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

13 Rachana DUONG,

14 Petitioner-Plaintiff,

15 v.

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

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

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

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

27 Respondents-Defendants.
28

Case No. 25-7598

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

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

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

IMMIGRATION HABEAS CASE

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner, Mr. Rachana Duong (“Mr. Duong”), hereby moves this Court to order Respondents to immediately release Mr. Duong and enjoin Respondents from re-arresting Mr. Duong unless and until he is afforded notice and a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether clear and convincing evidence demonstrates that he currently poses a flight risk or danger to the community such that his re-incarceration would be justified.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the Declaration of Neha Malik and Accompanying Exhibits, filed at Docket No. 1-1.

Mr. Duong warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in ending his unconstitutional detention and preventing his re-detention absent a constitutionally-compliant pre-deprivation hearing before a neutral adjudicator.

Respondents re-detained Mr. Duong on Saturday, September 6, 2025 at approximately 9:10am and he remains detained at the time of filing of the instant motion. Mr. Duong’s continued re-incarceration will result in immediate, irreparable injury, not only to Mr. Duong, whose mental and physical health will deteriorate significantly in detention, but also to his employer and family members, including his elderly and ill mother for whom he is the primary caretaker.

Absent immediate relief from this Court, Mr. Duong’s continued re-detention without notice and a hearing on whether such re-detention is justified is violating and will continue to violate Mr. Duong’s constitutional due process rights.

WHEREFORE, Mr. Duong prays that this Court grant his request for a temporary restraining order and a preliminary injunction ordering Respondents to immediately release him and enjoining them from re-detaining him unless and until he is afforded a constitutionally-compliant hearing before a neutral adjudicator on the question of whether his re-detention is justified.

Notice of Motion for Ex Parte TRO/PI

Case No. 25-7598

1
2 Dated: September 6, 2025

Respectfully submitted,

3 /s/ Lee Ann Felder-Heim

4 Lee Ann Felder-Heim
5 Asian Law Caucus
6 *Pro Bono* Attorney for Mr. Duong
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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. Rachana Duong (“Mr. Duong”), by and through undersigned
3 counsel, hereby files this motion for temporary restraining order and preliminary injunction to
4 order Respondents to immediately release Mr. Duong and enjoin the U.S. Department of
5 Homeland Security’s (“DHS”) and U.S. Immigration and Customs Enforcement (“ICE”) from
6 re-arresting Mr. Duong unless and until he is afforded notice and a hearing before a neutral
7 decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine
8 whether clear and convincing evidence demonstrates that he currently poses a flight risk or danger
9 to the community such that his re-incarceration would be justified.

10 The DHS previously incarcerated Mr. Duong—a long-time Lawful Permanent Resident
11 (“LPR”) who entered the United States at the age of five—for three months, during which time
12 his physical and mental health suffered acutely. On June 2, 2020, Mr. Duong was released from
13 ICE custody pursuant to a bail order from District Judge Vince Chhabria and through a bail
14 application process that considered both potential flight risk and danger to the community. While
15 at liberty for more than five years since then, Mr. Duong has fully complied with the bail order,
16 the requirements of his parole, and his ICE supervision conditions, including wearing an ankle
17 monitor and reporting for periodic in-person check-ins. Based on his diligent compliance, Mr.
18 Duong was released a year early from his parole supervision and ICE removed his ankle monitor
19 in June 2022. Mr. Duong has not been arrested or committed any crime since his release. Mr.
20 Duong most recently reported for an Intensive Supervision Appearance Program (“ISAP”) in-
21 person check-in in San Francisco on August 21, 2025.

22 During the past over five years since Mr. Duong’s release, he has served as the primary
23 caretaker for his elderly mother, who struggles with severe medical conditions, including kidney
24 failure, and who is on dialysis. Mr. Duong houses his nephew and provides essential support for
25 him, including by covering many of his living expenses. Mr. Duong also works for Turn Mental
26 Health Services, a community organization that provides essential services to individuals with
27 mental health and financial challenges. Mr. Duong’s work with this organization helps ensure that

1 vulnerable communities are able to access essential services safely. Mr. Duong has also diligently
2 litigated his immigration case over the last five years—he is currently set for a Master Calendar
3 Hearing on October 29, 2025 before the San Francisco Immigration Court.

4 Despite his spotless record over the *more than five years* since a federal court ordered his
5 release, on Saturday, September 6, 2025, ICE abruptly re-detained Mr. Duong at his home in
6 Fremont California. ICE persuaded Mr. Duong to step outside of his home under the auspices of
7 needing to take a new picture for his ISAP records. Once Mr. Duong complied and stepped outside
8 of his home, additional ICE officers waiting out of view approached and detained Mr. Duong.
9 The ICE officers stated reason for abruptly detaining Mr. Duong after over five years of living
10 peaceably in the community was that the photograph could not be uploaded to the ISAP
11 monitoring application, requiring Mr. Duong to be “processed in detention.”

12 It is well-established that individuals released from custody have a liberty interest in their
13 continued freedom and that certain procedures are required to protect erroneous deprivations of
14 liberty. On the particular facts of Mr. Duong’s case, due process required that he be provided with
15 a hearing before a neutral arbiter to assess whether his detention was justified *before* he was re-
16 detained. Because Respondents failed to provide such a hearing—or any process whatsoever—
17 Mr. Duong’s re-detention violated his due process rights.

18 Therefore, Respondents must be ordered to immediately release Mr. Duong, and enjoined
19 from re-arresting him unless and until he is provided with a constitutionally compliant hearing at
20 which the government establishes, by clear and convincing evidence, that he poses a current flight
21 risk or danger such that his re-detention is justified—something that they will likely be unable to
22 do given the facts at hand.

23 Mr. Duong meets the standard for a temporary restraining order. He will suffer immediate
24 and irreparable harm absent an order from this Court instructing Respondents to immediately
25 release Mr. Duong and enjoining Respondents from re-arresting Mr. Duong unless and until he
26 first receives a constitutionally-compliant hearing. Because holding federal agencies accountable
27

1 to constitutional demands is in the public interest, the balance of equities and public interest are
2 also strongly in Mr. Duong's favor.

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

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

5 Mr. Duong is an LPR who was admitted to the United States as a refugee when he was
6 five years old. *See* Docket No. 1-1, Declaration of Neha Malik ("Malik Decl.") at Exhibit ("Exh.")
7 A (Declaration of Rachana Duong) ¶ 2. He arrived in the United States with his family, fleeing
8 an early childhood marred by intense trauma and violence due to the Khmer Rouge genocide in
9 Cambodia. *See id.* ¶ 3 ("My first memories in life were of suffering, hardship, and death. . . . The
10 Khmer Rouge murdered all of my mother's siblings. . . . They made my mom work as a slave.").
11 After Mr. Duong's family settled in the United States, they continued to face strife and violence.
12 His father abandoned him and his siblings, leaving his mother to provide for the family. *Id.* Unable
13 to afford to live in a safer area, his family moved to Modesto, CA in 1983, which was a dangerous
14 place at the time. *Id.* His parents had divorced, and his mother's new partner became abusive to
15 Mr. Duong, and Mr. Duong's mother and younger siblings. *Id.* In his early teens, Mr. Duong
16 struggled with the trauma from the violence he had experienced, with being subjected to racist
17 bullying, 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 [REDACTED] Docket No.
20 1-1, Malik Decl. at Exh. B (Psychological Evaluation of Dr. Martha Hernandez) at 6-8.

21 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. Docket No. 1-1, Malik Decl. at Exh. A ¶ 5;
24 Malik Decl. ¶ 5. At the age of 19, Mr. Duong and two friends—desperate for financial security—
25 committed a robbery that led to the unintentional death of an elderly woman. Malik Decl. ¶ 5. For
26 his involvement in the robbery, Mr. Duong was convicted of first-degree murder and grand theft.
27 *Id.* Mr. Duong deeply regrets the terrible decisions he made in his youth and the harm that those

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

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

15 Upon release from criminal custody pursuant to the Governor’s grant of parole, Mr.
16 Duong was immediately arrested by ICE. *Id.* ¶ 7. For the next three months, Mr. Duong was held
17 in ICE custody in Yuba County Jail in “the worst conditions [he had] ever experienced.” Docket
18 No. 1-1, Malik Decl. at Exh. A ¶ 6. Mr. Duong suffers from severe asthma and other medical
19 conditions, and the unsanitary conditions at the Yuba County Jail triggered a deterioration in his
20 health. *Id.* ¶¶ 12-16. The “horrific” conditions of Mr. Duong’s detention also “exacerbated and
21 triggered” Mr. Duong’s already-fragile mental health. *See* Docket No. 1-1, Malik Decl. at Exh. B
22 at 6-7. He began experiencing daily visions of ghosts in his cell, including a “group of ghost like
23 figures marching towards him, similar to what he saw in Cambodia.” *Id.* at 7; Docket No. 1-1,
24 Malik Decl. at Exh. A ¶ 10. He became “heavily distressed and overwhelmed,” and would cry for
25 hours. Docket No. 1-1, Malik Decl. at Exh. B at 7. A clinical psychologist has concluded that Mr.
26 Duong, at the time of his prior ICE detention in 2020, was experiencing PTSD and Major
27 Depressive Disorder. *Id.* at 7-8, 10. Specifically, he “reported depressive symptoms such as

1 sadness, agitation, sleep disturbance, fatigue, feelings of worthlessness, impaired ability to think,
2 and recurrent thoughts of death” as well as “symptoms consistent with posttraumatic stress
3 disorder, such as involuntary and intrusive distressing memories, nightmares, flashbacks, severe
4 psychological distress, and physiological reactions.” *Id.* at 7.

5 On June 02, 2020, U.S. District Judge Vince Chhabria ordered Mr. Duong released from
6 ICE custody pursuant to the bail application process established by the *Zepeda Rivas v. Jennings*
7 class action suit—a suit filed in response to dangerous conditions of confinement at Yuba County
8 Jail and another detention facility in California at the beginning of the COVID-19 pandemic. *See*
9 Docket No. 1-1, Malik Decl. at Exh. F (Bail Order); *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d
10 36, 40-41 (N.D. Cal. 2020), *aff’d in part and ref’d to mediation*, 845 Fed. Appx. 530 (9th Cir.
11 2021), (granting temporary restraining order and providing district court bail application process
12 in which “care will be taken both to avoid releasing detainees who are a danger to the community
13 and to minimize the possibility that released detainees will fail to appear”). ICE released Mr.
14 Duong on an order of supervision, installed an electronic ankle monitor on Mr. Duong, and placed
15 him on a monitoring program through ISAP. Malik Decl. ¶ 8.

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

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

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

25 Since 2021, Mr. Duong has been gainfully employed at multiple community organizations
26 that provide essential services to vulnerable community members with mental health and financial
27 challenges. *Id.* ¶ 11. He has dedicated his life post-release to contributing to his community daily,

1 helping ensure people are able to access essential services safely and without fear. *See id.*; Docket
2 No. 1-1, Malik Decl. at Exh. G (Letter from manager, Sarahi Sanchez) (“At MHS Turn, we serve
3 many clients experiencing active substance use and severe mental health challenges. Rachana
4 works the 4 PM to 12 AM shift—the most demanding shift of all. During this time, he often
5 addresses the majority of client behaviors and incidents independently, utilizing his training and
6 skills to provide effective support. Clients feel comfortable approaching him with their concerns,
7 and he consistently maintains this trust”); Docket No. 1-1, Malik Decl. at Exh. H (Letter from co-
8 worker, Frank Morales) (“Rachana has shown his commitment to his job, displaying hard work,
9 team work, punctuality and most of all dedication when it come to his team member[s] and
10 residents”).

11 Mr. Duong serves his family with the same care he serves his community. *See* Malik Decl.
12 ¶ 12. He is the primary caretaker of his elderly mother, who struggles with severe medical
13 conditions and is on dialysis. *Id.* Since her kidney failure four years ago, Mr. Duong has taken
14 care of his mother’s basic needs and takes her to dialysis appointments every week. *Id.*; Docket
15 No. 1-1, Malik Decl. at Exh. I (letter from sister, Reatry Duong) (Mr. Duong “is a vital caregiver
16 for our aging and ailing mother who is suffering from kidney failure. . . . She depends on his daily
17 help for both emotional and physical support”). Mr. Duong additionally houses his nephew and
18 provides essential support for his living expenses—the two live together in Fremont, California.
19 Malik Decl. ¶ 12.

20 Mr. Duong struggles with multiple health conditions, including chronic respiratory issues.
21 Since his release, he has been able to receive consistent care and management for his health
22 conditions, including weekly allergy shots to manage his severe allergies and access to essential
23 medications. Mr. Duong is currently in the process of seeking treatment for his lungs after recently
24 discovering that part of his lungs has collapsed. *Id.* ¶ 10.

25 Since his release from ICE custody, Mr. Duong has also been diligently pursuing his rights
26 in his immigration proceedings, including receiving a successful grant of termination from the IJ
27 for prior proceedings on May 21, 2024. *Id.* ¶ 13. The Department of Homeland Security filed a

1 subsequent Notice to Appear with the San Francisco Immigration Court, and Mr. Duong has
2 continued to diligently litigate the proceedings stemming from that Notice to Appear—just weeks
3 before Mr. Duong’s arrest on September 6, 2025, he participated in a hearing before the San
4 Francisco Immigration Court during which the court scheduled Mr. Duong for a subsequent
5 hearing on October 29, 2025. *Id.*

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

7 Despite Mr. Duong’s consistent compliance with the terms of his release, on September
8 6, 2025, ICE arrested him at his home at 4109 Randy Common, Fremont, CA 94583. *Id.* ¶ 14. At
9 approximately 9:10 A.M., ICE officers knocked on Mr. Duong’s door and stated that there was
10 an issue with the submission of his photo as required by ISAP and that he needed to retake it. *Id.*
11 One of the ICE officers stated that Mr. Duong simply had to step outside the home and allow his
12 photo to be taken in order to avoid a citation. *Id.* When Mr. Duong complied and stepped outside
13 of his house, however, additional ICE officers waiting along the sides of the building approached
14 and detained Mr. Duong. *Id.* The ICE officers stated that the reason for Mr. Duong’s abrupt re-
15 detention was that the photograph could not be uploaded to the ISAP monitoring application, so
16 Mr. Duong needed to be “processed in detention.” *Id.*

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

23 Every day that Mr. Duong is detained harms Mr. Duong’s ability to care for his own health
24 and will harm Mr. Duong’s employer and Mr. Duong’s family, including by severely impacting
25 his elderly mother’s access to essential medical care and putting Mr. Duong’s nephew at high risk
26 of homelessness. Malik Decl. ¶ 17; Docket No. 1-1, Malik Decl. at Exh. G (losing Mr. Duong as
27 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.”); Docket No. 1-1, 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* Docket No. 1-1, Malik Decl. at Exh. B.

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.

Intervention from this Court is therefore required to ensure that Mr. Duong does not continue to suffer further irreparable harm.

III. LEGAL STANDARD

Mr. Duong is entitled to a temporary restraining order if he establishes that he is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if Mr. Duong does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). As set forth in more detail below, Mr. Duong overwhelmingly satisfies both standards.

1 **IV. ARGUMENT**

2 **a. MR. DUONG WARRANTS A TEMPORARY RESTRAINING ORDER**

3 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
4 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
5 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
6 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
7 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Without intervention
8 from this Court, Respondents will continue to detain Mr. Duong in violation of Mr. Duong’s due
9 process rights and Mr. Duong (and Mr. Duong’s family and community) will thus continue to
10 suffer irreparable injury including deterioration of Mr. Duong’s physical and mental health and
11 Mr. Duong’s elderly mother’s loss of her primary, essential caregiver.

12 **i. Mr. Duong is Likely to Succeed on the Merits of His Claim That, in**
13 **This Case, the Constitution Required a Hearing Before a Neutral**
Adjudicator Prior to Mr. Duong’s Re-Detention

14 Mr. Duong is likely to succeed on his claim that, in his particular circumstances,
15 Respondents violated Mr. Duong’s rights under the Due Process Clause of the Constitution by re-
16 detaining him before providing Mr. Duong with a pre-deprivation hearing before a neutral
17 decision maker to determine whether re-detention is justified by a risk of flight or danger to the
18 community.

19 Civil immigration detention must be justified by a permissible purpose and must be
20 reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two
21 permissible regulatory goals for immigration detention are “ensuring the appearance of
22 [noncitizens] at future immigration proceedings” and “preventing danger to the community.” *Id.*
23 For those held in immigration detention, substantive “due process requires that the . . .
24 commitment bear some reasonable relation to” one of these two permissible regulatory goals. *See*
25 *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). Where civil detention is not related to a
26 permissible regulatory goal, is “excessive in relation to” a permissible regulatory goal or is
27 “employed to achieve objectives that could be accomplished” with “alternative and less harsh

1 methods,” the detention amounts to punishment in violation of the individual’s substantive due
 2 process rights. *See id.* at 931-32.

3 Due process also constrains ICE’s power to re-arrest a noncitizen who is at liberty
 4 following a release from immigration custody. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
 5 Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
 6 requirements of due process”). “It is well established that the Fifth Amendment entitles
 7 [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510,
 8 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—
 9 from government custody, detention, or other forms of physical restraint—lies at the heart of the
 10 liberty” that the Due Process Clause protects. *Zachrydas*, 533 U.S. at 690; *see also id.* at 718
 11 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
 12 unlawful or arbitrary personal restraint or detention”).

13 Courts in this district have repeatedly recognized that due process requires that a
 14 noncitizen like Mr. Duong who was previously found by an adjudicator to be appropriate for
 15 release from immigration detention be given a pre-deprivation hearing *before* ICE re-detains him.
 16 *See, e.g., Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018);
 17 *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-
 18 PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, 534 F. Supp.
 19 3d 1050 (N.D. Cal. 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4
 20 (N.D. Cal. May 6, 2022) (holding petitioner would suffer irreparable harm if re-detained, and
 21 requiring notice and a hearing before re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-
 22 NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted
 23 preventing re-arrest where plaintiff had been on bond for more than five years).¹

24 ¹ In addition to being constrained by due process, ICE’s authority to re-detain noncitizens is also
 25 constrained by BIA case law. Although the statute and regulations grant ICE the ability to revoke
 26 a noncitizen’s immigration bond and re-arrest the noncitizen, 8 U.S.C. § 1226(b); 8 C.F.R. §
 27 236.1(c)(9), the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens
 28 in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (“where a previous bond determination
 has been made . . . , no change should be made by [the DHS] absent a change of circumstance”).
 The Ninth Circuit has assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an
 individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
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1 Indeed, in similar circumstances to this case, where a noncitizen was re-arrested prior to
 2 being provided a pre-deprivation hearing, multiple judges in this District and other districts have
 3 required ICE to immediately release petitioners and ordered that re-detention not occur absent a
 4 pre-deprivation constitutionally compliant bond hearing. *Pinchi v. Noem*, No. 25-cv-05632-RMI
 5 (RFL), 2025 WL 1853763, at *2 (N.D. Cal. July 4, 2025) (granting temporary restraining order,
 6 ordering immediate release, and ordering “that [petitioner] be given notice and a pre-detention
 7 hearing before a neutral decisionmaker prior to being taken back into custody”), converted to
 8 preliminary injunction at ---F. Supp. 3d---, 2025 WL 2084921, at *7 (holding that ICE cannot re-
 9 arrest petitioner-complainant absent a pre-deprivation hearing through the pendency of her
 10 immigration proceedings); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025
 11 WL 1918679, at *5, (E.D. Cal. July 11, 2025) (granting preliminary injunction, ordering
 12 immediately release from custody, and barring ICE from re-detaining petitioner through
 13 pendency of his proceedings without first holding a pre-deprivation hearing); *Arzate v. Andrews*,
 14 No. 1:25-cv-00942-KES-SKO (HC), 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025) (granting
 15 temporary restraining order, ordering immediate release from custody, and barring ICE from re-
 16 detaining petitioner absent a pre-deprivation hearing), converted to preliminary injunction at Dkt.
 17 15 (Aug. 20, 2025); *Pineda Campos v. Kaiser*, No. 25-cv-06920 (EKL), Dkt. 4 (N.D. Cal. Aug.
 18 16, 2025) (granting temporary restraining order, ordering immediately release from custody, and
 19 barring Respondents from re-detaining petitioner without a pre-deprivation hearing); *Hernandez*
 20 *Nieves v. Kaiser*, No. 25-cv-06921-LB, Dkt. 10 (N.D. Cal. Aug. 17, 2025) (same); *Salcedo Aceros*

21
 22 2021) (“Thus, absent changed circumstances . . . such as ‘reinvolvement with the criminal justice
 23 system’ . . . ICE cannot redetain Panosyan.”). Thus, under BIA caselaw, ICE may re-arrest a
 24 noncitizen who had been previously released pursuant to a determination regarding risk of flight
 25 or danger to the community—like Mr. Duong—only after a change in circumstances *increases*
 26 that risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017); *Matter of Sugay*,
 27 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 v. *Kaiser*, No. 1:25-cv-06924-RMI, Dkt. 6 (N.D. Cal. Aug. 16, 2025) (same); *Jimenez Garcia v.*
 2 *Kaiser*, No. 25-cv-06916-TSH (EKL), Dkt. 6 (N.D. Cal. Aug. 17, 2025) (same)

3 **1. Mr. Duong has a protected liberty interest in his conditional**
 4 **release**

5 Individuals have a weighty interest in avoiding re-incarceration that is protected by the
 6 Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee
 7 has a protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47
 8 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

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

16 This basic principle—that individuals have a liberty interest in their conditional release—
 17 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions
 18 since *Morrissey*. See, e.g., *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
 19 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
 20 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
 21 probation have a protected liberty interest requiring pre-deprivation process). In fact, an
 22 individual maintains a protected liberty interest in his freedom even where he obtained liberty
 23 through a mistake of law or fact. See *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.
 24 2017); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
 25 considerations support the notion that an inmate released on parole by mistake, because he was
 26 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
 27 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would

1 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
2 (internal quotation marks and citation omitted).

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

12 Here, Mr. Duong’s conditional release is in relevant ways similar to the liberty interest in
13 parole protected in *Morrissey*. Just as in *Morrissey*, Mr. Duong’s release “enables him to do a
14 wide range of things open to persons” who have never been in custody or convicted of any crime,
15 including to live at home, work, care for his family members, and “be with family and friends and
16 to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Indeed, Mr.
17 Duong is the primary caretaker for his elderly mother, who struggles with severe medical
18 conditions including kidney failure; houses his nephew and provides essential support for him,
19 including by covering many of his living expenses; and also ensures that vulnerable community
20 members can safely access essential services through his work for Turn Mental Health Services,
21 a community organization that provides essential services to individuals with mental health and
22 financial challenges. Docket No. 1-1, Malik Decl. ¶¶ 11-12. Even if “lawfully revocable,” Mr.
23 Duong’s five years at liberty provides him a “a liberty interest that entitles him to constitutional
24 due process before he is re-incarcerated.” *Hurd*, 864 F.3d at 683; *see also Gonzalez-Fuentes*, 607
25 F.3d at 887 (holding that inmates released to electronic monitoring program had liberty interest
26 protected by the Due Process Clause because the program “allowed the appellees to live with their
27 loved ones, form relationships with neighbors, lay down roots in their community, and reside in

1 a dwelling of their own choosing (albeit subject to certain limitations) rather than in a cell
 2 designated by the government.”); *see also Jorge M.F.*, 534 F. Supp. 3d at 1054 (holding that
 3 released noncitizen made a substantial showing that he had liberty interest requiring pre-
 4 deprivation hearing before re-arrest, even after original bond order was reversed on appeal)

5 **2. Mr. Duong’s liberty interest mandated a hearing before any re-
 arrest**

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

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

20 Importantly, the Supreme Court “usually has held that the Constitution requires some kind
 21 of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494
 22 U.S. 113, 127 (1990) (emphasis in original). Post-deprivation process only comports with due
 23 process in a “special case” where post-deprivation remedies are “the only remedies the State could
 24 be expected to provide”. *Id.* at 128. Further, only where “one of the variables in the *Mathews*
 25 equation—the value of pre-deprivation safeguards—is negligible in preventing the kind of
 26 deprivation at issue” can the government avoid providing pre-deprivation process. *Id.*; *see also*
 27 *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary

1 civil commitment proceedings may not constitutionally be held in jail pending the determination
2 as to whether they can ultimately be recommitted).

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

6 First, Mr. Duong's private interest in his liberty is substantial. *See Foucha v. Louisiana*,
7 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty
8 protected by the Due Process Clause"). The Supreme Court has recognized that individuals
9 released from serving a *criminal* sentence have a "valuable" liberty interest—even if that freedom
10 is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. Thus, released
11 individuals who have not violated the conditions of their release must be provided notice and a
12 hearing *before* they are reincarcerated. *See Johnson*, 682 F.2d at 873; *Gonzalez-Fuentes*, 607 F.3d
13 at 891-92; *Hurd*, 864 F.3d at 683. If that is true for parolees or probationers—who have a
14 diminished liberty interest given their convictions, *see, e.g., United States v. Knights*, 534 U.S.
15 112, 119 (2001)—the interest for an individual awaiting civil immigration proceedings is even
16 weightier. *See, e.g., Ortega*, 415 F. Supp. 3d at 969 ("[G]iven the civil context" of immigration
17 detention, a noncitizen's interest in release on bond is "arguably greater than the interest of
18 parolees in *Morrissey*").

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

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

14 Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally re-detain
15 Mr. Duong without a hearing before a neutral adjudicator that would determine whether detention
16 serves a permissible purpose, i.e. preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690.
17 After the California parole board and Governor Newsom deemed him to be such a low risk of
18 reoffending that he was suitable for release on parole, U.S. District Judge Chhabria reviewed Mr.
19 Duong’s case and found that he should be released on bail from ICE custody, taking flight risk
20 and dangerousness into consideration. *See* Malik Decl. ¶ 6; Malik Decl. at Exh. F; *Zepeda Rivas*,
21 445 F. Supp. at 40-41. In the five years since, Judge Chhabria’s decision to release Mr. Duong
22 from ICE custody—and Governor Newsom’s decision to release Mr. Duong from criminal
23 custody—have both proven to be good ones: Mr. Duong has complied with his bail conditions,
24 reported as required to ICE and ISAP check-ins, remained law-abiding and contributed
25 substantially to his community. *See* Malik Decl. ¶ 9. Because of his compliance with reporting
26 requirements and good behavior, Mr. Duong’s was released from parole one year early. *Id.*
27 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 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
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26
 27 ² Notably, without a hearing ordered by this court, DHS’ unilateral decision to re-detain Mr.
 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 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 Reytez 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 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. Because Respondents failed to give
27 Mr. Duong the notice and hearing he was due before re-incarcerating him, Due Process requires

1 that the Court order him released unless and until Respondents provide him with a
2 constitutionally-compliant hearing.

3 Due Process also requires that the government justify re-detention of Mr. Duong by
4 establishing, by clear and convincing evidence, that he poses a flight risk or danger. *See Singh*,
5 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened burden of proof on the
6 State in civil proceedings in which the individual interests at stake . . . are both particularly
7 important and more substantial than mere loss of money.”) (internal quotation marks omitted);
8 *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus
9 view” among District Courts concluding that, “where . . . the government seeks to detain [a
10 noncitizen] pending removal proceedings, it bears the burden of proving that such detention is
11 justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation
12 hearing before being returned to custody, ordering that the government bear the burden at the
13 hearing by clear and convincing evidence). Further, Due Process requires that the hearing
14 consider whether alternatives to detention—such as the ISAP program that has successfully
15 managed Mr. Duong’s release for more than five years—would adequately ensure Mr. Duong’s
16 appearance. Detention is not warranted if there are alternatives to detention that could mitigate
17 risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
18 must be considered in determining whether Mr. Duong’s re-incarceration is warranted. *Cf. G.C.*
19 *v. Wofford*, No. 1:24-cv-01032-EPG-HC, 2025 WL 711190, at *10 (E.D. Cal. Mar. 5, 2025)
20 (ordering bond hearing at which IJ considers alternative conditions of release).

21 * * *

22 As the above-cited authorities demonstrate, Mr. Duong is likely to succeed on his claim
23 that the Due Process Clause required notice and a hearing before a neutral decisionmaker *prior*
24 *to* re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions
25 regarding this issue. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

1 **ii. Mr. Duong Will Suffer Irreparable Harm Absent Injunctive Relief**

2 Absent the temporary restraining order he seeks, Mr. Duong will suffer continued
3 irreparable harm every moment that he remains deprived of his liberty and subjected to unlawful
4 incarceration by ICE without first having been provided constitutionally adequate process.

5 Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d
6 1193, 1195 (9th Cir. 2016), opinion vacated on other grounds by *Preap v. McAleenan*, 922 F.3d
7 1013 (9th Cir. 2019). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial
8 has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and
9 it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. For*
10 *Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth
11 Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to
12 immigration detention” including “subpar medical and psychiatric care in ICE detention facilities,
13 the economic burdens imposed on detainees and their families as a result of detention, and the
14 collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at
15 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention
16 centers. See, e.g., DHS, Office of Inspector General (OIG), Summary of Unannounced
17 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations
18 of environmental health and safety standards; staffing shortages affecting the level of care
19 detainees received for suicide watch, and detainees being held in administrative segregation in
20 unauthorized restraints, without being allowed time outside their cell, and with no documentation
21 that they were provided health care or three meals a day).³

22 Every day that Mr. Duong is detained harms Mr. Duong’s ability to care for his own health
23 and will harm Mr. Duong’s employer and Mr. Duong’s family, including by severely impacting
24 his elderly mother’s access to essential medical care and putting Mr. Duong’s nephew at high risk
25 of homelessness. Docket No. 1-1, Malik Decl. ¶ 17; Docket No. 1-1, Malik Decl. at Exh. G (losing
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27 ³ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
28 (last accessed Sept. 6, 2025).

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.”); Docket No. 1-1, 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 continued 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* Docket No. 1-1, 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* Docket No. 1-1, Malik Decl. at Exh. B.

Finally, as detailed *supra*, Mr. Duong’s continued detention absent a hearing before a neutral adjudicator violates his due process rights under the Constitution. It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*, 695 F.3d at 1002 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Duong from suffering irreparable harm by being subject to unlawful and unjust detention.

iii. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

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

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

Further, any burden imposed by requiring the DHS to refrain from arresting Mr. Duong unless and until he is provided a hearing before a neutral is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.”).

Finally, a temporary restraining order is in the public interest. First and most importantly, “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Mr. Duong in violation of the requirements of Due Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional 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 that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”).

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

V. CONCLUSION

For all the foregoing reasons, this Court should find that Mr. Duong warrants a temporary restraining order and a preliminary injunction ordering that Respondents immediately release Mr. Duong and enjoining Respondents from re-arresting Mr. Duong unless and until he is afforded notice and a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether clear and convincing evidence demonstrates that he

1 currently poses a flight risk or danger to the community such that his re-incarceration would be
2 justified.

3
4 Dated: September 6, 2025

Respectfully submitted,

5
6 /s/ Lee Ann Felder-Heim

7 Lee Ann Felder-Heim
8 Asian Law Caucus
9 *Pro Bono* Attorney for Mr. Duong
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