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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Rachana DUONG,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of San
Francisco Office of Detention and Removal, U.S.
Immigrations and Customs Enforcement; U.S.
Department of Homeland Security;

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

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

Pam BONDI, in her Official Capacity, Attorney
General of the United States;

Respondents-Defendants.

Case No. 25-7598

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

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

IMMIGRATION HABEAS CASE

INTRODUCTION

1
2 1. Petitioner-Plaintiff Rachana Duong (“Petitioner” or “Mr. Duong”) brings this petition for
3 writ of habeas corpus to remedy Respondents-Defendants’ (“Respondents”) unlawful re-
4 detention of Mr. Duong without any process, in violation of the Fifth Amendment to the U.S.
5 Constitution.

6 2. Mr. Duong is a long-time Lawful Permanent Resident (“LPR”) who was previously in
7 Immigration and Customs Enforcement (“ICE”) custody for approximately three months, from
8 March 2020 through June 2020, during which his physical and mental health suffered acutely. On
9 June 2, 2020, he was released from ICE custody pursuant to a bail order from District Judge Vince
10 Chhabria. While at liberty for more than five years since then, Mr. Duong has fully complied with
11 the bail order, the requirements of his parole, and his ICE supervision conditions, including
12 wearing an ankle monitor. Based on this compliance, Mr. Duong was released a year early from
13 his parole supervision and ICE removed his ankle monitor in June 2022. Mr. Duong has not been
14 arrested or committed any crime since his release.

15 3. Mr. Duong is the primary caretaker for his elderly mother, who struggles with severe
16 medical conditions, including kidney failure, and is on dialysis. Mr. Duong also houses his
17 nephew and provides essential support for him, including covering many of his living expenses.
18 Mr. Duong also works for Turn Mental Health Services, a community organization that provides
19 essential services to individuals with mental health and financial challenges.

20 4. Despite his spotless record over the more than five years since a federal court ordered his
21 release, on September 6, 2025, ICE arrested Mr. Duong at his home in Fremont, California. At
22 approximately 9:10 A.M., ICE officers knocked on Mr. Duong's door and stated that there was
23 an issue with the submission of his photo as required by ISAP and that he needed to retake it. One
24 of the ICE officers stated that Mr. Duong simply had to step outside the home and allow his photo
25 to be taken in order to avoid a citation. When Mr. Duong complied and stepped outside of his
26 house, however, additional ICE officers waiting along the sides of the building approached and
27 detained Mr. Duong. The ICE officers stated that the reason for Mr. Duong’s abrupt re-detention
28

1 was that the photograph could not be uploaded to the ISAP monitoring application, so Mr. Duong
2 needed to be “processed in detention.”

3 5. The Fifth Amendment’s Due Process Clause mandates that immigration detention serve a
4 legitimate purpose—namely to mitigate flight risk or prevent danger to the community. The fact
5 that Mr. Duong has been out of detention for *more than five years* without incident strongly
6 indicates that detention is not required to mitigate flight risk or prevent danger to the community.

7 6. Further, it is well-established that Mr. Duong has a liberty interest in his years-long
8 freedom and that the Fifth Amendment’s Due Process Clause requires certain procedural
9 protections be afforded to him prior to any re-detention. At minimum, due process entitled Mr.
10 Duong to notice and a hearing before a neutral adjudicator at which Respondents would need to
11 establish that detention is warranted to mitigate flight risk or prevent danger to the community
12 *prior to* the deprivation of his liberty. Because Respondents failed to provide such a hearing, Mr.
13 Duong’s current detention is unlawful and he therefore seeks immediate release.

14 JURISDICTION

15 7. Upon information and belief, Mr. Duong is currently detained in the custody of
16 Respondents at 630 Sansome Street, San Francisco, California.

17 8. Jurisdiction is proper over a writ of habeas corpus pursuant to Art. 1 § 9, cl. 2 of the United
18 States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. §
19 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment
20 of the U.S. Constitution, the Immigration & Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*,
21 and the Administrative Procedures Act (“APA”), 5 U.S.C. § 500.

22 9. The Court may grant declaratory and injunctive relief under the habeas corpus statutes, 28
23 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the Administrative
24 Procedures Act, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651. This Court also has
25 broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*,
26 977 F.3d 935, 941 (9th Cir. 2020).

27 10. The federal habeas statute establishes the Court’s power to decide the legality of Mr.
28 Duong’s detention and directs courts to “hear and determine the facts” of a habeas petition and to

1 “dispose of the matter as law and justice require.” 28 U.S.C. § 2243. Moreover, the Supreme
2 Court has held that the federal habeas statute codifies the common law writ of habeas corpus as
3 it existed in 1789. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“[A]t its historical core, the writ of
4 habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in
5 that context that its protections have been strongest.”). The common law gave courts power to
6 release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190
7 U.S. 40, 63 (1903) (“[T]he Queen’s Bench had, ‘independently of statute, by the common law,
8 jurisdiction to admit to bail[.]’”) (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

9 REQUIREMENTS OF 28 U.S.C. § 2243

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

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

20 13. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts
21 to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
22 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
23 omitted).

24 VENUE

25 14. Venue is proper in this District because it is the district in which Mr. Duong is confined
26 at the time of this petition’s filing. *See Ex Parte Endo*, 323 U.S. 283, 306 (1944); *Doe v. Garland*,
27 109 F.4th 1188, 1197-98 (9th Cir. 2024); *see also Ozturk v. Hyde*, 136 F.4th 382, 390-91 (2d Cir.
28 2025); *Khalil v. Joyce*, 777 F. Supp. 3d 369, 393-94 (D.N.J. 2025). This District also has territorial

jurisdiction over Respondent Polly Kaiser, the Acting ICE San Francisco Field Office Director who has taken Mr. Duong into custody in San Francisco and is currently Mr. Duong's custodian.

15. Additionally, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States, acting in their official capacity; a substantial part of the events or omissions giving rise to the claim occurred or will occur in the Northern District of California (namely Mr. Duong's arrest in Fremont, California); Mr. Duong resides in this District; and there is no real property involved in this action.

INTRADISTRICT ASSIGNMENT

16. Mr. Duong was re-detained by the San Francisco Field Office of ICE in San Francisco, California. Assignment to the San Francisco or Oakland Division of this Court is therefore proper under N.D. Local Rule 3-2(d).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Mr. Duong asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

18. No statutory exhaustion requirements apply to Mr. Duong's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

PARTIES

1 19. Petitioner Rachana Duong is a long-time LPR who was admitted to the United States as a
2 refugee when he was five years old and who has lived in the United States ever since. He and his
3 nephew reside together in Fremont, California. Mr. Duong was taken into custody by ICE on
4 September 6, 2025 at his home at 4019 Randy Commons, Fremont, California 94538 at around
5 9:10am. Upon information and belief, Mr. Duong is currently being held at 630 Sansome Street,
6 San Francisco California 94111 (“630 Sansome”).

7 20. Respondent Polly Kaiser is the Acting Field Office Director for the San Francisco Field
8 Office of ICE Enforcement and Removal Operations (“ERO”). Respondent Kaiser maintains her
9 office in San Francisco, California, within this judicial district. The San Francisco Field Office
10 oversees custody determinations of noncitizens at its office at 630 Sansome and holds some
11 noncitizens in custody there temporarily before their transfer to other facilities. Respondent
12 Kaiser is the federal official most directly responsible for Mr. Duong’s custody and is his legal
13 custodian. She is named in her official capacity.

14 21. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs
15 Enforcement. Respondent Lyons is responsible for ICE’s policies, practices, and procedures,
16 including those relating to the detention of noncitizens. Respondent Lyons is a legal custodian of
17 Mr. Duong. He is named in his official capacity.

18 22. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security
19 (“DHS”), an agency of the United States. She is responsible for overseeing DHS and its sub-
20 agencies, including ICE, and has ultimate responsibility over the detention of noncitizens in civil
21 immigration custody. *See* 8 U.S.C. § 1103(a). Respondent Noem is a legal custodian of Mr.
22 Duong. She is named in her official capacity.

23 23. Respondent Pamela Bondi is the Attorney General of the United States and the head of
24 the Department of Justice (“DOJ”), which encompasses the Board of Immigration Appeals
25 (“BIA”) and Immigration Judges (“IJs”) as part of its sub-agency, the Executive Office for
26 Immigration Review (“EOIR”). As Attorney General, Respondent Bondi is responsible for
27 overseeing the implementation and enforcement of the federal immigration laws. *See* 8 U.S.C.
28 § 1103(g). The Attorney General delegates this responsibility to the EOIR, which administers the

1 immigration courts and the BIA. Respondent Bondi is a legal custodian of Mr. Duong. She is
 2 sued in her official capacity.

3 **STATEMENT OF FACTS**

4 **Lengthy U.S. Residence and Initial Detention and Release**

5 24. Mr. Duong is an LPR who was admitted to the United States as a refugee when he was
 6 five years old. *See* Declaration of Neha Malik (“Malik Decl.”) at Exhibit (“Exh.”) A (Declaration
 7 of Rachana Duong) ¶ 2. He arrived in the United States with his family, fleeing an early childhood
 8 marred by intense trauma and violence due to the Khmer Rouge genocide in Cambodia. *See id.* ¶
 9 3 (“My first memories in life were of suffering, hardship, and death. . . . The Khmer Rouge
 10 murdered all of my mother’s siblings. . . . They made my mom work as a slave.”). After Mr.
 11 Duong’s family settled in the United States, they continued to face strife and violence. His father
 12 abandoned him and his siblings, leaving his mother to provide for the family. *Id.* Unable to afford
 13 to live in a safer area, his family moved to Modesto, CA in 1983, which was a dangerous place at
 14 the time. *Id.* His parents had divorced, and his mother’s new partner became abusive to Mr.
 15 Duong, and Mr. Duong’s mother and younger siblings. *Id.* In his early teens, Mr. Duong struggled
 16 with the trauma from the violence he had experienced, with being subjected to racist bullying,
 17 and with financial insecurity, including homelessness. *Id.* As a clinical psychologist has
 18 concluded, these “multiple adverse experiences” and “traumatic events” led Mr. Duong to
 19 develop PTSD, recurrent Major Depressive Disorder, and mild cognitive impairment. Malik Decl.
 20 at Exh. B (Psychological Evaluation of Dr. Martha Hernandez) at 6-8.

21 25. The trauma and instability of his early life led Mr. Duong down the wrong path—he
 22 became homeless, and he and his group of friends supported themselves through criminal
 23 activities which became more serious as he got older. Malik Decl. at Exh. A ¶ 5; Malik Decl. ¶ 5.
 24 At the age of 19, Mr. Duong and two friends—desperate for financial security—committed a
 25 robbery that led to the unintentional death of an elderly woman. Malik Decl. ¶ 5. For his
 26 involvement in the robbery, Mr. Duong was convicted of first-degree murder and grand theft. *Id.*
 27 Mr. Duong deeply regrets the terrible decisions he made in his youth and the harm that those
 28 decisions caused—while incarcerated, he devoted himself to learning about the factors that led to

1 his mistakes and worked to improve himself. *Id.* He participated in programs such as the
2 Alternatives to Violence program, anger management classes, and a Native Hawaiian spiritual
3 group. *Id.* He educated himself, focusing on understanding the severe harm his actions had caused,
4 learning to process his emotional state to prevent future harm, and learning how he could
5 contribute positively to his community and make amends. *Id.* He grew from a troubled and hurt
6 young man to a mature, responsible adult. *Id.*

7 26. After serving 26 years of his sentence, Mr. Duong was granted parole and released from
8 criminal custody in March 2020. *Id.* ¶ 6. As part of the rigorous parole application process, Mr.
9 Duong participated in a Comprehensive Risk Assessment, which resulted in a clinical
10 psychologist determining that Mr. Duong represented a low risk of reoffending. *Id.* The parole
11 board considered the Comprehensive Risk Assessment, the opinion of the District Attorney's
12 office, and Mr. Duong's conduct while in prison, and recommended his release from prison.
13 Governor Newsom agreed with the parole board's recommendation and granted parole. *Id.*

14 27. Upon release from criminal custody pursuant to the Governor's grant of parole, Mr.
15 Duong was immediately arrested by ICE. *Id.* ¶ 7. For the next three months, Mr. Duong was held
16 in ICE custody in Yuba County Jail in "the worst conditions [he had] ever experienced." Malik
17 Decl. at Exh. A ¶ 6. For example, there were feces on the walls and under the mattress, and urine
18 on the floor, which he was required to clean. *Id.* ¶ 8. Detained individuals faced psychological,
19 emotional, and physical abuse by guards, *see* Malik Decl. at Exh. C (San Francisco Chronicle
20 article), "lack of medical care, broken hygiene facilities, unsanitary conditions including mold
21 and insects, spoiled food, and excessive use of solitary confinement;" and deprivation of access
22 to phone calls and mail, *see* Malik Decl. at Exh. D (KQED article). A contemporaneous report by
23 the ICE Office of Detention Oversight found 28 deficiencies in the Yuba County Jail's
24 compliance with ICE detention standards, including deficiencies in medical care, environmental
25 health and safety, telephone access, and access to law libraries and legal materials, among other
26 things. Malik Decl. at Exh. E (Office of Detention Oversight Compliance Inspection).

27 28. Mr. Duong suffers from severe asthma and other medical conditions, and the unsanitary
28 conditions at the Yuba County Jail triggered a deterioration in his health. Malik Decl. at Exh. A ¶¶

1 12-16. The “horrific” conditions of Mr. Duong’s detention also “exacerbated and triggered” Mr.
2 Duong’s already-fragile mental health. *See* Malik Decl. at Exh. B at 6-7. He began experiencing
3 daily visions of ghosts in his cell, including a “group of ghost like figures marching towards him,
4 similar to what he saw in Cambodia.” *Id.* at 7; Malik Decl. at Exh. A ¶ 10. He became “heavily
5 distressed and overwhelmed,” and would cry for hours. Malik Decl. at Exh. B at 7. Dr. Hernandez
6 has concluded that Mr. Duong, at the time of his prior ICE detention in 2020, was experiencing
7 PTSD and Major Depressive Disorder. *Id.* at 7-8, 10. Specifically, he “reported depressive
8 symptoms such as sadness, agitation, sleep disturbance, fatigue, feelings of worthlessness,
9 impaired ability to think, and recurrent thoughts of death” as well as “symptoms consistent with
10 posttraumatic stress disorder, such as involuntary and intrusive distressing memories, nightmares,
11 flashbacks, severe psychological distress, and physiological reactions.” *Id.* at 7.

12 29. On June 02, 2020, U.S. District Judge Vince Chhabria ordered Mr. Duong released from
13 ICE custody pursuant to the bail application process established by the *Zepeda Rivas v. Jennings*
14 class action suit—a suit filed in response to dangerous conditions of confinement at Yuba County
15 Jail and another detention facility in California at the beginning of the COVID-19 pandemic. *See*
16 Malik Decl. at Exh. F (Bail Order); *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36, 40-41 (N.D.
17 Cal. 2020), *aff’d in part and ref’d to mediation*, 845 Fed. Appx. 530 (9th Cir. 2021), (granting
18 temporary restraining order and providing district court bail application process in which “care
19 will be taken both to avoid releasing detainees who are a danger to the community and to minimize
20 the possibility that released detainees will fail to appear”). ICE released Mr. Duong on an order
21 of supervision, installed an electronic ankle monitor on Mr. Duong, and placed him on a
22 monitoring program through ISAP. Malik Decl. ¶ 8.

23 30. Since his release from ICE custody in June 2020, Mr. Duong has complied with the terms
24 of his bail order and the reporting requirements imposed by ICE. *Id.* ¶ 9. In fact, in June 2022,
25 due to Mr. Duong’s compliance, ICE de-escalated Mr. Duong’s conditions of release and removed
26 his ankle monitor. Malik Decl. ¶ 9. Mr. Duong also satisfied his parole reporting requirements
27 and was released from parole one year early based on his compliance and good behavior. *Id.*

28 **Post-Release Community Contributions from June 2020 Through September 2025**

1 31. In the more than five years since his release, Mr. Duong has been serving his community
2 with patience and care, has been able to seek treatment for his chronic health conditions, and has
3 been diligently pursuing his rights in his immigration proceedings.

4 32. Since 2021, Mr. Duong has been gainfully employed at multiple community organizations
5 that provide essential services to vulnerable community members with mental health and financial
6 challenges. *Id.* ¶ 11. He has dedicated his life post-release to contributing to his community daily,
7 helping ensure people are able to access essential services safely and without fear. *See id.*; Malik
8 Decl. at Exh. G (Letter from manager, Sarahi Sanchez) (“At MHS Turn, we serve many clients
9 experiencing active substance use and severe mental health challenges. Rachana works the 4 PM
10 to 12 AM shift—the most demanding shift of all. During this time, he often addresses the majority
11 of client behaviors and incidents independently, utilizing his training and skills to provide
12 effective support. Clients feel comfortable approaching him with their concerns, and he
13 consistently maintains this trust”); Malik Decl. at Exh. H (Letter from co-worker, Frank Morales)
14 (“Rachana has shown his commitment to his job, displaying hard work, team work, punctuality
15 and most of all dedication when it come to his team member[s] and residents”).

16 33. Mr. Duong serves his family with the same care he serves his community. *See* Malik Decl.
17 ¶ 12. He is the primary caretaker of his elderly mother, who struggles with severe medical
18 conditions and is on dialysis. *Id.* Since her kidney failure four years ago, Mr. Duong has taken
19 care of his mother’s basic needs and takes her to dialysis appointments every week. *Id.*; Malik
20 Decl. at Exh. I (letter from sister, Reatry Duong) (Mr. Duong “is a vital caregiver for our aging
21 and ailing mother who is suffering from kidney failure. . . . She depends on his daily help for both
22 emotional and physical support”). Mr. Duong additionally houses his nephew and provides
23 essential support for his living expenses—the two live together in Fremont, California. Malik
24 Decl. ¶ 12.

25 34. Mr. Duong struggles with multiple health conditions, including chronic respiratory issues.
26 Since his release, he has been able to receive consistent care and management for his health
27 conditions, including weekly allergy shots to manage his severe allergies and access to essential
28

1 medications. Mr. Duong is currently in the process of seeking treatment for his lungs after recently
2 discovering that part of his lungs has collapsed. *Id.* ¶ 10.

3 35. Since his release from ICE custody, Mr. Duong has also been diligently pursuing his rights
4 in his immigration proceedings, including receiving a successful grant of termination from the IJ
5 for prior proceedings on May 21, 2024. *Id.* ¶ 13. The Department of Homeland Security filed a
6 subsequent Notice to Appear with the San Francisco Immigration Court, and Mr. Duong has
7 continued to diligently litigate the proceedings stemming from that Notice to Appear—just weeks
8 before Mr. Duong’s arrest on September 6, 2025, he participated in a hearing before the San
9 Francisco Immigration Court during which the court scheduled Mr. Duong for a subsequent
10 hearing on October 29, 2025. *Id.*

11 **Re-detention Without Notice or a Hearing on September 06, 2025**

12 36. Despite Mr. Duong’s consistent compliance with the terms of his release, on September
13 6, 2025, ICE arrested him at his home at 4109 Randy Common, Fremont, CA 94583. *Id.* ¶ 14. At
14 approximately 9:10 A.M., ICE officers knocked on Mr. Duong’s door and stated that there was
15 an issue with the submission of his photo as required by ISAP and that he needed to retake it. *Id.*
16 One of the ICE officers stated that Mr. Duong simply had to step outside the home and allow his
17 photo to be taken in order to avoid a citation. *Id.* When Mr. Duong complied and stepped outside
18 of his house, however, additional ICE officers waiting along the sides of the building approached
19 and detained Mr. Duong. *Id.* The ICE officers stated that the reason for Mr. Duong’s abrupt re-
20 detention was that the photograph could not be uploaded to the ISAP monitoring application, so
21 Mr. Duong needed to be “processed in detention.” *Id.*

22 37. After learning of this arrest from Mr. Duong’s family, Mr. Duong’s immigration attorney,
23 Neha Malik, made repeated attempts to contact ICE’s San Francisco Field Office to confirm
24 where Mr. Duong was taken after he was arrested. *Id.* ¶ 16. From Ms. Malik’s experience working
25 with people who are detained in the San Francisco Bay Area, she believes that Mr. Duong was
26 likely taken to 630 Sansome Street in San Francisco to be processed before he is transferred to a
27 detention facility. *Id.*

38. Every day that Mr. Duong is detained harms Mr. Duong's ability to care for his own health and will harm Mr. Duong's employer and Mr. Duong's family, including by severely impacting his elderly mother's access to essential medical care and putting Mr. Duong's nephew at high risk of homelessness. Malik Decl. ¶ 17; Malik Decl. at Exh. G (losing Mr. Duong as an employee would be "a devastating loss to my program at MHS TURN and to the agency as a whole. His absence would deeply affect both staff and clients, as Rachana is respected, valued, and cared for by many."); Malik Decl. at Exh. I ("Losing [Mr. Duong], even for a short time, would not only create an emotional and financial burden for our family, but would also deprive our mother of the care she so desperately needs"). Mr. Duong's detention will impair his ability to continue to seek treatment for his multiple physical health conditions, including severe allergies and a partially collapsed lung. *See* Malik Decl. ¶ 10. Mr. Duong tested positive for COVID-19 just two days before his arrest and he was suffering acute symptoms at the time of his arrest. *Id.* Additionally, considering Mr. Duong's traumatic experience in ICE custody in 2020 and underlying mental health conditions, every day that Mr. Duong spends in detention puts his mental health at risk of repeated deterioration, as happened during his period of detention in 2020. *See* Malik Decl. at Exh. B.

39. Upon information and belief, at the time of filing, Mr. Duong is currently detained at the ICE office at 630 Sansome Street in San Francisco, California. Malik Decl. ¶ 16.

ARGUMENT

Mr. Duong's Re-Arrest Without a Pre-deprivation Hearing Violated His Due Process Rights

40. Under the Due Process Clause of the Fifth Amendment, Respondents' re-detention of Mr. Duong without first providing a pre-deprivation hearing before a neutral decision maker to determine whether re-detention is justified by a risk of flight or danger to the community is unlawful.

41. Civil immigration detention must be justified by a permissible purpose and must be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two permissible regulatory goals for immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Id.*

1 For those held in immigration detention, substantive “due process requires that the . . .
2 commitment bear some reasonable relation to” one of these two permissible regulatory goals. *See*
3 *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). Where civil detention is not related to a
4 permissible regulatory goal, is “excessive in relation to” a permissible regulatory goal or is
5 “employed to achieve objectives that could be accomplished” with “alternative and less harsh
6 methods,” the detention amounts to punishment in violation of the individual’s substantive due
7 process rights. *See id.* at 931-32.

8 42. Due process also constrains ICE’s power to re-arrest a noncitizen who is at liberty
9 following a release from immigration custody. *See Hernandez*, 872 F.3d at 981 (“the
10 government’s discretion to incarcerate non-citizens is always constrained by the requirements of
11 due process”). “It is well established that the Fifth Amendment entitles [noncitizens] to due
12 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
13 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
14 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
15 Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *see also id.* at 718 (Kennedy, J.,
16 dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or
17 arbitrary personal restraint or detention”).

18 43. Courts in this district have repeatedly recognized that due process requires that a
19 noncitizen like Mr. Duong who was previously found by an adjudicator to be appropriate for
20 release from immigration detention be given a pre-deprivation hearing *before* ICE re-detains him.
21 *See, e.g., Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018);
22 *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-
23 PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, 534 F. Supp.
24 3d 1050 (N.D. Cal. 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4
25 (N.D. Cal. May 6, 2022) (holding petitioner would suffer irreparable harm if re-detained, and
26 requiring notice and a hearing before re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-
27
28

1 NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted
2 preventing re-arrest where plaintiff had been on bond for more than five years).¹

3 44. Indeed, in similar circumstances to this case, where a noncitizen was re-arrested prior to
4 being provided a pre-deprivation hearing, multiple judges in this District and other districts have
5 required ICE to immediately release petitioners and ordered that re-detention not occur absent a
6 pre-deprivation constitutionally compliant bond hearing. *Pinchi v. Noem*, No. 25-cv-05632-RMI
7 (RFL), 2025 WL 1853763, at *2 (N.D. Cal. July 4, 2025) (granting temporary restraining order,
8 ordering immediate release, and ordering “that [petitioner] be given notice and a pre-detention
9 hearing before a neutral decisionmaker prior to being taken back into custody”), converted to
10 preliminary injunction at ---F. Supp. 3d---, 2025 WL 2084921, at *7 (holding that ICE cannot re-
11 arrest petitioner-complainant absent a pre-deprivation hearing through the pendency of her
12 immigration proceedings); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025
13 WL 1918679, at *5, (E.D. Cal. July 11, 2025) (granting preliminary injunction, ordering
14 immediately release from custody, and barring ICE from re-detaining petitioner through
15 pendency of his proceedings without first holding a pre-deprivation hearing); *Arzate v. Andrews*,
16 No. 1:25-cv-00942-KES-SKO (HC), 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025) (granting
17 temporary restraining order, ordering immediate release from custody, and barring ICE from re-

18
19 ¹ In addition to being constrained by due process, ICE’s authority to re-detain noncitizens is also
20 constrained by BIA case law. Although the statute and regulations grant ICE the ability to revoke
21 a noncitizen’s immigration bond and re-arrest the noncitizen, 8 U.S.C. § 1226(b); 8 C.F.R. §
22 236.1(c)(9), the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens
23 in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (“where a previous bond determination
24 has been made . . . , no change should be made by [the DHS] absent a change of circumstance”).
25 The Ninth Circuit has assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an
26 individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
27 2021) (“Thus, absent changed circumstances . . . such as ‘reinvolvement with the criminal justice
28 system’ . . . ICE cannot redetain Panosyan.”). Thus, under BIA caselaw, ICE may re-arrest a
noncitizen who had been previously released pursuant to a determination regarding risk of flight
or danger to the community—like Mr. Duong—only after a change in circumstances *increases*
that risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017); *Matter of Sugay*,
17 I&N Dec. at 640; *Zepeda Rivas*, 445 F. Supp. 3d at 40-41 (establishing bail application process
that involved an assessment of flight risk and dangerousness). Because of Mr. Duong’s spotless
record over the past 5 years, and because he remains at the early stages of his proceedings, *see*
Malik Decl. ¶ 13, Mr. Duong’s risk of flight or risk of danger to the community has significantly
decreased since Judge Chhabria ordered his release from ICE custody in June 2020 and his re-
detention thus also violates relevant BIA case law.

1 detaining petitioner absent a pre-deprivation hearing), converted to preliminary injunction at Dkt.
2 15 (Aug. 20, 2025); *Pineda Campos v. Kaiser*, No. 25-cv-06920 (EKL), Dkt. 4 (N.D. Cal. Aug.
3 16, 2025) (granting temporary restraining order, ordering immediately release from custody, and
4 barring Respondents from re-detaining petitioner without a pre-deprivation hearing); *Hernandez*
5 *Nieves v. Kaiser*, No. 25-cv-06921-LB, Dkt. 10 (N.D. Cal. Aug. 17, 2025) (same); *Salcedo Aceros*
6 *v. Kaiser*, No. 1:25-cv-06924-RMI, Dkt. 6 (N.D. Cal. Aug. 16, 2025) (same); *Jimenez Garcia v.*
7 *Kaiser*, No. 25-cv-06916-TSH (EKL), Dkt. 6 (N.D. Cal. Aug. 17, 2025) (same).

8 **Mr. Duong has a Protected Liberty Interest in His Conditional Release**

9 45. Individuals have a weighty interest in avoiding re-incarceration that is protected by the
10 Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee
11 has a protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47
12 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

13 46. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
14 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of
15 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
16 form the other enduring attachments of normal life.” *Id.* at 482. “[T]he liberty of a parolee,
17 although indeterminate, includes many of the core values of unqualified liberty and its termination
18 inflicts a grievous loss on the parolee and often others.” *Id.* Therefore, “[b]y whatever name, the
19 liberty is valuable and must be seen within the protection of the [Fifth] Amendment.” *Id.*

20 47. This basic principle—that individuals have a liberty interest in their conditional release—
21 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions
22 since *Morrissey*. See, e.g., *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
23 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
24 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
25 probation have a protected liberty interest requiring pre-deprivation process). In fact, an
26 individual maintains a protected liberty interest in his freedom even where he obtained liberty
27 through a mistake of law or fact. See *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.
28 2017); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process

1 considerations support the notion that an inmate released on parole by mistake, because he was
2 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
3 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
4 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
5 (internal quotation marks and citation omitted).

6 48. As the First Circuit has explained, when analyzing the issue of whether a specific
7 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the
8 issue by comparing the specific conditional release in the case before them with the liberty interest
9 in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st
10 Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd*, 864 F.3d at 683
11 (“a person who is in fact free of physical confinement—even if that freedom is lawfully
12 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
13 incarcerated” (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S.
14 at 482)).

15 49. Here, Mr. Duong’s conditional release is in relevant ways similar to the liberty interest in
16 parole protected in *Morrissey*. Just as in *Morrissey*, Mr. Duong’s release “enables him to do a
17 wide range of things open to persons” who have never been in custody or convicted of any crime,
18 including to live at home, work, care for his family members, and “be with family and friends and
19 to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Indeed, Mr.
20 Duong is the primary caretaker for his elderly mother, who struggles with severe medical
21 conditions including kidney failure; houses his nephew and provides essential support for him,
22 including by covering many of his living expenses; and also ensures that vulnerable community
23 members can safely access essential services through his work for Turn Mental Health Services,
24 a community organization that provides essential services to individuals with mental health and
25 financial challenges. Malik Decl. ¶¶ 11-12. Even if “lawfully revocable,” Mr. Duong’s five years
26 at liberty provides him a “a liberty interest that entitles him to constitutional due process before
27 he is re-incarcerated.” *Hurd*, 864 F.3d at 683; *see also Gonzalez-Fuentes*, 607 F.3d at 887 (holding
28 that inmates released to electronic monitoring program had liberty interest protected by the Due

1 Process Clause because the program “allowed the appellees to live with their loved ones, form
2 relationships with neighbors, lay down roots in their community, and reside in a dwelling of their
3 own choosing (albeit subject to certain limitations) rather than in a cell designated by the
4 government.”); *see also Jorge M.F.*, 534 F. Supp. 3d at 1054 (holding that released noncitizen
5 made a substantial showing that he had liberty interest requiring pre-deprivation hearing before
6 re-arrest, even after original bond order was reversed on appeal).

7
8 **Mr. Duong’s Strong Liberty Interest in His Continued Conditional Release Required a
Hearing *Before* he was Re-incarcerated by ICE**

9 50. If a petitioner identifies a protected liberty interest, the Court must then determine what
10 process is due. “Adequate, or due, process depends upon the nature of the interest affected. The
11 more important the interest and the greater the effect of its impairment, the greater the procedural
12 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
13 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). To determine the
14 process due in this context, courts use the flexible balancing test set forth in *Mathews v. Eldridge*,
15 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d
16 at 1055.

17 51. Under the *Mathews* test, the Court balances three factors: “first, the private interest that
18 will be affected by the official action; second, the risk of an erroneous deprivation of such interest
19 through the procedures used, and the probative value, if any, of additional or substitute procedural
20 safeguards; and finally the government’s interest, including the function involved and the fiscal
21 and administrative burdens that the additional or substitute procedural requirements would
22 entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

23 52. Importantly, the Supreme Court “usually has held that the Constitution requires some kind
24 of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494
25 U.S. 113, 127 (1990) (emphasis in original). Post-deprivation process only comports with due
26 process in a “special case” where post-deprivation remedies are “the only remedies the State could
27 be expected to provide”. *Id.* at 128. Further, only where “one of the variables in the *Mathews*
28 equation—the value of pre-deprivation safeguards—is negligible in preventing the kind of

1 deprivation at issue” can the government avoid providing pre-deprivation process. *Id.*; *see also*
2 *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary
3 civil commitment proceedings may not constitutionally be held in jail pending the determination
4 as to whether they can ultimately be recommitted).

5 53. Here, the *Mathews* factors all favor Mr. Duong and establish that the government was
6 required to provide Mr. Duong notice and a hearing *prior* to any re-incarceration. *See, e.g.,*
7 *Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d at 1055.

8 54. First, Mr. Duong’s private interest in his liberty is substantial. *See Foucha v. Louisiana*,
9 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty
10 protected by the Due Process Clause”). The Supreme Court has recognized that individuals
11 released from serving a *criminal* sentence have a “valuable” liberty interest—even if that freedom
12 is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. Thus, released
13 individuals who have not violated the conditions of their release must be provided notice and a
14 hearing *before* they are reincarcerated. *See Johnson*, 682 F.2d at 873; *Gonzalez-Fuentes*, 607 F.3d
15 at 891-92; *Hurd*, 864 F.3d at 683. If that is true for parolees or probationers—who have a
16 diminished liberty interest given their convictions, *see, e.g., United States v. Knights*, 534 U.S.
17 112, 119 (2001)—the interest for an individual awaiting civil immigration proceedings is even
18 weightier. *See, e.g., Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of immigration
19 detention, a noncitizen’s interest in release on bond is “arguably greater than the interest of
20 parolees in *Morrissey*.”).

21 55. Mr. Duong’s private interest in liberty is particularly weighty given that even a brief
22 period of detention will negatively impact him and his community. Given Mr. Duong’s prior
23 traumatic experience in ICE detention and related mental health deterioration, his interest in
24 avoiding ICE detention and a potential subsequent deterioration of his mental health is extremely
25 weighty. *See* Malik Decl. at Exh. B at 6-8; Malik Decl. at Exh. A ¶ 10. Relatedly, Mr. Duong’s
26 delicate health requires regular, high-quality medical attention—attention that will be very
27 difficult to access from ICE detention. *See* Malik Decl. ¶ 10. Additionally, Mr. Duong’s
28 employer—which provides essential services to vulnerable community members—depends on

1 him for daily operations. *See, e.g.*, Malik Decl. at Exh. G (losing Mr. Duong as an employee
2 “would be a devastating loss to my program at MHS TURN and to the agency as a whole. His
3 absence would deeply affect both staff and clients, as [Mr. Duong] is respected, valued and cared
4 for by many”). Lastly, Mr. Duong’s family will suffer acutely if he remains detained for any
5 length of time. Mr. Duong’s nephew depends on him for housing and financial support—without
6 that support, Mr. Duong’s nephew is at high risk of becoming homeless as Mr. Duong’s other
7 family members are unable to provide similar support. *See* Malik Decl. ¶ 17. Without Mr. Duong,
8 his elderly and ill mother will lose access to life-saving medical care, as no other family member
9 is able to be her primary caregiver or to transport her to her dialysis appointments. *Id.*; Malik
10 Decl. at Exh. I (“Losing [Mr. Duong], even for a short time, would not only create an emotional
11 and financial burden for our family, but would also deprive our mother of the care she so
12 desperately needs”). For all of these reasons, every day of detention will cause acute harm for Mr.
13 Duong, Mr. Duong’s employer, and Mr. Duong’s family—underscoring the weightiness of his
14 liberty interest.

15 56. Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally re-detain
16 Mr. Duong without a hearing before a neutral adjudicator that would determine whether detention
17 serves a permissible purpose, i.e. preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690.
18 After the California parole board and Governor Newsom deemed him to be such a low risk of
19 reoffending that he was suitable for release on parole, U.S. District Judge Chhabria reviewed Mr.
20 Duong’s case and found that he should be released on bail from ICE custody, taking flight risk
21 and dangerousness into consideration. *See* Malik Decl. ¶ 6; Malik Decl. at Exh. F; *Zepeda Rivas*,
22 445 F. Supp. at 40-41. In the five years since, Judge Chhabria’s decision to release Mr. Duong
23 from ICE custody—and Governor Newsom’s decision to release Mr. Duong from criminal
24 custody—have both proven to be good ones: Mr. Duong has complied with his bail conditions,
25 reported as required to ICE and ISAP check-ins, remained law-abiding and contributed
26 substantially to his community. *See* Malik Decl. ¶ 9. Because of his compliance with reporting
27 requirements and good behavior, Mr. Duong’s was released from parole one year early. *Id.*
28 Further, ICE itself de-escalated Mr. Duong’s case based on his history of compliance, taking him

1 off an ankle monitor in June 2022. *Id.* These developments show that detention is very likely *not*
2 warranted. *See* Malik Decl. at Exh. G (“To question whether Rachana would be a dangerous
3 person . . . is something I would never think. Rachana works in a field where he cares for others’
4 safety . . . I strongly believe Rachana would never attempt to cause harm to anyone”). DHS’s
5 choice to re-detain Mr. Duong without a hearing has deprived him of his liberty and separated
6 him from his family and community without *any* notice or opportunity for Mr. Duong to contest
7 this unilateral action.²

8 57. By contrast, the value of a pre-deprivation hearing before a neutral decision-maker is high.
9 “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239
10 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*,
11 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous deprivation
12 of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone,
13 makes custody determinations. *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011). A
14 hearing before a neutral decisionmaker is much more likely than ICE’s unilateral decision to
15 produce accurate determinations regarding factual disputes, and to determine whether Mr. Duong
16 actually poses a current flight risk or danger such that detention is justified. *See, e.g., Pinchi*, ---
17 F. Supp. 3d---, 2025 WL 2084921, at *5 (“Ms. Garro Pinchi was detained after more than two
18 years of attending every required immigration hearing and despite her deep community ties and
19 lack of any criminal record. Under these circumstances, there is a significant risk that even the
20 two-day curtailment of liberty that [she] already suffered upon her re-detention by ICE was not
21 justified by any valid interest. Providing her with . . . a pre-detention hearing will have significant
22 value in helping ensure that any future detention has a lawful basis”). Ordering that Respondents
23 release Mr. Duong and hold such a hearing *before* Mr. Duong is re-detained serves to protect his
24 profound liberty interest, facilitate his right to counsel and to gather evidence, and ensure that

25
26
27 ² Notably, without a hearing ordered by this court, DHS’ unilateral decision to re-detain Mr.
28 Duong would *never* be subjected to review because Mr. Duong’s statutory detention authority is
under 8 U.S.C. § 1226(c), which does not provide for statutory bond hearings.

1 ICE's decision to revoke Mr. Duong's release does not evade review. *See Zinermon*, 494 U.S. at
2 127; *Hurd*, 864 F.3d at 683.

3 58. Third, the government's interest in detaining Mr. Duong *without* a hearing is low.
4 Providing Mr. Duong with a hearing before a neutral decisionmaker to determine whether there
5 is evidence that Mr. Duong *currently* poses any risk of flight or danger to the community imposes
6 a *de minimis*, if any, burden on the government. *See Singh v. Barr*, No. 18-cv-2471-GPC-MSB,
7 2019 WL 4168901, at *12 (S.D. Cal. Sept. 3, 2019) ("The government has not offered any
8 indication that a second bond hearing would have outside effects on its coffers"); *see also*
9 *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Lopez Reyes v. Bonnar*,
10 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019). Such a hearing is far *less* costly and burdensome for
11 the government than keeping Mr. Duong detained at what the Ninth Circuit described as a
12 "staggering" cost to the public of \$158 each day per detainee *in 2017*, "amounting to a total daily
13 cost of \$6.5 million," *Hernandez*, 872 F.3d at 996—the current cost is likely significantly higher.
14 In any event, it is "always in the public interest to prevent the violation of a party's constitutional
15 rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citations omitted); *cf.*
16 *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (the government "suffers no harm from an
17 injunction that merely ends unconstitutional practices and/or ensures that constitutional standards
18 are implemented"). The government cannot plausibly assert it has any urgent basis for keeping
19 Mr. Duong in detention while a pre-deprivation hearing is scheduled, given his spotless record
20 and consistent compliance with reporting requirements over the past more than five years. *See*
21 *Pinchi*, ---F. Supp. 3d---, 2025 WL 2084921, at *5 ("Detention . . . because the government has
22 not yet established constitutionally required pre-detention procedures is not a legitimate
23 government interest").

24 59. Thus, the three *Mathews* factors all weigh in Mr. Duong's favor and demonstrate that due
25 process required notice and a hearing before a neutral adjudicator *prior to* Mr. Duong's re-
26 incarceration to determine if such re-incarceration is justified.
27
28

60. Because Respondents failed to give Mr. Duong the notice and hearing he was due before re-incarcerating him, the Court should order him released unless and until Respondents provide him with a constitutionally-compliant hearing.

61. At a pre-deprivation hearing, due process requires that the government justify re-detention of Mr. Duong by establishing, by clear and convincing evidence, that he poses a flight risk or danger. *See Singh*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.”) (internal quotation marks omitted); *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view” among District Courts concluding that, “where . . . the government seeks to detain [a noncitizen] pending removal proceedings, it bears the burden of proving that such detention is justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before being returned to custody, ordering that the government bear the burden at the hearing by clear and convincing evidence).

62. The hearing must also consider whether alternatives to detention—such as the ISAP program that has successfully managed Mr. Duong’s release for more than five years—would adequately ensure Mr. Duong’s appearance. Detention is not warranted if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Duong’s re-incarceration is warranted. *Cf. G.C. v. Wofford*, No. 1:24-cv-01032-EPG-HC, 2025 WL 711190, at *10 (E.D. Cal. Mar. 5, 2025) (ordering bond hearing at which IJ considers alternative conditions of release).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Procedural Due Process Re-Arrest Without Pre-Deprivation Hearing

63. Mr. Duong re-alleges and incorporates by reference the paragraphs above.

64. 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.

65. Mr. Duong has a vested liberty interest in his release from immigration custody. Due Process does not permit the government to strip him of that liberty without first holding a hearing before a neutral adjudicator at which Respondents establishes, by clear and convincing evidence, that Mr. Duong poses a flight risk or a danger to the community. *See Morrissey*, 408 U.S. at 487-488.

66. The government’s rearrest of Mr. Duong five years after he was released from immigration detention without any such hearing violated his right to procedural due process.

67. Respondents must be ordered to release Mr. Duong immediately and prohibited from re-detaining him unless and until they can establish at a hearing before a neutral adjudicator that Mr. Duong poses a flight risk or a danger to the community by clear and convincing evidence. *See Pinchi*, 2025 WL 1853763, at *2; *Singh v. Andrews*, 2025 WL 1918679, at *5. In any custody redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention when determining whether Mr. Duong’s reincarceration is warranted.

SECOND CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Substantive Due Process Detention Without Lawful Justification

68. Mr. Duong re-alleges and incorporates by reference the paragraphs above.

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

70. Due Process does not permit Respondents to detain Mr. Duong where that detention is not tethered to one of the two constitutional bases for civil immigration detention: to mitigate against the risk of flight or to protect the community from danger. *Zadvydas*, 533 U.S. at 690.

71. Civil detention that is unrelated to a valid regulatory purpose, or excessive in relation to that purpose, is punitive in violation of substantive due process. *See Jones*, 393 F.3d at 934.

1 72. Since Mr. Duong was released in June 2020, he has complied with his bail order and the
2 additional conditions of release imposed on him by ICE (including his in-person ISAP
3 appointment on August 21, 2025 at which he feared he would be re-detained) and has a pending
4 case before the San Francisco Immigration Court that he continues to litigate rigorously. He
5 therefore poses no risk of flight. Additionally, during those five years at liberty, Mr. Duong has
6 not been arrested or convicted of any crime, has helped vulnerable community members access
7 essential services through his work, housed and supported his nephew, and been the primary
8 caretaker for his elderly and ill mother. He therefore poses no danger to the community.

9 73. Because Mr. Duong is neither a flight risk or a danger, Respondents' re-arrest and
10 continued detention of Mr. Duong is untethered to any valid basis for civil immigration detention,
11 is excessive in relation to any risk that does exist, and is punitive in violation of substantive due
12 process.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Mr. Duong requests that the Court:

- 15 1) Assume jurisdiction over this matter;
- 16 2) Declare Respondents' actions in re-arresting Mr. Duong on August 21, 2025, and
17 continuing to detain him, contrary to law;
- 18 3) Issue a Writ of Habeas Corpus and order Respondents to immediately release Mr. Duong
19 from their custody;
- 20 4) Enjoin Respondents, and anyone acting in concert with them, from re-detaining Mr.
21 Duong unless and until a hearing is held before a neutral adjudicator, at which the
22 government establishes by clear and conviction evidence that Mr. Duong presents a risk
23 of flight or danger, and that no alternatives to detention can sufficiently protect its
24 interests;
- 25 5) Award reasonable costs and attorney's fees under the Equal Access to Justice Act, as
26 amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under
27 law; and
- 28 6) Grant such relief as the Court deems just and proper.

1
2 Dated: September 6, 2025

Respectfully submitted,

3
4 /s/ Lee Ann Felder-Heim

5 Lee Ann Felder-Heim
6 Neha Malik
7 Asian Law Caucus
8 *Pro Bono* Attorneys for Mr. Duong

9
10 **VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**
11 **PURSUANT TO 28 U.S.C. § 2242**

12 I am submitting this verification on behalf of Mr. Duong because I am his attorney. As
13 Mr. Duong's attorney, I hereby verify that the statements made in the attached Petition for Writ
14 of Habeas Corpus are true and correct to the best of my knowledge.

15 Dated: September 6, 2025

/s/ Lee Ann Felder-Heim

16 Lee Ann Felder-Heim
17 *Pro Bono* Attorney for Mr. Duong
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