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9 UNITED STATES DISTRICT COURT
10
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12
13 WESTERN DIVISION

14 HAI CHIEU DAM aka Derrick Dam,
15 Petitioner-Plaintiff,

16 v.

17 Timonthy ROBBINS, Acting Field Office
18 Director of Los Angeles Office of Detention
19 and Removal, U.S. Immigrations and
20 Customs Enforcement; U.S. Department of
21 Homeland Security;

22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement, U.S.
24 Department of Homeland Security;

Kristi NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
Security; and

Pamela BONDI, in her Official Capacity,
Attorney General of the United States;
Respondents-Defendants.

Case No. 25-cv-8133

**PETITION FOR WRIT
OF HABEAS CORPUS
AND COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration Under Color of
Immigration Detention
Statutes; Request for
Declaratory and Injunctive
Relief

INTRODUCTION

1. Petitioner, Hai Chieu Dam, aka Derrick Dam (“Mr. Dam” or “Petitioner”), by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from (1) from re-arresting and re-detaining Mr. Dam without a showing that he is a flight risk or danger to the public; (2) requiring Mr. Dam to obtain travel papers from the Vietnamese government from which an Immigration Judge (IJ) has found Mr. Dam faces a risk of torture; (3) from removing Mr. Dam to Vietnam in violation of an IJ order and Ninth Circuit order; (4) from refouling or sending Mr. Dam to any third country without a hearing to establish he would be safe in that country; (5) and from placing Mr. Dam in current immigration detention conditions that violate the Fifth Amendment.

2. Mr. Dam will be 50 years old in September 2025. Mr. Dam is a citizen of Vietnam, and he arrived in the United States as a refugee when he was 3 years old. His elderly parents, adult sisters, 10 nephews and nieces, and his two children—ages 26 and 8—are all U.S. citizens who live in the Los Angeles area. When he was a teenager, Mr. Dam joined a gang and had a criminal record. In 2001, Mr. Dam was convicted of Cal. Penal Code § 245(a)(1) (assault with a deadly weapon, in which the prosecutor alleged his shoe was a deadly weapon when he kicked

1 someone). In 2004, an Immigration Judge (IJ) found that this conviction terminated
2 his lawful permanent residency status. The IJ also found that Mr. if Dam returned
3 to Vietnam, he would likely be tortured given the history that the Vietnamese
4 government jailed and harmed family members who opposed the government.
5 Moreover, Mr. Dam's Chinese ethnicity and failure to speak Vietnamese would will
6 result in his easy identification by others. The IJ granted Mr. Dam protection under
7 the Convention Against Torture (CAT).
8

9 3. Since 2004, Mr. Dam has lived at liberty and participated in the Intensive
10 Supervision Appearance Program (ISAP). Mr. Dam has complied with all
11 conditions of release, which includes reporting each year to the Federal Building in
12 Los Angeles. Mr. Dam has voluntarily reported each year for 21 years.
13

14 4. In a break from past practices, on August 18, 2025, ICE sent Mr. Dam a letter
15 directing him to report in person on September 18, 2025 with his travel papers in
16 hand.
17

18 5. In recent months, ICE has engaged in highly publicized arrests of non-
19 citizens who presented no flight risk or danger, often with no prior notice that
20 anything regarding their status was amiss or problematic, whisking them away to
21 faraway detention centers without warning.¹ In addition, ICE has also sent non-
22

23 ¹ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of*
24 *His Arrest*, N.Y. Times (Mar. 15, 2025),

<https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils->

1 citizens, including those with CAT protection, to third countries without regard to
2 the individual's safety, ties to the country, or ability to work or live safely in that
3 country. According to the International Refugee Assistance Project, since February
4 2025, the DHS and ICE have sent 350 non-citizens to Panama, 200 non-citizens to
5 Costa Rica, 5 non-citizens to Eswatini and 8 non-citizens to South Sudan.² In South
6 Sudan, the U.S. Department of State "considers South Sudan too dangerous for
7 almost all Americans," warning travelers of the risk of being taken hostage and
8 evaluating all non-essential diplomats.³

10 6. On June 23, 2025, a majority of the Supreme Court granted, without
11 providing any reasoning, the Government's emergency motion to vacate a district
12 court's class action enjoining third country removals. Three justices dissented,
13 explaining that "[i]n matters of life and death, it is best to proceed with caution.
14 In this case, the Government took the opposite approach. It wrongfully deported
15

16
17 [arrest.html](#) (Mahmoud Khalil, arrested in New York and transferred to Louisiana);
18 "What we know about the Tufts University PhD student detained by federal
19 agents," CNN (Mar. 28, 2025), [https://www.cnn.com/2025/03/27/us/rumeysa-](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html)
20 [ozturk-detained-what-we-know/index.html](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html) (Rumeysa Ozturk, arrested in Boston
21 and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to*
22 *deport another academic who is legally in the country, lawsuit says*, Politico (Mar.
23 [19, 2025](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)), available at [https://www.politico.com/news/2025/03/19/trump-](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)
24 [deportationgeorgetown-graduate-student-00239754](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754) (Badar Khan Suri, arrested in
Arlington, Virginia and transferred to Texas).

² *Trump Administration's Third Country Removals Put Migrants in Harm's Way*,
IRAP [https://refugeerights.org/news-resources/trump-administrations-third-](https://refugeerights.org/news-resources/trump-administrations-third-country-removals-put-migrants-in-harms-way)
[country-removals-put-migrants-in-harms-way](https://refugeerights.org/news-resources/trump-administrations-third-country-removals-put-migrants-in-harms-way)

³ Id.

1 one plaintiff to Guatemala, even though an Immigration Judge found he was likely
2 to face torture there. Then, in clear violation of a court order, it deported six more
3 to South Sudan, a nation the State Department considers too unsafe for all but its
4 most critical personnel. An attentive District Court's timely intervention only
5 narrowly prevented a third set of unlawful removals to Libya.” *Dep't of*
6 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting).
7

8 7. The Supreme Court’s action permitted the 8 non-citizens whom
9 Respondents had sent to South Sudan to remain there, and their “status is no
10 longer known.”⁴ Since June 2025, the Trump administration has made deals with
11 countries such as Rwanda to accept third-country removals and are negotiating
12 with 58 other countries, “who are incentivized to accept third country removals
13 through the threat of potential tariffs, travel bans, and other restrictions.”⁵
14

15 8. In light of credible reports of ICE re-arresting and re-detaining individuals
16 at their ISAP check-ins and in light of credible reports of ICE sending people,
17 even those with CAT protections, to third countries, it is highly likely that on
18 September 18, 2025 Mr. Dam will be re-arrested, re-detained, and sent to a third-
19 country, despite the fact that Mr. Dam is not a flight risk and is not danger to the
20 public.
21 public.

22
23 ⁴ Id.

24 ⁵ Id.

1 9. This habeas is being filed to seek an injunction prohibiting Respondents
2 from (1) from re-arresting and re-detaining Mr. Dam without a showing that he is
3 a flight risk or danger to the public; 21) requiring Mr. Dam to obtain travel papers
4 from the Vietnamese government from which an IJ has found Mr. Dam faces a
5 risk of torture; (3) from removing Mr. Dam to Vietnam; (4) from refouling or
6 sending Mr. Dam to any third country without a hearing to establish he would be
7 safe in that country; (5) and from placing him in current immigration detention
8 conditions that violate the Fifth Amendment.
9

10 **CUSTODY**

11 10. Mr. Dam is participating in ISAP, a monitoring program for
12 immigrants in removal proceedings who have been released from custody. The
13 program is operated by a private contractor, BI Incorporated. Pursuant to his
14 contract with ISAP, among other restrictions, Mr. Dam is subject to annual check-
15 ins as well as appearing to the appointment scheduled on September 18, 2025.
16 Such stringent requirements “impose[] conditions which significantly confine and
17 restrain his freedom; this is enough to keep him in the ‘custody’ of [the DHS]
18 within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S.
19 236, 243 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (9th Cir.
20 2010) (holding that comparable supervision requirements constitute “custody”
21 sufficient to support habeas jurisdiction).
22
23
24

1 **JURISDICTION**

2 11. This Court has jurisdiction over the present action pursuant to 28 U.S.C.
3 § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs
4 Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory
5 Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension
6 Clause); Art. 3 of the United States Constitution, and the common law.
7

8 **REQUIREMENTS OF 28 U.S.C. § 2243**

9 12. The Court must grant the petition for writ of habeas corpus or issue an order
10 to show cause (OSC) to Respondents “forthwith,” unless the petitioner is not
11 entitled to relief. *See* 28 U.S.C. § 2243. If an OSC is issued, the Court must
12 require Respondents to file a return “within ***three days*** unless for good cause
13 additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis added).
14

15 13. Courts have long recognized the significance of the habeas statute in
16 protecting individuals from unlawful detention. The Great Writ has been referred
17 to as “perhaps the most important writ known to the constitutional law of England,
18 affording as it does a ***swift*** and imperative remedy in all cases of illegal restraint
19 or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
20

21 14. Habeas corpus must remain a swift remedy. Importantly, “the statute itself
22 directs courts to give petitions for habeas corpus ‘special, preferential
23 consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208
24

1 E.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit
2 warned against any action creating the perception “that courts are more concerned
3 with efficient trial management than with the vindication of constitutional rights.”
4 *Id.*
5

6 VENUE

7 15. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e)
8 because the Respondents are employees or officers of the United States, acting in
9 their official capacity; because a substantial part of the events or omissions giving
10 rise to the claim occurred in the Central District of California; because Mr. Dam is
11 under the jurisdiction of the Los Angeles ICE Field Office, which is in the
12 jurisdiction of the California District of California; and because there is no real
13 property involved in this action.
14

15 INTRADISTRICT ASSIGNMENT

16 16. Any decision to re-arrest, re-incarcerate, or remove Mr. Dam to a third
17 country will be made by the Los Angeles Field Office of ICE. Moreover, Mr.
18 Dam is subject to an ISAP program operated out of Los Angeles California.
19 Therefore, the assignment to the Western District of this Court is proper.
20

21 EXHAUSTION OF ADMINISTRATIVE REMEDIES

22 17. For habeas claims, exhaustion of administrative remedies is prudential, not
23 jurisdictional. *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A
24

1 court may waive the prudential exhaustion requirement if “administrative
2 remedies are inadequate or not efficacious, pursuit of administrative remedies
3 would be a futile gesture, irreparable injury will result, or the administrative
4 proceedings would be void.” *Id.* (citation and quotation marks omitted)). Mr.
5 Dam asserts that exhaustion should be waived because administrative remedies
6 are (1) futile and (2) if he is re-arrested and re-detained without legal authority,
7 any unlawful detention or unlawful refolement to a third country would result in
8 irreparable harm.

10 18.No statutory exhaustion requirements apply to Mr. Dam’s claim of unlawful
11 re-arrest, re-detention, or refolement to a third country in violation of his due
12 process rights, and there are no administrative remedies that he needs to exhaust.
13 *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir.
14 1995) (holding exhaustion to be a “futile exercise because the agency does not
15 have jurisdiction to review” constitutional claims).

17 PARTIES

18 19.Mr. Dam was born in Vietnam and moved to the United States as a child at
19 the age of three. After a 2001 conviction for assault with a deadly weapon, the
20 DHS commenced immigration proceedings and revoked his lawful permanent
21 residence status. On December 2, 2004, the IJ granted Mr. Dam protection under
22 CAT after finding that he had a likelihood of being tortured in returned to
23
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1 Vietnam. ICE enrolled Mr. Dam in the ISAP program and Mr. Dam has complied
2 with all conditions of his release, including reporting to the Los Angeles ICE
3 office each year for the past 21 years.

4 20. After obtaining post-conviction relief, Mr. Dam filed a motion to reopen
5 with the Board of Immigration Appeals (BIA) seeking full faith and credit to the
6 vacatur of his criminal conviction. On December 27, 2024, Mr. Dam filed a
7 petition for review with the Ninth Circuit reviewing the BIA's decision not to
8 afford full faith and credit to the state court vacatur and restore his lawful
9 permanent residence status. On June 9, 2025, the Ninth Circuit granted an
10 emergency motion and issuing an order staying removal during the pendency of
11 the case. On August 18, 2025, ICE sent Mr. Dam a letter directing him to report
12 to the Los Angeles office on September 18, 2025 and bring with him
13 "identification from your country of origin such as a passport" and any medication
14 he is required to take. **Exhibit 8.**

17 21. Respondent Timothy ROBBINS is the Acting Field Office Director of ICE,
18 in Los Angeles, California and is named in his official capacity. ICE is the
19 component of the DHS that is responsible for detaining and removing noncitizens
20 according to immigration law and oversees custody determinations. In his official
21 capacity, he is the legal custodian of Mr. Dam.
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1 22. Respondent Todd M. LYONS is the Acting Director of ICE and is named in
2 his official capacity. Among other things, ICE is responsible for the
3 administration and enforcement of the immigration laws, including the removal of
4 noncitizens. In his official capacity as head of ICE, he is the legal custodian of
5 Mr. Dam.
6

7 23. Respondent Kristi NOEM is the Secretary of DHS and is named in her
8 official capacity. DHS is the federal agency encompassing ICE, which is
9 responsible for the administration and enforcement of the INA and all other laws
10 relating to the immigration of noncitizens. In her capacity as Secretary,
11 Respondent Noem has responsibility for the administration and enforcement of the
12 immigration and naturalization laws pursuant to section 402 of the Homeland
13 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see*
14 *also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Mr.
15 Dam.
16

17 24. Respondent Pamela BONDI is the Attorney General of the United States
18 and the most senior official in the U.S. Department of Justice (DOJ) and is named
19 in her official capacity. She has the authority to interpret the immigration laws
20 and adjudicate removal cases. The Attorney General delegates this responsibility
21 to the Executive Office for Immigration Review (EOIR), which administers the
22 immigration courts and the BIA.
23
24

STATEMENT OF FACTS

25. Mr. Dam was born in Vietnam on [REDACTED] 1975 and arrived in the United States when he was approximately three years old. **Exhibit 1, Exhibit 9.** On April 9, 1980, when he was 4 years old, he was admitted as a lawful permanent resident. **Exhibit 1, 2.**

26. In his teenage years, he joined a gang and had a serious of arrests and convictions, as a minor and later as an adult. His most serious crime was a conviction for assault with a deadly weapon. Mr. Dam was present during a bar fight. He kicked someone with a shoe, and the prosecutor alleged that his shoe was a deadly weapon when he kicked someone. He was convicted under Cal. Penal Code § 245(a)(1). **Exhibit 9.**

27. Mr. Dam left the gang after this incident. He did not want that life anymore, and because he took the rap, the gang let him walk away. Mr. Dam “learned my lesson” and “changed his life.” He stopped spending time with gang members and devoted time to work and family. He never had a criminal conviction after 2001. **Exhibit 9.**

28. On December 2, 2004, an IJ found that the assault with a deadly weapon conviction terminated his lawful permanent resident status. The IJ also granted Mr. Dam protection under CAT after finding that it was likely that he would be

1 tortured if he returned to Vietnam. **Exhibit 2.** Both parties appealed the decision.

2 On September 30, 2005, the BIA affirmed the order. **Exhibit 3.**

3 29. In 2020, Mr. Dam hired an attorney who specializes in immigration
4 consequences of criminal convictions. On November 1, 2001, the Superior Court
5 of California granted his motion to vacate the 2001 assault conviction. On
6 September 23, 2022, the lawyer filed a motion to reopen with the BIA, arguing
7 that under existing precedent, the BIA must afford full faith and credit to the
8 vacated conviction, which will restore Mr. Dam's lawful permanent status.
9

10 **Exhibit 9.**

11 30. On December 3, 2024, the BIA denied this motion. **Exhibit 4.** On
12 December 27, 2025, with the assistance of undersigned counsel, Mr. Dam filed a
13 timely petition for review, which is pending before the Ninth Circuit in *Dam v.*
14 *Bondi*, 24-7787. **Exhibit 5.**

15 31. Since the grant of his CAT protection, ICE enrolled Mr. Dam in ISAP
16 program. In recent years, each year, ICE will send Mr. Dam an email about one
17 month before his check-in date. In this email, ICE will direct Mr. Dam to report
18 to the Los Angeles ICE office at a specific time and date. Mr. Dam has reported
19 every year for the past 21 years as directed. **Exhibit 9.**

20 32. Typically, Mr. Dam will appear at a kiosk. The computer will direct him to
21 enter his information. Upon confirmation that he has no new arrests, the computer
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23
24

1 will notify him that he is in compliance and is scheduled to report the next year.

2 **Exhibit 9.**

3 33. The last email Mr. Dam received was on May 29, 2025. **Exhibit 6.** This
4 email directed Mr. Dam to report to the Los Angeles ICE office on June 12, 2025.
5

6 **Exhibit 6.**

7 34. Starting in an early June 2025, ICE began to detain non-citizens living in
8 Los Angeles who appeared at their check-ins. According to a June 7, 2025 CBS
9 News report “[m]any undocumented immigrants who went to their Immigration
10 and Customs Enforcement check-in appointments at a federal building in Los
11 Angeles this week were taken into custody and brought to the basement and held
12 there, some overnight, according to immigration lawyers and family members.”⁶
13

14 35. On June 9, 2025, in light of the arrests of those who reported at their ICE
15 appointments, undersigned counsel filed an emergency motion asking the Ninth
16 Circuit to adjudicate the pending motion to stay removal. **Exhibit 6, Docket 31.**
17 On June 9, 2025, the Court granted that motion and issued an order staying
18 removal during the pendency of the petition for review. **Exhibit 6, Docket 32.** O
19

20 36. On June 12, 2025, Mr. Dam then reported to the Los Angeles ICE office as
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22 ⁶ Nidia Cavazos, *Immigrants at ICE Check-ins Detained, Held in Basement of*
23 *Federal Building in Los Angeles, Some Overnight*, CBS News, Jun. 7, 2025
24 <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>

1 directed. On that date, the building was closed because the deployment of
2 Marines around the building and the presence of protesters objecting to the
3 immigration actions was centered around the Federal Building where Mr. Dam
4 was asked to report.⁷ Because the building was closed, Mr. was not permitted to
5 enter. Pursuant to the request of undersigned counsel, Mr. Dam sent photographs
6 of himself in front of the Federal Building at 300 North Los Angeles Street, which
7 were taken on June 12, 2025. **Exhibit 7.**

9 37. In addition, Mr. Dam took a video of himself speaking with two officers
10 who were outside of the federal building. Mr. Dam told him that was there
11 because he had a check-in appointment with ICE. One officer told him “They will
12 reschedule you.” Mr. Dam asked for clarification about whether he should report
13 when the building reopens. The officer confirmed that he will be notified when he
14 is to return. **Exhibit 9.**

16 38. On August 22, 2025, Mr. Dam received a letter from ICE, which had been
17 dated on August 18, 2025. This letter directed Mr. Dam to report to the ICE
18 office on September 18, 2025 at “300 N. Los Angeles St. 7th Fl. Rm. 7621, Los
19 Angeles, CA 90012.” **Exhibit 8.** The letter instructed Mr. Dam to report to a
20 “Case Officer,” and to bring with him “any identification form your country of
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23 ⁷ Rhonda Tarrant, *Maps and Photos Show How The Los Angeles ICE Protests*
24 *Unfolded*, CBS News, Jun. 12, 2025 <https://www.cbsnews.com/news/los-angeles-ice-protests-timeline/>

1 origin such as a passport. Please bring any immigration/medical documents and
2 medication.” **Exhibit 8.** The Reason for the Appointment was
3 “Interview/Receive immigration paperwork.” **Exhibit 8.**

4 39. On information and belief, this letter is preparing Mr. Dam to be detained,
5 which is why ICE directed to bring any medication with him, and removed or
6 refouled from the country, which is why ICE directed him to bring travel
7 documents from Vietnam.

9 40. Mr. Dam does not have any identification papers or passports from
10 Vietnam. Mr. Dam’s fled the country when he was a toddler and arrived in the
11 United States as refugees. In 2004, an IJ found that it is likely that Mr. Dam will
12 be tortured if he returns to Vietnam.

14 41. Upon information and belief, Vietnam has only one embassy in the United
15 States, which is located in Washington DC.⁸ It is unclear if Mr. Dam is eligible
16 for or permitted to obtain the requested documentation. But even if he is, it is not
17 safe for Mr. Dam to enter into an embassy or consulate, which is not under the
18 control of the United States. As an extreme example, it is alleged that Saudi
19 government officials kidnapped and murdered Jamal Khashoggi, a U.S.-based
20 journalist who was a critic of the Saudi government when he entered a consulate
21

22
23 ⁸ Embassy of the Socialist Republic of Vietnam in the United States of America,
24 <https://vietnamembassy-usa.org>

1 in Turkey.⁹ An IJ has found that Mr. Dam is likely to be tortured if he returns to
2 Vietnam and embassies and consulates are under the control of Vietnam, not the
3 United States.

4 42. “Between the end of the Vietnam War and 2008, Vietnam refused to
5 repatriate any Vietnamese immigrants who had been ordered removed from the
6 United States.” *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). In
7 2008, the United States and Vietnam entered into an agreement in which Vietnam
8 would consider repatriation requests for certain Vietnamese nationals who arrived
9 *after* July 12, 1995. *Id.* However, Vietnam and the United States agreed that the
10 United States would not remove Vietnamese nationals who had entered the United
11 States before July 12, 1995. *Id.*

12 43. In 2017, during the first Trump administration, the countries renegotiated
13 this agreement, and ICE “began detaining some pre-1995 Vietnamese immigrants
14 who had previously been released on orders of supervision.” *Trinh*, 466 F. Supp.
15 3d at 1084. In granting a class action, the district court enjoined ICE from such
16 practices. *Id.* In doing so, the court noted that “between 2017 and 2019, ICE
17 requested travel documents for pre-1995 Vietnamese immigrants 251 times.
18 Vietnam granted those requests only 18 times, in just over seven percent of
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23 ⁹ Jamal Khashoggi: *All You Need to Know About Saudi Journalist’s Death*, BBC,
24 Feb. 24, 2021 <https://www.bbc.com/news/world-europe-45812399>

1 cases.” *Id.* at 1087–88.

2 44. In March 2025, the Trump administration began “targeting these
3 [Vietnamese immigrants who arrived before June 12, 1995] again, disregarding
4 decades of rehabilitation, deep community ties, and valuable contributions to
5 America. Families are being torn apart, and the U.S. is once again betraying its
6 promise of refuge, safety, and hope.”¹⁰ ICE began to re-arrest and re-detain the
7 pre-1995 Vietnamese individuals.¹¹ In May 2025, ICE refouled to South Sudan at
8 least two Vietnamese non-citizens, after ICE first told him that they were going to
9 be sent to South Africa and Burma.¹² In addition, since June 2025, at least one
10 Vietnamese national who had been living in the United States was removed to
11 Vietnam, and another was refouled to Eswatini.¹³

14 45. In light of credible reports of ICE re-arresting and re-detaining people like
15

16 ¹⁰ Vietnamese American Organization, ICE Re-Arrest and Detention of Pre-1995
17 Vietnamese Immigrants is Inhuman, EIN Presswire, Mar 25, 2025,
18 [https://www.wsav.com/business/press-releases/ein-presswire/796080136/ice-re-](https://www.wsav.com/business/press-releases/ein-presswire/796080136/ice-re-arrest-and-detention-of-pre-1995-vietnamese-immigrants-is-inhumane/)
19 [arrest-and-detention-of-pre-1995-vietnamese-immigrants-is-inhumane/](https://www.wsav.com/business/press-releases/ein-presswire/796080136/ice-re-arrest-and-detention-of-pre-1995-vietnamese-immigrants-is-inhumane/)

20 ¹¹ *Id.*

21 ¹² Ximena Bustillo, Judge Questions Lawyers Over Alleged Deportations to South
22 Sudan, NPA May 21, 2025 [https://www.npr.org/2025/05/20/g-s1-68090/dhs-](https://www.npr.org/2025/05/20/g-s1-68090/dhs-migrants-deport-south-sudan)
23 [migrants-deport-south-sudan](https://www.npr.org/2025/05/20/g-s1-68090/dhs-migrants-deport-south-sudan); Ximena Bustillo, *The White House is Deporting*
24 *People to Countries They’re Not From. Why?* NPR, Jun. 1, 2025
<https://www.npr.org/2025/06/01/g-s1-69780/trump-deportations-south-sudan>

¹³ Kristina Cooke and Ted Hessen, *The US Said It Had No Choice But to Deport*
Them to A Third Country. Then It Sent Them Home, Reuters, August 3, 2025
[https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-](https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/)
[third-country-then-it-sent-them-home-2025-08-02/](https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/)

1 Mr. Dam who have the protections of CAT and refouling them to third countries
2 or even removing them to Vietnam, it is highly likely Mr. Dam will be arrested
3 and incarcerated at his September 18 appointment, despite the fact that Mr. Dam
4 is neither a flight risk nor a danger to the community. Moreover, CAT protection
5 is legal status and he has a pending Ninth Circuit case which will restore his
6 lawful permanent residence status if he prevails in that Court.
7

8 46. Intervention from this Court is therefore required to ensure that Mr. Dam is
9 not unlawfully re-arrested and re-incarcerated and subjected to irreparable harm
10 by being sent out of the country to Vietnam or a third country.
11

12 **LEGAL BACKGROUND**

13 **I. Due Process Compels Providing Petitioner A Right to a Hearing** 14 **Prior to Re-Arrest And Re-Detention**

15 47. In Mr. Dam's particular circumstances, the Due Process Clause of the
16 Constitution makes it unlawful for Respondents to re-arrest him without first
17 providing a pre-deprivation hearing before a neutral decision maker to determine
18 whether circumstances have materially changed since December 2004, such that
19 detention would now be warranted on the basis that he is a danger or a flight risk
20 by clear and convincing evidence. The regulatory language grants ICE the
21 authority to revoke a post-custody release "at any time." 8 C.F.R. § 236.1(c)(9).
22 When interpreting this regulation in the context of a non-citizen whose prior
23 release on bond was revoked, the Board noted an implicit limitation on ICE's
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1 authority to re-arrest noncitizens. In *Matter of Sugay*, 17 I & N Dec. at 640,
2 “where a previous bond determination has been made by an immigration judge, no
3 change should be made by [the DHS] absent a change of circumstance.” *Id.*

4 48. The Board made that finding in context of a non-citizen for whom an IJ had
5 revoked his prior release on bond. *See Matter of Sugay*, 17 I & N Dec. at 640.

6 However, the actual regulation permitting the re-arrest of a non-citizen is not
7 conditioned on how an individual was released and is by no means limited solely
8 to the context of a release on bond. Rather, the regulation provides: “When an
9 alien who, having been arrested and taken into custody, has been released, such
10 release may be revoked at any time in the discretion of the district director . . . in
11 which event the alien may be taken into physical custody and detained. If
12 detained, unless a breach has occurred, any outstanding bond shall be revoked and
13 cancelled.” 8 C.F.R. § 236.1(c)(9).

14 49. In practice, DHS “requires a showing of changed circumstances both
15 where the prior bond determination was made by an immigration judge **and where**
16 **the previous release decision was made by a DHS officer.**” *Saravia v. Sessions*,
17 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017). In *Saravia*, the district court
18 extended the protection of an immigration hearing in which the government must
19 prove changed circumstances before re-arresting and re-detaining non-citizen
20 minors whom ICE were alleging to be gang members. *Id.* at 1178. The Court
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1 explained that the initial release from custody and placement in home settings,
2 “reflects a determination by the government that the noncitizen is not a danger to
3 the community or a flight risk. Once a noncitizen has been released, the law
4 prohibits federal agents from rearresting him merely because he is subject to
5 removal proceedings. Rather, the federal agents must be able to present evidence
6 of materially changed circumstances—namely, evidence that the noncitizen is in
7 fact dangerous or has become a flight risk, or is now subject to a final order of
8 removal.” *Id.* at 1176. “[I]f the noncitizen disputes the notion that changed
9 circumstances justify his rearrest, he is entitled to a prompt hearing before an
10 immigration judge. These protections against the erroneous deprivation of liberty
11 arose out of a 1981 decision by the Board of Immigration Appeals and are
12 embodied in the current practices of the Department of Homeland Security.” *Id.*
13 at 1176–77 (citing *Matter of Sugay*).

16 50. In *Saravia*, ICE released from its custody non-citizens were released
17 without prior bond hearings. 280 F. Supp. 3d at 1197.

18 51. Likewise, in the *Hernandez Roman* settlement, the Court offered Class
19 Members these same due process protections, regardless if they had been released
20 on bond or after an ICE officer made an individualized determination. ***Exhibit 10***
21 at 11–14. The legal and constitutional protections afforded those released during
22 COVID were not limited only to those released on bond.
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1 52. It is unclear how and when Mr. Dam was released. Upon information and
2 belief, it appears that before December 2004, he was released on bond, taken back
3 into custody, and released again. Moreover, after the December 2, 2004 order
4 protecting him under CAT, Mr. Dam has been free from custody and under the
5 supervision of the ISAP program. Regardless of whether he is technically
6 released on bond or under the protections of CAT, basic due process protections,
7 existing agency practice and policy compels that Mr. Dam cannot be re-arrested
8 by ICE absent a showing in a hearing that he is a flight risk, a threat to public
9 safety, or the agency is about to execute a final order of removal. Indeed,
10 undersigned counsel has not found a case limiting due process to just those who
11 were released on bond. The reality is that our Courts, and our Constitution, have
12 routinely recognized that due process exists—not just as an individual right—but
13 as the only means by which government excess and abuses of power can be
14 checked. For instance, in a compelling dissent, Justice Ginsburg disabuses the
15 notion that the Fourth Amendment’s exclusionary right is a mere right of a
16 defendant because it is a remedy applicable only when suppression would result
17 in appreciable deterrence that outweighs the cost to the justice system.” *Herring*
18 *v. United States*, 555 U.S. 135, 150 (2009) (Ginsburg, J., dissenting). This is why
19 the exclusionary rule “also serves other important purposes: It ‘enabl[es] the
20 judiciary to avoid the taint of partnership in official lawlessness,’ and it ‘assur[es]

1 the people—all potential victims of unlawful government conduct—that the
2 government would not profit from its lawless behavior, thus minimizing the risk
3 of seriously undermining popular trust in government.” *Herring*, 555 U.S. at 150
4 (quoting *United States v. Calandra*, 414 U.S. 338, 357 (1974) (Brennan, J.,
5 dissenting)).
6

7 53. The need for the Court to provide protections against the federal
8 government invoking a person’s liberty for arbitrary purposes is a critical
9 protection—not just for targeted individuals but for the Rule of Law. “Stated
10 simply, what it means to have a system of government that is bounded by law is
11 that everyone is constrained by the law, no exceptions. And for that to actually
12 happen, courts must have the power to order everyone (including the Executive)
13 to follow the law—full stop.” *Trump v. CASA, Inc.*, No. 24A884, 606 U.S. ___,
14 145 S. Ct. 2540, 2597, 2025 WL 1773631, at *44 (U.S. June 27, 2025) (Jackson,
15 J., dissenting). “To conclude otherwise is to endorse the creation of a zone of
16 lawlessness within which the Executive has the prerogative to take or leave the
17 law as it wishes, and where individuals who would otherwise be entitled to the
18 law’s protection become subject to the Executive’s whims instead.” *Id.*
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21 54. On this record, ICE appears to be preparing to take Mr. Dam into custody
22 absent any evidence or concern that he is a flight risk or danger to the public. Mr.
23 Dam is not a flight risk. The fact that Mr. Dam has voluntarily reported to ICE
24

1 each year for 21 years, and even showed up to the Federal Building on June 12,
2 2025, after knowing that ICE was detaining others who reported to their
3 appointments, is proof that he will always comply with the conditions of his
4 release. **Exhibit 9.**

5
6 55.Mr. Dam is also not a danger to the community. Since his 2001 conviction,
7 for over 24 years, he has not had any subsequent arrest. On June 14, 2025, the
8 ICE officer never cited any concern about his conduct as a reason for his arrest.
9 Mr. Dam has not engaged in any conduct that shows that he is a danger to the
10 public or community.

11
12 56.The only reasonable inference from this record is that ICE is planning to re-
13 arrest Mr. Dam for an arbitrary or impermissible reason, which is to serve a
14 political purpose. Since May 2025, ICE has been re-arresting immigrants around
15 the country who report to their check-in appointments.¹⁴ Although the
16 administration has denied the allegations in legal filings, news reports from the
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18 ¹⁴ Gustavo Sagrero Alvarez, *Mysterious Notice Tells Immigrants to Check in at*
19 *Seattle-Area Federal Building. Several Get Detained*, NPR Jun. 14, 2025
20 <https://www.kuow.org/stories/mysterious-notice-tells-immigrants-to-check-in-at-seattle-area-federal-building-several-get-detained>; Nate Rodgers, *Hundreds*
21 *Received Texts, Emails Ordering Them to Go to Broadview Immigration Center*,
22 Fox 32 Chicago, Jun. 15, 2025 <https://www.fox32chicago.com/news/two-people-detained-broadview-immigration-center-after-hundreds-received-texts-emails>;
23 Robert Stewart, *Immigrants, Advocates Alarmed by Check-in Messages at ICE*
24 *Contractor's Facility*, New Orleans Public Radio, Jun. 18, 2025
<https://www.wwno.org/immigration/2025-06-18/immigrants-advocates-alarmed-by-check-in-messages-at-ice-contractors-facility>

1 Guardian and Axios “revealed that during a meeting with Immigration and
2 Customs Enforcement (Ice) leaders on 21 May [2025], the White House adviser
3 Stephen Miller and the Department of Homeland Security secretary, Kristi Noem,
4 demanded that immigration agents seek to arrest 3,000 people per day.”¹⁵ “Miller
5 appeared on Fox News in late May and stated that ‘under President Trump’s
6 leadership, we are looking to set a goal of a minimum of 3,000 arrests for Ice
7 every day.’ He added that Trump ‘is going to keep pushing to get that number
8 higher each and every day.’”¹⁶ In upholding a TRO injunction against DHS and
9 ICE from conducting unlawful immigration enforcement actions in the Los
10 Angeles that stop and arrest people after “individualized, reasonable suspicion that
11 the person to be stopped is unlawfully in the United States,” the Ninth Circuit
12 dropped a footnote both noting the public statements from administration officials
13 telling the public that a 3,000 daily arrest policy exist and the Department of
14 Justice denying to courts such policy exists. *Vasquez Perdomo v. Noem*, No. 25-
15 4312, ___ F.4th ___, [2025 WL 2181709](https://www.casaregis.com/casaregis/wp-content/uploads/2025/08/25-4312-Vasquez-Perdomo-v-Noem.pdf), n.2 at *2 (9th Cir. Aug. 1, 2025).
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19 57. What is not in dispute that, as of August 11, 2025, the administration is
20 detaining more than 60,000 immigrants, which is a “modern record,” a large
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22 ¹⁵ Anna Betts, *Trump Administration Denies Daily Quota for Immigration Arrests*,
23 The Guardian, Aug 3, 2025 [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2025/aug/03/trump-administration-daily-quota-immigration-arrests)
24 [news/2025/aug/03/trump-administration-daily-quota-immigration-arrests](https://www.theguardian.com/us-news/2025/aug/03/trump-administration-daily-quota-immigration-arrests)

¹⁶ Id.

1 increase from the 39,000 people who were detained in January 2025, and a
2 substantial increase from the 7,000 people who were in immigration detention in
3 2003 when ICE was created.¹⁷ The administration further has a stated political
4 goal of detaining 100,000 immigrants per day.¹⁸ In June 2025, Congress provided
5 ICE with “\$45 billion to build immigration jails for single adults and families, a
6 price tag 13 times more than ICE’s 2024 detention budget.¹⁹ That budget is larger
7 than what many nations spend on their entire militaries, including Italy (\$30.8
8 billion), Israel (\$30 billion), the Netherlands (\$27 billion), and Brazil (\$26.1
9 billion).²⁰

11 58. ICE’s power to re-arrest a noncitizen who is at liberty following a release
12 from custody is also constrained by the demands of due process. *See Hernandez*,
13 872 F.3d at 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-
14 citizens is always constrained by the requirements of due process”). In this case,
15 the guidance provided by *Matter of Sugay* is that ICE may not re-arrest a
16 noncitizen absent changed circumstances.

19 ¹⁷ Chris Cameron and Hamed Aleaziz, *Over 60,000 Are in Immigration Detention,*
20 *a Modern High, Records Show*, NY Times, Aug. 11, 2025

21 [https://www.nytimes.com/2025/08/11/us/politics/immigration-detention-](https://www.nytimes.com/2025/08/11/us/politics/immigration-detention-numbers.html)
22 [numbers.html](https://www.nytimes.com/2025/08/11/us/politics/immigration-detention-numbers.html)

23 ¹⁸ Id.

24 ¹⁹ Brendan Cole and John Feng, *ICE Budget Now Bigger Than Most of the World’s*
25 *Militaries*, Newsweek, Jun. 3, 2025 [https://www.newsweek.com/immigration-ice-](https://www.newsweek.com/immigration-ice-bill-trump-2093456)
26 [bill-trump-2093456](https://www.newsweek.com/immigration-ice-bill-trump-2093456)

27 ²⁰ Id.

1 59. Federal district courts in California and in other states have enjoined ICE
2 from re-arresting and re-detaining non-citizens without first providing an
3 individualized hearing where the government presents proof that the non-citizen is
4 a danger to the community or a flight risk. The courts reason that “the
5 immigrant's initial release reflected a determination by the government that the
6 noncitizen is not a danger to the community or a flight risk. Since it is the
7 government that initiated re-detention, it follows that the government should be
8 required to bear the burden of providing a justification for the re-detention.”

9 *Prieto Salazar v. Kaiser*, No. 1:25-CV-01017-JLT-SAB, [2025 WL 2456232](#), at
10 *13 (E.D. Cal. Aug. 26, 2025) (ordering release of asylum seeker from
11 immigration custody and providing that DHS may not “impose any additional
12 restrictions on her, such as electronic monitoring, unless that is determined to be
13 necessary at a future pre-deprivation/custody hearing”). *See also Pablo Sequen v.*
14 *Kaiser*, No. 25-CV-06487-PCP, ___ F. Supp. 3d ___, [2025 WL 2203419](#), at *1
15 (N.D. Cal. Aug. 1, 2025) (ordering release of asylum seeker and enjoining DHS
16 “from re-arresting or otherwise re-detaining Ms. Pablo Sequen without first
17 providing her with a pre-detention bond hearing before an immigration judge at
18 which ICE establishes by clear and convincing evidence that her detention is
19 necessary to prevent her flight or protect the public”); *Y-Z-L-H v. Bostock*, No.
20 3:25-CV-965-SI, ___ F. Supp. 3d ___, [2025 WL 1898025](#), at *14 (D. Or. July 9,
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2025) (ordering release of non-citizen from custody and providing that DHS “shall not cause Petitioner to be re-detained during the pendency of his removal proceedings without prior leave of this Court”); *Diaz v. Kaiser*, No. 3:25-cv-05071, [2025 WL 1676854](#) (N.D. Cal. Jun. 14, 2025) (granting injunction filed by non-citizen who had been at liberty for 5 years and received a ISAP notice directing him to report on June 14, 2025, which was before his normal check-in. The court directed the DHS not to re-arrest or re-detain him at his upcoming ICE check-in appointment, unless and until the DHS proved changed circumstances warranted revoking his liberty); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, [2025 WL 1382859](#), at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff’s ICE interview when he had been on bond for more than five years).

A. Mr. Dam Has A Protected Liberty Interest in His Conditional Release

60. Mr. Dam’s liberty from immigration custody is protected by the Due Process Clause: “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, [533 U.S. 678, 690](#) (2001).

61. Since December 2, 2024, Mr. Dam has exercised that freedom after he was granted protection under CAT. **Exhibit 2.** Although he was released from

1 detention before that point in time (and also remains under government custody,
2 as further demonstrated by his enrollment in ISAP), he retains a weighty liberty
3 interest under the Due Process Clause of the Fifth Amendment in avoiding
4 unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997);
5 *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S.
6 471, 482–83 (1972).

7
8 62. In *Morrissey*, the Supreme Court examined the “nature of the interest” that
9 a parolee has in “his continued liberty.” 408 U.S. at 481–82. “[S]ubject to the
10 conditions of his parole, [a parolee] can be gainfully employed and is free to be
11 with family and friends and to form the other enduring attachments of normal
12 life.” *Id.* at 482. Because “the parolee has relied on at least an implicit promise
13 that parole will be revoked only if he fails to live up to the parole conditions, . . .
14 “the liberty of a parolee, although indeterminate, includes many of the core values
15 of unqualified liberty and its termination inflicts a grievous loss on the parolee and
16 often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must
17 be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at
18 482.
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21 63. This basic principle—that individuals have a liberty interest in their
22 conditional release—has been reinforced by both the Supreme Court and the
23 circuit courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152
24

(holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated”) (citing inter alia *Young*, 520 U.S. at 152 and *Morrissey*, 408 U.S. at 482).

64. Just as in *Morrissey*, Mr. Dam’s release “enables him to do a wide range of things open to persons” who have never been in custody or convicted of any crime, including to live at home, work, care for his children, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

65. Mr. Dam is part of a close-knit family that includes his elderly parents, adult sisters, ten nephews and nieces, and two children—all of whom are U.S. citizens. He has complied with all conditions of release for over 21 years and he continues to do as he litigates the restoration of his lawful permanent resident status before the Ninth Circuit.

B. Mr. Dam’s Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Release from Custody

66. Mr. Dam asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for 21 years, during which time he has complied with

1 all conditions of release; (3) where he has a pending Ninth Circuit petition seeking
2 the restoration of his lawful permanent resident status; (4) where there is no
3 change in circumstances exist that would justify his lawful detention; and (5)
4 where the only circumstance that has changed appears to be ICE's campaign to
5 arrest as many people as possible because of the new administration, due process
6 mandates that Respondents be enjoined from re-arresting and re-detaining him at
7 his September 18, 2025 appointment and remain at liberty unless and until he
8 receives notice and a hearing before a neutral adjudicator *prior* to any re-arrest or
9 revocation of his custody release.
10

11 67. "Adequate, or due, process depends upon the nature of the interest affected.
12 The more important the interest and the greater the effect of its impairment, the
13 greater the procedural safeguards the [government] must provide to satisfy due
14 process." *Haygood v. Younger*, 769 F.2d 1350, 1355–56 (9th Cir. 1985) (en banc)
15 (citing *Morrissey*, 408 U.S. at 481–82). This Court must "balance [Mr. Dam's]
16 liberty interest against the [government's] interest in the efficient administration
17 of" its immigration laws in order to determine what process he is owed to ensure
18 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357.
19

20 Under the test set forth in *Mathews v. Eldridge*, this Court must consider three
21 factors in conducting its balancing test: "first, the private interest that will be
22 affected by the official action; second, the risk of an erroneous deprivation of such
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1 interest through the procedures used, and the probative value, if any, of additional
2 or substitute procedural safeguards; and finally the government’s interest,
3 including the function involved and the fiscal and administrative burdens that the
4 additional or substitute procedural requirements would entail.” *Haygood*, 769
5 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).
6

7 68. The Supreme Court “usually has held that the Constitution requires some
8 kind of a hearing *before* the State deprives a person of liberty or property.”
9 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a
10 “special case” where post-deprivation remedies are “the only remedies the State
11 could be expected to provide” can post-deprivation process satisfy the
12 requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where
13 “one of the variables in the *Mathews* equation—the value of predeprivation
14 safeguards—is negligible in preventing the kind of deprivation at issue” such that
15 “the State cannot be required constitutionally to do the impossible by providing
16 predeprivation process,” can the government avoid providing pre-deprivation
17 process. *Id.*
18
19

20 69. To comport with due process, ICE is required to provide Mr. Dam with
21 notice and a hearing *prior* to any re-incarceration and revocation of his custody.
22 See *Morrissey*, 408 U.S. at 481–82; *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.
23 1984) (holding that individuals awaiting involuntary civil commitment
24

1 proceedings may not constitutionally be held in jail pending the determination as
2 to whether they can ultimately be recommitted). Under *Mathews*, “the balance
3 weighs heavily in favor of [Mr. Dam’s] liberty” and requires a pre-deprivation
4 hearing before a neutral adjudicator.

5
6 **C. Mr. Dam’s Private Interest in His Liberty Is Profound**

7 70. Under *Morrissey* and its progeny, individuals conditionally released from
8 serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*,
9 408 U.S. at 482. Even in the criminal parolee context, the courts have held that
10 the parolee cannot be re-arrested without a due process hearing in which they can
11 raise any claims they may have regarding why their re-incarceration would be
12 unlawful. *See Hurd*, 864 F.3d at 683. Thus, Mr. Dam retains a truly weighty
13 liberty interest even though he is under conditional release.

15 71. What is at stake in this case for Mr. Dam is one of the most profound
16 individual interests recognized by our legal system: whether ICE may unilaterally
17 nullify a prior decision releasing him from custody and to take away—without a
18 lawful basis—his physical freedom, i.e., his “constitutionally protected interest in
19 avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir.
20 2011) (internal quotation omitted). “Freedom from bodily restraint has always
21 been at the core of the liberty protected by the Due Process Clause.” *Foucha v.*
22 *Louisiana*, 504 U.S. 71, 80 (1992); *see also Zadvydas*, 533 U.S. at 690 (“Freedom
23
24

1 from imprisonment—from government custody, detention, or other forms of
2 physical restraint—lies at the heart of the liberty that [the Due Process] Clause
3 protects.”).

4 72. Thus, there is a profound private interest at stake in this case, which must
5 be weighed heavily when determining what process Mr. Dam is owed under the
6 Constitution. *See Mathews*, 424 U.S. at 334–35.

8 **D. The Government’s Interest in Re-Incarcerating Mr. Dam Without a**
9 **Hearing is Low**

10 73. The government’s interest in detaining Mr. Dam without a due process
11 hearing is low, and when weighed against Mr. Dam’s significant private interest in
12 his liberty, the scale tips sharply in favor of enjoining Respondents from re-
13 arresting and re-detaining Mr. Dam unless and until the government demonstrates
14 by clear and convincing evidence that he is a flight risk or danger to the
15 community.

16 74. As immigration detention is civil, it can have no punitive purpose. The
17 government’s only interests in holding an individual in immigration detention can
18 be to prevent danger to the community or to ensure a noncitizen’s appearance at
19 immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the
20 government cannot plausibly assert that it has any lawful basis for detaining Mr.
21 Dam.
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1 75. Since December 2004, Mr. Dam was determined by an ICE officer not to be
2 a danger to the community and has done nothing to undermine that determination.
3 *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to
4 a person’s justifiable reliance in maintaining his conditional freedom so long as he
5 abides by the conditions on his release, than to his mere anticipation or hope of
6 freedom.”) (internal quotation marks and citations omitted).

8 76. As to flight risk, since his release from custody and the IJ grant of
9 protection under CAT, ICE has required yearly check-ins.. Those conditions have
10 proven sufficient to guard against any possible flight risk, to “assure [his]
11 presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699.

13 77. Moreover, Mr. Dam has meritorious petition for review before the Ninth
14 Circuit and the Ninth Circuit has issued a stay of removal while adjudicating that
15 petition.

16 78. It is difficult to see how the government’s interest in re-arresting and re-
17 detaining Mr. Dam has materially changed since December 2004, especially since
18 Mr. Dam he has complied with all conditions of release for the past 21 years. The
19 government’s interest in detaining Mr. Dam at this time is therefore low. There
20 are allegations that ICE has a new policy to make a minimum number of arrests
21 each day under the new administration.²¹ A mandatory arrest quota is not a
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24 ²¹ *See Betts, Trump Administration Denies Daily Quota*, *supra* 15.

1 material change in circumstances nor a legitimate increase the government's
2 interest in detaining Mr. Dam.

3 79. The “fiscal and administrative burdens” that Mr. Dam’s lawful pre-
4 detention hearing would impose is nonexistent in this case. *See Mathews*, 424
5 U.S. at 334–35. Mr. Dam does not seek a unique or expensive form of process,
6 but rather a routine hearing regarding whether there is a legitimate reason for him
7 to be re-arrested and re-detained.
8

9 **E. Without a Due Process Hearing Prior to Any Re-Arrest And Re-**
10 **Detention, the Risk of an Erroneous Deprivation of Liberty is High**

11 80. Enjoining Respondents from re-arresting and re-detaining Mr. Dam without
12 a pre-deprivation hearing would decrease the risk of him being erroneously
13 deprived of his liberty. Before Mr. Dam can be lawfully arrested and detained, he
14 must be provided with a hearing before a neutral adjudicator at which the
15 government is held to show that there has been sufficiently changed circumstances
16 such that prior release from custody determination, which occurred before
17 December 2, 2004, should be altered or revoked because clear and convincing
18 evidence exists to establish that Mr. Dam is a danger to the community or a flight
19 risk.
20

21 81. The procedure Mr. Dam seeks—a hearing in front of a neutral adjudicator
22 at which the government must prove by clear and convincing evidence that
23 circumstances have changed to justify his detention *before* any re-arrest and re-
24

1 detention—is much more likely to produce accurate determinations regarding
2 factual disputes, such as whether a certain occurrence constitutes a “changed
3 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.
4 1989) (when “delicate judgments depending on credibility of witnesses and
5 assessment of conditions not subject to measurement” are at issue, the “risk of
6 error is considerable when just determinations are made after hearing only one
7 side”). The Ninth Circuit has noted that the risk of an erroneous deprivation of
8 liberty under *Mathews* can be decreased where a neutral decisionmaker, rather
9 than ICE alone, makes custody determinations. *See Diouf v. Napolitano*, 634 F.3d
10 1081, 1091–92 (9th Cir. 2011).
11

12
13 82. Due process also requires consideration of alternatives to detention at any
14 custody redetermination hearing that may occur. The primary purpose of
15 immigration detention is to ensure a noncitizen’s appearance during removal
16 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to
17 this purpose if there are alternatives to detention that could mitigate risk of flight.
18 *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
19 detention must be considered in determining whether Mr. Dam’s re-incarceration
20 is warranted.
21

22 //

23 //

1 **II. Civil Detention Conditions May Not Be Punitive**

2 83. Under the current use of detention, since January 2025, the only reasonable
3 inference from the record is that the federal government is also creating detention
4 conditions that are not safe or humane. The government is engaged in intentional
5 overcrowding, not providing bedding so that people are sleeping on floors, not
6 providing adequate nutrition or food or regular meal times, not providing adequate
7 bathrooms so that people must use toilets in public or not have regular access to
8 them. The U.S. Senate produced a report showing that physical and sexual
9 violence is used against detainees. ICE is treating non-citizens in ways that are
10 designed to dehumanize them, such as requiring them to eat their food like dogs,
11 with their hands shackled behind them. In addition, ICE asking non-citizens who
12 are detained to give up their right to pursue their claims rather than endure
13 conditions that are designed to be inhumane, deplorable, and dehumanizing.
14 conditions that are designed to be inhumane, deplorable, and dehumanizing.

15
16 **A. Since January 2025, Conditions in Immigration Detention Centers**
17 **Have Substantially Deteriorated And Inflict Harm And Humiliation**
18 **on Non-Citizens**

19 84. Since January 2025, conditions in immigration detention centers across the
20 country, according to numerous human rights monitoring organizations and news
21 sources, have substantially deteriorated by design and for non-legitimate purposes.

22 85. On May 14, 2025, Amnesty International released a report called
23 “Dehumanized by Design: Human Rights Violations in El Paso,” which arises
24

1 from its findings from an April 2025 visit to the El Paso Service Processing
2 Center.²² Among its findings, “Amnesty International found that conditions at the
3 El Paso Service Processing Center (ESSPC) violate both US and international
4 detention standards. Individuals detained at EPSPC reported physical abuse by
5 guards, use of solitary confinement, unsanitary and overcrowded living spaces
6 including dysfunctional toilets, inadequate medical care, and poor-quality, expired
7 food.”²³

9 86. In July 2025, Human Rights Watch released a report called “‘You Feel Like
10 Your Life Is Over’ Abusive Practices at Three Florida Immigration Detention
11 Centers Since January 2025.”²⁴ By June 2025, “over 56,000 people were in
12 detention across the country, 40 percent more than in June 24, and the highest
13 detention population in the history of US immigration detention.”²⁵ In addition to
14 the rise in population, Human Rights Watch noted the change in treatment such
15 that detainees are treated “in a degrading and dehumanizing manner.”²⁶ Focusing
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19 ²² Amnesty International, *Dehumanized by Design: Human Rights Violations in El*
20 *Paso*, May 14, 2025 [https://www.amnestyusa.org/reports/dehumanized-by-design-](https://www.amnestyusa.org/reports/dehumanized-by-design-human-rights-violations-in-el-paso/)
21 [human-rights-violations-in-el-paso/](https://www.amnestyusa.org/reports/dehumanized-by-design-human-rights-violations-in-el-paso/)

22 ²³ Id. at 4.

23 ²⁴ Human Rights Watch, “*You Feel Like Your Life Is Over*” *Abusive Practices at*
24 *Three Florida Immigration Detention Centers Since January 2025*, July 2025 at 2
[https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-](https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration)
[practices-at-three-florida-immigration](https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration)

²⁵ Id. at 1

²⁶ Id. at 3.

1 on non-citizens detained in three Florida detention centers, “[s]ome were detained
2 shackled for prolonged periods on buses without food, water, or functioning
3 toilets; there was extreme overcrowding in freezing holding cells where detainees
4 were forced to sleep on cold concrete floors under constant fluorescent lighting;
5 and many were denied access to basic hygiene and medical care.”²⁷ Human
6 Rights Watch “finds that staff at the three [Florida] detention facilities researchers
7 examined subjected detained individuals to dangerously substandard medical care,
8 overcrowding, abusive treatment, and restrictions on access to legal and
9 psychosocial support.”²⁸ Among the examples, ***“officers made men eat while
10 shackled with their hands behind their backs after forcing the group to wait
11 hours for lunch: ‘We had to bend over and eat off the chairs with our mouths,
12 like dogs,’ one man said.”***²⁹ (emphasis added) “The Trump administration’s
13 one-track immigration policy, singularly focused on mass deportations[,] will
14 continue to send more people into immigration detention facilities that do not have
15 the capacity to hold them and will only worsen the conditions described in this
16 report.”³⁰

22 ²⁷ Id at 1–2.

23 ²⁸ Id. at 2

24 ²⁹ Id. at 5

³⁰ Id. at 5

1 87. The current administration's management of detention centers appears to be
2 intentionally implementing policies of degradation and dehumanization. On July
3 17, 2025, a report by the Disability Rights California, entitled "'They Treat Us
4 Like Dogs in Cages' Inside the Adelanto ICE Processing Center," reported that
5 detainees housed in the Adelanto ICE Processing Center "shouted in Spanish
6 about be treated like dogs in cages" during the organization's monitoring visit on
7 June 25, 2025.³¹ The organization reported observing "alarming" conditions.³²
8 The immigration detention center was housing "nearly 1,400 people at
9 Adelanto—a dramatic increase from the approximately 300 individuals in held
10 there just weeks before. Due to the surging numbers of people at Adelanto,
11 conditions appear to have quickly deteriorated."³³ Among its findings, there was
12 "inadequate access to food and water, including extreme delays in meal
13 distribution, provision of food that results in significant health issues, and a
14 shortage of drinking water."³⁴ There was also "inadequate access to clean clothes,
15 with many remaining in soiled clothing for long periods of time."³⁵ "Individuals
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20 ³¹ Disability Rights California, *'They Treat Us Like Dogs in Cages' Inside the*
21 *Adelanto ICE Processing Center*, Jul 14, 2025 at 2

22 [https://www.disabilityrightsca.org/drc-advocacy/investigations/inside-the-](https://www.disabilityrightsca.org/drc-advocacy/investigations/inside-the-adelanto-ice-processing-center)
23 [adelanto-ice-processing-center](https://www.disabilityrightsca.org/drc-advocacy/investigations/inside-the-adelanto-ice-processing-center)

24 ³² Id. at 3

³³ Id. at 4

³⁴ Id.

³⁵ Id.

1 also reported contagious respiratory viruses quickly spreading due to the increased
2 crowding at Adelanto.”³⁶

3 88. The State of California released a report in April 2025 “t[aking] issue with
4 restrictive housing being used as punishment.”³⁷ “Staff appeared to overutilize
5 discipline and use of force.”³⁸ The Otay Mesa, California facility “didn’t have a
6 psychologist on site. Detainees placed on suicide watch are put in cells with no
7 plumbing and must relieve themselves through grates on the floor, the CA Justice
8 report found.”³⁹

10 89. In Eloy Arizona, in May 2025, “[a] microwave fire at the Eloy Detention
11 Center led to the evacuation of detainees, raising concerns about safety procedures
12 and overcrowding.”⁴⁰ “[I]mmigrant advocates, attorneys and current and former
13 detainees describe . . . a pattern of mismanagement that endangers the lives of
14 detainees in their care at the privately run Eloy Detention Center.”⁴¹

17 _____
³⁶ Id.

18 ³⁷ Austin Grabish, *Completely Unacceptable: California Attorney General Report*
19 *Finds Immigration Detention Centers Are Failing*, ABC News, Apr. 29, 2025 at 5
20 [https://www.10news.com/completely-unacceptable-california-attorney-general-](https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing)
[report-finds-immigration-detention-centers-are-failing](https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing)

21 ³⁸ Id.

22 ³⁹ Id.

23 ⁴⁰ Raphael Romero Ruiz, *Safety, Medical Care, Overcrowding Top Worries at Eloy*
24 *Detention Center*, Arizona Republic, Jul. 28, 2025 at 1
[https://www.azcentral.com/story/news/politics/immigration/2025/07/28/migrants-](https://www.azcentral.com/story/news/politics/immigration/2025/07/28/migrants-at-ely-center-worry-over-safety-medical-care-overcrowding/85252920007/)
[at-ely-center-worry-over-safety-medical-care-overcrowding/85252920007/](https://www.azcentral.com/story/news/politics/immigration/2025/07/28/migrants-at-ely-center-worry-over-safety-medical-care-overcrowding/85252920007/)

⁴¹ Id. at 3

1 90. The deplorable conditions in immigration detention is not the result of the
2 lack of funding but appear to be a deliberate policy decision. From a July 1, 2025
3 New York Times article, the degrading detention conditions are nationwide.⁴²
4 “Some immigrants have good a week or more without showers. Others sleep
5 pressed tightly together on bare floors. Medications for diabetes, high blood
6 pressure and other chronic health problems are often going unprovided.”⁴³ Paul
7 Chavez, litigation and advocacy director at Americans for Immigration Justice in
8 Florida stated “***‘These are the worst conditions I have seen in my 20-year career***
9 ***. . . Conditions were never great, but this is horrendous.’***”⁴⁴ (emphasis added).
10

11 91. An 18-year-old Brazilian teenager who was “pulled over on his way to
12 volleyball practice in late May” spent six days in detention in Massachusetts
13 before his release.⁴⁵ “There was one toilet for 35 to 40 men, who had no privacy
14 when using it. . . . They slept on the concrete floor in head-by-toe formation with
15 aluminum blankets to cover them. He lost seven pounds in six days, he said,
16 because the food was poor and the portions tiny.”⁴⁶
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20 ⁴² Miriam Jordan and Jazmine Ulloa, *Concerns Grow Over Dire Conditions in*
21 *Immigrant Detention*, NY Times, Jul 1, 2025

22 <https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html>

23 ⁴³ Id. at 2

24 ⁴⁴ Id. at 2

⁴⁵ Id. at 4.

⁴⁶ Id. at 4.

1 92. In Tacoma Washington, food is delivered “close to midnight.”⁴⁷ The
2 detention center transferred immigrants to Alaska to be “locked up in a state
3 corrections facility in Anchorage.”⁴⁸ A New Mexico detention center “limited
4 [each detainee] to two bottles of drinking water per day and [they] were unable to
5 flush their toilets for days at a time.”⁴⁹ Representative Judy Chu toured the
6 Adelanto detention center and reported that detainees “were not able to change
7 their underwear for 10 days.”⁵⁰

9 93. From July 22, 2025, NBC News reported that immigration advocates allege
10 that detainees housed in “Alligator Alcatraz, a new facility in the Everglades,
11 described what they called torturous conditions in cage-like units full of
12 mosquitos, where fluorescent lights shine bright on them at all times. Detainees
13 here also called attention to unsanitary conditions, as well as lack of food and
14 reliable medical treatment for their chronic conditions.”⁵¹ Detainees report being
15 “stripped naked every time they are moved to a different cell,” “are only allowed
16 one meal a day (and given only minutes to eat),” “instances of physical assaults
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20 ⁴⁷ Id.

21 ⁴⁸ Id.

22 ⁴⁹ Id. at 5.

23 ⁵⁰ Id. at 5

24 ⁵¹ Nicole Acevedo, *Detainees Held at Alligator Alcatraz Describe Cage-like Units
Swarmed by Mosquitoes*, NBC News, Jul. 22, 2025 at 1

<https://www.nbcnews.com/news/us-news/alligator-alcatraz-florida-detainees-conditions-fungus-mosquitoes-rcna220205>

1 and excessive use of force by guards,” “being allowed to shower only every three
2 to four days and being kept in a cage-style unit with 32 other people.”⁵²

3 94. On July 30, 2025, Senator Jon Ossoff released a report called “The Abuse
4 of Pregnant Women & Children in U.S. Immigration Detention.”⁵³ His study
5 surveyed conditions in immigration detention facilities, “county jails, and federal
6 buildings across 25 U.S. states, Puerto Rico, at U.S. military bases (including
7 Guantanamo Bay in Cuba and Camp Lemonnier in Djibouti) and on chartered
8 deportation flights.”⁵⁴ This investigation “received or identified 510 credible
9 reports of human rights abuse” against individuals in those facilities, including
10 “41 credible reports of physical and sexual abuse of individuals in U.S.
11 immigration detention.”⁵⁵ The confirmed events include “deaths in custody,
12 physical and sexual abuse, mistreatment of pregnant women, mistreatment of
13 children, inadequate medical care, overcrowding and unsanitary living conditions,
14 inadequate food or water, exposure to extreme temperatures, denial of access to
15 attorneys, and family separations.”⁵⁶

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20 _____
⁵² Id at 2, 3

21 ⁵³ Sen. Jon Ossoff, *The Abuse of Pregnant Women & Children in U.S. Immigration*
22 *Detention*, Jul. 30, 2025, [https://www.ossoff.senate.gov/wp-](https://www.ossoff.senate.gov/wp-content/uploads/2025/08/250721_Pregnancy_Report_v7.pdf)
23 [content/uploads/2025/08/250721_Pregnancy_Report_v7.pdf](https://www.ossoff.senate.gov/wp-content/uploads/2025/08/250721_Pregnancy_Report_v7.pdf)

24 ⁵⁴ Id. at 2.

⁵⁵ Id.

⁵⁶ Id.

1 95. “These immigration detentions, and the continued overcrowding, are
2 resulting in deaths.”⁵⁷ In fiscal year 2022, only three people died in ICE
3 custody.⁵⁸ As of July 4, 2025, 12 people have died in ICE custody since October
4 2024, which matches “the previous year’s total.”⁵⁹ Eunice Cho, from the
5 American Civil Liberties Union, stated that ““These deaths are clearly attributable
6 to the Trump administration’s increased and aggressive detention policies, and I
7 have no doubt that when more complete investigations take place, it will likely
8 provide information that these deaths were likely preventable.””⁶⁰ When asked
9 about the rising death rate in immigration detention, border czar Tom Homan
10 stated ““People die in ICE custody.””⁶¹

11
12
13 96. “As of July 17, [2025] ICE was detaining just shy of 57,000 people
14 nationwide . . . among the highest population levels in recent years.”⁶² Under prior
15 years, Congress had spent \$3.5 billion each year to house up to 41,500 detention
16 beds.⁶³ The new “‘One Big Beautiful Bill’ . . . increases spending for immigration
17
18

19 ⁵⁷ Dan Gooding, *More ICE Deaths ‘Inevitable’ As Detention Numbers Soar*,
20 Newsweek, Jul 4, 2025 at 2 <https://www.newsweek.com/ice-detention-center-migrant-deaths-rising-2093770>

21 ⁵⁸ Id. at 4

22 ⁵⁹ Id.

23 ⁶⁰ Id.

24 ⁶¹ Id.

⁶² Romero Ruiz, *Safety, Medical Care, Overcrowding Top Worries*, supra n.40 at 3.

⁶³ Id. at 4

1 detention to \$45 billion,” which will “increase bed capacity to more than
2 100,000.”⁶⁴

3 97. The more than ten-fold increase in funding will not improve any of the
4 detention conditions. There is no longer any oversight on these conditions. “The
5 poor conditions described at Eloy are occurring as the federal government
6 simultaneously expands detention operations and dismantles internal oversight
7 mechanisms designed to monitor abuse.”⁶⁵ On March 21, 2025, “hundreds of
8 employees at the Department of Homeland Security’s three key watchdog officers
9 . . . were suspended via mass email, effectively shutting down the offices. . . .”⁶⁶
10

11 98. “The Trump administration has repeatedly obstructed elected officials from
12 conducting basic oversight [over the detention facilities]. There is a pattern of
13 impunity and contempt in the way the Department of Homeland Security has
14 stonewalled the Newark mayor, Ras Baraka, the New Jersey members of
15 Congress LaMonica McIver and Bonnie Watson Coleman, the New York
16 members Adriano Espaillat and Nydia Velazquez and the California members
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23 ⁶⁴ Id.

24 ⁶⁵ Id. at 11

⁶⁶ Id.

1 Maxin Waters, Jimmy Gomez and Norma Torres when they have attempted to
2 access federal facilities, as is their right and duty.”⁶⁷

3 99. Moreover, the \$45 billion in more Congressional funding will not be used
4 to improve conditions in existing spaces. Rather, the new funding appears to be
5 destined to build more facilities that will replicate the abuses found in the facility
6 nicknamed “Alligator Alcatraz.” Respondent Secretary of DHS Kristi Noem
7 stated that “*“Alligator Alcatraz can be a blueprint for detention facilities across*
8 *the country.* It will provide DHS with the beds and space needed to safely detain
9 the worst of the worst.””⁶⁸ (emphasis added).

10
11 100. On August 1, 2025 Fort Bliss in Texas started receiving immigrants
12 and is slated “to become the site of the largest immigrant detention facility in the
13 United States. . . .” in which it will “hold 5,000 people at the detention facility.”⁶⁹
14 Despite becoming the largest detention facility, ICE has “blocked” the El Paso
15 Congressional Representative Veronica Escobar “from visiting the [new] facility .
16 . . .”⁷⁰ Representative Escobar has stated that “congressional oversight [is need] to
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19 ⁶⁷ Soraya Nadia McDonald, *There’s A Name for What Trump Is Doing. Juan Crow*,
20 N.Y. Times, Jul. 29, 2025 at 6

<https://www.nytimes.com/2025/07/29/opinion/trump-juan-crow-birther-race.html>

21 ⁶⁸ Gooding, *More ICE Deaths ‘Inevitable’*, supra n.57 at 7.

22 ⁶⁹ Jeff Abbott, *El Paso’s Fort Bliss to Become Largest Immigration Detention in*
23 *US*, El Paso Times Aug. 8, 2025 at 1

<https://www.elpasotimes.com/story/news/immigration/2025/08/08/fort-bliss-is-becoming-the-largest-immigration-detention-facility-in-us/85562828007/>

24 ⁷⁰ Id. at 4

1 uphold humane conditions at the immigration detention site” and has filed a
2 lawsuit against the Trump administration from denying members of Congress
3 oversight and access to monitor the conditions there.⁷¹

4
5 **B. Immigration Detention Is Costly And Not Needed to Guarantee
That Non-Citizens Will Attend Their Hearings**

6 101. “[I]mmigration imprisonment is a historical anomaly. After relying
7 on confinement in the ugly years of the Chinese exclusion era the United States
8 did not lock up migrants for migration-related activities for much of the twentieth
9 century.” Cesar Cuauhtemoc Garcia Hernandez, *Abolishing Immigration Prisons*,
10 97 B.U. L. Rev. 245, 248 (2017). In the 1980s, with the War on Drugs and in the
11 1990s, with the War on Crime, immigration detention increased in numbers. *Id.*

12
13 102. In June 2025, the Vera Institute issued a report noting that
14 “immigration detention as a whole—is entirely unnecessary. The federal
15 government’s own data shows that detention does not deter migration, and
16 detention is not necessary to ensure that people appear in court for immigration
17 hearings.”⁷²

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22 ⁷¹ *Id.* at 4–5

23 ⁷² Nazish Dholakia, *The Truth About Immigration Detention in the United States*,
24 Vera Institute, Jul. 11, 2025 at 3 <https://www.vera.org/news/the-truth-about-immigration-detention-in-the-united-states>

1 103. From a 2019 study using government data, from 2008 to 2019, 97%
2 of immigrants appeared at immigration court if they had an attorney.⁷³

3 104. “The costs to the public of immigration detention are ‘staggering’”
4 *Hernandez*, 872 F.3d at 996. According to ICE’s own report, “Alternatives to
5 Detention,” the daily cost of enrolling someone in ISAP costs “less than \$4.20 per
6 day—a stark contrast from the cost of detention, which is around \$152 per day.”⁷⁴
7 Brick-and-mortar facilities take approximately two years to build.⁷⁵ To “ramp up
8 capacity,” the Trump administration is contracting with private companies to
9 instead build “temporary, soft-sided tent style structure[s],” which was used in
10 “Alligator Alcatraz.”⁷⁶ This building can be created faster than the brick-and-
11 mortar facilities “[b]ut the cost per detainee in a tent facility can be more than
12 double that because of the added expenses related to providing things like
13
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15

16 ⁷³ American Immigration Council, *Immigrants and Families Appear in Court:*
17 *Setting the Record Straight*, Jul 30, 2019 at 2
18 [https://www.americanimmigrationcouncil.org/fact-sheet/immigrants-and-families-appear-](https://www.americanimmigrationcouncil.org/fact-sheet/immigrants-and-families-appear-court/#:~:text=Once%20immigrants%20manage%20to%20obtain,no%20fault%20of%20their%20own.)
19 [court/#:~:text=Once%20immigrants%20manage%20to%20obtain,no%20fault%20of%20their%20own.](https://www.americanimmigrationcouncil.org/fact-sheet/immigrants-and-families-appear-court/#:~:text=Once%20immigrants%20manage%20to%20obtain,no%20fault%20of%20their%20own.)

20 ⁷⁴ ICE, *Alternatives to Detention*, Feb. 27, 2025, last visited Aug 30, 2025, at 3
<https://www.ice.gov/features/atd>

21 ⁷⁵ Laura Strickler, Julia Ainsley, Didi Martinez, *Trump Administration Hits*
22 *Hurdles As It Builds A Key Immigrant Detention Facility*, NBC News, Aug. 14,
23 2025 <https://www.nbcnews.com/politics/immigration/trump-administration-hits-hurdles-builds-key-immigrant-detention-facil-rcna224608>

24 ⁷⁶ Id.

1 food, laundry, air conditioning and running water in the remote areas where
2 tent facilities are being built. Security is also a logistical challenge because it
3 is easier for detainees to escape soft-sided structures, so tent facilities typically
4 need more security staff on site.”⁷⁷

5
6 105. In a rush to build the new facilities, in Fort Bliss, the contract process
7 is also rushed and not transparent.⁷⁸ In February 2025, the DHS awarded a
8 contract to build a detention facility at Fort Bliss, which it canceled in April 2025
9 after two investigations by the Government Accountability Office for improper
10 bidding.⁷⁹ In July 2025, the DHS awarded the \$1.2 billion contract to a different
11 company.⁸⁰ “The Acquisition Logistics Company, which has been serving as the
12 top contractor overseeing the project, has come under scrutiny recently. According
13 to public records, Acquisition Logistics is a small business run by Kenneth
14 Wagner, 77, out of his single-family home in Virginia. Prior to this contract, the
15 company’s largest contract, according to public records, appears to have been
16 worth \$16 million.”⁸¹

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21 ⁷⁷ Id.

22 ⁷⁸ Id.

23 ⁷⁹ Id.

24 ⁸⁰ Id.

⁸¹ Id.

C. ICE Officials Are Encouraging Detained Non-Citizens to “Accept Quick[] Deportation” Instead of Fighting Their Cases

106. The deplorable conditions appear to be used by ICE to pressure non-citizens to give up their rights to pursue their claims through immigration courts. “ICE officials appeared to be trying to free up [detention] space by encouraging detainees to accept quicky deportation.”⁸² “A lawyer in Arizona, Ner Shefer, said that some of her clients had recently been offered \$1,000 by authorities if they agreed to immediate voluntary departure. She said all of them declined.”⁸³

107. From a July 29, 2025, New York Times Opinion piece, an author noted that the immigration detention policy is part of a larger project consistent with white supremacy that “is accelerating toward a new, modern nadir of Juan Crow, just downstream of Jim and Jane. . . . The targeting of the undocumented has a name, after all, based in ugly history and shameful tradition: Juan Crow.”⁸⁴ The phrase was popularized by journalist Roberto Lovato to describe ‘the matrix of laws, social customs, economic institutions and symbolic systems’ that isolate and control undocumented immigrants. The domestic policies of the Trump administration have taken this legacy to a more dangerous place.”⁸⁵ The claims in

⁸² Jordan & Ulloa, *Concerns Grow Over Dire Conditions*, supra 42 at 8

⁸³ Id.

⁸⁴ Soraya Nadia McDonald, *There’s A Name for What Trump Is Doing. Juan Crow*, N.Y. Times, Jul. 29, 2025 at 6

<https://www.nytimes.com/2025/07/29/opinion/trump-juan-crow-birther-race.html>

⁸⁵ Id.

1 a Human Rights report on three Florida detention facilities read like a nightmare
2 mash-up of Guantánamo bay and American mass incarceration: freezing,
3 overcrowded facilities; routine denial of medical treatment; shackling the hands
4 and wrists of detainees; feeding detainees meager amounts of rotting food or
5 forcing them to eat it ‘like dogs,’ with their hands behind their backs; forcing
6 detainees to sleep on concrete floors.”⁸⁶

8 108. If Respondents re-detain Mr. Dam, it is unclear when they would
9 release him. He has had lawful status since December 2004, which allows him to
10 live and work in the United States. He has a pending petition in the Ninth Circuit
11 to restore his lawful permanent residence status. But if he does not prevail, he
12 keeps his December 2004 order protecting him under CAT. Unlike other non-
13 citizens who are defending against removal, there is no foreseeable moment in
14 which his final order would be executed. Absent the DHS filing a motion to
15 reopen establishing changed conditions in Vietnam, there will be no legal basis to
16 take away his current legal status. Intervention from this Court is therefore
17 required to ensure that Mr. Dam is not subject to prolonged or indefinite
18 detention. The DHS must provide Mr. Dam with a process by which the DHS
19 provides evidence that Mr. Dam is a flight risk or a danger to the public. Without
20 such a showing, Mr. Dam will be subjected to prolonged if not indefinite
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22
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24 ⁸⁶ Id. at 1–2

1 detention in detention conditions that are being designed to be dehumanizing,
2 deplorable, and punitive in violation of law and due process.

3 **FIRST CAUSE OF ACTION**

4 **Procedural Due Process**

5 **Substantive Due Process**

6 **U.S. Const. amend. V**

7 **Compels Enjoining Respondents From Re-Arresting And Re-Detaining
8 Petitioner Without A Hearing While Petitioner's Immigration Case is Being
9 Litigated**

10 109. Mr. Dam re-alleges and incorporates herein by reference, as is set
11 forth fully herein, the allegations in all the preceding paragraphs.

12 110. The Due Process Clause of the Fifth Amendment forbids the
13 government from depriving any "person" of liberty "without due process of law."
14 U.S. Const. amend. V.

15 111. Since December 2004, Mr. Dam has fully complied with the
16 conditions of release imposed on him by ICE, thus demonstrating that he is neither
17 a flight risk nor a danger. On August 18, 2025, ICE sent Mr. Dam a letter
18 instructing him to report to ICE on September 18, 2025 with travel documents and
19 medication, which creates a presumption that Respondents intend to re-arrest, re-
20 detain, and possibly remove Mr. Dam. Respondents have not provided any reason
21 for his re-arrest and re-detention, especially after the fact that he has reported each
22 year for 21 years without issue. Any reason for his arrest and detention not related
23 to being a flight risk or public danger is punitive and violates his constitutional
24

1 right to be free from the unjustified deprivation of his liberty.

2 112. Mr. Dam has a vested liberty interest in his lawful conditional
3 release. Due Process does not permit the government to strip him of that liberty
4 without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.
5

6 113. Prior to any re-arrest and re-detention, the government must provide
7 Mr. Dam with a hearing before a neutral adjudicator. At the hearing, the neutral
8 adjudicator would evaluate, *inter alia*, whether clear and convincing evidence
9 demonstrates, taking into consideration alternatives to detention, that Mr. Dam is a
10 danger to the community or a flight risk, such that his re-incarceration is
11 warranted. During any custody redetermination hearing that occurs, this Court or,
12 in the alternative, a neutral adjudicator must consider alternatives to detention
13 when determining whether Mr. Mr. Dam's re-incarceration is warranted.
14

15 114. The immigration agency's prior decision that released Mr. Dam from
16 immigration detention was done with evidence that Mr. Dam is not a flight risk
17 nor danger to the public. Mr. Dam asks for the Court to enjoin Respondents from
18 re-arresting and re-detaining him—absent evidence that Petitioner is a flight risk
19 or is danger to the public—while he is pursuing his requested remedies before the
20 Ninth Circuit Court of Appeals.
21

22 //

23 //

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

Compels Enjoining ICE from Causing Mr. Dam to Obtain Identification and Travel Documents From Vietnam While the Order Granting CAT Is in Effect

115. Mr. Dam re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

116. The Due Process Clause of the Fifth Amendment forbids the government from depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend. V.

117. On December 2, 2004, the IJ granted Mr. Dam protection under CAT after finding that, more likely than not, the Vietnamese government will torture him if he returns to the country. **Exhibit 2**.

118. On August 18, 2025, Respondents sent Mr. Dam a letter, directing him to report to ICE on September 18, 2025. At this appointment, Mr. Dam must bring with him “medication” and “any identification from your country of origin such as a passport.” **Exhibit 8**.

119. Mr. Dam’s family fled Vietnam when he was a toddler. They arrived in the United States before he was four years old, and when he was four years old, in April 1980, he was admitted to the United States as a lawful permanent resident. **Exhibit 2**.

120. Mr. Dam does not have any identification documents nor a passport

1 from Vietnam. **Exhibit 9.**

2 121. Upon information and belief, Vietnam has only one embassy in the
3 United States, which is located in Washington DC.⁸⁷ Even if Mr. Dam is eligible
4 to obtain a passport from Vietnam, it is not safe for Mr. Dam to enter into an
5 embassy or consulate, which is not under the control of the United States. As an
6 extreme example, it is alleged that Saudi government officials kidnapped and
7 murdered Jamal Khashoggi, a U.S.-based journalist who was a critic of the Saudi
8 government when he entered a consulate in Turkey.⁸⁸ An IJ has found that Mr.
9 Dam is likely to be tortured if he returns to Vietnam and embassies and consulates
10 are under the control of Vietnam, not the United States.
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13 122. “Between the end of the Vietnam War and 2008, Vietnam refused to
14 repatriate any Vietnamese immigrants who had been ordered removed from the
15 United States.” *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). In
16 2008, the United States and Vietnam entered into an agreement in which Vietnam
17 would consider repatriation requests for certain Vietnamese nationals who arrived
18 *after* July 12, 1995. *Id.* However, Vietnam and the United States agreed that the
19 United States would not remove Vietnamese nationals who had entered the United
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22 ⁸⁷ Embassy of the Socialist Republic of Vietnam in the United States of America,
23 <https://vietnamembassy-usa.org>

24 ⁸⁸ Jamal Khashoggi: *All You Need to Know About Saudi Journalist’s Death*, supra
n.9.

1 States before July 12, 1995. *Id.*

2 123. In 2017, during the first Trump administration, the countries
3 renegotiated this agreement, and ICE “began detaining some pre-1995 Vietnamese
4 immigrants who had previously been released on orders of supervision.” *Trinh*,
5 466 F. Supp. 3d at 1084. In granting a class action, the district court enjoined ICE
6 from such practices. *Id.* In doing so, the court noted that “between 2017 and
7 2019, ICE requested travel documents for pre-1995 Vietnamese immigrants 251
8 times. Vietnam granted those requests only 18 times, in just over seven percent of
9 cases.” *Id.* at 1087–88.
10

11 124. It is irrational and unsafe for the DHS to condition Mr. Dam’s
12 continued release from custody on obtaining travel documents and identification
13 documents from the Vietnamese government, which an IJ has found will likely
14 torture him if returned to their jurisdiction. This is particularly true given that the
15 2004 grant of CAT confers Mr. Dam with legal status to live and work in the
16 United States. Moreover, Mr. Dam has a pending Ninth Circuit petition, which if
17 successful, will restore his lawful permanent resident status to him. Mr. Dam asks
18 this Court to enjoin Respondents from requiring him to obtain identification
19 documents and travel documents from the Vietnamese government.
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THIRD CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

Compels Enjoining ICE from Removing Petitioner to Vietnam

125. Mr. Dam re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

126. On December 2, 2004, an IJ granted Mr. Dam protection under CAT after finding that, more likely than not, the Vietnamese government would torture him if he returned to Vietnam. **Exhibit 2.** This status permits Mr. Dam to live and work in the United States. *See* 8 C.F.R. § 208.17. Although this status does not provide a pathway to lawful residence, it cannot be terminated unless and until the DHS files a motion with an Immigration Court that “is accompanied by evidence that it is relevant to the possibility that the alien would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing. 8 C.F.R. § 208.17(d)(1). If this occurs, the IJ must provide the non-citizen with a hearing in which the non-citizen may provide evidence to show that they are in continuing danger. 8 C.F.R. § 208.17(d)(2). After considering the evidence, the IJ shall make its decision, which is subject to appeal. 8 C.F.R. § 208.17(d)(4).

127. The DHS has not filed any motion showing that Mr. Dam would be safe to return to Vietnam.

1 128. In addition, the Ninth Circuit, on June 9, 2025, issued an order staying
2 removal while it is considering the merits of Mr. Dam's claim that the BIA erred in
3 not restoring his lawful permanent residence status. **Exhibit 5.**

4 129. Normally, two court orders staying removal to a country would be
5 enough protection for any person. However, this administration is defying court
6 orders to effectuate immigration enforcement goals. See *Dep't of Homeland Sec. v.*
7 *D.V.D.*, 145 S. Ct. 2153, 2158 (2025) (Sotomayor, J., dissenting) ("Here, in
8 violation of an unambiguous TRO, the Government flew four noncitizens to
9 Guantanamo Bay, and from there deported them to El Salvador. Then, in violation
10 of the very preliminary injunction from which it now seeks relief, the Government
11 removed six class members to South Sudan with less than 16 hours' notice and no
12 opportunity to be heard. The Government's assertion that these deportations could
13 be reconciled with the injunction is wholly without merit."). Indeed, there is a
14 whistleblower who alleged that senior members of the Department of Justice
15 directed attorneys not to follow court orders that instructed the department to
16 return non-citizens who had a right to return or remain in the United States.⁸⁹

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23 ⁸⁹ See Ben Penn, *DOJ Whistleblower Reinforces Claim Bove Defied Court Order*,
24 Bloomberg, July 10, 2025 <https://news.bloomberglaw.com/us-law-week/doj-whistleblower-reinforces-claim-emil-bove-defied-court-order>

1 130. To avoid irreparable harm, Mr. Dam requests that this Court enjoin
2 Respondents from removing him to Vietnam as long as the IJ order granting him
3 protection under CAT is in effect.
4

5 **FOURTH CAUSE OF ACTION**

6 **Substantive Due Process**

7 **U.S. Const. amend. V**

8 **Compels Enjoining ICE from Removing Petitioner to Any Third Country**
9 **Without Notice And Hearing**

10 131. Mr. Dam re-alleges and incorporates herein by reference, as is set
11 forth fully herein, the allegations in all the preceding paragraphs.

12 132. On December 2, 2004, an IJ granted Mr. Dam protection under CAT
13 after finding that, more likely than not, the Vietnamese government would torture
14 him if he returned to Vietnam. **Exhibit 2.** This status prohibits the government
15 from removing Mr. Dam to Vietnam and permits Mr. Dam to live and work in the
16 United States. *See* 8 C.F.R. § 208.17.

17 133. In rare situations, Congress has permitted the government to conduct a
18 “third-country removal,” which is means that the DHS is permitted to send
19 someone to a country that is not the one where they were born, had citizenship
20 status, had resided in, or traveled through. 8 U.S.C. § 1231(b)(1)(E)(i)–(vi).
21 However, the DHS can only do so if it is “impracticable, inadvisable, or
22 impossible to remove” the noncitizen to a country defined in 8 U.S.C.
23 § 1231(b)(1)(E)(i)–(vi). *See* 8 U.S.C. § 1231(b)(1)(E)(vii).
24

1 134. Moreover, Congress has prohibited the Attorney General from
2 “remov[ing] an alien to a [third] country if the Attorney General decides that the
3 alien’s life or freedom would be threatened in that country because of the alien’s
4 race, religion, nationality, membership in a particular social group, or political
5 opinion.” 8 U.S.C. § 1231(b)(3)(A).
6

7 135. On February 18, 2025, the DHS issued a directive instructing
8 immigration officers “to review the cases of aliens granted withholding
9 of removal or protection under CAT ‘to determine the viability of removal to
10 a third country and accordingly whether the alien should be re-detained’ and, in
11 case of persons who previously could not be removed because the
12 designated countries were unwilling to receive them, “review for re-detention . . .
13 in light of the Administration's significant gains with regard to previously
14 recalcitrant countries and the potential for third country removals.’” *D.V.D. v.*
15 *U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 367 (D. Mass. 2025) (quoting
16 and citing DHS February directive). On March 30, 2025, the DHS issued an
17 updated guidance on third-country removal,, which “dictates that aliens may
18 be removed to a third country without notice if the United States has received
19 assurances from that country that aliens removed from the United States will not
20 be persecuted or tortured.” *Id.* at 368 (citing March guidance). The third-country
21 “assurances are not individualized, and the March Guidance provides for no
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1 review, meaning that deportations to a third country can occur without any
2 consideration of the individual risks facing a particular alien.” Id.

3 136. On August 18, 2025, Respondents sent Mr. Dam a letter, directing
4 him to report to ICE on September 18, 2025. At this appointment, Mr. Dam must
5 bring with him “medication” and “any identification from your country of origin
6 such as a passport.” **Exhibit 8.** The only reasonable inference is that this letter is
7 consistent with Respondents to remove Mr. Dam outside of the country, including
8 third countries to which he has no legal status, connection, or guaranteed safety.
9

10 137. “‘It is well established that the Fifth Amendment entitles aliens to due
11 process of law’ in the context of removal proceedings.” *Trump v. J.G.G.*, 604
12 U.S. ___, 145 S. Ct. 1003, 1006, (Apr. 7, 2025) (*per curiam*) (quoting *Reno v.*
13 *Flores*, 507 U.S. 292, 306 (1993)). Due process requires that the government
14 provide non-citizens with notice of any removal to their native country and an
15 opportunity to contest whether they face a risk of persecution or torture in such
16 country. “The notice must be afforded within a reasonable time and in such a
17 manner as will allow them to actually seek habeas relief in the proper venue
18 before such removal occurs.” *J. G. G.*, 145 S. Ct. at 1006.
19

20 138. On August 18, 2025, Respondents sent Mr. Dam a letter, directing
21 him to report to ICE on September 18, 2025. At this appointment, Mr. Dam must
22 bring with him “medication” and “any identification from your country of origin
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1 such as a passport.” **Exhibit 8.** The most reasonable inference is that
2 Respondents intend to remove Mr. Dam to Vietnam (in violation of existing
3 order) or send him a country to which he has no legal tie, connection, or evidence
4 of safety.
5

6 139. Mr. Dam requests that this Court enjoin Respondents from sending
7 Mr. Dam to any country unless they provide notice and an opportunity for him to
8 establish whether it is a place where he will be accepted and live without
9 persecution or torture.
10

11 **FIFTH CAUSE OF ACTION**

12 **Substantive Due Process**

13 **U.S. Const. amend. V**

14 **U.S. Const. amend XIV**

15 **Compels Enjoining ICE from Causing Mr. Dam to Detained in Conditions
16 That Are Designed to Punish Him for Pursuing His Lawful Remedies While
17 His Case is Being Litigated**

18 140. Mr. Dam re-alleges and incorporates herein by reference, as is set
19 forth fully herein, the allegations in all the preceding paragraphs.

20 141. Because immigration detention is nominally “civil” in nature,
21 conditions in immigration facilities cannot “amount to punishment.” *King v.*
22 *County of Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018) (“Under the Due
23 Process Clause of the Fourteenth Amendment, an individual detained under civil
24 process cannot be subjected to conditions that amount to punishment.”). “Because

1 the purpose of confinement is not punitive, the state must also provide the civilly-
2 committed with ‘more considerate treatment and conditions of confinement than
3 criminals whose conditions of confinement are designed to punish.’” *Sharp v.*
4 *Weston*, 233 F.3d 1166, 1172 (9th Cir. 2000) (quoting *Youngberg v. Romeo*, 457
5 U.S. 307, 322 (1982)). Civil confinement amounts to punishment when “ the
6 harm or disability caused by the government's action must either significantly
7 exceed, or be independent of, the inherent discomforts of confinement.” *Demery*
8 *v. Arpaio*, 378 F.3d 1020, 1030 (9th Cir. 2004).

10 142. On this record, Respondents are operating and designing detention
11 facilities that cause harm and disability that “significantly exceed, or be
12 independent of, the inherent discomforts of confinement.” *Demery*, 378 F.3d at
13 1030. Since January 2025, Human Rights Watch noted a change in treatment
14 under the new administration such that immigrant detainees are treated “in a
15 degrading and dehumanizing manner.”⁹⁰ Paul Chavez, litigation and advocacy
16 director at Americans for Immigration Justice in Florida stated “***These are the***
17 ***worst conditions I have seen in my 20-year career . . .*** Conditions were never
18 great, but this is horrendous.”⁹¹

23 ⁹⁰ Human Rights Watch, “*You Feel Like Your Life Is Over*” supra n.24 at 2

24 ⁹¹ Jordan & Jazmine Ulloa, *Concerns Grow Over Dire Conditions*, supra n.42

1 143. Immigrant detainees in Florida “were shackled for prolonged periods
2 on buses without food, water, or functioning toilets; there was extreme
3 overcrowding in freezing holding cells where detainees were forced to sleep on
4 cold concrete floors under constant fluorescent lighting; and many were denied
5 access to basic hygiene and medical care.”⁹² Immigration “*officers made men eat*
6 *while shackled with their hands behind their backs after forcing the group to*
7 *wait hours for lunch: ‘We had to bend over and eat off the chairs with our*
8 *mouths, like dogs,’ one man said.*”⁹³ (emphasis added).
9

10 144. At the El Paso Service Processing Center, in May 2025, Amnesty
11 International “reported physical abuse by guards, use of solitary confinement,
12 unsanitary and *overcrowded living spaces including dysfunctional toilets,*
13 inadequate medical care, and *poor-quality, expired food.*”⁹⁴ (emphasis added).
14

15 145. In June 2025, detainees housed in the Adelanto ICE Processing
16 Center (where Mr. Dam had been detained until his release in February 2022)
17 “shouted in Spanish about *being treated like dogs in cages*” during the monitoring
18 visit by Disability Rights California on June 25, 2025.⁹⁵ Among its findings, there
19 was “*inadequate access to food and water,* including extreme delays in meal
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22 ⁹² Human Rights Watch, “*You Feel Like Your Life Is Over,*” supra n.24.

23 ⁹³ Id.

24 ⁹⁴ Amnesty International, *Dehumanized by Design*, supra n.22

⁹⁵ Disability Rights California, ‘*They Treat Us Like Dogs in Cages*’, supra n.31.

1 distribution, provision of food that results in significant health issues, and a
2 shortage of drinking water.”⁹⁶ There was also “*inadequate access to clean*
3 *clothes*, with many remaining in soiled clothing for long periods of time.”⁹⁷
4 “Individuals also reported contagious respiratory viruses quickly spreading due to
5 the increased crowding at Adelanto.”⁹⁸
6

7 146. The degrading and unsanitary conditions are in detention centers
8 across the country. In Massachusetts, “[t]here was one toilet for 35 to 40 men,
9 who had no privacy when using it. . . . They slept on the concrete floor in head-
10 by-toe formation with aluminum blankets to cover them. [A teenager who was
11 detained] lost seven pounds in six days, he said, because the food was poor and
12 the portions tiny.”⁹⁹ “In Tacoma Washington, food is delivered “close to
13 midnight.”¹⁰⁰ “Some immigrants have good a week or more without showers.
14 Others sleep pressed tightly together on bare floors.”¹⁰¹ A New Mexico detention
15 center “limited [each detainee] to *two bottles of drinking water per day* and [they]
16 were *unable to flush their toilets* for days at a time.”¹⁰² Representative Judy Chu
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20 ⁹⁶ Id. at 4.

21 ⁹⁷ Id.

22 ⁹⁸ Id.

23 ⁹⁹ Jordan & Ulloa, *Concerns Grow Over Dire Conditions in Immigrant Detention*,
24 supra n.42 at 4.

¹⁰⁰ Id.

¹⁰¹ Id. at 2.

¹⁰² Id. at 5.

1 toured the Adelanto California detention center and reported that detainees “**were**
2 **not able to change their underwear** for 10 days.”¹⁰³ (emphasis added).

3 147. “Alligator Alcatraz, a new facility in the Everglades, described what
4 they called torturous conditions in **cage-like units full of mosquitos, where**
5 **fluorescent lights shine bright on them at all times**. Detainees here also called
6 attention to unsanitary conditions, as well as lack of food and reliable medical
7 treatment for their chronic conditions.”¹⁰⁴ (emphasis added). Detainees report
8 being “**stripped naked** every time they are moved to a different cell,” “are only
9 allowed **one meal a day** (and given only minutes to eat),” “instances of physical
10 assaults and excessive use of force by guards,” “being allowed to shower only
11 every three to four days and being kept in a cage-style unit with 32 other
12 people.”¹⁰⁵ (emphasis added).

13 148. These deplorable conditions are not for want of funding. In June
14 2025, Congress provided ICE with “\$45 billion to build immigration jails for
15 single adults and families, a price tag 13 times more than ICE’s 2024 detention
16 budget.”¹⁰⁶ Instead of trying to change these conditions, Respondent Secretary of
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21 ¹⁰³ Id. at 5.

22 ¹⁰⁴ Nicole Acevedo, *Detainees Held at Alligator Alcatraz Describe Cage-like*
Units, supra n.51, at 1.

23 ¹⁰⁵ Id. at 2, 3.

24 ¹⁰⁶ Cole & Feng, *ICE Budget Now Bigger Than Most of the World’s Militaries*,
supra n.19.

1 DHS Kristi Noem stated that “‘*Alligator Alcatraz can be a blueprint* for detention
2 facilities across the country.’”¹⁰⁷ (emphasis added).

3 149. In *Demery v. Arpaio*, the Ninth Circuit upheld a district court’s
4 injunction against a county sheriff who used webcams to livestream images of
5 pretrial detainees on the Internet. The Court reasoned that “[h]aving every
6 moment of one’s daily activities expose to general and world-wide scrutiny would
7 make anyone uncomfortable. Exposure to millions of complete strangers
8 constitutes a level of humiliation that almost anyone would regard as profoundly
9 undesirable and strive to avoid.” 378 F.3d at 1030. Likewise here, Respondents
10 are designing and operating immigrant detention facilities that involve numerous
11 instances of humiliation in the forms of forcing non-citizens to eat their food
12 while their hands are shackled behind their backs, not having clean clothes,
13 sleeping on cold floors and next to people in overcrowded conditions, eating
14 rotten food, being housed in extreme temperatures, being unsafe from mosquitos,
15 and having a lack of privacy or lack of access to working toilets.
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18 150. In addition, Respondents are operating facilities where non-citizens
19 are not protected from physical abuse, sexual abuse, and death. Senator Ossoff’s
20 July 2025 investigation “received or identified 510 credible reports of human
21 rights abuse” against individuals in those facilities, including “41 credible reports
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23

24 ¹⁰⁷ Gooding, *More ICE Deaths ‘Inevitable’*, supra n.57 at 7

1 of physical and sexual abuse of individuals in U.S. immigration detention.”¹⁰⁸

2 The confirmed events include “deaths in custody, physical and sexual abuse,
3 mistreatment of pregnant women, mistreatment of children, inadequate medical
4 care, overcrowding and unsanitary living conditions, inadequate food or water,
5 exposure to extreme temperatures, denial of access to attorneys, and family
6 separations.” *Id.* In fiscal year 2022, only three people died in ICE custody.¹⁰⁹

7 As of July 4, 2025, 12 people have died in ICE custody since October 2024, which
8 matches “the previous year’s total.”¹¹⁰ Eunice Cho, from the American Civil
9 Liberties Union, stated that “‘These deaths are clearly attributable to the Trump
10 administration’s increased and aggressive detention policies, and I have no doubt
11 that when more complete investigations take place, it will likely provide
12 information that these deaths were likely preventable.’”¹¹¹

13 151. “[W]hen the government takes a person into custody, it must provide
14 for the person’s ‘basic human needs—e.g. food, clothing, shelter, medical care,
15 and reasonable safety.’” *Doe v. Kelly*, 878 F.3d 710, 714 (9th Cir. 2017) (quoting
16 *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200
17 (1989)). “[A] condition of confinement violates the Fifth and Fourteenth
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22 ¹⁰⁸ Sen. Jon Ossoff, *The Abuse of Pregnant Women*, *supra* n.53

23 ¹⁰⁹ Gooding, *More ICE Deaths ‘Inevitable’*, *supra* n.42 at 4.

24 ¹¹⁰ *Id.*

¹¹¹ *Id.*

1 Amendments if it imposes some harm to the detainee that significantly exceeds or
2 is independent of the inherent discomforts of confinement and is not reasonably
3 related to a legitimate governmental objective or is excessive in relation to the
4 legitimate governmental objective.” *Doe*, 878 F.3d at 714 (citing *Kingsley v.*
5 *Hendrickson*, 576 U.S. 389 (2015)).
6

7 152. Mr. Dam contends that because Respondents are designing and
8 operating detention centers to not provide for the basic needs of adequate food,
9 clean clothing, safe shelter, sanitary conditions, and reasonable safety, the Fifth
10 Amendment and Fourteenth Amendments compel enjoining Respondents from
11 placing him in the current detention centers that are designed to inflict humiliation
12 and harm to cause him to give up a legitimate claim to remain in the United
13 States. Mr. Dam asks for the Court to enjoin Respondents from detaining him
14 under punitive detention conditions while his 2004 order granting him CAT is in
15 effect and while he is pursuing his requested remedies before the Ninth Circuit
16 Court of Appeals,
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19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Mr. Dam prays that this Court grant the following relief:

21 (1) Assume jurisdiction over this matter;

22 (2) Enjoin Respondents from re-arresting and re-detaining Petitioner

23 unless and until a neutral adjudicator determines in a hearing that,
24

1 by clear and convincing evidence, the government has shown that
2 Mr. Dam is a danger to the public or a flight risk,

3 (3) Declare That and Enjoin Respondents from requiring Mr. Dam to
4 affirmatively communicate with and request identification and
5 travel documents from Vietnam, its consulates, and its embassies,
6 a country that an IJ has found will likely torture him if he is
7 returned to that country;

8
9 (4) Declare that and Enjoin Respondents and all other agencies of the
10 U.S. government from violating the December 2, 2004 IJ order
11 and the June 9, 2025 Ninth Circuit order preventing Petitioner
12 from being removed to Vietnam while the 2004 order remains in
13 effect and while his petition for review before the Ninth Circuit is
14 pending;

15
16 (5) Declare that and Enjoin Respondents and all other agencies of the
17 U.S. government from sending Petitioner to any country in the
18 world without first providing him with notice and a hearing in
19 which a neutral adjudicator will determine whether there is
20 evidence that he will be safe from persecution and torture in such
21 country;
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- 1 (6) Enjoin Respondents from re-detaining Mr. Dam in any detention
2 conditions that are punitive in nature by causing humiliation or
3 harm that is incident to the conditions of custody;
4 (7) Award reasonable costs and attorney fees; and
5 (8) Grant such further relief as the Court deems just and proper.
6

7 Dated: August 30, 2025

Respectfully submitted,

8
9 /s/ Kari Hong
Kari Hong
10 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this August 30, 2025, in Missoula, Montana.

/s/ Kari Hong
Kari Hong
Attorney for Petitioner