

1
2 Kari Hong (Cal. Bar #220252, MT Bar #66568073)
3 Florence Immigrant & Refugee Rights Project
4 P.O. Box 86299
5 Tucson, AZ 85754
6 Telephone: (510) 384-4524
7 Facsimile: (520) 829-4154
8 khong@firrp.org

9 *Attorney for Petitioner-Plaintiff*

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

13 HAI CHIEU DAM,
14 Petitioner-Plaintiff,
15
16 v.
17 Timothy ROBBINS, et al.,
18 Respondents-Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 25-cv-8133

**MOTION FOR
TEMPORARY
RESTRAINING ORDER**

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

Challenge to Unlawful Incarceration;
Request for Declaratory and
Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner hereby moves this Court for an order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pamela Bondi, in her official capacity as the U.S. Attorney General, from re-arresting Petitioner-Plaintiff Hai Chieu Dam until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk. In addition, Petitioner requests for an order enjoining Respondents from (1) 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; (2) from removing Mr. Dam to Vietnam in violation of an IJ order and Ninth Circuit order; (3) from refouling or sending Mr. Dam to any third country without a hearing to establish he would be safe in that country; and (4) from placing Mr. Dam in current immigration detention conditions that violate the Fifth Amendment.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached

1 Declaration of Attorney Hong with Accompanying Exhibits in Support of Petition
2 for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order.

3 As set forth in the Points and Authorities in support of this Motion, Petitioner
4
5 raises that he warrants a temporary restraining order due to his weighty liberty
6
7 interest under the Due Process Clause of the Fifth Amendment in preventing (1)
8
9 his unlawful re-arrest and re-incarceration absent a pre-deprivation due process
10
11 hearing before a neutral adjudicator where the government bears the burden; (2)
12
13 unlawful requirement to communicate with and obtain identification and travel
14
15 documents from the Vietnamese government, which an Immigration Judge has
16
17 found a likelihood of torture if he returns to Vietnam, (3) unlawful removing Mr.
18
19 Dam to Vietnam in violation of an IJ order and Ninth Circuit order; (3) unlawful
20
21 refoulement or removal of Mr. Dam to any third country without a hearing to
22
23 establish he would be safe in that country; and (5) unlawful placement in current
24
25 immigration detention conditions that violate the Fifth Amendment.

26 WHEREFORE, Petitioner prays that this Court grant his request for a
27
28 temporary restraining order and a preliminary injunction enjoining Respondents
29
30 from re-incarcerating him unless and until he is afforded a hearing before a neutral
31
32 decisionmaker on the question of whether his re-incarceration would be lawful.

33 Petitioner is currently scheduled to appear before the Intensive Supervision
34
35 Appearance Program (ISAP), as required by Respondents, on Thursday,

1 September 18, 2025, when Respondents likely intend to re-arrest and re-
2 incarcerate for an indefinite period of time.
3
4

5 Dated: September 3, 2025

Respectfully Submitted

6
7
8 /s/Kari Hong

9 KARI HONG

10 Attorney for Mr. Hai Chieu Dam
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Contents

Table of Authorities	vi
INTRODUCTION	1
STATEMENT OF FACTS AND CASE	7
LEGAL STANDARD	14
ARGUMENT	15
I. <u>Mr. Dam Is Likely to Succeed on The Merits of His Claims</u>	15
A. The Constitution and Relevant Statutes Compel Enjoining Respondents from Re-Arresting and Re-Detaining Mr. Dam.....	16
1. <i>Mr. Dam Is Likely to Succeed on the Merits of His Claim That in This Case the Constitution Requires a Hearing Before a Neutral Adjudicator Prior to Any Re-Arrest and De-Detention</i>	16
2. <i>Mr. Dam Has a Protected Liberty Interest in His Conditional Release</i>	25
3. <i>Mr. Dam's Liberty Interest Mandates a Hearing Before any Re- Arrest and Revocation of Bond</i>	27
4. <i>Mr. Dam's Private Interest in His Liberty is Profound</i>	30
5. <i>The Government's Interest in Re-Incarcerating Mr. Dam Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing is Minimal</i>	31
6. <i>Without a Due Process Hearing Prior to Any Re-Arrest And Re- Detention, the Risk of an Erroneous Deprivation of Liberty is High</i>	33

1	B. Due Process Compels Enjoining Respondents From Causing Mr. Dam	
2	to Affirmatively Contact, Communicate With, And Obtain	
3	Identification and Travel Documents from the Vietnamese	
4	Government As Long As The Order Granting CAT Is in Effect.....	35
5	C. Due Process Compels Enjoining Respondents From Removing Mr.	
6	Dam to Vietnam	38
7	D. Due Process Compels Enjoining Respondents From Removing Mr.	
8	Dam to Any Third Country Without Legal Protections Afforded	
9	Under Law.....	40
10	E. The Fifth Amendment Compels Enjoining Respondents from Placing	
11	Mr. Dam in Current Detention Conditions, Which Are Not Safe or	
12	Humane	43
13	1. <i>Since January 2025, Conditions in Immigration Detention Centers</i>	
14	<i>Have Substantially Deteriorated And Inflict Harm And</i>	
15	<i>Humiliation on Non-Citizens</i>	44
16	2. <i>Immigration Detention Is Costly And Not Needed to Guarantee</i>	
17	<i>That Non-Citizens Will Attend Their Hearings.....</i>	54
18	3. <i>ICE Officials Are Encouraging Detained Non-Citizens to “Accept</i>	
19	<i>Quick[] Deportation” Instead of Fighting Their Cases</i>	56
20	II. <u>Mr. Dam Will Suffer Irreparable Harm Absent Injunctive Relief</u>	59
21	III. <u>The Balance of Equities and the Public Interest Favor Granting the</u>	
22	<u>Temporary Restraining Order</u>	61
23	CONCLUSION.....	63

Table of Authorities

Cases

<i>Alliance for the Wild Rockies v. Cottrell</i> , <u>632 F.3d 1127</u> (9th Cir. 2011)	15, 59
<i>Ariz. Dream Act Coal. v. Brewer</i> , <u>757 F.3d 1053</u> (9th Cir. 2014)	62
<i>Barker v. Wingo</i> , <u>407 U.S. 514</u> (1972).....	59
<i>Bell v. Wolfish</i> , <u>441 U.S. 520</u> (1979).....	34
<i>Chalkboard, Inc. v. Brandt</i> , <u>902 F.2d 1375</u> (9th Cir. 1989)	34
<i>Dep't of Homeland Sec. v. D.V.D.</i> , <u>145 S. Ct. 2153</u> (2025).....	4, 29
<i>Diaz v. Kaiser</i> , No. 3:25-cv-05071, <u>2025 WL 1676854</u> (N.D. Cal. Jun. 14, 2025).....	24
<i>Diouf v. Napolitano</i> , <u>634 F.3d 1081</u> (9th Cir. 2011)	34
<i>D.V.D. v. U.S. Dep't of Homeland Sec.</i> , <u>778 F. Supp. 3d 355</u> (D. Mass. 2025)	41
<i>Enamorado v. Kaiser</i> , <u>2025 WL 1382859</u> (N.D. Cal. May 12, 2025)	25
<i>Foucha v. Louisiana</i> , <u>504 U.S. 71</u> (1992).....	30
<i>Gagnon v. Scarpelli</i> , <u>411 U.S. 778</u> (1973).....	25

1	<i>Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No.</i>	
2	<i>70 of Alameda,</i>	
3	<u>415 U.S. 423</u> (1974).....	15
4	<i>Haygood v. Younger,</i>	
5	<u>769 F.2d 1350</u> (9th Cir. 1985)	28
6	<i>Hernandez v. Sessions,</i>	
7	<u>872 F.3d 976</u> (9th Cir. 2017)	22, 54, 60, 62
8	<i>Herring v. United States,</i>	
9	<u>555 U.S. 135</u> (2009).....	20
10	<i>Hurd v. District of Columbia,</i>	
11	<u>864 F.3d 671</u> (D.C. Cir. 2017)	26, 30
12	<i>Lopez v. Heckler,</i>	
13	<u>713 F.2d 1432</u> (9th Cir. 1983)	62
14	<i>Mathews v. Eldridge,</i>	
15	<u>424 U.S. 319</u> (1976).....	28, 29, 31, 32
16	<i>Matter of Sugay,</i>	
17	17 I&N Dec. (BIA 1981)	5, 17, 18, 22
18	<i>Morrissey v. Brewer,</i>	
19	<u>408 U.S. 471</u> (1972).....	25–28, 30, 31
20	<i>Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.,</i>	
21	<u>743 F.2d 1365</u> (9th Cir. 1984)	59
22	<i>Pablo Sequen v. Kaiser, No. 25-CV-06487-PCP,</i>	
23	___ F. Supp. 3d ___, <u>2025 WL 2203419</u> (N.D. Cal. Aug. 1, 2025)	24
24	<i>Preap v. Johnson,</i>	
25	<u>831 F.3d 1193</u> (9th Cir. 2016)	59
26	<i>Preminger v. Principi,</i>	
27	<u>422 F.3d 815</u> (9th Cir. 2005)	62
28		

1	<i>Prieto Salazar v. Kaiser</i> , No. 1:25-CV-01017-JLT-SAB,	
2	<u>2025 WL 2456232</u> (E.D. Cal. Aug. 26, 2025).....	24
3		
4	<i>Reno v. Flores</i> ,	
5	<u>507 U.S. 292</u> (1993).....	42
6	<i>Saravia v. Barr</i> ,	
7	<u>280 F. Supp. 3d 1168</u> (N.D. Cal. 2017)	5, 18, 19
8	<i>Singh v. Holder</i> ,	
9	<u>638 F.3d 1196</u> (9th Cir. 2011)	30
10	<i>Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.</i> ,	
11	<u>240 F.3d 832</u> (9th Cir. 2001)	14
12	<i>Trinh v. Homan</i> ,	
13	<u>466 F. Supp. 3d 1077</u> (C.D. Cal. 2020).	12, 36
14	<i>Trump v. CASA, Inc.</i> , No. 24A884,	
15	606 U.S. ___, <u>145 S. Ct. 2540, 2597, 2025 WL 1773631</u> (U.S. Jun. 27, 2025).....	
16		20, 21
17	<i>Trump v. J.G.G.</i> ,	
18	604 U.S. ___, <u>145 S. Ct. 1003</u> (Apr. 7, 2025)	42
19		
20	<i>United States v. Calandra</i> , <u>414 U.S. 338, 357</u> (1974)	20
21	<i>Valle del Sol Inc. v. Whiting</i> ,	
22	<u>732 F.3d 1006</u> (9th Cir. 2013)	62
23	<i>Vasquez Perdomo v. Noem</i> , No. 25-4312,	
24	___ F.4th ___, <u>2025 WL 2181709</u> (9th Cir. Aug. 1, 2025).	22
25		
26	<i>Winter v. Nat. Res. Def. Council, Inc.</i> ,	
27	<u>555 U.S. 7</u> (2008).....	14
28	<i>Y-Z-L-H v. Bostock</i> , No. 3:25-CV-965-SI,	
	___ F. Supp. 3d ___, <u>2025 WL 1898025</u> (D. Or. July 9, 2025)	24

<i>Young v. Harper</i> , <u>520 U.S. 143</u> (1997).....	25–27
<i>Zadvydas v. Davis</i> , <u>533 U.S. 678</u> (2001).....	25, 30–32, 34
<i>Zepeda v. I.N.S.</i> , <u>753 F.2d 719</u> (9th Cir. 1983)	61
<i>Zinerman v. Burch</i> , <u>494 U.S. 113</u> (1990).....	29

Statutes

<u>8 U.S.C. § 1226(b)</u>	5
<u>8 U.S.C. § 1231(b)(1)(E)(i)</u>	40
<u>8 U.S.C. § 1231(b)(1)(E)(ii)</u>	40
<u>8 U.S.C. § 1231(b)(1)(E)(iii)</u>	40
<u>8 U.S.C. § 1231(b)(1)(E)(iv)</u>	40
<u>8 U.S.C. § 1231(b)(1)(E)(v)</u>	40
<u>8 U.S.C. § 1231(b)(1)(E)(vi)</u>	40
<u>8 U.S.C. § 1231(b)(3)(A)</u>	41
California Penal Code (PC) § 245(a)(1)	7

Rules

Rule 65(b) of the Federal Rules of Civil Procedure	1, 15
--	-------

Regulations

<u>8 C.F.R. § 208.17</u>	40
--------------------------------	----

1	<u>8 C.F.R. § 208.17(d)(1)</u>	38
2		
3	<u>8 C.F.R. § 208.17(d)(2)</u>	38
4	<u>8 C.F.R. § 236.1(c)(9)</u>	5, 17
5		

Other Authority

7	Cesar Cuauhtemoc Garcia Hernandez,	
8	<i>Abolishing Immigration Prisons</i> , 97 B.U. L. Rev. 245 (2017).....	54
9		

INTRODUCTION

Petitioner-Plaintiff Mr. Hai Chieu Dam, aka Derrick Dam (“Mr. Dam” or Petitioner”) by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security’s (DHS), 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.

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 approximately 3 years old. When he was four years old, on April 9, 1989, he was admitted as a lawful permanent resident. 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

1 Code § 245(a)(1) (assault with a deadly weapon, in which the prosecutor alleged
2 his shoe was a deadly weapon when he kicked someone). In 2004, an
3 Immigration Judge (IJ) found that this conviction terminated his lawful permanent
4 residency status. The IJ also found that Mr. if Dam returned to Vietnam, he would
5 likely be tortured given the history that the Vietnamese government jailed and
6 harmed family members who opposed the government. The IJ granted Mr. Dam
7 protection under the Convention Against Torture (CAT).
8
9

10 Since 2004, Mr. Dam has lived at liberty and has been enrolled in in the
11 Intensive Supervision Appearance Program (ISAP). Mr. Dam has complied with
12 all conditions of release, which includes reporting each year to the Federal
13 Building in Los Angeles. Mr. Dam has voluntarily reported each year for 21
14 years.
15
16

17 In a break from past practices, on August 18, 2025, ICE sent Mr. Dam a
18 letter directing him to report in person on September 18, 2025 and to bring with
19 him his travel papers, identification documents from the Vietnamese government,
20 and any medication. Mr. Dam received this letter on Friday, August 22, 2025 and
21 immediately called undersigned Counsel.
22
23

24 ICE has engaged in highly publicized arrests of non-citizens who presented
25 no flight risk or danger, often with no prior notice that anything regarding their
26 status was amiss or problematic, whisking them away to faraway detention centers
27
28

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

10 In recent months, ICE has engaged in highly publicized arrests of
11 individuals who presented no flight risk or danger, often with no prior notice that
12 anything regarding their status was amiss or problematic, whisking them away to
13
14
15
16
17
18
19

20 ¹ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y.
21 Times (Mar. 15, 2025),
22 <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
23 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about
24 the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025),
25 <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html>
26 (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh
27 Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit*
28 *says*, Politico (Mar. 19, 2025), available at <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-country-removals-put-migrants-in-harms-way>

³ Id.

1 faraway detention centers without warning.⁴

2 On June 23, 2025, a majority of the Supreme Court granted, without
3 providing any reasoning, the Government's emergency motion to vacate a district
4 court's class action enjoining third country removals. Three justices dissented,
5 explaining that "[i]n matters of life and death, it is best to proceed with caution.
6 In this case, the Government took the opposite approach. It wrongfully deported
7 one plaintiff to Guatemala, even though an Immigration Judge found he was likely
8 to face torture there. Then, in clear violation of a court order, it deported six more
9 to South Sudan, a nation the State Department considers too unsafe for all but its
10 most critical personnel. An attentive District Court's timely intervention only
11 narrowly prevented a third set of unlawful removals to Libya." *Dep't of*
12 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting).
13
14
15
16
17

18 The Supreme Court's action permitted the 8 non-citizens whom
19 Respondents had sent to South Sudan to remain there, and their "status is no
20
21

22 ⁴ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y.
23 Times (Mar. 15, 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
24 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about
25 the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025),
26 <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html>
27 (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh
28 Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

1 longer known.”⁵ Since June 2025, the Trump administration has made deals with
2 countries such as Rwanda to accept third-country removals and are negotiating
3 with 58 other countries, “who are incentivized to accept third country removals
4 through the threat of potential tariffs, travel bans, and other restrictions.”⁶

6 In light of credible reports of ICE re-arresting and re-detaining individuals
7 at their ISAP check-ins and in light of credible reports of ICE sending people,
8 even those with CAT protections, to third countries, it is highly likely that on
9 September 18, 2025 Mr. Dam will be re-arrested, re-detained, and sent to a third-
10 country, despite the fact that Mr. Dam is not a flight risk and is not danger to the
11 public.
12
13
14

15 By statute and regulation, as interpreted by the Board of Immigration
16 Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their
17 bond, only where there has been a change in circumstances since the individual’s
18 release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I & N
19 Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that
20 any change in circumstances must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d
21 1168, 1197 (N.D. Cal. 2017). That authority, however, is proscribed by the Due
22 Process Clause because it is well-established that individuals released from
23
24
25
26
27

28 ⁵ Id.

⁶ Id.

1 incarceration have a liberty interest in their freedom. In turn, to protect that
2 interest, on the particular facts of Mr. Dam's case, due process requires notice and
3 a hearing, before he is re-arrested or re-detained, at which the government has the
4 burden to prove that Mr. Dam is a flight risk or danger to the public.

6 That basic principle—that individuals placed at liberty are entitled to
7 process before the government imprisons them—has particular force here, where
8 Mr. Dam has been released from detention for 21 years and has voluntarily
9 reported each year. After an IJ granted him legal status in 2004, no circumstances
10 have changed that would justify re-arrest and re-detention. Moreover, it is
11 unlawful for Respondents to require Mr. Dam to affirmatively communicate with
12 and obtain identification documents and travel documents from the Vietnamese
13 government in light of the 2024 finding by an IJ that he would be likely tortured if
14 he returned to Vietnam. It is unlawful for Respondents to remove Mr. Dam to
15 Vietnam in violation of two court orders and to refoul him to a third country
16 without a hearing in which it is established he is safe to be sent there. It is lastly
17 in violation of the Fifth Amendment to be placed in current immigration
18 conditions, which are being designed to inflict humiliation and suffering.

25 Mr. Dam meets the standard for a temporary restraining order. He will
26 suffer immediate and irreparable harm absent an order from this Court enjoining
27 the government from arresting him at his ISAP check-in on Thursday, September
28

1 18, 2025, unless and until he first receives a hearing before a neutral adjudicator,
2 as demanded by the Constitution. He will be further harmed if he has to comply
3 with the Respondent's directive to affirmatively communicate with and obtain
4 identification and travel documents from the Vietnamese government. He will be
5 lastly irreparably harmed if he is sent outside of the country in violation of court
6 orders and legal protections. Because holding federal agencies accountable to
7 constitutional demands is in the public interest, the balance of equities and public
8 interest are also strongly in Mr. Dam's favor.

12 STATEMENT OF FACTS AND CASE

13 Mr. Dam was born in Vietnam on [REDACTED] 1975 and arrived in the
14 United States when he was approximately three years old. **Exhibit 1, Exhibit 9.**

16 On April 9, 1980, when he was 4 years old, he was admitted as a lawful
17 permanent resident. **Exhibit 1, 2.**

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

27 Mr. Dam left the gang after this incident. He did not want that life
28

1 anymore, and because he took the rap, the gang let him walk away. Mr. Dam
2 “learned my lesson” and “changed his life.” He stopped spending time with gang
3 members and devoted time to work and family. He never had a criminal
4 conviction after 2001. **Exhibit 9.**

6 On December 2, 2004, an IJ found that the assault with a deadly weapon
7 conviction terminated his lawful permanent resident status. The IJ also granted
8 Mr. Dam protection under CAT after finding that it was likely that he would be
9 tortured if he returned to Vietnam. **Exhibit 2.** Both parties appealed the decision.
10 On September 30, 2005, the BIA affirmed the order. **Exhibit 3.**

13 In 2020, Mr. Dam hired an attorney who specializes in immigration
14 consequences of criminal convictions. On November 1, 2001, the Superior Court
15 of California granted his motion to vacate the 2001 assault conviction. On
16 September 23, 2022, the lawyer filed a motion to reopen with the BIA, arguing
17 that under existing precedent, the BIA must afford full faith and credit to the
18 vacated conviction, which will restore Mr. Dam’s lawful permanent status.
19

21 **Exhibit 9.**

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

1 Since the grant of his CAT protection in 2004, ICE enrolled Mr. Dam in
2 ISAP program. In recent years, each year, ICE will send Mr. Dam an email about
3 one month before his check-in date. In this email, ICE will direct Mr. Dam to
4 report to the Los Angeles ICE office at a specific time and date. Mr. Dam has
5 reported every year for the past 21 years as directed. **Exhibit 9.**

6
7
8 Typically, Mr. Dam will appear at a kiosk. The computer will direct him to
9 enter his information. Upon confirmation that he has no new arrests, the computer
10 will notify him that he is in compliance and is scheduled to report the next year.
11

12 **Exhibit 9.**

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

15 **Exhibit 6.**

16 Starting in an early June 2025, ICE began to detain non-citizens living in
17 Los Angeles who appeared at their check-ins. According to a June 7, 2025 CBS
18 News report “[m]any undocumented immigrants who went to their Immigration
19 and Customs Enforcement check-in appointments at a federal building in Los
20 Angeles this week were taken into custody and brought to the basement and held
21 there, some overnight, according to immigration lawyers and family members.”⁷
22
23
24
25

26
27 ⁷ Nidia Cavazos, *Immigrants at ICE Check-ins Detained, Held in Basement of Federal Building*
28 *in Los Angeles, Some Overnight*, CBS News, Jun. 7, 2025
<https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>

1 On June 9, 2025, in light of the arrests of those who reported at their ICE
2 appointments, undersigned counsel filed an emergency motion asking the Ninth
3 Circuit to adjudicate the pending motion to stay removal. **Exhibit 6, Docket 31**.
4

5 On June 9, 2025, the Court granted that motion and issued an order staying
6 removal during the pendency of the petition for review. **Exhibit 6, Docket 32**. O
7

8 On June 12, 2025, Mr. Dam then reported to the Los Angeles ICE office as
9 directed. On that date, the building was closed because the deployment of
10 Marines around the building and the presence of protesters objecting to the
11 immigration actions was centered around the Federal Building where Mr. Dam
12 was asked to report.⁸ Because the building was closed, Mr. was not permitted to
13 enter. Pursuant to the request of undersigned counsel, Mr. Dam sent photographs
14 of himself in front of the Federal Building at 300 North Los Angeles Street, which
15 were taken on June 12, 2025. **Exhibit 7**.
16
17
18

19 In addition, Mr. Dam took a video of himself speaking with two officers
20 who were outside of the federal building. Mr. Dam told him that was there
21 because he had a check-in appointment with ICE. One officer told him “They will
22 reschedule you.” Mr. Dam asked for clarification about whether he should report
23 when the building reopens. The officer confirmed that he will be notified when he
24
25
26
27

28 ⁸ Rhonda Tarrant, *Maps and Photos Show How The Los Angeles ICE Protests Unfolded*, CBS News, Jun. 12, 2025 <https://www.cbsnews.com/news/los-angeles-ice-protests-timeline/>

1 is to return. **Exhibit 9.**

2 On August 22, 2025, Mr. Dam received a letter from ICE, which had been
3 dated on August 18, 2025. This letter directed Mr. Dam to report to the ICE
4 office on September 18, 2025 at “300 N. Los Angeles St. 7th Fl. Rm. 7621, Los
5 Angeles, CA 90012.” **Exhibit 8.** The letter instructed Mr. Dam to report to a
6 “Case Officer,” and to bring with him “any identification form your country of
7 origin such as a passport. Please bring any immigration/medical documents and
8 medication.” **Exhibit 8.** The Reason for the Appointment was
9 “Interview/Receive immigration paperwork.” **Exhibit 8.**

10 On information and belief, this letter is preparing Mr. Dam to be detained,
11 which is why ICE directed to bring any medication with him, and removed or
12 refouled from the country, which is why ICE directed him to bring travel
13 documents from Vietnam.

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

18 Upon information and belief, Vietnam has only one embassy in the United
19
20
21
22
23
24
25
26
27
28

1 States, which is located in Washington DC.⁹ It is unclear if Mr. Dam is eligible
2 for or permitted to obtain the requested documentation. But even if he is, it is not
3 safe for Mr. Dam to enter into an embassy or consulate, which is not under the
4 control of the United States. As an extreme example, it is alleged that Saudi
5 government officials kidnapped and murdered Jamal Khashoggi, a U.S.-based
6 journalist who was a critic of the Saudi government when he entered a consulate
7 in Turkey.¹⁰ An IJ has found that Mr. Dam is likely to be tortured if he returns to
8 Vietnam and embassies and consulates are under the control of Vietnam, not the
9 United States.

13 “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
20 States before July 12, 1995. *Id.*

24 In 2017, during the first Trump administration, the countries renegotiated

26
27 ⁹ Embassy of the Socialist Republic of Vietnam in the United States of America,
<https://vietnamembassy-usa.org>

28 ¹⁰ Jamal Khashoggi: *All You Need to Know About Saudi Journalist’s Death*, BBC, Feb. 24, 2021
<https://www.bbc.com/news/world-europe-45812399>

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

8
9 In March 2025, the Trump administration began “targeting these
10 [Vietnamese immigrants who arrived before June 12, 1995] again, disregarding
11 decades of rehabilitation, deep community ties, and valuable contributions to
12 America. Families are being torn apart, and the U.S. is once again betraying its
13 promise of refuge, safety, and hope.”¹¹ ICE began to re-arrest and re-detain the
14 pre-1995 Vietnamese individuals.¹² In May 2025, ICE refouled to South Sudan at
15 least two Vietnamese non-citizens, after ICE first told him that they were going to
16 be sent to South Africa and Burma.¹³ In addition, since June 2025, at least one
17
18
19
20
21
22
23

24 ¹¹ Vietnamese American Organization, ICE Re-Arrest and Detention of Pre-1995 Vietnamese
25 Immigrants is Inhuman, EIN Presswire, Mar 25, 2025, <https://www.wsav.com/business/press-releases/ein-presswire/796080136/ice-re-arrest-and-detention-of-pre-1995-vietnamese-immigrants-is-inhumane/>

26 ¹² *Id.*

27 ¹³ Ximena Bustillo, Judge Questions Lawyers Over Alleged Deportations to South Sudan, NPA
28 May 21, 2025 <https://www.npr.org/2025/05/20/g-s1-68090/dhs-migrants-deport-south-sudan>;
Ximena Bustillo, *The White House is Deporting 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>

1 Vietnamese national who had been living in the United States was removed to
2 Vietnam, and another was refouled to Eswatini.¹⁴

3
4 In light of credible reports of ICE re-arresting and re-detaining people like
5 Mr. Dam who have the protections of CAT and refouling them to third countries
6 or even removing them to Vietnam, it is highly likely Mr. Dam will be arrested
7 and incarcerated at his September 18, 2025 appointment, despite the fact that Mr.
8 Dam is neither a flight risk nor a danger to the community. Moreover, CAT
9 protection is legal status and he has a pending Ninth Circuit case which will
10 restore his lawful permanent residence status if he prevails in that Court.
11

12
13 Intervention from this Court is therefore required to ensure that Mr. Dam is
14 not unlawfully re-arrested and re-incarcerated and subjected to irreparable harm
15 by being sent out of the country to Vietnam or a third country.
16

17 LEGAL STANDARD

18
19 Mr. Dam is entitled to a temporary restraining order if he establishes that he
20 is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the
21 absence of preliminary relief, that the balance of equities tips in [his] favor, and
22 that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*,
23 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d
24

25
26
27 ¹⁴ Kristina Cooke and Ted Hessen, *The US Said It Had No Choice But to Deport Them to A*
28 *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-third-country-then-it-sent-them-home-2025-08-02/>

1 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary
2 restraining order standards are “substantially identical”). Even if Mr. Dam does
3 not show a likelihood of success on the merits, the Court may still grant a
4 temporary restraining order if he raises “serious questions” as to the merits of his
5 claims, the balance of hardships tips “sharply” in his favor, and the remaining
6 equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
7 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Dam
8 overwhelmingly satisfies both standards.

12 ARGUMENT

13 **I. Mr. Dam Is Likely to Succeed on The Merits of His Claims**

14 A temporary restraining order should be issued if “immediate and
15 irreparable injury, loss, or irreversible damage will result” to the applicant in the
16 absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining
17 order is to prevent irreparable harm before a preliminary injunction hearing is
18 held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers*
19 *Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Dam is likely to be
20 re-arrested absent any material change in circumstances and prior to receiving a
21 hearing before a neutral adjudicator, in violation of his due process rights, without
22 intervention by this Court.

1 Absent any injunction, Mr. Dam will also likely to suffer irreparable injury
2 by affirmatively communicating with the Vietnamese government to obtain
3 identification and travel documents. In 2004, an IJ found that, due to his family's
4 political opposition to the government, it is more likely than not that he will be
5 tortured if he returns to Vietnam. Requiring Mr. Dam to appear inside of an
6 embassy or consulate will place him in danger.
7

9 Mr. Dam will also likely suffer irreparable injury if he is removed to
10 Vietnam, in violation of two court orders, and sent to a third country without the
11 lawful process to ensure his safety in any third country.
12

13 Mr. Dam likely will continue suffer irreparable injury if he is detained and
14 placed in detention conditions that are designed to inflict humiliation and
15 suffering.
16

17
18 **A. The Constitution and Relevant Statutes Compel Enjoining**
19 **Respondents from Re-Arresting and Re-Detaining Mr. Dam**

20 ***1. Mr. Dam Is Likely to Succeed on the Merits of His Claim That in This***
21 ***Case the Constitution Requires a Hearing Before a Neutral***
22 ***Adjudicator Prior to Any Re-Arrest and De-Detention***

23 Mr. Dam is likely to succeed on his claim that, in his particular
24 circumstances, the Due Process Clause of the Constitution prevents Respondents
25 from re-arresting and re-detaining him without first providing a pre-deprivation
26 hearing before a neutral adjudicator where the government demonstrates by clear
27
28

1 and convincing evidence that there has been a material change in circumstances
2 such that he is now a danger or a flight risk.

3
4 The regulatory language grants ICE the authority to revoke a post-custody
5 release “at any time.” 8 C.F.R. § 236.1(c)(9). When interpreting this regulation
6 in the context of a non-citizen whose prior release on bond was revoked, the
7
8 Board noted an implicit limitation on ICE’s authority to re-arrest noncitizens. In
9 *Matter of Sugay*, 17 I & N Dec. at 640, “where a previous bond determination has
10 been made by an immigration judge, no change should be made by [the DHS]
11 absent a change of circumstance.” *Id.*

12
13 The Board made that finding in context of a non-citizen for whom an IJ had
14 revoked his prior release on bond. *See Matter of Sugay*, 17 I & N Dec. at 640.
15
16 However, the actual regulation permitting the re-arrest of a non-citizen is not
17
18 conditioned on how an individual was released and is by no means limited solely
19 to the context of a release on bond. Rather, the regulation provides: “When an
20 alien who, having been arrested and taken into custody, has been released, such
21 release may be revoked at any time in the discretion of the district director . . . in
22 which event the alien may be taken into physical custody and detained. If
23 detained, unless a breach has occurred, any outstanding bond shall be revoked and
24
25 cancelled.” 8 C.F.R. § 236.1(c)(9).
26
27
28

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

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

3 Likewise, in the *Hernandez Roman* settlement, the Court offered Class
4 Members these same due process protections, regardless if they had been released
5 on bond or after an ICE officer made an individualized determination. ***Exhibit 10***
6 at 11–14. The legal and constitutional protections afforded those released during
7 COVID were not limited only to those released on bond.
8

9 It is unknown how and when Mr. Dam was released from custody. Upon
10 information and belief, it appears that before December 2004, he was released on
11 bond, taken back into custody, and released again. Moreover, after the December
12 2, 2004 order protecting him under CAT, Mr. Dam has been free from custody
13 and under the supervision of the ISAP program. Regardless of whether he is
14 technically released on bond or under the protections of CAT, basic due process
15 protections, existing agency practice and policy compels that Mr. Dam cannot be
16 re-arrested by ICE absent a showing in a hearing that he is a flight risk, a threat to
17 public safety, or the agency is about to execute a final order of removal. Indeed,
18 undersigned counsel has not found a case limiting due process to just those who
19 were released on bond. The reality is that our Courts, and our Constitution, have
20 routinely recognized that due process exists—not just as an individual right—but
21 as the only means by which government excess and abuses of power can be
22
23
24
25
26
27
28

1 checked. For instance, in a compelling dissent, Justice Ginsburg disabuses the
2 notion that the Fourth Amendment’s exclusionary right is a mere right of a
3 defendant because it is a remedy applicable only when suppression would result
4 in appreciable deterrence that outweighs the cost to the justice system.” *Herring*
5 *v. United States*, 555 U.S. 135, 150 (2009) (Ginsburg, J., dissenting). This is why
6 the exclusionary rule “also serves other important purposes: It ‘enabl[es] the
7 judiciary to avoid the taint of partnership in official lawlessness,’ and it ‘assur[es]
8 the people—all potential victims of unlawful government conduct—that the
9 government would not profit from its lawless behavior, thus minimizing the risk
10 of seriously undermining popular trust in government.’” *Herring*, 555 U.S. at 150
11 (quoting *United States v. Calandra*, 414 U.S. 338, 357 (1974) (Brennan, J.,
12 dissenting)).

13
14
15
16
17
18 The need for the Court to provide protections against the federal
19 government invoking a person’s liberty for arbitrary purposes is a critical
20 protection—not just for targeted individuals but for the Rule of Law. “Stated
21 simply, what it means to have a system of government that is bounded by law is
22 that everyone is constrained by the law, no exceptions. And for that to actually
23 happen, courts must have the power to order everyone (including the Executive)
24 to follow the law—full stop.” *Trump v. CASA, Inc.*, No. 24A884, 606 U.S. ___,
25 145 S. Ct. 2540, 2597, 2025 WL 1773631, at *44 (U.S. June 27, 2025) (Jackson,

1 J., dissenting). “To conclude otherwise is to endorse the creation of a zone of
2 lawlessness within which the Executive has the prerogative to take or leave the
3 law as it wishes, and where individuals who would otherwise be entitled to the
4 law's protection become subject to the Executive's whims instead.” *Id.*

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

13 The only reasonable inference from this record is that ICE is planning to re-
14
15 arrest Mr. Dam for an arbitrary or impermissible reason, which is to serve a
16 political purpose. Since May 2025, ICE has been re-arresting immigrants around
17
18 the country who report to their check-in appointments.¹⁵ Although the
19 administration has denied the allegations in legal filings, news reports from the
20 Guardian and Axios “revealed that during a meeting with Immigration and
21

23 ¹⁵ Gustavo Sagrero Alvarez, *Mysterious Notice Tells Immigrants to Check in at Seattle-Area*
24 *Federal Building. Several Get Detained*, NPR Jun. 14, 2025
25 <https://www.kuow.org/stories/mysterious-notice-tells-immigrants-to-check-in-at-seattle-area-federal-building-several-get-detained>; Nate Rodgers, *Hundreds Received Texts, Emails Ordering Them to Go to Broadview Immigration Center*, Fox 32 Chicago, Jun. 15, 2025
26 <https://www.fox32chicago.com/news/two-people-detained-broadview-immigration-center-after-hundreds-received-texts-emails>; Robert Stewart, *Immigrants, Advocates Alarmed by Check-in Messages at ICE Contractor's Facility*, New Orleans Public Radio, Jun. 18, 2025
27 <https://www.wwno.org/immigration/2025-06-18/immigrants-advocates-alarmed-by-check-in-messages-at-ice-contractors-facility>
28

1 Customs Enforcement (Ice) leaders on 21 May [2025], the White House adviser
2 Stephen Miller and the Department of Homeland Security secretary, Kristi Noem,
3 demanded that immigration agents seek to arrest 3,000 people per day.”¹⁶ “Miller
4 appeared on Fox News in late May and stated that ‘under President Trump’s
5 leadership, we are looking to set a goal of a minimum of 3,000 arrests for Ice
6 every day.’ He added that Trump ‘is going to keep pushing to get that number
7 higher each and every day.’”¹⁷ In upholding a TRO injunction against DHS and
8 ICE from conducting unlawful immigration enforcement actions in the Los
9 Angeles that stop and arrest people after “individualized, reasonable suspicion that
10 the person to be stopped is unlawfully in the United States,” the Ninth Circuit
11 dropped a footnote both noting the public statements from administration officials
12 telling the public that a 3,000 daily arrest policy exist and the Department of
13 Justice denying to courts such policy exists. *Vasquez Perdomo v. Noem*, No. 25-
14 4312, ___ F.4th ___, 2025 WL 2181709, n.2 at *2 (9th Cir. Aug. 1, 2025).

15
16
17
18
19
20
21 What is not in dispute that, as of August 11, 2025, the administration is
22 detaining more than 60,000 immigrants, which is a “modern record,” a large
23 increase from the 39,000 people who were detained in January 2025, and a
24 substantial increase from the 7,000 people who were in immigration detention in
25

26
27 ¹⁶ Anna Betts, *Trump Administration Denies Daily Quota for Immigration Arrests*, The
28 Guardian, Aug 3, 2025 [https://www.theguardian.com/us-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)

¹⁷ Id.

1 2003 when ICE was created.¹⁸ The administration further has a stated political
2 goal of detaining 100,000 immigrants per day.¹⁹ In June 2025, Congress provided
3 ICE with “\$45 billion to build immigration jails for single adults and families, a
4 price tag 13 times more than ICE’s 2024 detention budget.²⁰ That budget is larger
5 than what many nations spend on their entire militaries, including Italy (\$30.8
6 billion), Israel (\$30 billion), the Netherlands (\$27 billion), and Brazil (\$26.1
7 billion).²¹

8
9 ICE’s power to re-arrest a noncitizen who is at liberty following a release
10 from custody is also constrained by the demands of due process. *See Hernandez*
11 *v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s discretion to
12 incarcerate non-citizens is always constrained by the requirements of due
13 process”). In this case, the guidance provided by *Matter of Sugay* is that ICE may
14 not re-arrest a noncitizen absent changed circumstances.

15
16 Federal district courts in California and in other states have enjoined ICE
17 from re-arresting and re-detaining non-citizens without first providing an
18 individualized hearing where the government presents proof that the non-citizen is

19
20
21
22
23
24
25 ¹⁸ Chris Cameron and Hamed Aleaziz, *Over 60,000 Are in Immigration Detention, a Modern*
26 *High, Records Show*, NY Times, Aug. 11, 2025

27 <https://www.nytimes.com/2025/08/11/us/politics/immigration-detention-numbers.html>

28 ¹⁹ Id.

²⁰ Brendan Cole and John Feng, *ICE Budget Now Bigger Than Most of the World’s Militaries*,
Newsweek, Jun. 3, 2025 <https://www.newsweek.com/immigration-ice-bill-trump-2093456>

²¹ Id.

1 a danger to the community or a flight risk. The courts reason that “the
2 immigrant's initial release reflected a determination by the government that the
3 noncitizen is not a danger to the community or a flight risk. Since it is the
4 government that initiated re-detention, it follows that the government should be
5 required to bear the burden of providing a justification for the re-detention.”
6
7 *Prieto Salazar v. Kaiser*, No. 1:25-CV-01017-JLT-SAB, [2025 WL 2456232](#), at
8 *13 (E.D. Cal. Aug. 26, 2025) (ordering release of asylum seeker from
9 immigration custody and providing that DHS may not “impose any additional
10 restrictions on her, such as electronic monitoring, unless that is determined to be
11 necessary at a future pre-deprivation/custody hearing”). *See also Pablo Sequen v.*
12 *Kaiser*, No. 25-CV-06487-PCP, ___ F. Supp. 3d ___, [2025 WL 2203419](#), at *1
13 (N.D. Cal. Aug. 1, 2025) (ordering release of asylum seeker and enjoining DHS
14 “from re-arresting or otherwise re-detaining Ms. Pablo Sequen without first
15 providing her with a pre-detention bond hearing before an immigration judge at
16 which ICE establishes by clear and convincing evidence that her detention is
17 necessary to prevent her flight or protect the public”); *Y-Z-L-H v. Bostock*, No.
18 3:25-CV-965-SI, ___ F. Supp. 3d ___, [2025 WL 1898025](#), at *14 (D. Or. July 9,
19 2025) (ordering release of non-citizen from custody and providing that DHS
20 “shall not cause Petitioner to be re-detained during the pendency of his removal
21 proceedings without prior leave of this Court”); *Diaz v. Kaiser*, No. 3:25-cv-

1 05071, [2025 WL 1676854](#) (N.D. Cal. Jun. 14, 2025) (granting injunction filed by
2 non-citizen who had been at liberty for 5 years and received a ISAP notice
3 directing him to report on June 14, 2025, which was before his normal check-in.
4 The court directed the DHS not to re-arrest or re-detain him at his upcoming ICE
5 check-in appointment, unless and until the DHS proved changed circumstances
6 warranted revoking his liberty); *Enamorado v. Kaiser*, No. 25-CV-04072-NW,
7 [2025 WL 1382859](#), at *3 (N.D. Cal. May 12, 2025) (temporary injunction
8 warranted preventing re-arrest at plaintiff's ICE interview when he had been on
9 bond for more than five years).

13 **2. Mr. Dam Has a Protected Liberty Interest in His Conditional Release**

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

19 Since December 2, 2024, Mr. Dam has exercised that freedom after he was
20 granted protection under CAT. **Exhibit 2.** Although he was released from
21 detention before that point in time (and also remains under government custody,
22 as further demonstrated by his enrollment in ISAP), he retains a weighty liberty
23 interest under the Due Process Clause of the Fifth Amendment in avoiding
24 unlawful re-incarceration. *See Young v. Harper*, [520 U.S. 143, 146–47](#) (1997);
25
26
27
28

1 Gagnon v. Scarpelli, 411 U.S. 778, 781-82 (1973); Morrissey v. Brewer, 408 U.S.
2 471, 482–83 (1972).

3
4 In *Morrissey*, the Supreme Court examined the “nature of the interest” that
5 a parolee has in “his continued liberty.” 408 U.S. at 481–82. “[S]ubject to the
6 conditions of his parole, [a parolee] can be gainfully employed and is free to be
7 with family and friends and to form the other enduring attachments of normal
8 life.” *Id.* at 482. Because “the parolee has relied on at least an implicit promise
9 that parole will be revoked only if he fails to live up to the parole conditions, . . .
10 “the liberty of a parolee, although indeterminate, includes many of the core values
11 of unqualified liberty and its termination inflicts a grievous loss on the parolee and
12 often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must
13 be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at
14 482.

15
16 This basic principle—that individuals have a liberty interest in their
17 conditional release—has been reinforced by both the Supreme Court and the
18 circuit courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152
19 (holding that individuals placed in a pre-parole program created to reduce prison
20 overcrowding have a protected liberty interest requiring pre-deprivation process);
21 *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017)
22 (“a person who is in fact free of physical confinement—even if that freedom is
23
24
25
26
27
28

1 lawfully revocable—has a liberty interest that entitles him to constitutional due
2 process before he is re-incarcerated”) (citing inter alia *Young*, 520 U.S. at 152 and
3 *Morrissey*, 408 U.S. at 482).

4
5 Just as in *Morrissey*, Mr. Dam’s release “enables him to do a wide range of
6 things open to persons” who have never been in custody or convicted of any
7 crime, including to live at home, work, care for his children, and “be with family
8 and friends and to form the other enduring attachments of normal life.”
9
10 *Morrissey*, 408 U.S. at 482.

11
12 Mr. Dam is part of a close-knit family that includes his elderly parents,
13 adult sisters, ten nephews and nieces, and two children—all of whom are U.S.
14 citizens. He has complied with all conditions of release for over 21 years and he
15 continues to do as he litigates the restoration of his lawful permanent resident
16 status before the Ninth Circuit.
17
18

19 ***3. Mr. Dam’s Liberty Interest Mandates a Hearing Before any Re-Arrest***
20 ***and Revocation of Bond***

21 Mr. Dam asserts that, here, (1) where his detention would be civil; (2)
22 where he has been at liberty for 21 years, during which time he has complied with
23 all conditions of release; (3) where he has a pending Ninth Circuit petition seeking
24 the restoration of his lawful permanent resident status; (4) where there is no
25 change in circumstances exist that would justify his lawful detention; and (5)
26 where the only circumstance that has changed appears to be ICE’s campaign to
27
28

1 arrest as many people as possible because of the new administration, due process
2 mandates that Respondents be enjoined from re-arresting and re-detaining him at
3 his September 18, 2025 appointment and remain at liberty unless and until he
4 receives notice and a hearing before a neutral adjudicator **prior** to any re-arrest or
5 revocation of his custody release.
6

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

16 Under the test set forth in *Mathews v. Eldridge*, this Court must consider three
17 factors in conducting its balancing test: “first, the private interest that will be
18 affected by the official action; second, the risk of an erroneous deprivation of such
19 interest through the procedures used, and the probative value, if any, of additional
20 or substitute procedural safeguards; and finally the government’s interest,
21 including the function involved and the fiscal and administrative burdens that the
22 additional or substitute procedural requirements would entail.” *Haygood*, 769
23
24
25
26
27
28

1 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

2 The Supreme Court “usually has held that the Constitution requires some
3 kind of a hearing **before** the State deprives a person of liberty or property.”
4
5 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a
6 “special case” where post-deprivation remedies are “the only remedies the State
7 could be expected to provide” can post-deprivation process satisfy the
8 requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where
9 “one of the variables in the *Mathews* equation—the value of predeprivation
10 safeguards—is negligible in preventing the kind of deprivation at issue” such that
11 “the State cannot be required constitutionally to do the impossible by providing
12 predeprivation process,” can the government avoid providing pre-deprivation
13 process. *Id.*

14
15 To comport with due process, ICE is required to provide Mr. Dam with
16 notice and a hearing **prior** to any re-incarceration and revocation of his custody.
17
18 *See Morrissey*, 408 U.S. at 481–82; *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.
19 1984) (holding that individuals awaiting involuntary civil commitment
20 proceedings may not constitutionally be held in jail pending the determination as
21 to whether they can ultimately be recommitted). Under *Mathews*, “the balance
22 weighs heavily in favor of [Mr. Dam’s] liberty” and requires a pre-deprivation
23 hearing before a neutral adjudicator.
24
25
26
27
28

1 **4. Mr. Dam’s Private Interest in His Liberty is Profound**

2 Under *Morrissey* and its progeny, individuals conditionally released from
3 serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*,
4 408 U.S. at 482. Even in the criminal parolee context, the courts have held that
5 the parolee cannot be re-arrested without a due process hearing in which they can
6 raise any claims they may have regarding why their re-incarceration would be
7 unlawful. *See Hurd*, 864 F.3d at 683. Thus, Mr. Dam retains a truly weighty
8 liberty interest even though he is under conditional release.

9 What is at stake in this case for Mr. Dam is one of the most profound
10 individual interests recognized by our legal system: whether ICE may unilaterally
11 nullify a prior decision releasing him from custody and to take away—without a
12 lawful basis—his physical freedom, i.e., his “constitutionally protected interest in
13 avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir.
14 2011) (internal quotation omitted). “Freedom from bodily restraint has always
15 been at the core of the liberty protected by the Due Process Clause.” *Foucha v.*
16 *Louisiana*, 504 U.S. 71, 80 (1992); *see also Zadvydas*, 533 U.S. at 690 (“Freedom
17 from imprisonment—from government custody, detention, or other forms of
18 physical restraint—lies at the heart of the liberty that [the Due Process] Clause
19 protects.”).

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

4
5 ***5. The Government’s Interest in Re-Incarcerating Mr. Dam Without a***
6 ***Hearing is Low and the Burden on the Government to Refrain from***
7 ***Re-Arresting Him Unless and Until He is Provided a Hearing is***
8 ***Minimal***

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

16 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.
22

23 Since at least by December 2004, Mr. Dam was determined by an ICE
24 officer not to be a danger to the community and has done nothing to undermine
25 that determination. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach
26
27
28

1 greater importance to a person's justifiable reliance in maintaining his conditional
2 freedom so long as he abides by the conditions on his release, than to his mere
3 anticipation or hope of freedom.") (internal quotation marks and citations
4 omitted).

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

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

16 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.²² A mandatory arrest quota is not a
22 material change in circumstances nor a legitimate increase the government's
23 interest in detaining Mr. Dam.

28 ²² See Betts, *Trump Administration Denies Daily Quota*, supra 15.

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

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

10 Enjoining Respondents from re-arresting and re-detaining Mr. Dam without
11 a pre-deprivation hearing would decrease the risk of him being erroneously
12 deprived of his liberty. Before Mr. Dam can be lawfully arrested and detained, he
13 must be provided with a hearing before a neutral adjudicator at which the
14 government is held to show that there has been sufficiently changed circumstances
15 such that prior release from custody determination, which occurred before
16 December 2, 2004, should be altered or revoked because clear and convincing
17 evidence exists to establish that Mr. Dam is a danger to the community or a flight
18 risk.
19
20
21
22

23 The procedure Mr. Dam seeks—a hearing in front of a neutral adjudicator
24 at which the government must prove by clear and convincing evidence that
25 circumstances have changed to justify his detention *before* any re-arrest and re-
26 detention—is much more likely to produce accurate determinations regarding
27 factual disputes, such as whether a certain occurrence constitutes a “changed
28

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

9
10
11
12 Due process also requires consideration of alternatives to detention at any
13 custody redetermination hearing that may occur. The primary purpose of
14 immigration detention is to ensure a noncitizen’s appearance during removal
15 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to
16 this purpose if there are alternatives to detention that could mitigate risk of flight.
17
18
19 *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
20 detention must be considered in determining whether Mr. Dam’s re-detention is
21 warranted.

22
23 //

24
25 //

26
27 //

28
29 //

B. Due Process Compels Enjoining Respondents From Causing Mr. Dam to Affirmatively Contact, Communicate With, And Obtain Identification and Travel Documents from the Vietnamese Government As Long As The Order Granting CAT Is in Effect

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.

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.**

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.**

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.**

Mr. Dam does not have any identification documents nor a passport from Vietnam. **Exhibit 9.**

1 Upon information and belief, Vietnam has only one embassy in the United
2 States, which is located in Washington DC.²³ Even if Mr. Dam is eligible to
3 obtain a passport from Vietnam, it is not safe for Mr. Dam to enter into an
4 embassy or consulate, which is not under the control of the United States. As an
5 extreme example, it is alleged that Saudi government officials kidnapped and
6 murdered Jamal Khashoggi, a U.S.-based journalist who was a critic of the Saudi
7 government when he entered a consulate in Turkey.²⁴ An IJ has found that Mr.
8 Dam is likely to be tortured if he returns to Vietnam and embassies and consulates
9 are under the control of Vietnam, not the United States.
10
11
12

13 “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
20 States before July 12, 1995. *Id.*
21
22
23
24
25
26

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

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

1 In 2017, during the first Trump administration, the countries renegotiated
2 this agreement, and ICE “began detaining some pre-1995 Vietnamese immigrants
3 who had previously been released on orders of supervision.” *Trinh*, 466 F. Supp.
4 3d at 1084. In granting a class action, the district court enjoined ICE from such
5 practices. *Id.* In doing so, the court noted that “between 2017 and 2019, ICE
6 requested travel documents for pre-1995 Vietnamese immigrants 251 times.
7
8 Vietnam granted those requests only 18 times, in just over seven percent of
9 cases.” *Id.* at 1087–88.
10
11

12 It is irrational and unsafe for the DHS to condition Mr. Dam’s continued
13 release from custody on obtaining travel documents and identification documents
14 from the Vietnamese government, which an IJ has found will likely torture him if
15 returned to their jurisdiction. This is particularly true given that the 2004 grant of
16 CAT confers Mr. Dam with legal status to live and work in the United States.
17
18 Moreover, Mr. Dam has a pending Ninth Circuit petition, which if successful, will
19 restore his lawful permanent resident status to him. Mr. Dam asks this Court to
20 enjoin Respondents from requiring him to obtain identification documents and
21 travel documents from the Vietnamese government before his September 18, 2025
22 interview and at any point in time as long as the order granting him CAT is in
23 effect.
24
25
26
27
28

//

1 **C. Due Process Compels Enjoining Respondents From Removing Mr.**
2 **Dam to Vietnam**

3 On December 2, 2004, an IJ granted Mr. Dam protection under CAT after
4 finding that, more likely than not, the Vietnamese government would torture him if
5 he returned to Vietnam. **Exhibit 2.** This status permits Mr. Dam to live and work
6 in the United States. *See* 8 C.F.R. § 208.17. Although this status does not provide
7 a pathway to lawful residence, it cannot be terminated unless and until the DHS
8 files a motion with an Immigration Court that “is accompanied by evidence that it
9 is relevant to the possibility that the alien would be tortured in the country to which
10 removal has been deferred and that was not presented at the previous hearing. 8
11 C.F.R. § 208.17(d)(1). If this occurs, the IJ must provide the non-citizen with a
12 hearing in which the non-citizen may provide evidence to show that they are in
13 continuing danger. 8 C.F.R. § 208.17(d)(2). After considering the evidence, the IJ
14 shall make its decision, which is subject to appeal. 8 C.F.R. § 208.17(d)(4).
15
16
17
18
19

20 The DHS has not filed any motion showing that Mr. Dam would be safe to
21 return to Vietnam.
22

23 In addition, the Ninth Circuit, on June 9, 2025, issued an order staying
24 removal while it is considering the merits of Mr. Dam’s claim that the BIA erred in
25 not restoring his lawful permanent residence status. **Exhibit 5.**
26
27
28

1 Normally, two court orders staying removal to a country would be enough
2 protection for any person. However, this administration is defying court orders to
3 effectuate immigration enforcement goals. See *D.V.D.*, 145 S. Ct. at 2158
4 (Sotomayor, J., dissenting) (“Here, in violation of an unambiguous TRO, the
5 Government flew four noncitizens to Guantanamo Bay, and from there deported
6 them to El Salvador. Then, in violation of the very preliminary injunction from
7 which it now seeks relief, the Government removed six class members to South
8 Sudan with less than 16 hours’ notice and no opportunity to be heard. The
9 Government’s assertion that these deportations could be reconciled with the
10 injunction is wholly without merit.”). Indeed, there is a whistleblower who alleged
11 that senior members of the Department of Justice directed attorneys not to follow
12 court orders that instructed the department to return non-citizens who had a right to
13 return or remain in the United States.²⁵
14
15
16
17
18

19 To avoid irreparable harm, Mr. Dam requests that this Court enjoin
20 Respondents from removing him to Vietnam as long as the IJ order granting him
21 protection under CAT is in effect.
22
23

24 //

25
26
27 ²⁵ See Ben Penn, *DOJ Whistleblower Reinforces Claim Bove Defied Court Order*, Bloomberg,
28 July 10, 2025 <https://news.bloomberglaw.com/us-law-week/doj-whistleblower-reinforces-claim-emil-bove-defied-court-order>

1
2
3 **D. Due Process Compels Enjoining Respondents From Removing Mr.**
4 **Dam to Any Third Country Without Legal Protections Afforded Under**
5 **Law**

6 On December 2, 2004, an IJ granted Mr. Dam protection under CAT after
7 finding that, more likely than not, the Vietnamese government would torture him if
8 he returned to Vietnam. **Exhibit 2.** This status prohibits the government from
9 removing Mr. Dam to Vietnam and permits Mr. Dam to live and work in the
10 United States. *See* [8 C.F.R. § 208.17](#).
11
12

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

23 Moreover, Congress has prohibited the Attorney General from “remov[ing]
24 an alien to a [third] country if the Attorney General decides that the alien’s life or
25 freedom would be threatened in that country because of the alien’s race, religion,
26
27
28

1 nationality, membership in a particular social group, or political opinion.” 8

2 U.S.C. § 1231(b)(3)(A).

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

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

9
10 ‘It is well established that the Fifth Amendment entitles aliens to due process
11 of law’ in the context of removal proceedings.” *Trump v. J.G.G.*, 604 U.S. ___,
12 145 S. Ct. 1003, 1006, (Apr. 7, 2025) (*per curiam*) (quoting *Reno v. Flores*, 507
13 U.S. 292, 306 (1993)). Due process requires that the government provide non-
14 citizens with notice of any removal to their native country and an opportunity to
15 contest whether they face a risk of persecution or torture in such country. “The
16 notice must be afforded within a reasonable time and in such a manner as will
17 allow them to actually seek habeas relief in the proper venue before such removal
18 occurs.” *J. G. G.*, 145 S. Ct. at 1006.
19
20
21
22

23 On August 18, 2025, Respondents sent Mr. Dam a letter, directing him to
24 report to ICE on September 18, 2025. At this appointment, Mr. Dam must bring
25 with him “medication” and “any identification from your country of origin such as
26 a passport.” **Exhibit 8.** The most reasonable inference is that Respondents intend
27
28

1 to remove Mr. Dam to Vietnam (in violation of existing order) or send him a
2 country to which he has no legal tie, connection, or evidence of safety.
3

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

10 **E. The Fifth Amendment Compels Enjoining Respondents from Placing**
11 **Mr. Dam in Current Detention Conditions, Which Are Not Safe or**
12 **Humane**

13 Under the current use of detention, since January 2025, the only reasonable
14 inference from the record is that the federal government is also creating detention
15 conditions that are not safe or humane. The government is engaged in intentional
16 overcrowding, not providing bedding so that people are sleeping on floors, not
17 providing adequate nutrition or food or regular meal times, not providing adequate
18 bathrooms so that people must use toilets in public or not have regular access to
19 them. The U.S. Senate produced a report showing that physical and sexual
20 violence is used against detainees. ICE is treating non-citizens in ways that are
21 designed to dehumanize them, such as requiring them to eat their food like dogs,
22 with their hands shackled behind them. In addition, ICE asking non-citizens who
23 are detained to give up their right to pursue their claims rather than endure
24 conditions that are designed to be inhumane, deplorable, and dehumanizing.
25
26
27
28

1 ***1. Since January 2025, Conditions in Immigration Detention Centers***
2 ***Have Substantially Deteriorated And Inflict Harm And Humiliation***
3 ***on Non-Citizens***

4 Since January 2025, conditions in immigration detention centers across the
5 country, according to numerous human rights monitoring organizations and news
6 sources, have substantially deteriorated by design and for non-legitimate purposes.
7

8 On May 14, 2025, Amnesty International released a report called
9 “Dehumanized by Design: Human Rights Violations in El Paso,” which arises
10 from its findings from an April 2025 visit to the El Paso Service Processing
11 Center.²⁶ Among its findings, “Amnesty International found that conditions at the
12 El Paso Service Processing Center (ESSPC) violate both US and international
13 detention standards. Individuals detained at EPSPC reported physical abuse by
14 guards, use of solitary confinement, unsanitary and overcrowded living spaces
15 including dysfunctional toilets, inadequate medical care, and poor-quality, expired
16 food.”²⁷
17
18
19
20

21 In July 2025, Human Rights Watch released a report called “‘You Feel Like
22 Your Life Is Over’ Abusive Practices at Three Florida Immigration Detention
23 Centers Since January 2025.”²⁸ By June 2025, “over 56,000 people were in
24

25
26 ²⁶ Amnesty International, *Dehumanized by Design: Human Rights Violations in El Paso*, May
27 14, 2025 [https://www.amnestyusa.org/reports/dehumanized-by-design-human-rights-violations-](https://www.amnestyusa.org/reports/dehumanized-by-design-human-rights-violations-in-el-paso/)
28 [in-el-paso/](https://www.amnestyusa.org/reports/dehumanized-by-design-human-rights-violations-in-el-paso/)

²⁷ Id. at 4.

²⁸ Human Rights Watch, “*You Feel Like Your Life Is Over*” *Abusive Practices at Three Florida Immigration Detention Centers Since January 2025*, July 2025 at 2

1 detention across the country, 40 percent more than in June 24, and the highest
2 detention population in the history of US immigration detention.”²⁹ In addition to
3 the rise in population, Human Rights Watch noted the change in treatment such
4 that detainees are treated “in a degrading and dehumanizing manner.”³⁰ Focusing
5 on non-citizens detained in three Florida detention centers, “[s]ome were detained
6 shackled for prolonged periods on buses without food, water, or functioning
7 toilets; there was extreme overcrowding in freezing holding cells where detainees
8 were forced to sleep on cold concrete floors under constant fluorescent lighting;
9 and many were denied access to basic hygiene and medical care.”³¹ Human
10 Rights Watch “finds that staff at the three [Florida] detention facilities researchers
11 examined subjected detained individuals to dangerously substandard medical care,
12 overcrowding, abusive treatment, and restrictions on access to legal and
13 psychosocial support.”³² Among the examples, *“officers made men eat while
14 shackled with their hands behind their backs after forcing the group to wait
15 hours for lunch: ‘We had to bend over and eat off the chairs with our mouths,
16 like dogs,’ one man said.”*³³ (emphasis added) “The Trump administration’s
17
18
19
20
21
22
23
24

25 <https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration>

26 ²⁹ Id at 1

27 ³⁰ Id. at 3.

28 ³¹ Id at 1–2.

³² Id. at 2

³³ Id. at 5

1 one-track immigration policy, singularly focused on mass deportations[,] will
2 continue to send more people into immigration detention facilities that do not have
3 the capacity to hold them and will only worsen the conditions described in this
4 report.”³⁴

6 The current administration’s management of detention centers appears to be
7 intentionally implementing policies of degradation and dehumanization. On July
8 17, 2025, a report by the Disability Rights California, entitled “‘They Treat Us
9 Like Dogs in Cages’ Inside the Adelanto ICE Processing Center,” reported that
10 detainees housed in the Adelanto ICE Processing Center “shouted in Spanish
11 about be treated like dogs in cages” during the organization’s monitoring visit on
12 June 25, 2025.³⁵ The organization reported observing “alarming” conditions.³⁶

16 The immigration detention center was housing “nearly 1,400 people at
17 Adelanto—a dramatic increase from the approximately 300 individuals in held
18 there just weeks before. Due to the surging numbers of people at Adelanto,
19 conditions appear to have quickly deteriorated.”³⁷ Among its findings, there was
20 “inadequate access to food and water, including extreme delays in meal
21 distribution, provision of food that results in significant health issues, and a
22
23
24

25
26 ³⁴ Id. at 5

27 ³⁵ Disability Rights California, ‘They Treat Us Like Dogs in Cages’ Inside the Adelanto ICE
28 Processing Center, Jul 14, 2025 at 2 [https://www.disabilityrightsca.org/drc-
advocacy/investigations/inside-the-adelanto-ice-processing-center](https://www.disabilityrightsca.org/drc-advocacy/investigations/inside-the-adelanto-ice-processing-center)

³⁶ Id. at 3

³⁷ Id. at 4

1 shortage of drinking water.”³⁸ There was also “inadequate access to clean clothes,
2 with many remaining in soiled clothing for long periods of time.”³⁹ “Individuals
3 also reported contagious respiratory viruses quickly spreading due to the increased
4 crowding at Adelanto.”⁴⁰

6 The State of California released a report in April 2025 “t[aking] issue with
7 restrictive housing being used as punishment.”⁴¹ “Staff appeared to overutilize
8 discipline and use of force.”⁴² The Otay Mesa, California facility “didn’t have a
9 psychologist on site. Detainees placed on suicide watch are put in cells with no
10 plumbing and must relieve themselves through grates on the floor, the CA Justice
11 report found.”⁴³

15 In Eloy Arizona, in May 2025, “[a] microwave fire at the Eloy Detention
16 Center led to the evacuation of detainees, raising concerns about safety procedures
17 and overcrowding.”⁴⁴ “[I]mmigrant advocates, attorneys and current and former
18

21 ³⁸ Id.

22 ³⁹ Id.

23 ⁴⁰ Id.

24 ⁴¹ Austin Grabish, *Completely Unacceptable: California Attorney General Report Finds*
25 *Immigration Detention Centers Are Failing*, ABC News, Apr. 29, 2025 at 5
<https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing>

26 ⁴² Id.

27 ⁴³ Id.

28 ⁴⁴ Raphael Romero Ruiz, *Safety, Medical Care, Overcrowding Top Worries at Eloy Detention Center*, Arizona Republic, Jul. 28, 2025 at 1
<https://www.azcentral.com/story/news/politics/immigration/2025/07/28/migrants-at-elyo-center-worry-over-safety-medical-care-overcrowding/85252920007/>

1 detainees describe . . . a pattern of mismanagement that endangers the lives of
2 detainees in their care at the privately run Eloy Detention Center.”⁴⁵

3
4 **I.** The deplorable conditions in immigration detention is not the result of the
5 lack funding but appear to be a deliberate policy decision. From a July 1, 2025
6 New York Times article, the degrading detention conditions are nationwide.⁴⁶
7
8 “Some immigrants have good a week or more without showers. Others sleep
9 pressed tightly together on bare floors. Medications for diabetes, high blood
10 pressure and other chronic health problems are often going unprovided.”⁴⁷ Paul
11 Chavez, litigation and advocacy director at Americans for Immigration Justice in
12 Florida stated “***These are the worst conditions I have seen in my 20-year career***
13
14 . . . Conditions were never great, but this is horrendous.”⁴⁸ (emphasis added).
15

16 An 18-year-old Brazilian teenager who was “pulled over on his way to
17 volleyball practice in late May” spent six days in detention in Massachusetts
18 before his release.⁴⁹ “There was one toilet for 35 to 40 men, who had no privacy
19 when using it. . . .They slept on the concrete floor in head-by-toe formation with
20
21
22
23
24

25 ⁴⁵ Id. at 3

26 ⁴⁶ Miriam Jordan and Jazmine Ulloa, *Concerns Grow Over Dire Conditions in Immigrant*
27 *Detention*, NY Times, Jul 1, 2025 <https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html>

28 ⁴⁷ Id. at 2

⁴⁸ Id. at 2

⁴⁹ Id. at 4.

1 aluminum blankets to cover them. He lost seven pounds in six days, he said,
2 because the food was poor and the portions tiny.”⁵⁰

3
4 In Tacoma, Washington, food is delivered “close to midnight.”⁵¹ The
5 detention center transferred immigrants to Alaska to be “locked up in a state
6 corrections facility in Anchorage.”⁵² A New Mexico detention center “limited
7 [each detainee] to two bottles of drinking water per day and [they] were unable to
8 flush their toilets for days at a time.”⁵³ Representative Judy Chu toured the
9 Adelanto detention center and reported that detainees “were not able to change
10 their underwear for 10 days.”⁵⁴

11
12 From July 22, 2025, NBC News reported that immigration advocates allege
13 that detainees housed in “Alligator Alcatraz, a new facility in the Everglades,
14 described what they called torturous conditions in cage-like units full of
15 mosquitos, where fluorescent lights shine bright on them at all times. Detainees
16 here also called attention to unsanitary conditions, as well as lack of food and
17 reliable medical treatment for their chronic conditions.”⁵⁵ Detainees report being
18 “stripped naked every time they are moved to a different cell,” “are only allowed
19
20
21
22
23

24 ⁵⁰ Id. at 4.

25 ⁵¹ Id.

26 ⁵² Id.

27 ⁵³ Id. at 5.

28 ⁵⁴ Id. at 5

⁵⁵ 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 one meal a day (and given only minutes to eat),” “instances of physical assaults
2 and excessive use of force by guards,” “being allowed to shower only every three
3 to four days and being kept in a cage-style unit with 32 other people.”⁵⁶
4

5 On July 30, 2025, Senator Jon Ossoff released a report called “The Abuse
6 of Pregnant Women & Children in U.S. Immigration Detention.”⁵⁷ His study
7 surveyed conditions in immigration detention facilities, “county jails, and federal
8 buildings across 25 U.S. states, Puerto Rico, at U.S. military bases (including
9 Guantanamo Bay in Cuba and Camp Lemonnier in Djibouti) and on chartered
10 deportation flights.”⁵⁸ This investigation “received or identified 510 credible
11 reports of human rights abuse” against individuals in those facilities, including
12 “41 credible reports of physical and sexual abuse of individuals in U.S.
13 immigration detention.”⁵⁹ The confirmed events include “deaths in custody,
14 physical and sexual abuse, mistreatment of pregnant women, mistreatment of
15 children, inadequate medical care, overcrowding and unsanitary living conditions,
16 inadequate food or water, exposure to extreme temperatures, denial of access to
17 attorneys, and family separations.”⁶⁰
18
19
20
21
22
23
24

25 ⁵⁶ Id at 2, 3

26 ⁵⁷ Sen. Jon Ossoff, *The Abuse of Pregnant Women & Children in U.S. Immigration Detention*,
27 Jul. 30, 2025, [https://www.ossoff.senate.gov/wp-](https://www.ossoff.senate.gov/wp-content/uploads/2025/08/250721_Pregnancy_Report_v7.pdf)
28 [content/uploads/2025/08/250721_Pregnancy_Report_v7.pdf](https://www.ossoff.senate.gov/wp-content/uploads/2025/08/250721_Pregnancy_Report_v7.pdf)

⁵⁸ Id. at 2.

⁵⁹ Id.

⁶⁰ Id.

1 “These immigration detentions, and the continued overcrowding, are
2 resulting in deaths.”⁶¹ In fiscal year 2022, only three people died in ICE
3 custody.⁶² As of July 4, 2025, 12 people have died in ICE custody since October
4 2024, which matches “the previous year’s total.”⁶³ 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.””⁶⁴ When asked
9 about the rising death rate in immigration detention, border czar Tom Homan
10 stated ““People die in ICE custody.””⁶⁵

11 “As of July 17, [2025] ICE was detaining just shy of 57,000 people
12 nationwide . . . among the highest population levels in recent years.”⁶⁶ Under prior
13 years, Congress had spent \$3.5 billion each year to house up to 41,500 detention
14 beds.⁶⁷ The new “‘One Big Beautiful Bill’ . . . increases spending for immigration

15
16
17
18
19
20
21
22
23
24 ⁶¹ Dan Gooding, *More ICE Deaths ‘Inevitable’ As Detention Numbers Soar*, Newsweek, Jul 4,
25 2025 at 2 <https://www.newsweek.com/ice-detention-center-migrant-deaths-rising-2093770>

26 ⁶² Id. at 4

27 ⁶³ Id.

28 ⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Romero Ruiz, *Safety, Medical Care, Overcrowding Top Worries*, supra n.40 at 3.

⁶⁷ Id. at 4

1 detention to \$45 billion,” which will “increase bed capacity to more than
2 100,000.”⁶⁸

3
4 The more than ten-fold increase in funding will not improve any of the
5 detention conditions. There is no longer any oversight on these conditions. “The
6 poor conditions described at Eloy are occurring as the federal government
7 simultaneously expands detention operations and dismantles internal oversight
8 mechanisms designed to monitor abuse.”⁶⁹ On March 21, 2025, “hundreds of
9 employees at the Department of Homeland Security’s three key watchdog officers
10 . . . were suspended via mass email, effectively shutting down the offices. . . .”⁷⁰

11
12 “The Trump administration has repeatedly obstructed elected officials from
13 conducting basic oversight [over the detention facilities]. There is a pattern of
14 impunity and contempt in the way the Department of Homeland Security has
15 stonewalled the Newark mayor, Ras Baraka, the New Jersey members of
16 Congress LaMonica McIver and Bonnie Watson Coleman, the New York
17 members Adriano Espaillat and Nydia Velazquez and the California members
18 Maxin Waters, Jimmy Gomez and Norma Torres when they have attempted to
19 access federal facilities, as is their right and duty.”⁷¹

20
21
22
23
24
25 _____
26 ⁶⁸ Id.

27 ⁶⁹ Id. at 11

28 ⁷⁰ Id.

⁷¹ 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>

1 Moreover, the \$45 billion in more Congressional funding will not be used
2 to improve conditions in existing spaces. Rather, the new funding appears to be
3 destined to build more facilities that will replicate the abuses found in the facility
4 nicknamed “Alligator Alcatraz.” Respondent Secretary of DHS Kristi Noem
5 stated that “*“Alligator Alcatraz can be a blueprint for detention facilities across*
6 *the country.* It will provide DHS with the beds and space needed to safely detain
7 the worst of the worst.””⁷² (emphasis added).
8
9

10 On August 1, 2025 Fort Bliss in Texas started receiving immigrants and is
11 slated “to become the site of the largest immigrant detention facility in the United
12 States. . . .” in which it will “hold 5,000 people at the detention facility.”⁷³
13
14 Despite becoming the largest detention facility, ICE has “blocked” the El Paso
15 Congressional Representative Veronica Escobar “from visiting the [new] facility .
16 . . .”⁷⁴ Representative Escobar has stated that “congressional oversight [is need] to
17 uphold humane conditions at the immigration detention site” and has filed a
18 lawsuit against the Trump administration from denying members of Congress
19 oversight and access to monitor the conditions there.⁷⁵
20
21
22
23
24

25
26 ⁷² Gooding, *More ICE Deaths ‘Inevitable’*, supra n.57 at 7.

27 ⁷³ Jeff Abbott, *El Paso’s Fort Bliss to Become Largest Immigration Detention in US*, El Paso
28 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/>

⁷⁴ Id. at 4

⁷⁵ Id. at 4–5

1 **2. Immigration Detention Is Costly And Not Needed to Guarantee That**
2 **Non-Citizens Will Attend Their Hearings**

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

9
10
11 In June 2025, the Vera Institute issued a report noting that “immigration
12 detention as a whole—is entirely unnecessary. The federal government’s own
13 data shows that detention does not deter migration, and detention is not necessary
14 to ensure that people appear in court for immigration hearings.”⁷⁶

15
16
17 From a 2019 study using government data, from 2008 to 2019, 97% of
18 immigrants appeared at immigration court if they had an attorney.⁷⁷

19
20 “The costs to the public of immigration detention are ‘staggering’”
21 *Hernandez*, 872 F.3d at 996. According to ICE’s own report, “Alternatives to
22

23
24 ⁷⁶ Nazish Dholakia, *The Truth About Immigration Detention in the United States*, Vera Institute,
25 Jul. 11, 2025 at 3 [https://www.vera.org/news/the-truth-about-immigration-detention-in-the-](https://www.vera.org/news/the-truth-about-immigration-detention-in-the-united-states)
[united-states](https://www.vera.org/news/the-truth-about-immigration-detention-in-the-united-states)

26 ⁷⁷ American Immigration Council, *Immigrants and Families Appear in Court: Setting the Record*
27 *Straight*, Jul 30, 2019 at 2 [https://www.americanimmigrationcouncil.org/fact-sheet/immigrants-](https://www.americanimmigrationcouncil.org/fact-sheet/immigrants-and-families-appear-court/#:~:text=Once%20immigrants%20manage%20to%20obtain,no%20fault%20of%20their%20own)
28 [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)
[court/#:~:text=Once%20immigrants%20manage%20to%20obtain,no%20fault%20of%20their%20](https://www.americanimmigrationcouncil.org/fact-sheet/immigrants-and-families-appear-court/#:~:text=Once%20immigrants%20manage%20to%20obtain,no%20fault%20of%20their%20own)
[0own](https://www.americanimmigrationcouncil.org/fact-sheet/immigrants-and-families-appear-court/#:~:text=Once%20immigrants%20manage%20to%20obtain,no%20fault%20of%20their%20own).

1 Detention,” the daily cost of enrolling someone in ISAP costs “less than \$4.20 per
2 day—a stark contrast from the cost of detention, which is around \$152 per day.”⁷⁸
3 Brick-and-mortar facilities take approximately two years to build.⁷⁹ To “ramp up
4 capacity,” the Trump administration is contracting with private companies to
5 instead build “temporary, soft-sided tent style structure[s],” which was used in
6 “Alligator Alcatraz.”⁸⁰ This building can be created faster than the brick-and-
7 mortar facilities “[b]ut the cost per detainee in a tent facility can be more than
8 double that because of the added expenses related to providing things like food,
9 laundry, air conditioning and running water in the remote areas where tent
10 facilities are being built. Security is also a logistical challenge because it is easier
11 for detainees to escape soft-sided structures, so tent facilities typically need more
12 security staff on site.”⁸¹

13
14 In a rush to build the new facilities, in Fort Bliss, the contract process is
15 also rushed and not transparent.⁸² In February 2025, the DHS awarded a contract
16 to build a detention facility at Fort Bliss, which it canceled in April 2025 after two
17

18
19
20
21
22 ⁷⁸ ICE, *Alternatives to Detention*, Feb. 27, 2025, last visited Aug 30, 2025, at 3
23 <https://www.ice.gov/features/atd>

24 ⁷⁹ Laura Strickler, Julia Ainsley, Didi Martinez, *Trump Administration Hits Hurdles As It Builds*
25 *A Key Immigrant Detention Facility*, NBC News, Aug. 14, 2025
26 <https://www.nbcnews.com/politics/immigration/trump-administration-hits-hurdles-builds-key-immigrant-detention-facil-rcna224608>

27 ⁸⁰ Id.

28 ⁸¹ Id.

⁸² Id.

1 investigations by the Government Accountability Office for improper bidding.⁸³

2 In July 2025, the DHS awarded the \$1.2 billion contract to a different company.⁸⁴

3 “The Acquisition Logistics Company, which has been serving as the top
4 contractor overseeing the project, has come under scrutiny recently. According to
5 public records, Acquisition Logistics is a small business run by Kenneth Wagner,
6 77, out of his single-family home in Virginia. Prior to this contract, the company’s
7 largest contract, according to public records, appears to have been worth \$16
8 million.”⁸⁵

9
10
11
12 **3. ICE Officials Are Encouraging Detained Non-Citizens to “Accept**
13 **Quick[] Deportation” Instead of Fighting Their Cases**

14 The deplorable conditions appear to be used by ICE to pressure non-citizens
15 to give up their rights to pursue their claims through immigration courts. “ICE
16 officials appeared to be trying to free up [detention] space by encouraging
17 detainees to accept quicky deportation.”⁸⁶ “A lawyer in Arizona, Ner Shefer, said
18 that some of her clients had recently been offered \$1,000 by authorities if they
19 agreed to immediate voluntary departure. She said all of them declined.”⁸⁷
20
21
22
23
24
25

26 ⁸³ Id.

27 ⁸⁴ Id.

28 ⁸⁵ Id.

⁸⁶ Jordan & Ulloa, *Concerns Grow Over Dire Conditions*, supra 42 at 8

⁸⁷ Id.

1 From a July 29, 2025, New York Times Opinion piece, an author noted that
2 the immigration detention policy is part of a larger project consistent with white
3 supremacy that “is accelerating toward a new, modern nadir of Juan Crow, just
4 downstream of Jim and Jane. . . . The targeting of the undocumented has a name,
5 after all, based in ugly history and shameful tradition: Juan Crow.”⁸⁸ The phrase
6 was popularized by journalist Roberto Lovato to describe ‘the matrix of laws,
7 social customs, economic institutions and symbolic systems’ that isolate and
8 control undocumented immigrants. The domestic policies of the Trump
9 administration have taken this legacy to a more dangerous place.”⁸⁹ The claims in
10 a Human Rights report on three Florida detention facilities read like a nightmare
11 mash-up of Guantánamo bay and American mass incarceration: freezing,
12 overcrowded facilities; routine denial of medical treatment; shackling the hands
13 and wrists of detainees; feeding detainees meager amounts of rotting food or
14 forcing them to eat it ‘like dogs,’ with their hands behind their backs; forcing
15 detainees to sleep on concrete floors.”⁹⁰

16 If Respondents re-detain Mr. Dam, it is unclear when they would release
17 him. He has had lawful status since December 2004, which allows him to live and
18

19
20
21
22
23
24
25
26 ⁸⁸ Soraya Nadia McDonald, *There’s A Name for What Trump Is Doing. Juan Crow*, N.Y. Times,
27 Jul. 29, 2025 at 6 [https://www.nytimes.com/2025/07/29/opinion/trump-juan-crow-birther-
28 race.html](https://www.nytimes.com/2025/07/29/opinion/trump-juan-crow-birther-race.html)

⁸⁹ Id.

⁹⁰ Id. at 1–2

1 work in the United States. He has a pending petition in the Ninth Circuit to
2 restore his lawful permanent residence status. But if he does not prevail, he keeps
3 his December 2004 order protecting him under CAT. Unlike other non-citizens
4 who are defending against removal, there is no foreseeable moment in which his
5 final order would be executed. Absent the DHS filing a motion to reopen
6 establishing changed conditions in Vietnam, there will be no legal basis to take
7 away his current legal status.

8 Intervention from this Court is therefore required to ensure that Mr. Dam is
9 not subject to the irreparable harm of prolonged or indefinite detention. The DHS
10 must provide Mr. Dam with a process by which the DHS provides evidence that
11 Mr. Dam is a flight risk or a danger to the public. Without such a showing, Mr.
12 Dam likely will be subjected to prolonged if not indefinite detention in detention
13 conditions that are being designed to be dehumanizing, deplorable, and punitive in
14 violation of law and due process.

15 * * *

16 As the above-cited authorities show, Mr. Dam is likely to succeed on his
17 claims that the Due Process Clause requires (1) notice and a hearing before a
18 neutral decisionmaker *prior to any* re-arrest and re-detention by ICE; (2) enjoining
19 Respondents from requiring him to communicate with and ask for identification
20 and travel documents from the Vietnam government as long as the order granting

1 CAT is in effect; (3) enjoining Respondents from removing him to Vietnam as
2 long as his order granting him CAT is in effect; (4) enjoining Respondents from
3 removing him to a third country absent a hearing and evidence that he will not be
4 persecuted or tortured in the third country; and (5) enjoining Respondents from
5 placing him in current detention conditions that are designed be unsafe and
6 inhumane. And, at the very minimum, he clearly raises serious questions
7 regarding these issues, thus also meriting a TRO. *See Alliance for the Wild*
8 *Rockies*, 632 F.3d at 1135.

12 **II. Mr. Dam Will Suffer Irreparable Harm Absent Injunctive**
13 **Relief**

14 First, on his first claim, Mr. Dam will suffer irreparable harm were he to be
15 deprived of his liberty and subjected to unlawful incarceration by immigration
16 authorities without being provided the constitutionally adequate process that this
17 motion for a temporary restraining order seeks. Detainees in ICE custody are held
18 in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir.
19 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial
20 has a detrimental impact on the individual. It often means loss of a job; it disrupts
21 family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33
22 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365,
23 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete
24 terms the irreparable harms imposed on anyone subject to immigration detention”

1 including “subpar medical and psychiatric care in ICE detention facilities, the
2 economic burdens imposed on detainees and their families as a result of detention,
3 and the collateral harms to children of detainees whose parents are detained.”
4
5 *Hernandez*, 872 F.3d at 995.

6 Second, on his second claim, Mr. Dam and his family members living in the
7
8 United States would face likely irreparable harm to have communication with the
9 Vietnamese government after the IJ has already found that, based on his family’s
10 political opposition to the government, it is likely he will be tortured if he is
11 returned to that country.
12

13 Third, on this third claim, Mr. Dam would likely face irreparable harm if
14 removed to Vietnam, given that an IJ found in 2004 that he is likely to be tortured
15 if he returns to that country.
16

17 Fourth, on this fourth claim, Mr. Dam would likely face irreparable harm if
18 sent to a third country where he has no ties, no contacts, and no showing that he
19 would be accepted and not persecuted in that country.
20

21 Fifth, on this fifth claim, Mr. Dam would likely face irreparable harm if
22 placed in detention conditions that are documented to be unsafe and inhumane.
23
24 This is particularly true given, that unlike other non-citizens, Mr. Dam has legal
25 status in the form of an order protecting him under the Convention Against
26
27
28

1 Torture. If he is detained, it is unclear when Respondents would release him from
2 detention.

3
4 **III. The Balance of Equities and the Public Interest Favor**
5 **Granting the Temporary Restraining Order**

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

8 First, the balance of hardships strongly favors Mr. Dam the government
9 cannot suffer harm from an injunction that prevents it from engaging in unlawful
10 practices. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS
11 cannot reasonably assert that it is harmed in any legally cognizable sense by being
12 enjoined from constitutional violations.”). Therefore, the government cannot
13 allege harm arising from a temporary restraining order or preliminary injunction
14 ordering it to comply with the Constitution or existing immigration laws, which
15 require affirming Mr. Dam with notice and hearings before re-arrest, re-detention,
16 or sending him to any third country.

17 Second, given that there are two court orders preventing Mr. Dam from
18 being removed to Vietnam, there is harm to the government to ensure that it will
19 comply with existing court orders.

20 Third, any burden imposed by requiring the DHS to refrain from arresting
21 and detaining Mr. Dam unless and until he is provided a hearing before a neutral
22 is both *de minimis* and clearly outweighed by the substantial harm he will suffer as
23

1 if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)
2 (“Society’s interest lies on the side of affording fair procedures to all persons,
3 even though the expenditure of governmental funds is required.”).
4

5 Fourth, a temporary restraining order is in the public interest. “[I]t would
6 not be equitable or in the public’s interest to allow [a party] . . . to violate the
7 requirements of federal law, especially when there are no adequate remedies
8 available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014)
9 (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a
10 temporary restraining order is not entered, the government would effectively be
11 granted permission to detain or remove Mr. Dam in violation of the requirements
12 of relevant laws, regulations, and Due Process. “The public interest and the
13 balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional
14 rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quotations and citations
15 omitted); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from
16 an injunction that ensures that individuals are not deprived of their liberty and
17 held in immigration detention because of bonds established by a likely
18 unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir.
19 2005) (“Generally, public interest concerns are implicated when a constitutional
20 right has been violated, because all citizens have a stake in upholding the
21 Constitution.”).
22
23
24
25
26
27
28

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

3
4 **CONCLUSION**

5 For all the above reasons, this Court should find that Mr. Dam warrants a
6 temporary restraining order and a preliminary injunction ordering that Respondents
7 refrain (1) from re-arresting and re-detaining Mr. Dam without a showing that he is
8 a flight risk or danger to the public; (2) from requiring Mr. Dam to communicate
9 with and seek and obtain identification and travel papers from the Vietnamese
10 government as long as the 2004 order granting him CAT remains in effect; (3)
11 from removing Mr. Dam to Vietnam in violation of the 2004 IJ order and Ninth
12 Circuit order; (4) from refouling or sending Mr. Dam to any third country without
13 a hearing to establish he would be safe in that country; (5) from placing Mr. Dam
14 in current immigration detention conditions that violate the Fifth Amendment; and
15 (6) granting any further relief as the Court deems proper.

16
17
18
19
20 Dated: September 3, 2025

Respectfully submitted,

21
22
23 /s/ Kari Hong

24 Kari Hong

25 Attorney for Petitioner
26
27
28

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 September 3, 2025, in Missoula, Montana.

/s/ Kari Hong
Kari Hong
Attorney for Petitioner