach, and/or to summarily remove him to any third country, in violation
9 of the requirements of Due Process. “The public interest and the balance of the equities
10 favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act*
11 *Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872
12 F.3d at 996 (“The public interest benefits from an injunction that ensures that individuals
13 are not deprived of their liberty and held in immigration detention because of bonds
14 established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d
15 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a
16 constitutional right has been violated, because all citizens have a stake in upholding the
17 Constitution.”).

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22 **V. CONCLUSION**

23 For all the above reasons, Mr. Quach warrants a grant of preliminary injunctive
24 relief that enjoins Respondents from continuing to detain him, requires that Respondents
25 not re-detain him unless he is afforded notice and a hearing before an Immigration Judge
26 on whether his re-detention is not indefinite, and further whether it is justified by
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1 evidence that he is a danger to the community or a flight risk, and requires that
2 Respondents not remove him to any third country without first providing him with
3 constitutionally-compliant procedures.
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5 Dated: September 19, 2025

Respectfully submitted,

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7 s/Ami Hutchinson

8 Ami E. Hutchinson
9 Attorney for Petitioner
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