

1 John M. Mitchell (AZ Bar No. 039739)*
2 Christine K. Wee (AZ Bar No. 028535)
3 American Civil Liberties Union
4 Foundation of Arizona
5 2712 N. 7th Street
6 Phoenix, Arizona 85006
(602) 650-1854
jmittchell@acluaz.org
cwee@acluaz.org

7 * *Admitted pursuant to Arizona Supreme Court Rule 38(d)*
8

9 *Attorneys for Petitioner Monnathy L. Nambounmy*
10 *Additional attorneys listed on next page*

11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF ARIZONA**

13 Monnathy L. Nambounmy,

14 *Petitioner,*

15 v.

16 John E. Cantu, Enforcement and Removal
17 Operations, Arizona Field Office Director,
18 U.S. Immigration and Customs
19 Enforcement; Todd Lyons, Acting
20 Director of Immigration and Customs
21 Enforcement; Kristi Noem, Secretary,
22 U.S. Department of Homeland Security;
23 David R. Rivas, warden at San Luis
24 Regional Detention Center; U.S.
25 Department of Homeland Security; U.S.
26 Immigration and Customs Enforcement,

27 *Respondents.*

28 **Civil Case No.**

**PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND MEMORANDUM OF
LAW IN SUPPORT OF MOTION**

1 Andres Holguin-Flores (CA Bar No. 305860)**
2 ACLU Foundation of San Diego and Imperial Counties
2760 Fifth Ave #300
3 San Diego, California 92101
3 (619) 232-2121
4 aholguinflores@aclu-sdic.org

5 Geovanna Y. Medel (CA Bar No. 362859)**
6 ABA Immigration Justice Project
2727 Camino Del Rio South, Suite 320
7 San Diego, CA 92108
7 (619) 859-6650
8 Geovanna.Medel@abaijp.org

9 ** *Pro hac vice* application forthcoming
10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I. INTRODUCTION

2 Petitioner Monnathy L. Nambounmy (“Petitioner”) faces immediate irreparable
3 harm absent this Court’s intervention. He is experiencing unlawful prolonged immigration
4 detention and, as a Laotian refugee with a 24-year-old removal order, he faces a real and
5 imminent threat of removal to a third country in violation of his statutory and constitutional
6 rights. He respectfully asks this Court to order his release, enjoin Respondents from
7 removing him to a third country without affording him his statutory and constitutional
8 rights in reopened removal proceedings, and enjoin Respondents from removing him to a
9 third country for a punitive purpose and effect.

II. STATEMENT OF FACTS

Petitioner was born on [REDACTED] 1979, in a town outside Vientiane, Laos. Declaration of Monnathy Nambounmy ¶1. He was admitted to the United States on January 27, 1981, as a refugee alongside his parents and five siblings. *Id.* ¶¶3-4; Declaration of Andres Holguin-Flores ¶7. He was one and a half years old when they arrived. Nambounmy Decl. ¶4.

16 Petitioner and his family were forced to flee Laos shortly after his birth because the
17 new government in Laos was hunting down and killing people who had worked for or
18 supported the American military during the Vietnam War. *Id.* ¶3. The government had
19 begun searching for his father, who worked for Air America¹ during the war. *Id.* The family
20 fled to Thailand and lived in a refugee camp until their resettlement in the United States.
21 *Id.*

22 Petitioner and his family eventually settled in the San Diego area, where they still
23 live. *Id.* ¶¶4, 6, 33. His parents and four of his five siblings are naturalized citizens. *Id.* ¶33.
24 Petitioner became a lawful permanent resident on November 24, 1982. Holguin-Flores
25 Decl. ¶22.

²⁷ ²⁸ ¹ Air America was an airline covertly owned and operated by the Central Intelligence Agency (“CIA”) that supplied and supported covert operations in Southeast Asia during the Vietnam War. See, e.g. Wikipedia, *Air America (airline)*, [https://en.wikipedia.org/wiki/Air_America_\(airline\)](https://en.wikipedia.org/wiki/Air_America_(airline)).

1 Until his recent detention, Petitioner lived with his U.S. citizen wife, Stacy Lin
2 Imgrund, and their two children, ages 8 and 11. Nambounmy Decl. ¶¶26-27. Ms. Imgrund
3 is dying of end-stage renal failure and several other chronic illnesses. *Id.* ¶27; Holguin-
4 Flores Decl. ¶3, Exh. B at 22-35 (Imgrund Decl. and medical records). She is currently
5 number one on a nationwide list for kidney transplants. Nambounmy Decl. ¶27. Her doctor
6 estimates that “her life expectancy could be less than one year” if she does not receive a
7 kidney transplant soon. Holguin-Flores Decl. ¶3, Exh. B at 35 (Doctor letter).

8 Prior to his detention, Petitioner was Ms. Imgrund’s caregiver. Nambounmy Decl.
9 ¶¶31. As of this filing, her health has significantly deteriorated since he was detained last
10 month. *Id.* She is currently being treated for internal bleeding. *Id.*

11 Additionally, Petitioner’s 11-year-old son has Diabetes Mellitus Type 1, Attention
12 Hyperactive Deficit Disorder (“ADHD”), and an auditory processing disorder. *Id.* ¶28. His
13 son cannot be left alone for extended periods of time, particularly at night when his glucose
14 levels are unpredictable. *Id.* ¶29. Prior to his detention, Petitioner was his primary
15 caregiver. *Id.* At night, Petitioner monitored his son to ensure his glucose levels did not
16 drop, waked him when they did, and administered medications as needed. *Id.* At night, Ms.
17 Imgrund is connected to her dialysis machine and cannot move for nine hours while the
18 dialysis treatment is administered. *Id.* ¶30. In Petitioner’s absence, his son sleeps by her
19 side so that she can call someone if help is needed for her son. *Id.*

20 Since his detention, Petitioner’s son has struggled significantly to manage his
21 diabetes. *Id.* As of this filing, his son is battling a severe leg infection that may require
22 surgical intervention. *Id.* Both the survival of his wife and son quite literally depends on
23 Petitioner’s presence. *Id.*

24 Petitioner grew up in National City in San Diego County, California. *Id.* ¶6. In the
25 1980s and 90s, National City experienced significant racial tension and the Laotian refugee
26 community there suffered significant discrimination and violence. *Id.* This led to the
27 formation of Laotian youth gangs to protect against attacks from other gangs. *Id.*

28 On October 23, 1997, at the age of 18, Petitioner was convicted of attempted murder

1 in the second-degree for driving the car in which someone else shot a gun, although no one
2 was injured. *Id.* ¶7. He was 17 at the time of the events and charged as an adult. *Id.* He was
3 sentenced to five years in prison. *Id.* ¶8.

4 In June 2001, while completing his sentence, the former Immigration and
5 Naturalization Service (“INS”) initiated removal proceedings, charging him with being
6 removable under 8 U.S.C. § 1227(a)(2)(A)(iii) for having an aggravated felony due to the
7 attempted murder conviction. Holguin-Flores Decl. ¶8. Handwritten notes from the INS
8 trial attorney in immigration court during Petitioner’s master calendar hearing state that
9 Petitioner told the immigration judge “if returned to Laos he would be killed.” The notes
10 continue, “R[espondent] wanted to designate Canada as his country of deportation. IJ
11 didn’t listen to him.” *Id.* ¶20. An immigration judge ordered Petitioner removed on August
12 9, 2001. *Id.* ¶11. Petitioner was unrepresented. Monnathy Decl. ¶12.

13 The INS detained Petitioner from August 8, 2001 to November 15, 2001. Holguin-
14 Flores Decl. ¶5, Exh. D at 2, The INS released Petitioner on an Order of Supervision after
15 determining that he could not be removed. *Id.* In recommending release, an ICE officer
16 noted he could not be removed because “no repatriation agreement exists at this time to
17 effect his removal from the United States.” *Id.* ¶14. The INS’s Release Decision notice
18 informed Petitioner that the government would continue to make efforts to obtain his travel
19 document for deportation and that “[i]f we are successful in obtaining those documents,
20 you will be required to surrender to the INS for removal. You will, at that time, be given
21 an opportunity to prepare for an orderly departure.” *Id.* ¶15.

22 On March 15, 2005, immigration officials again took Petitioner into custody. *Id.* ¶5,
23 Exh. D at 2. On April 8, 2005, ICE officials sent a travel document request to Laos. *Id.* ¶16.
24 On June 14, 2005, after three additional months of immigration custody, ICE again released
25 Petitioner from immigration custody, under an Order of Supervision, because no travel
26 document was received from Laos. *Id.* ¶5, Exh. D at 2. ICE issued a release notification
27 letter to Petitioner that again stated “Once a travel document is obtained, you will be
28 required to surrender to ICE for removal. You will, at that time, be given an opportunity to

1 prepare for an orderly departure.” *Id.* ¶17.

2 In July 2011, as Petitioner was leaving state prison having served a sentence for a
3 burglary in the second degree, ICE decided to lift his immigration detainer because ICE
4 could not remove him to Laos and because it concluded Petitioner was not a danger or
5 flight risk. *Id.* ¶19. Instead, it issued Petitioner a decision to release him on his prior
6 conditions of supervision, requiring regular check ins with ICE. *Id.* When he appeared for
7 his scheduled check in on August 1, 2011, *id.*, for reasons unknown, ICE re-detained him.
8 *Id.* ¶5, Exh. D at 2. On October 6, 2011, ICE again sent a request to Laos for a travel
9 document. *Id.* ¶18. It also sent a request to Thailand, asking Thailand to accept him. *Id.*
10 After neither country agreed to accept him, ICE again released Petitioner on October 26,
11 2011 on an Order of Supervision. *Id.* ¶21. ICE gave Petitioner a Release Notification that
12 again stated: “Once a travel document is obtained, you will be required to surrender to ICE
13 for removal. You will, at that time, be given an opportunity to prepare for an orderly
14 departure.” *Id.* ¶23.

15 ICE issued Petitioner’s most recent order of supervision on February 22, 2016. *Id.*
16 ¶24 Petitioner has dutifully complied with his supervision requirements ever since,
17 including appearing for all his scheduled check-ins. Nambounmy Decl. ¶16.

18 On June 5 and 6, 2025, ICE officers came to Petitioner’s house apparently looking
19 to arrest him. Declaration of Yolanda Crystal Felix ¶6. Although Petitioner had been fully
20 compliant with his Order of Supervision and was scheduled for his annual check in on July
21 3, 2025, it was clear ICE was intending to re-arrest and detain him. *Id.* ¶7. With the
22 assistance of counsel, on June 13, 2025, Petitioner filed an emergency request for a stay of
23 removal with ICE, given Ms. Imgrund’s critical medical condition. *Id.* ¶¶9-10.

24 Petitioner appeared with counsel for his annual check in on July 3, 2025. At that
25 check-in, an ICE officer verbally approved Petitioner’s application for a stay of removal
26 and enrolled Petitioner in the Alternatives to Detention electronic monitoring program. *Id.*
27 ¶12.

28 Shortly thereafter, Petitioner received a “call in” letter at home requesting that he

1 appear at another ICE check-in on July 30, 2025 with any travel documents or passports
2 he may have. *Id.* ¶15; Holguin-Flores Decl. ¶12 (“call in” letter). On July 21, Petitioner’s
3 counsel went to the ICE office to ask for explanation of the letter and ICE told her that
4 “whoever represented that the Stay was approved did not have the authority to do so.” Felix
5 Decl. ¶16.

6 Upon receiving this letter, Petitioner’s wife contacted the Laos Embassy and the
7 Embassy confirmed they would not issue a passport to him. Nambounmy Decl. ¶20.
8 Petitioner appeared for his ICE check-in on July 30, 2025, alongside his wife and mother-
9 in-law. *Id.* At that time, officers informed him that his approved stay of removal was
10 revoked and they were going to detain me. *Id.* ¶21. An officer said: “Nothing personal, we
11 just gotta take you in.” *Id.* ¶21.

12 At no time since his re-detention has ICE given Petitioner a (1) Notice of Revocation
13 of Release, explaining the reasons why they were revoking his conditions of supervision
14 and re-detaining him; (2) explanation in an initial interview why they were revoking his
15 release; (3) provide him an opportunity to respond with evidence to the reasons for the
16 revocation, or (4) conducted a revocation custody review. *Id.* ¶22.

17 At the time of his re-detention, ICE did not have a travel document to Laos, nor had
18 they even requested one. Approximately two weeks ago, Petitioner’s deportation officer
19 asked him for information needed to process a travel document request to Laos. Petitioner
20 gave the officer the name of the only family member he has in Laos. *Id.* ¶23.

21 **A. Laos Repatriation History**

22 No repatriation agreement exists between Laos and the United States. According to
23 the government, “Laos has historically failed to accept back its removable nationals.”²

24 Until this year, Laos has generally not accepted people for repatriation from the
25

26 ² President Donald Trump, Proclamation: *Restricting the Entry of Foreign Nationals to*
27 *Protect the United States from Foreign Terrorists and Other National Security and Public*
28 *Safety Threats*, June 4, 2025, <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>.

1 United States. Upon information and belief, Laos will not accept a person for repatriation
 2 from the United States without first processing a request from ICE and issuing a travel
 3 document. In FY 2020, there were reportedly 4,700 Laos individuals with final orders of
 4 removal in the United States who could not be removed.³

5 In June 2025, the government placed a partial travel ban on Laos and cut off visas
 6 for certain Lao individuals citing visa overstays and failure to cooperate with U.S.
 7 deportation efforts.⁴ The Laos government has slowly began issuing travel documents in
 8 response. Dozens of individuals have reportedly been deported to Laos in recent months.

9 There is no known information about who Laos will and will not accept for
 10 repatriation at this moment in time. What is known is that historically they accepted barely
 11 any deportees from the United States, and that they have now begun to accept some and
 12 others they have deported to third countries without notice.

13 **B. ICE's New Third Country Removal Policy**

14 On July 9, 2025, ICE released a memorandum instructing staff that ICE may deport
 15 a person to a third country not designated on the removal order without any procedures for
 16 notice or an opportunity to be heard if the State Department confirms that it has received
 17 diplomatic assurances that individuals will not be persecuted or tortured. Holguin-Flores
 18 Decl. ¶2. It makes no mention of assurances that a person will not be arbitrarily or
 19 indefinitely imprisoned. *Id.*

20 If no diplomatic assurances are received, the memorandum instructs officers to
 21 serve on the individual a Notice of Removal that includes the intended country of removal.
 22 *Id.* It tells officers not to ask whether the individual is afraid of removal to that country and
 23 states that officers should “generally wait at least 24 hours following service of the Notice
 24 of Removal before effectuating removal.” *Id.* But states that “[i]n exigent circumstances,

25
 26 ³ H.R. 6034, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6034/text>.

27
 28 ⁴ Lex Harvey, *Trump Slaps New Travel Ban on 12 Countries, Partial Restriction on Laos*, Laotian Times (June 5, 2025), <https://laotiantimes.com/2025/06/05/trump-slaps-new-travel-ban-on-12-countries-partial-restriction-on-laos/>.

1 [ICE] may execute a removal order six (6) or more hours after service of the Notice of
 2 Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak
 3 with an attorney prior to removal." *Id.*

4 The memorandum further instructs that if the noncitizen "does not affirmatively
 5 state a fear of persecution or torture if removed to the country of removal listed on the
 6 Notice of Removal within 24 hours, [ICE] may proceed with removal to the country
 7 identified on the notice." If the noncitizen "does affirmatively state a fear if removed to the
 8 country of removal," then ICE will refer the case to U.S. Citizenship and Immigration
 9 Services ("USCIS") for a screening for eligibility for withholding of removal and
 10 protection under the Convention Against Torture. *Id.* "USCIS will generally screen within
 11 24 hours." *Id.* If USCIS determines that the [noncitizen] does not meet the standard, the
 12 individual will be removed. *Id.* If USCIS determines that they have met the standard, then
 13 the policy directs ICE to either move to reopen removal proceedings "for the sole purpose
 14 of determining eligibility for [withholding of removal protection] and [Convention Against
 15 Torture ("CAT")] or designate another country for removal. *Id.*

16 **C. Punitive Banishment to Third Countries**

17 Since January 2025, Respondents have developed and implemented a policy and
 18 practice of removing individuals to third countries, without first following the Immigration
 19 and Nationality Act ("INA") procedures for designation and removal to a third county and
 20 without providing fair notice and an opportunity to contest the removal in immigration
 21 court. These removals are unconstitutionally punitive.

22 Respondents reportedly have negotiated with at least 58 countries to accept
 23 deportees from other nations. On June 25, 2025, the New York Times reported that seven
 24 countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—
 25 had agreed to accept deportees who are not their own citizens.⁵ Since then, ICE has carried
 26 out highly-publicized third country deportations to South Sudan and Eswatini.

27
 28 ⁵ Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, NY Times (June 25, 2025),
<https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html>.

1 Punishment and deterrence appear to be the point of the Administration's third
2 country removal scheme. In an official video, President Donald Trump stated, "If illegal
3 aliens choose to remain in America, they're remaining illegally and they will face severe
4 consequences," such as "significant jail time, enormous financial penalties, confiscation of
5 all property, garnishment of all wages, imprisonment and incarceration, and sudden
6 deportation in a place and manner solely of our discretion."⁶ In January, President Trump
7 announced a plan to detain immigrants at the Guantanamo Bay prison in Cuba stating:
8 "Some of them are so bad we don't even trust the countries to hold them, because we don't
9 want them coming back," he continued, "So we're going to send them to Guantanamo . . .
10 it's a tough place to get out."⁷

11 In February 2025, Secretary of State Marco Rubio announced that El Salvador had
12 agreed to “accept for deportation any illegal alien in the [U.S.] who is a criminal from any
13 nationality”⁸ with the explicit understanding that that deportees will be imprisoned. “We
14 can send them, and [President Bukele] will put them in his jails.”⁹ At a press conference
15 with President Trump and President Bukele, Respondent DHS Secretary Kristi Noem said,
16 “It has been wonderful for us to be able to have somewhere to send the worst of the worst
17 and someone to partner with. And we’d like to continue that partnership because it’s been

²¹ ²² ⁶ Roll Call, *Donald Trump Vlog Self-Deportation Program - May 9, 2025*, at 00:00:55 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> (last visited July 24, 2025).

²² ²³ ²⁴ ²⁵ ²⁶ ²⁷ Benedict Garman & Matt Murphy, *Migrant Tents Removed From Guantanamo Bay, Satellite Images Show*, BBC News (Apr. 17, 2025), <https://www.bbc.com/news/articles/crm3x27vw70o>.

²⁴ Stefano Pozzebon et al, *El Salvador Offers to House Violent US Criminals and Deportees of any Nationality in Unprecedented Deal*, CNN World (Feb. 4, 2025), <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

27 ⁹ Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any*

28 Nationality, Including Americans, AP News (Feb. 4, 2025).
<https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396ba9c45a2c0b>.

1 a powerful message of consequences.”¹⁰ Secretary Noem continued, “Mr. President, you
 2 wanted people to know that there was consequences if you break our laws and harm our
 3 people and endanger families. And this is a clear consequence for the worst of the worst
 4 that we have somewhere to put them.”¹¹ Noem thanked El Salvador for taking in the
 5 deportees and for “incarcerat[ing] them and to have consequences for the violence that they
 6 have perpetuated”; she continued, “I also want everybody to know, if you come to our
 7 country illegally, this is one of the consequences you could face . . . know, that this facility
 8 is one of the tools in our tool kit that we will use. . . .”¹²

9 In June 2025, President Trump spoke about the deterrent effect of the El Salvador
 10 banishments: “[W]e bring people there and when they go there, they don’t get out. And
 11 frankly, when they hear they have to go there, they become very nice people.”¹³ The
 12 Department of Homeland Security agreed, posting, “Illegal aliens are turning back because
 13 they know the reality is they will ultimately leave in handcuffs.”¹⁴

14 Earlier, in April 2025, Secretary of State Marco Rubio told reporters that the
 15 administration is “working with other countries to say, we want to send you some of the
 16 most despicable human beings. . . and the further away from America, the better, so they
 17 can’t come back across the borders.”¹⁵ Secretary Noem, in press statements, videos and
 18

19 ¹⁰ Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El
 20 Salvador - April 14, 2025*, at 00:06:45 (emphasis added),
<https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/> (last visited July 24, 2025).

21 ¹¹ *Id.*, at 00:06:45, 00:07:10.

22 ¹² Video posted by Kristi Noem (@Sec_Noem), X (Mar. 26, 2025, at 4:08 PM),
https://x.com/Sec_Noem/status/1905034256826408982.

23 ¹³ Roll Call, White House Press Conference: *Press Conference: Donald Trump Hosts a
 24 Press Conference at the White House - June 27, 2025*, at 00:20:29,
<https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> (last visited July 24, 2025).

25 ¹⁴ Homeland Security (@DHSgov), X (June 24, 2025 at 4:17 PM),
<https://x.com/DHSgov/status/1937651350059327520>.

26 ¹⁵ Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7,
 27 2025), <https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations>.

1 ads, threatened noncitizens with criminal convictions to “leave America” otherwise “be
 2 fined nearly \$1,000 per day, imprisoned, and deported.”¹⁶ She stated, “Child molesters.
 3 Rapists. Murderers. These are just a few of the illegal alien scumbags who have been fined,
 4 imprisoned, and deported thanks to President Trump. . . President Trump and I have a clear
 5 message to those in our country illegally: LEAVE NOW. If you do not self-deport, we will
 6 hunt you down, arrest you, and deport you.”¹⁷

7 The Administration has negotiated with countries to have U.S. deportees imprisoned
 8 in prisons, camps or other facilities. Deportees sent to third countries have in fact been
 9 incarcerated. In February 2025, Panama and Costa Rica took in hundreds of deportees from
 10 countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a
 11 detention center.¹⁸ In Panama, officials confiscated cell phones, and did not allow the group
 12 access to their attorneys.¹⁹ Deportees slept in structures made from plastic sheets and had
 13 to be escorted to the toilet.²⁰ They were “guarded like prisoners.”²¹

14

15 ¹⁶ Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and*
 16 *International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025),
<https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self>.

17 ¹⁷ *Id.* (italics omitted).

18 ¹⁸ The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal*
 19 *‘Black Hole,’* CBC News (Feb. 28, 2025, 6:29
 20 AM), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan
 21 Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try to*
 22 *Return Them to Their Countries*, AP World News (Feb. 18,
 23 2025), <https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455>; Manuel Rueda, *Asylum Seekers Deported by the*
 24 *U.S. Are Stuck in Panama and Unable to Return Home*, All Things Considered, NPR
 25 (May 5, 2025), <https://www.npr.org/2025/05/05/10369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

19 ¹⁹ Julie Turkewitz et al, *Migrants, Deported to Panama Under Trump Plan, Detained in*
 20 *Remote Jungle Camp*, N.Y. Times (Feb. 19,
 21 2025), <https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock>.

20 ²⁰ Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from*
 21 *US Details Legal Limbo in Panama Camp Near Darien Gap*, AP World News (Feb. 22,
 22 2025), <https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86>.

21 ²¹ *Id.*

1 The Costa Rican president announced an agreement to receive up to 200 deportees
 2 and to hold them for up to six weeks before sending them to their home countries,²² at the
 3 expense of the United States.²³ The deportees were held at the Temporary Migrant Care
 4 Center (CATEM).²⁴ Migrants held there previously reported sleeping on the ground in
 5 tents, being held in cramped quarters like prisoners, and sanitation issues.²⁵ On June 24
 6 2025, a Costa Rican court ordered the release of the deportees who remained in detention
 7 due to civil rights violations, finding “they had been deprived of their freedom of
 8 movement without a prior individual ruling, that their communications with the outside
 9 had been restricted, and that they had not been told about the possibility of applying for
 10 refugee status.”²⁶

11 In March 2025, the United States paid El Salvador \$5 million to arbitrarily and
 12 indefinitely imprison over 200 deported Venezuelans in a maximum-security prison
 13 notorious for gross human rights abuses, known as CECOT.²⁷ CECOT is notorious for
 14 gross human rights abuses, including torture.²⁸ El Salvador’s justice minister stated the
 15 only way out of CECOT is in a coffin.²⁹

16

²² Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President Says*, Reuters (Feb. 19, 2025), <https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/>.

17 ²³ *Id.*

18 ²⁴The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in Costa Rica*, NBC News (Feb. 21, 2025 at 7:37 AM PST), <https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148>

19 ²⁵ *Id.*

20 ²⁶ Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported from US*, BBC News (June 25, 2025), <https://www.bbc.com/news/articles/cwyrn42kp7no>.

21 ²⁷ See, e.g., Wong, *supra*; Michael Rios, *What We Know About the El Salvador ‘Mega Prison’ Where Trump Is Sending Alleged Venezuelan Gang Members*, CNN (Mar. 17, 2025).

22 ²⁸ *Id.*

23 ²⁹ Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents Indicate Most Have No Apparent Criminal Records*, CBS News (Apr. 6, 2025), (Continued...)

1 In May 2025, ICE attempted to deport individuals from Vietnam, Laos, the
 2 Philippines, and Mexico to Libya.³⁰ The aircraft sat on the runway for hours, before the
 3 immigrants were taken back to a detention center after a court ordered the men not to be
 4 deported.³¹

5 On July 4, 2025, ICE deported eight men, including one Laotian man, to South
 6 Sudan.³² They have been imprisoned in a guarded facility, virtually incommunicado, ever
 7 since.³³ Holguin-Flores Decl. ¶25..

8 On July 15, 2025, ICE deported five men, including one Laotian man, to the tiny
 9 African nation of Eswatini. DHS referred to the men as “depraved monsters” and “so
 10 uniquely barbaric that their home countries refused to take them back.”³⁴ Eswatini
 11 government officials have said the men are imprisoned in solitary confinement and that the
 12 U.S. is paying for the costs of their imprisonment.³⁵ An Eswatini government official
 13 estimated the men would be held for about 12 months.³⁶

14

15 [https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/)
 16 [prison-60-minutes-transcript/](#).

17 ³⁰ Human Rights Watch, *U.S.: Don’t Forceably Transfer Migrants to Libya*, May 9, 2025,
 18 <https://www.hrw.org/news/2025/05/09/us-dont-forceably-transfer-migrants-libya>.

19 ³¹ *Id.*

20 ³² Guardian, *US Judge Clears Path for Eight Immigrants to be Deported to South Sudan*,
 21 July 4, 2025, <https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted>.

22 ³³ See Matthias Schwartz, *Trump Administration Poised to Ramp Up Deportations to Distant Countries*, N.Y. Times, July 13, 2025,
 23 <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html>; Felicia Schwartz, et al, *South Sudan took 8 migrants from the US. It wants something in return.*, POLITICO, July 20, 2025,
 24 <https://www.politico.com/news/2025/07/30/south-sudan-might-take-more-us-migrant-deportees-it-has-a-few-asks-00482793>.

25 ³⁴ Tricia McLaughlin (@TriciaOhio), X (July 15, 2025),
 26 <https://x.com/TriciaOhio/status/1945274627976200206>.

27 ³⁵ Nimi Princewill et al., ‘*Not Trump’s Dumping Ground*’: *Outrage Over Arrival of Foreign US Deportees in Tiny African Nation*, CNN World (July 18, 2025),
 28 <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>; Rachel Savage et al., *Eswatini opposition attacks US deal as ‘human trafficking disguised as deportation’*, The Guardian, Jul. 23, 2025,
 29 <https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>.

30 ³⁶ *Id.*

1 In mid-August, ICE deported seven individuals to Rwanda.³⁷ Rwanda also reported
 2 reaching an agreement with the United States to receive up to 250 deportees.³⁸

3 The Administration has handpicked countries known for human rights abuses for
 4 third country deportation agreements to scare people in the U.S. into self-deporting or to
 5 accept removal to their home countries. For example, conditions in South Sudan are so
 6 extreme that the U.S. State Department website warns Americans not to travel there, and
 7 if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker
 8 negotiator first.³⁹ Eswatini is ruled by a monarch with complete power, and many of its
 9 citizens live on less than four dollars a day.⁴⁰ The prison system is overcrowded, with
 10 prisoners receiving one meal a day.⁴¹ The U.S. Department of State advises Americans to
 11 “exercise increased caution in Eswatini due to crime and civil unrest.”⁴² And Libya is in
 12 the middle of a civil war, with a record of “pervasive long-term arbitrary detention,
 13 enforced disappearances of both men and women, killings under torture, and unlawful
 14 killings in places of detention.”⁴³ The United Nations has called Libya’s violations of
 15 detainees’ rights “crimes against humanity.”⁴⁴

16

17

18

19 ³⁷ Daphne Psaledakis et al., *Rwanda received migrants deported from US earlier this*
 20 *month*, Reuters, Aug. 28, 2025.

21 ³⁸ *Id.*

22 ³⁹ U.S. Department of State, Travel.State.Gov, *South Sudan Travel Advisory* (Mar. 8,
 2025), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html>.

23 ⁴⁰ Nimi Princewill et al., ‘*Not Trump’s Dumping Ground*’: *Outrage Over Arrival of Foreign US Deportees in Tiny African Nation*, CNN World (July 18, 2025), <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>.

24 ⁴¹ *Id.*

25 ⁴² U.S. Department of State, Travel.State.Gov, *Eswatini Travel Advisory* (July 1, 2024), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html>.

26 ⁴³ Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya*, *supra*; see Bartlett, *supra*.

27 ⁴⁴ Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya*, *supra*.

III. LEGAL STANDARD

To obtain a temporary restraining order (TRO), a moving party “must establish that he is likely to succeed on the merits, that he is 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); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve “substantially identical” analysis). In this Circuit, courts employ “an alternative ‘serious question’ standard, also known as the ‘sliding scale’ variant of the *Winter* standard.” *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021) (citation omitted). Under this approach, the four *Winter* elements are “balanced, so that a stronger showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so long as the other *Winter* factors are met. *Id.* at 1132.

IV. ARGUMENT

17 This Court should issue a temporary restraining order because “immediate and
18 irreparable injury . . . or damage” is occurring and will continue in the absence of an order.
19 Fed. R. Civ. P. 65(b). Respondents have re-detained Petitioner in violation of his due
20 process and statutory rights and threaten to remove him to a third country without adhering
21 to constitutional and statutory procedural protections and in violation of bedrock law
22 prohibiting the government from imposing punitive measures on noncitizens ordered
23 removed. This Court should order Petitioner’s release and enjoin removal to a third country
24 where he may be imprisoned or harmed and absent legally required protections.

25 Emergency relief is necessary because Petitioner has already been unlawfully
26 detained for more than a month. His immediate release to his prior conditions of
27 supervision is necessary to restore the status quo pending the resolution of this habeas
28 petition.

A. Petitioner Is Likely to Succeed on the Merits of His Claims.

1. Petitioner Is Likely to Succeed on the Merits of His Claim That His Re-Detention Is Unconstitutional and Unlawful.

3 Petitioner is likely to succeed on the merits of his claim that his re-detention violates
4 the Due Process Clause, 8 U.S.C. § 1231(a), and governing regulations. Petitioner has
5 been detained by the government for a cumulative period of more than nine months, due
6 to four sets of releases and re-detentions. No law permits the government to re-detain in a
7 revolving door of releases and re-detentions after the presumptively reasonable period of
8 post-order immigration detention has expired and without any certainty that Petitioner can
9 be lawfully removed. Rather, for a person like Petitioner who has lived in the United States
10 since infancy, has a 24-year-old removal order, is from a country that until just a few
11 months ago generally did not accept any deportees from the United States, and remained
12 compliant with his most recent order of supervision for the past nine years, the Due Process
13 Clause required the government to give him notice and a hearing before any revocation of
14 release and to obtain a travel document prior to his re-detention. It also does not permit his
15 continuing indefinite detention. The government was also required to follow procedures
16 for revocation of Petitioner’s release under governing regulations, which it altogether
17 ignored. For all these reasons, serious questions going to the merits suggest that Petitioner’s
18 re-detention was unlawful and this Court should order his immediate release to restore the
19 status quo and return him to his prior Order of Supervision.

a. *Substantive Due Process and 8 U.S.C. §1231(a)(1)(A)*

21 The INA provides that after a removal order becomes final, the government “shall
22 remove the alien from the [U.S.] within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A).
23 This 90-day period is often referred to as the initial removal period and during it, the
24 government “shall detain the alien.” *Id.* § 1231(a)(2). In some circumstances, federal
25 immigration authorities can continue to detain an alien beyond the initial removal period.
26 Specifically, section 1231(a)(6) allows the government to detain certain enumerated
27 classes of immigrants—including those ordered removed due to criminal convictions—for
28 more than 90 days. *Id.* § 1231(a)(6).

1 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court interpreted the
2 detention statute, 8 U.S.C. § 1231(a)(6), in light of the Due Process Clause and held that
3 “[a] statute permitting indefinite detention of an alien would raise a serious constitutional
4 problem” because it would become punitive. *Id.* at 690. “[G]overnment detention violates
5 [the Fifth Amendment’s Due Process Clause] unless the detention is ordered in a *criminal*
6 proceeding with adequate procedural protections, or, in certain special and narrow
7 nonpunitive circumstances. . . where a special justification, such as a harm-threatening
8 mental illness, outweighs the individual’s constitutionally protected interest in avoiding
9 physical restraint.” *Id.* Civil immigration detention, the Court said, is only authorized for
10 the limited purpose of flight risk or a danger to the community. *Id.* The Court held that
11 section 1231(a)(6) “implicitly limits an alien’s detention to a period reasonably necessary
12 to bring about that alien’s removal.” *Id.* at 679. Thus, “once removal is no longer
13 reasonably foreseeable, continued detention is no longer authorized by [section
14 1231(a)(6)].” *Id.* at 699. “[F]or the sake of uniform administration in the federal courts,”
15 the Court found that post-order detention was “presumptively reasonable” for the first six
16 months. *Id.* at 700–01.

17 After that “presumptively reasonable” six-month period ends, once the noncitizen
18 “provides good reason to believe that there is no significant likelihood of removal in the
19 reasonably foreseeable future, the Government must respond with evidence sufficient to
20 rebut that showing. *Id.* at 701. And for detention to remain reasonable, as the period of
21 prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’
22 conversely would have to shrink.” *Id.*

23 Here, Petitioner’s re-detention is presumptively unreasonable as it is well beyond
24 the six-month mark. The clock does not restart upon each new re-detention. *See Nguyen v.*
25 *Scott*, 2025 WL 2419288, *13 (W.D. Wash. Aug. 21, 2025); *Said v. Nielsen*, 2018 WL
26 1876907, at *6 (N.D. Cal. Apr. 18, 2018) (“the six month period does not reset when the
27 government detains a[] [noncitizen]. . . , releases him from detention, and then re-detains
28 him again.”); *Chen v. Holder*, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015)

1 (“[s]urely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the
 2 government. . . while technically not in violation of the presumptively reasonable
 3 jurisprudential six month removal period, in essence results in an indefinite period of
 4 detention, albeit executed in successive six month intervals.”).

5 Petitioner’s removal to Laos is not significantly likely in the reasonably foreseeable
 6 future. At the time of his re-detention on July 30, 2025 and continuing until the day of this
 7 filing, Respondents have not obtained a travel document from Laos. In fact, they waited
 8 nearly a month to even ask Petitioner for information needed to begin the travel document
 9 request process. “Respondents intent to complete a travel document request for Petitioner
 10 does not make it significantly likely he will be removed in the foreseeable future” to
 11 authorize re-detention of a person already held more than six months. *Phan v. Beccerra*,
 12 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025); *see Liu v. Carter*, No. 25-cv-03036-
 13 JWJ, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025). Rather, re-detention at that point
 14 is only authorized if the person is a danger or a flight risk. *Zadvydas*, 533 U.S. at 690;
 15 *Padilla v. ICE*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023).

16 Here, Petitioner has complied with his most recent order of supervision for nine
 17 years. He is categorically not a flight risk or a danger to society. Moreover, to the extent
 18 detention is authorized at all at this point under *Zadvydas*, even without a showing of flight
 19 risk or danger to society, it can only be for the “narrow nonpunitive” purpose of securing
 20 a person’s removal “at the moment” of removal. *Zadvydas*, 533 U.S. at 690, 699.
 21 “Reasonableness” is measured “in terms of the statute’s basic purpose”: “assuring the
 22 [noncitizen’s] presence *at the moment* of removal.” *Id.* at 699. Detention without having
 23 even initiated the process of obtaining a travel document, is presumptively unreasonable,
 24 just as is continued detention only to explore whether Laos or another country will take
 25 Petitioner. Detention for that purpose has no definitive end and is not designed to facilitate
 26 the individual’s presence “at the moment” of removal—indeed, there is no known moment
 27 of removal because it is not known whether he can even be removed.

28 Further, there is no evidence that Laos will issue a travel document to Petitioner,

1 making his removal foreseeable. For 24 years, the government has sought to remove
 2 Petitioner to Laos unsuccessfully. On several occasions, the government applied for travel
 3 documents from Laos and Thailand and were denied. Indeed, Petitioner called the Laos
 4 Embassy before his last check in and was told by an Embassy official that Laos would not
 5 issue him a passport. Petitioner also does not have a Laos birth certificate and only has one
 6 living relative in Laos. The government's lengthy history of attempts to have Laos accept
 7 Petitioner make his re-detention now that much more unreasonable and his removal not
 8 foreseeable. *See Tadros v. Noem*, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) ("Tadros
 9 has demonstrated there is no significant likelihood of his removal in the reasonably
 10 foreseeable future because fifteen years have gone by without the Government securing. .
 11 . his removal.").

12 The fact that Laos is now accepting *some* individuals for removal for the first time
 13 in history, does not make it significantly likely that it will accept Petitioner. "Courts in this
 14 circuit have regularly refused to find Respondents' burden met where Respondents have
 15 offered little more than generalizations regarding the likelihood that removal will occur,"
 16 and it should not do so here. *Nguyen v. Scott*, 2025 WL 2419288, *16 (W.D. Wash. Aug.
 17 21, 2025); *see id.* at *18 ("The government has not provided any evidence of Vietnam's
 18 eligibility criteria or why it believes Petitioner now meets it."); *Singh v. Gonzales*, 448
 19 F.Supp.2d 1214, 1220 (W.D. Wash. 2006) (finding ICE did not meet its burden where it
 20 "merely assert[ed] that it has followed up on its request for travel documents"); *see also*
 21 *Hoac v. Becerra*, 2025 WL 1993771, at *3 (E.D. Cal. June 25, 2025) ; *Chun Yat Ma v.*
 22 *Asher*, 2012 WL 1432229, at *4 (W.D. Wash Apr. 25, 2012) .

23 **b. Procedural Due Process**

24 Petitioner had a procedural due process right to notice and a hearing before being
 25 suddenly arrested and re-detained. As district courts throughout this circuit have found,
 26 "individuals released from immigration custody. . . have a protectable liberty interest in
 27 remaining in the community on supervision." *See Zakzouk v. Becerra*, No. 25-cv-06254,
 28 2025 WL 2097470, at *3 (N.D. Cal. July 26, 2025) (citing cases). Applying the *Mathews*

1 *v. Eldridge*, 424 U.S. 319 (1976) factors, notice and a predeprivation hearing were required
2 before the government could revoke Petitioner’s Order of Supervision. *See, e.g., Gagnon*
3 *v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972);
4 *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025); *Azarte v. Andrews*, 2025
5 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025) (citing *Young v. Harper*, 520 U.S. 143, 147-
6 49 (1997); *Sequen v. Kaiser*, 2025 WL 2203419 (N.D. Cal. Aug. 1, 2025); *Guillermo M.R.*
7 *v. Kaiser*, 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Garcia v. Andrews*, 2025 WL
8 1927596 (E.D. Cal. July 14, 2025); *Romero v. Kaiser*, Case No. 22-cv-02508-TSH, 2022
9 WL 1443250, at *2 (N.D. Cal. May 6, 2022) *Chhoeun v. Marin*, 442 F.Supp.3d 1233, 1251
10 (C.D. Cal. 2020).

11 Like the post-order Petitioners in *Chhoeun* and *Zakzouk*, the private interest affected
12 here could not be stronger. As a lifelong resident of the United States, Petitioner has lived
13 subject to a “dormant” removal order for 24 years, duly complied with his last order of
14 supervision for nine years, has a terminally ill wife who depends on him for life-saving
15 care and support and a chronically ill child, and no connections at all to Laos. The risk of
16 erroneous deprivation absent notice and a hearing to determine whether the government
17 has the legal authority to revoke Petitioner’s order of supervision is extremely high—a fact
18 made plain by the allegations made in this petition. Absent any check on the power of the
19 government to detain, the government has detained Petitioner without a legal basis to do
20 so. *City of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (“The Due Process Clause was
21 intended to prevent government officials from abusing their power, or employing it as an
22 instrument of oppression.”). Moreover, the facts of this case demonstrate the arbitrary
23 exercise of the government’s power, where it initially granted a stay of removal so that
24 Petitioner could care for his dying wife and make arrangements for their family, only to
25 have that assurance abruptly withdrawn without any warning. Finally, the government’s
26 interest, by contrast, is extremely low. Indeed, “[c]ivil immigration detention is permissible
27 only to prevent flight or protect against danger to the community.” *Zakzouk*, 2025 WL
28 2097470, at *3 (citing *Zadvydas*, 533 U.S. at 690). It has also been 24 years since Petitioner

1 was ordered deported. As the court noted in *Chhoeun*, the government has no legitimate
2 claim that it is burdened by a slight delay of the execution of Petitioner's removal order
3 when it "waited years or decades to execute these removal orders." 442 F. Supp. 3d at
4 1249.

5 Indeed, the very language of the Release Notification that ICE gave to Petitioner on
6 at least three occasions commits to not re-detaining him without notice and opportunity for
7 an orderly departure. As one court recently observed, "The idea that ICE would be justified
8 in lying to such people about such a small but profound thing—the freedom to say goodbye.
9 . . .—boggles the mind. In such circumstances, a ruse disguised as a promise is not a tool for
10 effective law enforcement—it is manifest cruelty." *Ceesay v. Kurzdorfer*, 781 F.Supp.3d
11 137, 169 (W.D.N.Y. 2025).

12 **c. Post-Detention Procedural Protections**

13 Re-detention and the revocation of release on an order of supervision is governed
14 by 8 C.F.R. § 241.13(i). ICE may revoke a noncitizen's release and return them to ICE
15 custody due to failure to comply with any of the conditions of release, 8 C.F.R. §
16 241.13(i)(1), or if, "on account of changed circumstances, the Service determines that there
17 is a significant likelihood that the [noncitizen] may be removed in the reasonably
18 foreseeable future." *Id.* § 241.13(i)(2).

19 Upon such a determination by ICE to re-detain, "the alien will be notified of the
20 reasons for revocation of his or her release. [ICE] will conduct an initial informal
21 interview promptly after his or her return to [ICE] custody to afford the alien an
22 opportunity to respond to the reasons for revocation stated in the notification. The
23 [noncitizen] may submit any evidence or information that he or she believes shows
24 there is no significant likelihood he or she [will] be removed in the reasonably
25 foreseeable future, or that he or she has not violated the order of supervision. The
26 revocation custody review will include an evaluation of any contested facts relevant to
27 the revocation and a determination whether the facts as determined warrant revocation
28 and further denial of release." *Id.* § 241.13(i)(3).

1 Here, Petitioner can show that Respondents did not comply with the procedural
2 requirements of 8 C.F.R. § 241.13(i) in revoking his release. ICE is required to follow
3 its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268
4 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition
5 that agencies may be required to abide by certain internal policies is well-established.”).
6 “Where the rights of individuals are affected, it is incumbent upon agencies to follow
7 their own procedures. This is so even where the internal procedures are possibly more
8 rigorous than otherwise would be required.” *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

9 As discussed, no “changed circumstances” makes it significantly likely that
10 Petitioner will be removed in the foreseeable future. 8 C.F.R. § 241.13(i)(2). ICE did not
11 notify Petitioner of the “reasons for revocation of his [] release,” conduct “an initial
12 informal interview promptly after his . . . return to [ICE] custody to afford [him] an
13 opportunity to respond to the reasons for revocation stated in the notification,” allow
14 Petitioner to “submit any evidence or information that he or she believes shows there is no
15 significant likelihood he or she [will] be removed in the reasonably foreseeable future,” or
16 provide a written “revocation custody review.” *Id.* § 241.13(i)(3); *see also Phan*, 2025 WL
17 1993735, at *3.

18 Accordingly, as numerous courts have held in recent months, Petitioner is likely to
19 succeed on his claim that his re-detention was unlawful under the governing regulations
20 and release is warranted. *See, e.g., Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137 (W.D. New
21 York 2025); *Phan*, 2025 WL 1993735; *Hoac v. Becerra*, 2025 WL 1993771 (E.D. Cal.
22 June 30, 2025); *Nguyen v. Hyde*, 2025 WL 1725791 (D. Mass June 20, 2025).

23 For all these reasons, Petitioner is likely to succeed on his claim that his re-detention
24 was unlawful.

25 **2. Petitioner Is Likely to Succeed on the Merits of His Claim That He Is
26 Entitled to Legally Required Procedures Prior to Any Nonpunitive
27 Third Country Removal.**

28 Petitioner is likely to succeed on the merits of his claim that he may not be removed
to a third country absent Respondents following the legally required multistep procedures

1 set out in 8 U.S.C. § 1231(b) and required by due process.

2 In Petitioner's case, no country other than Laos meets the criteria for removal under
3 8 U.S.C. § 1231(b)(2)(A)-(E). Moreover, to remove Petitioner to a third country, the statute
4 requires that the Attorney General—here, an immigration judge—first determine that it is
5 “impracticable, inadvisable, or impossible” to remove Petitioner to Laos and that the
6 designated third country “will accept [Petitioner] into that country.” *Id.* §
7 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C.
8 § 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed
9 country of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs
10 Enf't*, 543 U.S. 335, 344 (2005). It is the immigration judge, not DHS, that the statute
11 authorizes to designate a third country for removal. 8 U.S.C. § 1231(b)(2)(E)(vii) (“the
12 Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. § 1240.10(f) (in removal
13 proceedings the immigration judge “shall. . . identify for the record a country, or countries
14 in the alternative, to which the alien's removal may be made”). Here, to remove Petitioner
15 to a third country would require Respondents to move to reopen Petitioner's 25-year-old
16 removal proceedings to ask an immigration judge to designate a third country under the
17 statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014)
18 (unpublished) (holding that should a new country of removal be designated, “the agency
19 must provide [the noncitizen] with notice and an opportunity to reopen his case for full
20 adjudication of his claim of withholding of removal from” the third country); *Aden v.
21 Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal
22 proceedings “shall be reopened and a hearing shall be held before the immigration judge
23 so that petitioner may apply for relief from removal” as to a country not designated in prior
24 proceedings).

25 Adherence to that process also ensures Petitioner's statutory right to claim
26 protection in immigration court against removal to a third country where he may be
27 persecuted or tortured, a form of protection known as withholding of removal. 8 U.S.C.
28 § 1231(b)(3)(A); 28 C.F.R. § 200.1 (“A removal order. . . shall not be executed in

1 circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18;
2 *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under
3 the Convention Against Torture (“CAT”).

4 Of course, the statutory framework is entirely meaningless without meaningful
5 notice of a third country removal and an opportunity to respond that comports with Fifth
6 Amendment due process. *See Department of Homeland Security v. D.V.D.*, 145 S. Ct. 2153,
7 2163 (2025) (Sotomayor, J., dissenting) (“[t]he Fifth Amendment unambiguously
8 guarantees that right” to notice of a third country removal so that a noncitizen “learn[s]
9 about it in time to seek an immigration judge’s review”). Notice cannot be “last minute”
10 because that would deprive an individual of a meaningful opportunity to apply for fear-
11 based protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).
12 Individuals must have time to prepare and present relevant arguments and evidence and to
13 seek reopening of their removal case. “[W]ritten notice of the country being designated” is
14 required and “the statutory basis for the designation, i.e., the applicable subsection of §
15 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S.*
16 *Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May
17 21, 2025) (“All removals to third countries, i.e., removal to a country other than the country
18 or countries designated during immigration proceedings as the country of removal on the
19 non-citizen’s order of removal, must be preceded by written notice to both the non-citizen
20 and the non-citizen’s counsel in a language the non-citizen can understand.” (internal
21 citation omitted)); *Andriasian*, 180 F.3d at 1041 (due process requires notice to the
22 noncitizen of the right to apply for asylum and withholding to the country where they will
23 be removed).

24 Due process also demands that the government “ask the noncitizen whether he or
25 she fears persecution or harm upon removal to the designated country and memorialize in
26 writing the noncitizen’s response. This requirement ensures DHS will obtain the necessary
27 information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about
28 what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.

1 Respondents' third country removal program skips over these statutory and
2 constitutional procedural protections. According to ICE's July 7, 2025 guidance,
3 individuals can be removed to third countries "without the need for further procedures," so
4 long as "the [U.S.] has received diplomatic assurances." Petitioner is likely to succeed on
5 the merits of his claim on this fact alone, because the policy instructs officers to violate the
6 statutory and constitutional requirements. The same is true of the minimal procedures ICE
7 offers when no diplomatic assurances are present. The policy provides no meaningful
8 notice (6-24 hours), instructs officers *not* to ask about fear, and provides no actual
9 opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone reopen
10 removal proceedings. In sum, it directs ICE officers to violate the rights of those whom
11 they seek to be subject to the third country removal program.

12 Several courts have recently granted individual TROs against removal to third
13 countries under similar circumstances. *See generally Nguyen v. Scott*, 2025 WL 2419288
14 (W.D. Wash, Aug. 21, 2025) (on a PI enjoining removal to "a country other than Vietnam
15 without notice and a meaningful opportunity to be heard in reopened removal proceedings
16 with a hearing before an immigration judge"); *J.R. v. Bostock*, 25-cv-01161-JNW, 2025
17 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to "Cuba,
18 Libya, or any third country in the world absent prior approval from this Court"); *Phan*,
19 2025 WL 1993735, at *7 (enjoining Respondents from "re-detaining or removing
20 Petitioner to a third country without notice and an opportunity to be heard"); *Hoac*, 2025
21 WL 1993771, at *7 (same); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL
22 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 2025 WL 1771438 (N.D. Cal. June
23 26, 2025).

24 **3. Petitioner Is Likely to Succeed on the Merits of His Claim That the
25 Constitution Prohibits Punitive Third Country Removals.**

26 Petitioner is likely to succeed on the merits of his claim that the Constitution
27 prohibits him from being subjected to Respondents' punitive third country removal
28 program. The prohibition against imposing punitive measures on an individual subject to

1 a final order of removal is as old as immigration law. *Wong Wing v. United States*, 163
2 U.S. 228 (1896). In *Wong Wing*, the Supreme Court struck down a provision of the Chinese
3 Exclusion Act that imposed one year of imprisonment at hard labor as an immigration
4 sanction before their deportation. *Id.* at 237. The Court drew a distinction between
5 “deportation,” which it described as a sanction for failure to comply with the legal
6 requirements of residency in the United States that may be imposed by executive
7 authorities, and “punishment,” which may not. *Id.* at 236-37. The Court held that the
8 government could not attach a punishment to deportation—here, imprisonment—without
9 criminal charges, a judicial trial, and the concomitant protections of the Fifth, Sixth and
10 Eighth Amendments. *Id.*

11 The government’s third country removal program defies 130 years of constitutional
12 immigration law between civil penalty and infamous punishment. *See, e.g., Zadvydas*, 533
13 U.S. at 694. Respondents’ third country removal program is designed to punish those it
14 deports by subjecting them to imprisonment upon their arrival in the receiving countries.
15 Respondents’ program is not simply about removing individuals to third countries. It is
16 about removing them to be imprisoned upon arrival and paying countries to carry out said
17 imprisonment; selecting countries and overseas prisons (like CECOT and Guantanamo)
18 notorious for cruelty, torture, lawlessness, and other human rights abuses; and broadcasting
19 these third country removals across public media platforms to demonize the deportees and
20 strike extreme fear in the immigrant community that people self-deport. This program is
21 about punitive banishment.

22 To determine whether a given sanction constitutes punishment, courts look to intent.
23 If the government’s intent is to punish, “that is the end of the inquiry.” *Am. Civ. Liberties*
24 *Union of Nevada v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538
25 U.S. 84, 92 (2003)). Here, the government’s own statements show intent to deport
26 individuals, particularly those with criminal convictions, into situations of forever
27 confinement or substantial harm constitute punishment.

28 When the government’s intent to punish is unclear, courts move to the second step

1 of the inquiry to determine whether the practices are “so punitive either in purpose or effect
2 as to negate the [government’s] intention to deem it civil.” *Id.* (quoting *Smith*, 538 U.S. at
3 92). To determine punitive purpose or effect, courts often turn to the factors laid out in
4 *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963). *See also Hudson v. United*
5 *States*, 522 U.S. 93, 99 (1997) (“the factors listed in *Kennedy v. Mendoza-Martinez*
6 [citation], provide useful guideposts”). Those factors are: “[w]hether the sanction involves
7 an affirmative disability or restraint, whether it has historically been regarded as a
8 punishment, whether it comes into play only on a finding of scienter, whether its operation
9 will promote the traditional aims of punishment—retribution and deterrence, whether the
10 behavior to which it applies is already a crime, whether an alternative purpose to which it
11 may rationally be connected is assignable for it, and whether it appears excessive in relation
12 to the alternative purpose assigned.” *Mendoza-Martinez*, 372 U.S. at 168-69 (footnotes
13 omitted).

14 Under these factors, the government’s third country removal program undeniably
15 constitutes punishment, as each factor is met. For example, under the first factor, the
16 government’s practices of deporting people only to have them imprisoned or subjected to
17 other forms of physical harm, is an “affirmative disability or restraint.” The “paradigmatic
18 affirmative disability” is the “punishment of imprisonment.” *Smith*, 538 U.S. at 100.
19 Moreover, under this factor, “we inquire how the effects of the [sanction] are felt by those
20 subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be
21 punitive.” *Id.* at 99-100. There can be no question that being deported to a country to be
22 imprisoned or experience other extreme harm will be felt as a significant and direct
23 disability or restraint.

24 The second factor is also satisfied. “[D]evices of banishment and exile have
25 throughout history been used as punishment.” *Mendoza-Martinez*, 372 U.S. at 168 n.23. In
26 1791, the year the Bill of Rights was ratified, deportation was *exclusively* used and
27 understood as punishment. *Fong Yue Ting v. U.S.*, 149 U.S. 698, 740-41 (1893) (Brewer,
28 J. dissenting) (citing President James Madison); *see id.* at 740 (“[I]t needs no citation of

1 authorities to support the proposition that deportation is punishment. Every one knows that
 2 to be forcibly taken away from home and family and friends and business and property,
 3 and sent across the ocean to a distant land, is punishment, and that oftentimes most severe
 4 and cruel.”). Banishment as a form of punishment dates to ancient times and was used on
 5 citizens and noncitizens alike. Peter L. Markowitz, *Deportation is Different*, 13 U. Pa. J.
 6 Const. L. 1299, 1308-09 (2011) (tracing the use of banishment from medieval England
 7 through colonial America).

8 The fourth factor, whether it promotes the traditional aims of punishment—
 9 retribution and deterrence, is also satisfied. The government’s own statements make clear
 10 that its goals are retribution and deterrence to encourage people to leave the country on
 11 their own. As DHS Secretary Kristi Noem stated, “President Trump and I have a clear
 12 message to criminal illegal aliens: LEAVE NOW. If you do not leave, we will hunt you
 13 down, arrest you, and you could end up in this El Salvadorian prison.”⁴⁵ The Supreme
 14 Court has made clear that such “general deterrence” justifications are impermissible absent
 15 criminal process. *See Kansas v. Crane*, 534 U.S. 407, 412 (2002) (warning that civil
 16 detention may not “become a ‘mechanism for retribution or *general deterrence*’—
 17 functions properly those of criminal law, not civil commitment” (quoting *Kansas v.*
 18 *Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J., concurring) (emphasis added)); *see*
 19 *Hendricks*, 521 U.S. at 373 (Kennedy, J. concurring) (“[W]hile incapacitation is a goal
 20 common to both the criminal and civil systems of confinement, retribution and general
 21 deterrence are reserved for the criminal system alone.”).

22 The program satisfies the third, fifth, sixth and seventh factors too because
 23 Respondents have designed this program specifically for those being deported for criminal
 24 convictions, there is no logical nonpunitive rationale for deporting people into dangerous
 25 conditions of imprisonment or other harm, and the program is designed to be patently
 26 excessive in relation to the purpose of simply removing people from the country.
 27

28 ⁴⁵ Secretary Kristi Noem (@sec_noem), Instagram (Mar. 27, 2025),
<https://www.instagram.com/p/DHtVvbgsHhh/>

B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.

“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). “Unlawful detention certainly constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

Here, the irreparable harm to Petitioner and his family is severe. He has already been unreasonably deprived of over nine months of his life in prolonged immigration detention following the issuance of his removal order. Absent relief, Petitioner will remain detained in an indefinite and prolonged state, denied his liberty, removed from his livelihood, separated from and unable to provide critical care and support to his United States citizen medically vulnerable child and his terminally ill wife, and removed from his family and community where he belongs.

C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with such a conflict between financial concerns and preventable human suffering.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Here, the balance of hardships tips solidly in Petitioner's favor. Petitioner faces weighty hardships: deprivation of his liberty and removal to a third country where he is likely to suffer imprisonment or other serious harm. “[T]he [government] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from

1 constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover,
2 it is always in the public interest to prevent violations of the Constitution and ensure the
3 rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens
4 “from being wrongfully removed, particularly to countries where they are likely to face
5 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash.
6 2019) (when government’s treatment “is inconsistent with federal law, . . . the balance of
7 hardships and public interest factors weigh in favor of a preliminary injunction.”).
8 Accordingly, the balance of hardships and the public interest overwhelmingly favor
9 emergency relief to ensure Petitioner’s freedom and prevent unlawful third country
10 removal.

11 **V. CONCLUSION**

12 For the foregoing reasons, the Court should immediately grant Petitioner’s TRO.

13 Respectfully submitted this 10th day of September, 2025.

14 By: */s/ John M. Mitchell*

15 John M. Mitchell

16 Christine K. Wee

ACLU Foundation of Arizona

17 Andres Holguin-Flores**

18 ACLU Foundation of San Diego and Imperial Counties

19 Geovanna Y. Medel**

ABA Immigration Justice Project

20 ** *Pro hac vice* application forthcoming

21
22 *Attorneys for Petitioner*

23

24

25

26

27

28