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12 **pro hac vice application forthcoming*

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14
15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF ARIZONA

17
18 Vienghkone SIKEO,

19 Petitioner-Plaintiff,

20 v.

21 John E. Cantu, Field Office Director,
22 U.S. Immigration and Customs Enforcement,
23 U.S. Department of Homeland Security;
24 Kristi Noem, Secretary of U.S. Department of
25 Homeland Security; and Pam Bondi,
26 Attorney General of the United States,
27 Warden, Florence Detention Center; in their official
28 capacities;

Respondents-Defendants.

Case No. CV-25-3191-PHX-SHD

**[CORRECTED] NOTICE OF
MOTION; MOTION FOR EX
PARTE TEMPORARY
RESTRANING ORDER AND
PRELIMINARY
INJUNCTION;
MEMORANDUM OF POINTS
AND AUTHORITIES**

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

NOTICE OF MOTION

2 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Petitioner hereby moves
3 this Court for an order enjoining Respondents Department of Homeland Security (“DHS”), U.S.
4 Immigration and Customs Enforcement (“ICE”), and Pam Bondi, in her official capacity as the
5 U.S. Attorney General, from removing Petitioner Mr. Sikeo until he is afforded a hearing before
6 a neutral adjudicator, as required by the Due Process clause of the Fifth Amendment, to
7 determine whether his removal is reasonably foreseeable and otherwise whether circumstances
8 have changed such that his re-detention is justified—that is, whether he poses a danger or a flight
9 risk. Mr. Sikeo additionally seeks to enjoin Respondents from removing him from the United
10 States to any third country to which he does not have a removal order (i.e., any country other
11 than Laos) without first providing him with constitutionally-compliant procedures.

12 The reasons in support of this Motion are set forth in the accompanying Memorandum of
13 Points and Authorities. This Motion is based on the concurrently-filed Declaration of Zachary
14 Nightingale with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and
15 Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in
16 support of this Motion, Petitioner Mr. Sikeo raises that he warrants a temporary restraining order
17 due to his weighty liberty and life interests under the Due Process Clause of the Fifth
18 Amendment in preventing his unlawful re-incarceration absent a pre-deprivation due process
19 hearing before a neutral adjudicator where the government bears the burden, and in preventing
20 his summary removal to a third country, other than Laos, without first providing him with notice
21 and an opportunity to apply for fear-based relief as to that third country.

22 WHEREFORE, Petitioner prays that this Court grant his request for a temporary
23 restraining order and a preliminary injunction enjoining Respondents from transferring him to
24 another detention center, continuing his detention, or removing him to a third country unless and
25 until he is afforded a hearing before a neutral adjudicator on whether his removal is reasonably
26 foreseeable and further whether it is justified by evidence that he is a danger to the community or
27 a flight risk, and refrain from removing him to any third country without first providing him with
28 constitutionally-compliant procedures.

1 Dated: September 2, 2025

Respectfully Submitted

2 /s/Johnny Sinodis
3 Attorney for Petitioner-Plaintiff

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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. Viengkhone Sikeo, by and through undersigned counsel, hereby
3 files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S.
4 Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE")
5 from re-arresting him unless and until he is afforded notice and a hearing before a neutral
6 adjudicator on the questions of whether his removal to Laos is reasonably foreseeable and
7 otherwise whether there are changed circumstances showing he is now a danger and a flight risk
8 such that his re-detention would be warranted. Petitioner Mr. Sikeo further seeks to enjoin
9 Respondents from removing him to any third country without first providing him with
10 constitutionally-compliant procedures.

11 Mr. Sikeo is an ethnically Laotian refugee, born in Thailand, who has lived in the United
12 States, first as a refugee and then as a U.S. lawful permanent resident, since approximately 1987.
13 Although he was ordered removed on July 12, 2005, and then held for another six months while
14 the government was to attempt to secure travel documents for his removal, he was released from
15 detention due to ICE's inability to execute his removal. Since his release from detention in 2005,
16 Mr. Sikeo has lived at liberty for twenty years while complying with all reporting requirements,
17 and raising a family with his fiancée and their two children. He also applied for and received a
18 work authorization document, and for years he has been working as a diesel mechanic.

19 *Declaration of Zachary Nightingale ("ZN Decl.") at Exhibit ("Exh.") A.*

20 Once a noncitizen is released from ICE detention, as Mr. Sikeo was in 2005, their re-
21 detention is limited by regulation, statute and the constitution. By statute and regulation, only in
22 specific circumstances (that do not apply here) does ICE have the authority to re-detain a
23 noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability
24 of ICE to simply re-arrest someone following their release from detention, however, is further
25 limited by the Due Process Clause because it is well-established that individuals released from
26 incarceration have a liberty interest in their freedom. Here, this means that, *prior to any re-*
27 *detention*, Mr. Sikeo must be provided with notice and a hearing before a neutral adjudicator at
28 which DHS bears the burden of justifying his re-detention.

1 That basic principle—that individuals placed at liberty are entitled to process before the
2 government imprisons them—has particular force here, where Mr. Sikeo was already released
3 from detention in 2005 after findings that his removal was not reasonably foreseeable and that he
4 need not be incarcerated to prevent flight or to protect the community, and no circumstances have
5 changed that would justify his re-arrest.

6 Therefore, at a minimum, in order to lawfully re-arrest Mr. Sikeo, the government must
7 first establish before a neutral adjudicator that his removal is reasonably foreseeable, and
8 otherwise that he is a danger to the community or a flight risk, such that his re-incarceration is
9 necessary.

10 Additionally, Mr. Sikeo has a protected interest not only in his liberty, but also in his life.
11 Here, this means that the government must provide him with constitutionally-complaint
12 procedures prior to any removal to a third country (i.e. any country apart from Laos, which is the
13 only country listed in his removal order): notice and an adequate opportunity to apply for fear-
14 based relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading
15 Treatment or Punishment as to that third country.

16 Mr. Sikeo meets the standard for a temporary restraining order. He will suffer immediate
17 and irreparable harm absent an order from this Court enjoining the government from removing
18 him to a third country where his life could be in danger without due process. Because holding
19 federal agencies accountable to constitutional demands is in the public interest, the balance of
20 equities and public interest are also strongly in Petitioner Mr. Sikeo's favor.

21 **II. STATEMENT OF FACTS AND CASE**

22 Mr. Sikeo was born in a refugee camp in Thailand to parents who are from Laos. On
23 information and belief, he is stateless and has never had citizenship in any country. He
24 immigrated as a child with his parents to the United States, first as a refugee and then was granted
25 lawful permanent resident status.

26 He was ordered removed in 2005 by an Immigration Judge in Eloy, Arizona on the basis
27 of a conviction he sustained under California Penal Code Section 261.5(c). Although it was likely
28 charged as an aggravated felony conviction at the time, the Supreme Court has since held that it

1 is not an aggravated felony, and the Ninth Circuit has held it is not a crime involved moral
2 turpitude. Therefore, it never should have been a basis for this removal order.

3 Since being released from ICE custody in June 2005, Mr. Sikeo has exercised his right to
4 liberty, and has been on an order of supervision. He continues to lawfully reside and work in the
5 United States, and he plays an integral role in the life of his U.S. citizen partner, two children and
6 elderly parents, all of whom are U.S. citizens.

7 Mr. Sikeo had been reporting annually to ICE since 2005 and thus was surprised to be
8 taken into ICE custody in July of 2025. He was not told the reason. Because he believes he is
9 stateless, he did not believe he could be properly deported to any country.

10 On information and belief, Mr. Sikeo has never been ordered removed to any third country
11 or notified of such potential removal. Yet, given the Supreme Court of the United States' decision
12 on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153,
13 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded
14 the government from removing noncitizens to third countries without notice and an opportunity
15 to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send
16 noncitizens to far corners of the planet—places they have absolutely no connection to
17 whatsoever—in violation of clear statutory obligations set forth in the Immigration and
18 Nationality Act (INA), a binding treaty, and due process. In the absence of the nationwide
19 injunction, individual lawsuits like this one are the only method to challenge the illegal third-
20 country removals.

21 In recent weeks, individuals in identical or substantially similar circumstances as Mr.
22 Sikeo have been re-arrested and re-incarcerated absent notice and a hearing and even though ICE
23 could not (and still cannot) physically remove them from the country, resulting in district courts
24 granting them habeas and other relief. *See, e.g., Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025
25 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025) (noncitizen with CAT protection unlikely to be
26 removed to third country in foreseeable future because he first must receive the opportunity to
27 present a fear-based claim as to that country); *Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025
28 WL 2097470, at *2 (N.D. Cal. July 26, 2025) (stateless Palestinian on OSUP likely to be re-

1 arrested despite no likelihood of removal); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025
 2 WL 1993771, at *1 (E.D. Cal. July 16, 2025) (Vietnamese national on OSUP rearrested even
 3 though government had not obtained travel document); *Phan v. Becerra*, No. 2:25-CV-01757-
 4 DC-JDP, 2025 WL 1993735, at *1 (E.D. Cal. July 16, 2025) (same).¹

5 By statute and regulation, ICE has the authority to re-detain a noncitizen previously
 6 ordered removed only in specific circumstances, including where an individual violates any
 7 condition of release or the individual's conduct demonstrates that release is no longer appropriate.
 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed by the Due
 9 Process Clause because it is well-established that individuals released from incarceration have a
 10 liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr.
 11 Sikeo's case, due process requires notice and a hearing, *prior to any re-arrest*, at which he would
 12 be afforded the opportunity to advance her arguments as to why he should not be re-detained.

13 Here, Respondents created a reasonable expectation that Mr. Sikeo would be permitted to
 14 live and work in the United States without being subject to arbitrary arrest and removal. In
 15 addition to being granted CAT protection, the OSUP provided to him by ICE enables her to
 16 continue lawfully residing and working in the United States. This reasonable expectation creates
 17 constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601–
 18 03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a
 19 constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015),
 20 affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that “DACA involve[s]
 21 issuing benefits” to certain applicants). These benefits are entitled to constitutional protections no
 22 matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*,
 23 287 F.3d 786, 797 (9th Cir. 2002) (“[T]he identification of property interests under constitutional
 24 law turns on the substance of the interest recognized, not the name given that interest by the state
 25 or other independent source.”) (internal quotations omitted).

26

27 ¹ *See also* “Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some
 28 overnight,” CBS News (June 7, 2025), <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; “They followed the government’s rules. ICE held them anyway,” LAist (June 11, 2025), <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>.

1 Further, the Supreme Court has limited the potentially indefinite post-removal order
 2 detention to a maximum of six months when removal is not reasonably foreseeable. *Zadvydas v.*
 3 *Davis*, 533 U.S. 678, 701 (2001).

4 The basic principle that individuals placed at liberty are entitled to process before the
 5 government imprisons them has particular force here, where Mr. Sieko was *already* previously
 6 released from ICE detention twenty years ago, after which he began to rebuild his life, including
 7 by securing employment. Under these circumstances, ICE was required to afford him the
 8 opportunity to advance arguments in favor of his freedom before robbing him of his liberty. He
 9 must therefore not be re-detained unless and until ICE proves to a neutral arbiter that (1) his
 10 detention is necessary because there has been a material change in circumstances establishing that
 11 he is a flight risk or a danger to the community and (2) that his removal is reasonably foreseeable.
 12 Numerous federal district courts in the Northern, Eastern, and Central Districts of California have
 13 already ordered similar relief. *See, e.g., J.P. v. Santacruz*, 8:25-cv-01640-FWS-JC, Dkt. 10 (C.D.
 14 Cal. July 28, 2025); *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-JC, Dkt. 14 (C.D.
 15 Cal. Aug. 14, 2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No.
 16 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025
 17 WL 1993735, at *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10
 18 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D. Cal.
 19 July 24, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *7 (N.D. Cal.
 20 Aug. 6, 2025); *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025),
 21 *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D. Tex. Aug. 3, 2025).

22 Additionally, under the INA, if ICE intends to attempt to remove Mr. Sieko to a third
 23 country, ICE *must* first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE *must* provide him
 24 with sufficient notice and an opportunity to respond and apply for fear-based relief as to that
 25 country, in compliance with the INA, due process, and the binding international treaty: The
 26 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²
 27

28 ² United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec.
 10, 1984), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>; *see also* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA).

1 Currently, DHS has a policy of removing or seeking to remove individuals to third countries
2 without first providing constitutionally adequate notice of third country removal, or any
3 meaningful opportunity to contest that removal if the individual has a fear of persecution or torture
4 in that country.

5 As stated above, the U.S. District Court for the District of Massachusetts in *D.V.D.*
6 previously issued a nationwide preliminary injunction blocking such third country removals
7 without notice and a meaningful opportunity to apply for relief under the CAT, in recognition that
8 the government's policy violates due process and the United States' obligations under the CAT.
9 The U.S. Supreme Court has since granted the government's motion to stay the injunction on June
10 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025), limiting
11 nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an
12 opinion, signals only disagreement with the nature, and not the substance, of the nationwide
13 preliminary injunction.

14 On information and belief, Mr. Sikeo is being detained by ICE for the purpose of removal
15 to a country in which he does not hold citizenship. Counsel attempted to communicate with ICE
16 officials regarding which country they intend to remove Mr. Sikeo to, and were informed it is his
17 country of citizenship, which in this case does not resolve the unknown question of which country
18 that is, since he appears to be stateless. Counsel has not been able to review the removal order to
19 understand to which country he was ordered removed, and thus has reason to believe he might be
20 removed to a country other than that contained on his order of removal. Moreover, because he
21 believes he is stateless, it is possible that his life would be in danger if a country agrees to accept
22 him despite his lack of citizenship in that country, and thus he should have the opportunity to raise
23 his claim under the Convention Against Torture, which he could not previously do.

24 In this individual habeas petition and complaint for declaratory and injunctive relief, Mr.
25 Sikeo submits that he cannot be removed to any third country unless he is first provided with
26 adequate notice and a meaningful opportunity to apply for protection under the CAT. Other
27 federal district courts have already issued similar relief. *See Vaskanyan v. Janecka*, No. 5:25-CV-
28 01475-MRA-AS, 2025 WL 2014208, at *9 (C.D. Cal. June 25, 2025); *Hoac*, No. 2:25-CV-01740-

1 DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at
 2 *7; *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30,
 3 2025); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGRx (C.D. Cal. Jul. 14, 2025); *Ortega v.*
 4 *Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025).

5 **III. LEGAL STANDARD**

6 Petitioner is entitled to a temporary restraining order if he establishes that he is “likely to
 7 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
 8 that the balance of equities tips in [his] favor, and that an injunction is in the public interest.”
 9 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D.*
 10 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
 11 temporary restraining order standards are “substantially identical”). Even if Petitioner does not
 12 show a likelihood of success on the merits, the Court may still grant a temporary restraining
 13 order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips
 14 “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild*
 15 *Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner
 16 overwhelmingly satisfies both standards.

17 **IV. ARGUMENT**

18 **A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER**

19 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
 20 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
 21 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
 22 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
 23 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974).

24 Without intervention by this Court, Petitioner Mr. Sikeo is likely to be re-arrested absent
 25 notice or a hearing before a neutral adjudicator—even though his removal is not reasonably
 26 foreseeable and there is no change in circumstances—in violation of his due process rights. Given
 27 that he cannot be deported to neither Thailand nor Laos, he is also likely to be deported to a third
 28 country without notice or an opportunity to apply for fear-based relief. Mr. Sikeo will continue

suffer irreparable injury if he is arrested and detained without due process, and if he is summarily removed to a third country—far away from his family and his community.

1. Petitioner 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-Incarceration by ICE.

Mr. Sikeo is likely to succeed on his claim that The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

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

The Court must therefore order that the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether clear and convincing evidence demonstrates that Mr. Sikeo is a danger to the community or a flight risk, taking into consideration alternatives to detention, and that his removal is reasonably foreseeable, such that his re-incarceration is warranted.

2. Petitioner is Likely to Succeed on the Merits of His Claim That the Fifth Amendment forbids the government from depriving him of his individual right to be free from unjustified deprivations of liberty without substantive due process

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

Under the INA, Respondents have a clear and non-discretionary right to Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

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

The Court must therefore order that the government must provide him with a hearing before

1 a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether
 2 clear and convincing evidence demonstrates that Mr. Sikeo is a danger to the community or a
 3 flight risk, taking into consideration alternatives to detention, and that his removal is reasonably
 4 foreseeable, such that his re-incarceration is warranted.

5 **3. Petitioner is likely to succeed on the merits that the fifth
 6 amendment forbids the government from depriving him of his
 7 right to be free from unjustified deprivations of liberty**

8 Mr. Sikeo is also likely to succeed on the merits of his claim that The Due Process Clause
 9 of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the
 10 deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v.*
 11 *Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D. Cal. 1994) (“[D]ue process
 12 requires that government action falling within the clause’s mandate may only be taken where there
 13 is notice and an opportunity for hearing.”).

14 Mr. Sikeo has a protected interest in his life. Thus, prior to any third country removal, he
 15 must be provided with constitutionally compliant notice and an opportunity to respond and contest
 16 that removal if he has a fear of persecution or torture in that country.

17 The INA, FARRA, and implementing regulations further mandate meaningful notice and
 18 opportunity to present a fear-based claim to an IJ before ICE deports a person to a third country.

19 Mr. Sikeo has a due process right to meaningful notice and opportunity to present a fear-
 20 based claim to an IJ before DHS deports him to a third country. *See, e.g., Aden v. Nielsen*, 409 F.
 21 Supp. 3d 998, 1004 (W.D. Wash. 2019). He also has a due process right to implementation of a
 22 process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*,
 23 498 U.S. 479, 491 (1991). Mr. Sikeo further has a due process right to not be re-detained because
 24 Respondents have no procedural protections to ensure meaningful notice and an opportunity to
 25 present a fear-based claim prior to removal to a third country. *Zadvydas v. Davis*, 533 U.S. 678,
 26 690 (2001). The APA likewise compels a reviewing court to “hold unlawful and set aside agency
 27 action, findings, and conclusions found to be . . . without observance of procedure required by
 28 law.” 5 U.S.C. § 706(2)(D).

1 By failing to implement a process or procedure to afford Mr. Sikeo meaningful notice and
2 opportunity to present a fear-based claim to an IJ before DHS deports a person to a third country
3 and by re-detaining previously released individuals pursuant to the July 9, 2025 "Guidance,"
4 Respondents would violate Mr. Sikeo's substantive and procedural due process rights and are not
5 implementing procedures required by the INA, FARRA, and the implementing regulations.

6 Accordingly, the Court should declare that Respondents would violate Mr. Sikeo's
7 constitutional right to due process and that the Due Process Clause affords him the right to a
8 process and procedure ensuring that DHS provides meaningful notice and opportunity to present
9 a fear-based claim to an IJ before DHS deports her to a third country.

10 The Court should enjoin Respondents from failing to provide Mr. Sikeo with meaningful
11 notice and opportunity to present a claim for protection to an IJ before DHS deports him to a third
12 country.

13 For these reasons, Mr. Sikeo's removal to any third country without adequate notice and
14 an opportunity to apply for relief under the CAT would violate his due process rights, as well as
15 her rights under the INA, FARRA, and the implementing regulations. The only remedy of this
16 violation is for this Court to order that he not be summarily removed to any third country unless
17 and until he is provided constitutionally adequate procedures.

18 **4. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief**

19 Mr. Sikeo will suffer irreparable harm were he to be deprived of his liberty and subjected
20 to unlawful detention by immigration authorities without being provided the constitutionally
21 adequate process that this motion for a temporary restraining order seeks. Detainees in civil ICE
22 custody are held in "prison-like conditions" which have real consequences for their lives. *Preap*
23 v. *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he
24 time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of
25 a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33
26 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984).
27 Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on
28 anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE

1 detention facilities, the economic burdens imposed on detainees and their families as a result of
 2 detention, and the collateral harms to children of detainees whose parents are detained.”
 3 *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor
 4 conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary
 5 of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024)
 6 (reporting violations of environmental health and safety standards; staffing shortages affecting
 7 the level of care detainees received for suicide watch, and detainees being held in administrative
 8 segregation in unauthorized restraints, without being allowed time outside their cell, and with no
 9 documentation that they were provided health care or three meals a day).³

10 Mr. Sikeo has been out of ICE custody for twenty years. During that time, he has been
 11 reconnecting with his family and community. He has been gainfully employed as a diesel
 12 mechanic. He has a U.S. citizen fiancée and two US citizen children, who all reside in California.
 13 *ZN Decl.* Further detention would irreparably harm not only him, but also his family and
 14 community members who rely on him. *Id.*

15 Further, Mr. Sikeo will suffer irreparable harm were he to be removed to a third country
 16 without first being provided with constitutionally-compliant procedures to ensure that his right to
 17 apply for fear-based relief is protected. Individuals removed to third countries under DHS’s
 18 policy have reported that they are now stuck in countries where they do not have government
 19 support, do not speak the language, and have no network.⁴ Others removed in violation of their
 20 prior grant of protection under the Convention Against Torture have reported that they have
 21 faced severe torture at the hands of government agents.⁵ It is clear that “the deprivation of
 22 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695
 23 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a

24 ³ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
 25 (last accessed June 27, 2025).

26 ⁴ NPR, “Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May
 27 5, 2025), available at: <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

28 ⁵ NPR, “Abrego Garcia says he was severely beaten in Salvadoran prison” (July 3, 2025),
 available at: <https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture>.

1 temporary restraining order is necessary to prevent Mr. Sikeo from suffering irreparable harm by
2 being subject to unlawful and unjust detention, and by being summarily removed to any third
3 country where he may face persecution or torture.

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

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

8 First, the balance of hardships strongly favors Mr. Sikeo. The government cannot suffer
9 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*
10 *L.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed
11 in any legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the
12 government cannot allege harm arising from a temporary restraining order or preliminary
13 injunction ordering it to comply with the Constitution.

14 Further, any burden imposed by requiring DHS to refrain from re-arresting Mr. Sikeo
15 unless and until he is provided a hearing before a neutral adjudicator is both *de minimis* and clearly
16 outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713
17 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures
18 to all persons, even though the expenditure of governmental funds is required.”). Similarly, any
19 burden of requiring Respondents *not* to remove Mr. Sikeo to any third country is outweighed by
20 the substantial harm he may suffer if removed to a country where he will face persecution or
21 torture. *See id.*

22 Finally, a temporary restraining order is in the public interest. First and most importantly,
23 “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the
24 requirements of federal law, especially when there are no adequate remedies available.” *Ariz.*
25 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v.*
26 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the
27 government would effectively be granted permission to detain Mr. Sikeo, and/or to summarily
28 remove him to any third country, in violation of the requirements of Due Process. “The public

1 interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional
2 rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that ensures
3 that individuals are not deprived of their liberty and held in immigration detention because of
4 bonds established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d
5 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a
6 constitutional right has been violated, because all citizens have a stake in upholding the
7 Constitution.”).

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

11 **V. CONCLUSION**

12 For all the above reasons, this Court should find that Mr. Sikeo warrants a temporary
13 restraining order and preliminary injunction ordering that Respondents refrain from transferring
14 him to another detention center, continuing his detention, or removing him to a third country
15 unless and until he is afforded a hearing before a neutral adjudicator on whether his removal is
16 reasonably foreseeable and further whether it is justified by evidence that he is a danger to the
17 community or a flight risk, and refrain from removing him to any third country without first
18 providing him with constitutionally-compliant procedures.

19 Dated: September 2, 2025

Respectfully submitted,

20 s/Johnny Sinodis

21 Attorney for Petitioner

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