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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VU THANH TRAN,
Petitioner,
vs.

) No. CV25-1897

) **MOTION FOR PRELIMINARY
INJUNCTION**

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; CAMMILLA
WAMSLEY, Seattle Field Office
Director, United States Citizenship and
Immigration Services; BRUCE SCOTT,
Warden of Immigration Detention
Facility; and the United States
Immigration and Customs Enforcement,
Respondents.

) Note on Motion Calendar: Oct. 29, 2025

) **Expedited Hearing Requested**

) ***Oral Argument Requested***

I. INTRODUCTION

Earlier today, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. In the petition, he asserts that he was detained in violation of the Administrative Procedures Act (“APA”) and the Fifth Amendment’s Due Process Clause, and that his continued detention by immigration officials violates the Due Process Clause and 8 U.S.C. § 1231 as interpreted by *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner also asserts that there is a risk of unconstitutionally punitive deportation to a third country and also of deportation without the due process required by Ninth Circuit precedent. Because Petitioner is likely to prevail on these claims, he respectfully asks the Court (a) to order Petitioner’s immediate release from custody while this case is litigated, (b) to bar Respondents from removing Petitioner to any third

1 country because Respondents' third country removal program is punitive, and (c) to bar
2 Respondents from removing Petitioner to a third country without notice and meaningful
3 opportunity to respond in compliance with the statute and due process in reopened
4 removal proceedings.

5 **II. FACTS RELEVANT TO POST-REMOVAL ORDER DETENTION,**
6 **RELEASE, AND REVOCATION OF RELEASE**

7 As detailed in Mr. Tran's habeas petition, he immigrated to the United States
8 from Vietnam as a toddler and was admitted in 1984. Following a marijuana conviction,
9 he was ordered removed in absentia in 2007. When he finished serving a custodial
10 sentence on a subsequent marijuana-related conviction, ICE took Mr. Tran into custody
11 pursuant to the 2007 removal order. ICE held him in custody for approximately two
12 months in 2009, before releasing him subject to ICE supervision because he could not
13 be removed to Vietnam. *See* Petition for Writ of Habeas Corpus, Dkt. 1 at 5–6.

14 Mr. Tran has lived nearly his entire life in the United States. All of his
15 immediate family live in the United States—including both of his parents, his siblings,
16 his common-law wife, and his toddler daughter. Most of Mr. Tran's family are U.S.
17 citizens. His grandparents have passed away, and he has no immediate family left in
18 Vietnam, only extended relations. *See* Dkt. *Id.* at 5–6, 26–27.

19 For the past 15 years, Mr. Tran has dutifully checked in with his ICE supervision
20 officers as directed. On August 21, 2025, Mr. Tran went to his regular check-in
21 appointment. Without advance notice or warning, ICE arrested him that date and has
22 held him in custody since then. Not until approximately three weeks after this arrest did
23 ICE even begin the process of requesting travel documents for Mr. Tran to be removed
24 to Vietnam. While Mr. Tran has diligently attempted to complete these forms, no ICE
25 officer has returned to collect them. *See id.* at 6.

1 For decades, the Vietnamese government, which formed after the Vietnam War,
2 refused to repatriate Vietnamese people who had immigrated to the U.S.. Vietnam later
3 agreed to repatriate those who immigrated after Vietnam and the U.S. established
4 diplomatic relations in 1995. After a few attempts at negotiation, U.S. officials and
5 Vietnamese officials reached a Memorandum of Understanding (MOU) in 2020.
6 Pursuant to that MOU, Vietnam agreed to repatriate some pre-1995 immigrants who
7 met particular criteria. Vietnamese officials intended to issue travel documents for
8 eligible individuals within 30 days. However, one of the mandatory criteria and most of
9 the discretionary factors are redacted from the publicly available MOU. An experienced
10 immigration attorney has affirmed that a limited number of pre-1995 Vietnamese
11 immigrants have received travel documents from Vietnam for repatriation, and it
12 typically takes months to even get an answer from Vietnamese officials about whether
13 or not they will issue travel documents. *See* Dkt. 1-2, Ex. B to Petition for Writ of
14 Habeas Corpus at 5 (this exhibit is the Declaration of Glenda M. Aldana Madrid, filed
15 in *Nguyen v. Scott*, No. 2:25-CV-01398, dkt. 29 (W.D. Wash. Aug. 1, 2025)).

16 On August 21, 2025, Mr. Tran appeared as directed for his regular check-in
17 meeting with ICE supervision. However, ICE promptly arrested him. Mr. Tran received
18 no prior notice of his re-detention or the reasons for it. All he has been told is a remark
19 by one of the arresting ICE officers that the new administration required his detention.
20 Mr. Tran does not recall receiving any further explanation since his arrest and has had
21 no meaningful opportunity to challenge that detention. ICE appears to be moving
22 slowly, if at all, in efforts to request travel documents from Vietnam, waiting
23 approximately three weeks to even provide Mr. Tran with a form required by Vietnam
24 to consider a repatriation request, and never returning to collect the form. It is unknown
25 whether Mr. Tran would even be eligible for repatriation based on the MOU between
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1 ICE and Vietnamese officials, and the request process itself typically takes many
2 months.

3 **III. FACTS RELEVANT TO PUNITIVE THIRD COUNTRY DEPORTATION**

4 Since January 2025, Respondents have implemented a policy and practice of
5 removing individuals to third countries, without (1) following the Immigration and
6 Nationality Act (“INA”) procedures for designation and removal to a third country, and
7 (2) providing fair notice and an opportunity to contest the removal in immigration
8 court. These removals are unconstitutional and amount to punitive banishment.

9 Respondents reportedly have negotiated with at least 58 countries to accept
10 deportees from other nations. On June 25, 2025, the New York Times reported that
11 seven countries had agreed to accept deportees who are not their own citizens.¹ Since
12 then, ICE has carried out highly publicized third country deportations to South Sudan
13 and Eswatini.

14 **A. The Administration’s third country removal scheme is designed to
15 punish and deter.**

16 In an official video, President Donald Trump stated, “[I]f illegal aliens choose to
17 remain in America, they’re remaining illegally, and they will face severe
18 consequences,” such as “significant jail time, ... garnishment of all wages,
19 imprisonment and incarceration, and *sudden deportation in a place and manner solely*
20 *of our discretion.*”² In January, President Trump announced a plan to detain immigrants

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22 ¹ The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo, Mexico,
23 Panama, and Rwanda. Edward Wong, et al., *Inside the Global Deal-Making Behind*
24 *Trump’s Mass Deportations*, NY Times (June 25, 2025), <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> [<https://perma.cc/9U5C-BCG6>].

25 ² Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55
26 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> [<https://perma.cc/XBX2-QALT>].

1 at the Guantanamo Bay prison in Cuba because “it’s a tough place to get out” and “we
2 don’t want them coming back.”³

3 Later, Secretary of State Marco Rubio announced that El Salvador had agreed to
4 “accept for deportation any illegal alien in the [U.S.] who is a criminal”⁴ with the
5 explicit understanding that “[President Bukele] will put them in his jails.”⁵ Respondent
6 DHS Secretary Kristi Noem said, “It has been wonderful for us to be able to have
7 somewhere to send the worst of the worst and someone to partner with. And we’d like
8 to continue that partnership because it’s been *a powerful message of consequences*.”⁶
9 President Trump recently spoke about the deterrent effect of the El Salvador
10 banishments: “[W]e bring people there and ... they don’t get out.”⁷ DHS agreed,
11 posting, “Illegal aliens are turning back because they know ... they will ultimately leave
12 in handcuffs.”⁸

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15 ³ 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> [<https://perma.cc/DGM4-JJE9>].

16 ⁴ 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>

17 ⁵ Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any Nationality, Including Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>

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21 ⁶ Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El 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/> [<https://perma.cc/GQ26-ADHG>].

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23 ⁷ Roll Call, *Press Conference: Donald Trump Hosts a 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/> [<https://perma.cc/326E-5T8L>].

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26 ⁸ @DHSgov (Homeland Security), X (June 24, 2025, 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520> [<https://perma.cc/2BRH-UXJ5>].

1 In April, Secretary of State Rubio stated that the Administration is “working
2 with other countries ... to send [them] some of the most despicable human beings ...
3 and the further away from America, the better, so they can’t come back.”⁹ Secretary
4 Noem has publicly threatened noncitizens with criminal convictions to “leave America”
5 or “be fined nearly \$1,000 per day, imprisoned, and deported.”¹⁰ She stated, “President
6 Trump and I have a clear message to those in our country illegally: LEAVE NOW. If
7 you do not self-deport, we will hunt you down, arrest you, and deport you.”¹¹

8 **B. The Administration has negotiated with countries to have U.S. deportees**
9 **imprisoned in prisons, camps, or other facilities.**

10 In February, Panama and Costa Rica took in hundreds of deportees from African
11 and Central Asian countries and imprisoned them in hotels, a jungle camp, and a
12 detention center.¹² In Panama, officials confiscated cell phones, denying deportees

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16 ⁹ Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7,
17 2025), [https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-](https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations)
[trump-deportations \[https://perma.cc/C9LM-7333\]](https://perma.cc/C9LM-7333).

18 ¹⁰ Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and*
19 *International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025),
20 [https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-](https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self)
[ads-warning-illegal-aliens-self \[https://perma.cc/2R24-34PA\]](https://perma.cc/2R24-34PA).

21 ¹¹ Press Release, *supra* note 10 (italics omitted).

22 ¹² The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal*
23 *‘Black Hole,’* CBC News (Feb. 28, 2025), [https://www.cbc.ca/news/world/costa-rica-](https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142)
[panama-us-migrants-1.7471142 \[https://perma.cc/CE84-S3Y7\]](https://perma.cc/CE84-S3Y7); Juan Zamorano, *Nearly*
24 *300 Deportees From US Held in Panama Hotel as Officials Try to Return Them to Their*
25 *Countries*, AP World News (Feb. 18, 2025), [https://apnews.com/article/panama-trump-](https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455)
[migrants-darien-d841c33a215c172b8f99d0aeb43b0455](https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home); Manuel Rueda, *Asylum Seekers*
26 *Deported by the U.S. Are Stuck in Panama and Unable to Return Home*, All Things
Considered, NPR (May 5, 2025), [https://www.npr.org/2025/05/05/nx-s1-](https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home)
[5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-](https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home)
[home](https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home).

1 access to their attorneys.¹³ Deportees were “guarded like prisoners,” sleeping in
2 structures made from plastic sheets and having toilet access only when escorted.¹⁴

3 The Costa Rican president announced an agreement to receive up to 200
4 deportees and to hold them for up to six weeks before sending them to their home
5 countries, all paid for by the U.S.¹⁵ The deportees were held at the Temporary Migrant
6 Care Center (CATEM).¹⁶ Migrants held there previously reported sleeping on the
7 ground in tents, being held in cramped quarters like prisoners, and having sanitation
8 issues.¹⁷ On June 24, a Costa Rican court ordered the release of the deportees due to
9 civil rights violations, finding “they had been deprived of their freedom of movement
10 without a prior individual ruling, that their communications with the outside had been
11 restricted, and that they had not been told about the possibility of applying for refugee
12 status.”¹⁸

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15 ¹³ Julie Turkewitz, et al., *Migrants, Deported to Panama Under Trump Plan, Detained*
16 *in Remote Jungle Camp*, N.Y. Times (Feb. 19, 2025), <https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock> [<https://perma.cc/T5BW-HL39>].

17 ¹⁴ Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from*
18 *US Details Legal Limbo in Panama Camp Near Darien Gap*, AP World News (Feb. 22,
2025), <https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86> [<https://perma.cc/7FL8-KNXT>].

19 ¹⁵ Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President*
20 *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/>
21 [<https://perma.cc/8NR4-4F4A>].

22 ¹⁶ The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in*
23 *Costa Rica*, NBC News (Feb. 21, 2025), <https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148>
24 [<https://perma.cc/R6MT-HK9F>].

25 ¹⁷ The Associated Press, *supra* note 16.

26 ¹⁸ Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported*
from US, BBC News (June 25, 2025), <https://www.bbc.com/news/articles/cwyrn42kp7no> [<https://perma.cc/45FA-3VCY>].

1 In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200
2 deported Venezuelans in a maximum-security prison notorious for gross human rights
3 abuses, known as CECOT.¹⁹ El Salvador's justice minister stated the only way out of
4 CECOT is in a coffin.²⁰

5 In May, ICE attempted to deport individuals from Vietnam, Laos, the
6 Philippines, and Mexico to Libya.²¹ The aircraft sat on the runway for hours until the
7 individuals were returned to a detention center after a court ordered the men not to be
8 deported.²²

9 On July 4, ICE deported eight men, including one pre-1995 Vietnamese refugee,
10 to South Sudan.²³ The government of South Sudan euphemistically said in a statement
11 that the deportees were "under the care of the relevant authorities"²⁴—meaning they are
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13 ¹⁹ See, e.g., Wong, et al., *supra* note 1; Michael Rios, *What We Know About the El*
14 *Salvador 'Mega Prison' Where Trump Is Sending Alleged Venezuelan Gang Members*,
CNN (Mar. 17, 2025), <https://www.cnn.com/2025/03/17/americas/el-salvador-prison-trump-deportations-gangs-intl-latam> [<https://perma.cc/G3CE-M2LB>].

15 ²⁰ Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents*
16 *Indicate Most Have No Apparent Criminal Records*, CBS News (Apr. 6, 2025),
17 <https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/> [<https://perma.cc/65ZQ-UNXZ>].

18 ²¹ Human Rights Watch, *U.S.: Don't Forcibly Transfer Migrants to Libya* (May 9,
19 2025), <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>
[<https://perma.cc/LC6H-4Y6G>].

20 ²² Human Rights Watch, *supra* note 21.

21 ²³ Guardian, *US Judge Clears Path for Eight Immigrants to Be Deported to South*
22 *Sudan* (July 4, 2025), <https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted> [<https://perma.cc/33XA-N863>].

23 ²⁴ Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to*
24 *Distant Countries*, N.Y. Times (July 13, 2025), <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html> [<https://perma.cc/7MXJ-QWY9>]; see also Press Statement, Republic of South Sudan, *Official Statement on the*
25 *Arrival of Third-Country Nationals and South Sudanese Deported from the United*
26 *States of America to South Sudan* (July 8, 2025), <https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/> [<https://perma.cc/ML25-BJZM>].

1 imprisoned. They have been held incommunicado since their deportation was
2 completed.²⁵

3 On July 15, ICE deported five men to Eswatini, including one Vietnamese pre-
4 1995 immigrant.²⁶ DHS referred to the men as “so uniquely barbaric that their home
5 countries refused to take them back.”²⁷ Eswatini government officials have said the
6 men are imprisoned in solitary confinement and that the U.S. is paying for the costs of
7 their imprisonment.²⁸ An Eswatini government official estimated the men would be
8 held for about 12 months.²⁹

9 The administration also attempted—and completed—an “end-run” around the
10 protections of the Convention against Torture by deporting a group of migrants to
11 Ghana, which sent them on to their countries of citizenship despite fears of
12 persecution.³⁰

13 _____
14 ²⁵ Dkt. 1-4, Ex. D to Petition for Writ of Habeas Corpus, 4 (¶ 18) (this exhibit is the
15 Declaration of Glenda M. Aldana Madrid, filed in *Nguyen v. Scott*, No. 2:25-CV-01398,
16 dkt. 29 (W.D. Wash. Aug. 1, 2025)).

17 ²⁶ DKt. 1-2 (Ex. B), 6 (¶ 19).

18 ²⁷ @TriciaOhio (Tricia McLaughlin), X (July 15, 2025 at 5:09 PM),
<https://x.com/TriciaOhio/status/1945274627976200206> [<https://perma.cc/YV2M-4WRL>].

19 ²⁸ Nimi Princewill, et al., ‘*Not Trump’s Dumping Ground’: Outrage Over Arrival of*
20 *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>
21 [<https://perma.cc/8U9T-LVMP>]; Rachel Savage, et al., *Eswatini Opposition Attacks US*
22 *Deal as ‘Human Trafficking Disguised as Deportation,’* The Guardian (July 23, 2025),
<https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>
23 [<https://perma.cc/XV7W-89P4>].

24 ²⁹ Savage, et al., *supra* note 28.

25 ³⁰ Camilo Montoya-Perez, *Judge Says U.S. Trying to Do “End-Run” Around Legal*
26 *Protections with Deportations to Ghana*, CBS News (Sept. 15, 2025),
<https://www.cbsnews.com/news/judge-says-u-s-trying-to-do-end-run-around-legal-protections-with-deportations-to-ghana/> [<https://perma.cc/9RUP-KJQJ>].

1 **C. The Administration has handpicked countries known for human rights**
2 **abuses for third country deportation agreements to scare people in the**
3 **U.S. into self-deporting or to accept removal to their home countries.**

4 For example, conditions in South Sudan are so extreme that the U.S. State
5 Department website warns Americans not to travel there, or to prepare their will, make
6 funeral arrangements, and appoint a hostage-taker negotiator first.³¹ Eswatini is ruled
7 by a monarch, and many of its citizens live on less than four dollars a day.³² The prison
8 system is overcrowded, with prisoners receiving one meal a day.³³ The U.S. State
9 Department advises Americans to “exercise increased caution in Eswatini due to crime
10 and civil unrest.”³⁴ And Libya is in the middle of a civil war, with a record of
11 “pervasive long-term arbitrary detention, enforced disappearances of both men and
12 women, killings under torture, and unlawful killings in places of detention.”³⁵ The
13 United Nations has called Libya’s violations of detainees’ rights “crimes against
14 humanity.”³⁶

14 **IV. FACTS RELEVANT TO DUE PROCESS AND DEPORTATIONS**

15 Respondents have, through both word and action, evidenced their intent to
16 remove people to third countries without first following the procedural safeguards of
17 the INA or providing adequate notice and opportunity to be heard regarding fear of
18 removal to a third country.

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20 ³¹ U.S. Department of State, Travel.State.Gov, *South Sudan Travel Advisory* (Mar. 8,
21 2025), [https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html)
22 [sudan-travel-advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html) [<https://perma.cc/6NXV-JXCY>].

23 ³² Princewill, et al., *supra* note 28.

24 ³³ Princewill, et al., *supra* notes 28, 32.

25 ³⁴ U.S. Department of State, Travel.State.Gov, *Eswatini Travel Advisory* (July 1, 2024),
26 [https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html)
27 [travel-advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html) [<https://perma.cc/ASY7-2DUF>].

28 ³⁵ Human Rights Watch, *supra* note 21; *see* Bartlett, *supra* note 9.

29 ³⁶ Human Rights Watch, *supra* notes 21, 35.

1 A July 9, 2025, ICE memo regarding procedures for third-country deportations
2 states:

3 If the United States has received diplomatic assurances from the country
4 of removal that [noncitizens] removed from the United States will not be
5 persecuted or tortured, and if the Department of State believes those
6 assurances to be credible, the [noncitizen] may be removed without the
7 need for further procedures. ICE will seek written confirmation from the
8 Department of State that such diplomatic assurances were received and
9 determined to be credible. HSI and ERO will be made aware of any such
10 assurances. In all other cases, ICE must comply with the following
11 procedures:

12 • An ERO officer will serve on the [noncitizen] the attached Notice of
13 Removal. The notice includes the intended country of removal and will be
14 read to the [noncitizen] in a language he or she understands.

15 • ERO will not affirmatively ask whether the [noncitizen] is afraid of
16 being removed to the country of removal.

17 • ERO will generally wait at least 24 hours following service of the
18 Notice of Removal before effectuating removal. In exigent circumstances,
19 ERO may execute a removal order six (6) or more hours after service of
20 the Notice of Removal as long as the [noncitizen] is provided reasonable
21 means and opportunity to speak with an attorney prior to removal.

22 • Any determination to execute a removal order under exigent
23 circumstances less than 24 hours following service of the Notice of
24 Removal must be approved by the DHS General Counsel, or the Principal
25 Legal Advisor where the DHS General Counsel is not available.

26 • If the [noncitizen] does not affirmatively state a fear of persecution or
torture if removed to the country of removal listed on the Notice of
Removal within 24 hours, ERO may proceed with removal to the country
identified on the notice. ERO should check all systems for motions as
close in time as possible to removal.

• If the [noncitizen] does affirmatively state a fear if removed to the
country of removal listed on the Notice of Removal, ERO will refer the
case to U.S. Citizenship and Immigration Services (USCIS) for a
screening for eligibility for protection under section 241(b)(3) of the INA

1 and the Convention Against Torture (CAT). USCIS will generally screen
2 the [noncitizen] within 24 hours of referral.

3 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21,
4 2025); *see also* Dkt. 1-1, Ex. A to Petition for Writ of Habeas Corpus (ICE
5 Memorandum).

6 As detailed above, Respondents have already removed multiple people to third
7 countries where they are met by torturous detention or re-deported to their home
8 countries where they face torture, in violation of the Convention Against Torture. *See*
9 *supra* pp. 4–9. Among those subjected to these actions were pre-1995 Vietnamese
10 immigrants, who have reported no meaningful advance notice or opportunity to be
11 heard. *See id.*; Dkt. 1-2 at 6–7; Dkt. 1-4 at 3–5.

12 **IV. LEGAL STANDARD FOR A PRELIMINARY INJUNCTION**

13 A plaintiff seeking a preliminary injunction must show (1) he is likely to succeed
14 on the merits, (2) he is likely to suffer irreparable harm absent preliminary relief, (3) the
15 balance of equities tips in his favor, and (4) the relief sought is in the public interest.

16 *Winters v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The movant must make a
17 showing on each element of the *Winters* test. *All. for the Wild Rockies v. Cottrell*, 632
18 F.3d 1127, 1135 (9th Cir. 2011). However, “where the ‘balance of hardships ... tips
19 sharply towards the plaintiff,’ a plaintiff need only show ‘serious questions going to the
20 merits,’ rather than likelihood of success on the merits[.]” *Roman v. Wolf*, 977 F.3d
21 935, 941 (9th Cir. 2020) (quoting *All. for the Wild Rockies*, 632 F.3d at 1135).

22 The Ninth Circuit distinguishes between “mandatory” and “prohibitory”
23 injunctions, even though that approach is “controversial.” *Hernandez v. Sessions*, 872
24 F.3d 976, 997 (9th Cir. 2017) (noting that other circuits have held the distinction “not
25 meaningful” and that “[t]o worry these questions is merely to fuzz up the legal
26 standard”) (quoting *United Food & Commercial Workers Union, Local 1099 v. Sw.*
Ohio Reg’l Transit Auth., 163 F.3d 341, 348 (6th Cir. 1998), and *Chicago United*

1 *Indus., Ltd. v. City of Chicago*, 445 F.3d 940, 944 (7th Cir. 2006) (Posner, J.).
2 Mandatory injunctions order “a responsible party to ‘take action.’” *Marlyn*
3 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)
4 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)).

5 Although mandatory injunctions “should not be approved in the absence of a risk
6 of ‘extreme or very serious damage[,]’” *Hernandez*, 872 F.3d at 997 (quoting *Marlyn*
7 *Nutraceuticals, Inc.*, 571 F.3d at 879), they are most likely to be appropriate when “the
8 status quo ... is exactly what will inflict the irreparable injury upon complainant.” *Id.*
9 at 999 (quoting *Friends for All Child., Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816,
10 830 n.21 (D.C. Cir. 1984)).

11 **V. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
12 **ORDERING RELEASE.**

13 **A. Petitioner is likely to succeed on the merits.**

14 Respondents violated the Administrative Procedures Act (APA), statute,
15 regulation, and due process when they re-detained Petitioner without a valid reason,
16 notice, or an opportunity to be heard. Furthermore, Petitioner has met his burden to
17 show that “there is no significant likelihood of removal in the reasonably foreseeable
18 future” that could justify any ongoing detention. *Nadarajah v. Gonzales*, 443 F.3d
19 1069, 1082 (9th Cir. 2006); *see also Zadvydas*, 533 U.S. at 701. Therefore he is likely
20 to succeed on the merits of his petition for a writ of habeas corpus.

21 **1. Respondents violated the APA and due process by detaining**
22 **Mr. Tran on August 21, 2025, without valid reason, notice, or**
an opportunity to be heard.

23 Respondents violated the APA and due process when detaining Mr. Tran.
24 Namely, they both abused their discretion and acted beyond their statutory authority in
25 violation of the APA. And they failed to afford Mr. Tran basic due process—notice and
26 a meaningful opportunity to be heard—before taking his liberty.

1 Respondents' detention of Mr. Tran is governed by statute and regulation. The
2 INA provides that after a removal order becomes final, the government "shall remove
3 the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A).
4 The government may detain a noncitizen during this period or an extended period in
5 certain cases, but may not detain them longer than is reasonably necessary to effectuate
6 removal and may not detain them when removal is no longer reasonably foreseeable.
7 See 8 U.S.C. §§ 1231(a)(1)(A), (a)(2), (a)(6); *Zadvydas*, 533 U.S. at 699. After six
8 months of post-removal order detention, detention is no longer presumptively
9 reasonable, and a noncitizen is entitled to a process to determine whether ongoing
10 detention is authorized. *Zadvydas*, 533 U.S. at 700–01. When it is determined that a
11 noncitizen should be released from detention following entry of a removal order, they
12 are to be released with orders to comply with certain conditions of release. 8 U.S.C. §
13 1231(a)(3), (6). Here, the government released Mr. Tran from immigration custody in
14 2009 pursuant to this legal framework. He has been successfully supervised on release
15 for over 15 years.

16 The revocation of that release is governed by 8 C.F.R. § 241.13(i), which
17 authorizes ICE to revoke a noncitizen's release under § 1231 for purposes of removal or
18 for violation of conditions of release. The government may revoke a noncitizen's
19 release and return them to ICE custody due to failure to comply with any of the
20 conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed
21 circumstances, the [Immigration] Service determines that there is a significant
22 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,"
23 *id.* § 241.13(i)(2).

24 Such revocation of release, even if justified by one of the reasons recognized by
25 regulation, requires notice and an opportunity for the noncitizen to be heard. Upon a
26

1 determination by the government (namely ICE) to re-detain a person previously
2 released following a removal order:

3 the alien will be notified of the reasons for revocation of his or her
4 release. [ICE] will conduct an initial informal interview promptly after his
5 or her return to [ICE] custody to afford the alien an opportunity to
6 respond to the reasons for revocation stated in the notification. The
7 [noncitizen] may submit any evidence or information that he or she
8 believes shows there is no significant likelihood he or she be removed in
9 the reasonably foreseeable future, or that he or she has not violated the
10 order of supervision. The revocation custody review will include an
11 evaluation of any contested facts relevant to the revocation and a
12 determination whether the facts as determined warrant revocation and
13 further denial of release.

14 *Id.* § 241.13(i)(3).

15 ICE's decision to re-detain also cannot be arbitrary, but instead is governed by
16 the factors laid out in 8 C.F.R. § 241.13(f), including:

17 the history of the [noncitizen's] efforts to comply with the order of
18 removal, the history of [ICE's] efforts to remove [noncitizens] to the
19 country in question or to third countries, including the ongoing nature of
20 [ICE's] efforts to remove [the noncitizen] and the [noncitizen's]
21 assistance with those efforts, the reasonably foreseeable results of those
22 efforts, and the views of the Department of State regarding the prospects
23 for removal of [noncitizens] to the country or countries in question.

24 *Id.* See also *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3
25 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first
26 instance, they may review them for compliance with the regulation. See *id.*; *Nguyen v.*
Hyde, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing
Kong v. United States, 62 F.4th 608, 620 (1st Cir. 2023)).

27 Respondents arrested Petitioner on August 21, 2025, without any advance notice
28 or warning. Respondents have yet to explain the reason for the re-detention except one
29 ICE officer's remark that it was required by the new administration. There is no
30 apparent relevant change in circumstance to justify the re-detention. Furthermore,

1 Respondents afforded Petitioner no meaningful opportunity to be heard regarding the
2 re-detention. In taking these actions, Respondents violated the APA in two separate
3 ways—first by abusing their discretion and second by acting not in accordance with law
4 and in excess of statutory authority. Respondents further violated Petitioner’s right to
5 due process.

6 First, under the APA, a court shall “hold unlawful and set aside agency action”
7 that is an abuse of discretion. 5 U.S.C. § 706(2)(A). An action is an abuse of discretion
8 if the agency “entirely failed to consider an important aspect of the problem, offered an
9 explanation for its decision that runs counter to the evidence before the agency, or is so
10 implausible that it could not be ascribed to a difference in view or the product of agency
11 expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)
12 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
13 U.S. 29, 43 (1983)).

14 To survive an APA challenge, the agency must articulate “a satisfactory
15 explanation” for its action, “including a rational connection between the facts found and
16 the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation
17 omitted). By revoking Mr. Tran’s release without consideration of his individualized
18 facts and circumstances, Respondents have violated the APA. Respondents have abused
19 their discretion in detaining Petitioner, because there have been no relevant changes to
20 his facts or circumstances since the agency made its initial custody determinations that
21 support revocation of his release from custody at this time. There is no allegation that
22 Mr. Tran failed to comply with his supervised release. Nor is there evidence that there
23 is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
24 533 U.S. at 701.

25 Rather, the only explanation that Mr. Tran was provided at the time of his arrest
26 was that it was required by the new administration. Respondents abused their discretion

1 in re-detaining Mr. Tran based on some purported priority of the current presidential
2 administration without any change in facts relevant to Mr. Tran to justify their actions.

3 Second, Under the APA, a court “shall . . . hold unlawful . . . agency action” that
4 is “not in accordance with law;” “contrary to constitutional right;” “in excess of
5 statutory jurisdiction, authority, or limitations;” or “without observance of procedure
6 required by law.” 5 U.S.C. § 706(2)(A)-(D).

7 As detailed above, ICE initially detained Mr. Tran pursuant to 8 U.S.C.
8 § 1231(a), which allows for post-removal order detention, but only so long as there is a
9 significant likelihood of removal in the reasonably foreseeable future. 8 U.S.C. §§
10 1231(a)(1)(A), (a)(2), (a)(6); *Zadvydas*, 533 U.S. at 699. ICE determined in 2009 that
11 Mr. Tran’s removal to Vietnam was not likely and released him pursuant to 8 U.S.C.
12 § 1231(a)(3), (6). The revocation of this release is governed by 8 C.F.R. § 241.13(i),
13 which authorizes ICE to revoke a noncitizen’s release under § 1231 only for purposes
14 of removal or for violation of conditions of release. ICE is to further consider factors
15 that include a noncitizen’s performance on supervision and cooperation with efforts to
16 obtain authorization to return to their home country. *See* 8 C.F.R. § 241.13(f). The
17 regulation also requires notice and a prompt opportunity to challenge the basis for the
18 revocation of release. *See Id.* § 241.13(i)(3). Yet here, Respondents provided no valid
19 reason for re-detention, no notice, and no meaningful opportunity for Petitioner to be
20 heard.

21 It is a well-established administrative principle that “agency action taken without
22 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F.
23 Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C.
24 Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th
25 Cir. 2016) (invalidating agency action because it was taken by unauthorized official).
26 Revocation of Petitioner’s release due to enforcement priorities when he is in full

1 compliance of his release conditions and is not likely removable in the reasonably
2 foreseeable future is unlawful and exceeds statutory authority.

3 Third, due process requires that government action be rational and non-arbitrary.
4 *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has
5 discretion to detain or ultimately release individuals under 8 U.S.C. § 1231(a) and to
6 revoke release as detailed in 8 C.F.R. § 241.13(i), this discretion is not “unlimited” and
7 must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698. 64. Here,
8 Respondents have chosen to revoke Petitioner’s release in an arbitrary manner and not
9 based on a rational and individualized determination of whether there is a significant
10 likelihood he can be removed in the reasonably foreseeable future, in violation of due
11 process. Because no individualized custody revocation has been made and no
12 circumstances have changed to make Petitioner likely removable in the reasonably
13 foreseeable future, Respondents’ revocation of Petitioner’s release violates his right to
14 procedural due process.

15 **2. Respondents’ continued detention of Petitioner violates 8**
16 **U.S.C. § 1231 and his right to due process because there is not**
17 **a significant likelihood Respondents can remove Petitioner in**
the reasonably foreseeable future.

18 Respondents previously determined that Petitioner could not be removed to
19 Vietnam and released him in 2009. Yet without any evidence that Petitioner
20 individually can be removed, Respondents re-detained him on August 21, 2025. He
21 remains detained although his removal is not reasonably foreseeable.

22 Detention of noncitizens who have been ordered removed is mandatory during
23 the so-called 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A). This period begins, as
24 relevant here, on the “date the order of removal becomes administratively final.” 8
25 U.S.C. § 1231(a)(1)(B)(i). Because Petitioner’s removal order became final on
26

1 December 25, 2007,³⁷ the removal period has long since expired and detention is no
2 longer required under 8 U.S.C. § 1231.

3 Not only is detention no longer required, it is no longer allowed under the facts
4 of this case. Given the “serious constitutional threat” the *Zadvydas* Court believed to be
5 posed by the indefinite detention of noncitizens who had been admitted to the country
6 under the Fifth Amendment’s Due Process Clause, 553 U.S. at 699, the Court
7 interpreted 8 U.S.C. § 1231(a)(6) to permit only detention related to the statute’s “basic
8 purpose [of] effectuating an alien’s removal[.]” *Id.* at 696-699. The Court further held
9 that the presumptive period during which the detention is reasonably necessary to
10 effectuate a noncitizen’s removal is six months; after that, the noncitizen is eligible for
11 conditional release if they can demonstrate that there is “no significant likelihood of
12 removal in the reasonably foreseeable future.” *Id.* at 701. After the “presumptively
13 reasonable” period of six months’ detention, when the noncitizen can “provide good
14 reason to believe that there is no significant likelihood of removal in the reasonably
15 foreseeable future,” then “the Government must respond with evidence sufficient to
16 rebut that showing.” *Id.* at 701. “A petitioner’s total length of confinement need not be
17 consecutive to reach the six-month presumptively reasonable limit established in
18 *Zadvydas*.” *Tang v. Bondi*, No. 2:25-CV-01473-RAJ-TLF, 2025 WL 2637750, at *4
19 (W.D. Wash. Sept. 11, 2025).

20 Detention may be unlawful even within the six-month grace period. This is
21 because the six-month grace period is only “*presumptively* reasonable.” *Zadvydas*, 533

22 ³⁷ “A removal order becomes final upon the earlier of (i) a determination by the Board
23 of Immigration Appeals (BIA) affirming such order; or (ii) the expiration of the period
24 in which the alien is permitted to seek review of such order by the BIA. 8 U.S.C.S. §
25 1101(a)(47)(B); 8 C.F.R. § 1003.39. Because in absentia removal orders may not be
26 appealed to the BIA without first filing a motion to reopen the order before the
immigration judge (IJ) within 180 days of the order, 8 U.S.C.S. § 1229a(b)(5)(C)(i); if
the petitioner does not timely file such a motion before the IJ the order becomes final at
the end of the 180-day period.” *Yuzi Cui v. Garland*, 13 F.4th 991, 993 (9th Cir. 2021).

1 U.S. at 701 (emphasis added). Several courts have concluded that an immigrant may
2 rebut that presumption with sufficiently compelling evidence that his removal is not
3 foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020)
4 (collecting cases). Such evidence exists here. ICE previously released Mr. Tran
5 because it recognized that it could not remove him. ICE has indeed made no progress in
6 removing Mr. Tran, despite having a final removal order for over 15 years. ICE
7 rearrested Mr. Tran apparently only to implement an across-the-board policy—not
8 because of any movement in his particular removal case. In fact, it is clear that ICE has
9 not even yet asked Vietnam to accept Mr. Tran because it has not collected required
10 forms from him—forms that Mr. Tran completed as quickly as he could. As detailed
11 below, Mr. Tran has compelling evidence that removal is not foreseeable. And the
12 government cannot rebut the conclusion that Mr. Tran’s continued detention in ICE
13 custody violates the Due Process Clause of the Fifth Amendment under *Zadvydas*. *See*
14 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug.
15 21, 2025) (granting preliminary injunction requiring release under *Zadvydas*); *Tang*,
16 dkt. 26 at 12 (same).

17 Petitioner has shown that his removal is not reasonably foreseeable. *Zadvydas*
18 determined that detention becomes “indefinite” when there is “good reason to believe
19 that there is no significant likelihood of removal in the reasonably foreseeable future.”
20 *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at
21 701). Such is the case here.

22 Mr. Tran is a pre-1995 Vietnamese immigrant. As such, he is among a group of
23 people that Vietnam has refused to repatriate at all until relatively recently. Even now,
24 Vietnam will only accept pre-1995 immigrant deportees from the United States if they
25 meet specific criteria, some of which the government has not disclosed. *See* Dkt. 1-1
26 (MOU). Furthermore, it has taken months for people in this group to even receive an

1 answer from Vietnamese officials about whether or not they are approved for travel
2 documents. *See* Dkt. 1-2 at 3.

3 Furthermore, the government made no effort to seek travel documents for Mr.
4 Tran, let alone to confirm whether he is eligible, before arresting him. And since
5 arresting Mr. Tran, the government has moved slowly to seek repatriation from
6 Vietnam. ICE waited approximately three weeks before even providing Mr. Tran with
7 the form that Vietnamese officials need to begin reviewing an application for
8 repatriation. While Mr. Tran was diligent—despite his detention and lack of meaningful
9 interpretive assistance—ICE was not. It has been over a week and ICE has not returned
10 to retrieve the completed form from Mr. Tran.

11 Mr. Tran has lived in the United States since he was a toddler. Both of his
12 parents have naturalized, and he has multiple siblings who are also U.S. citizens. His
13 grandparents have passed away, so he no longer has any immediate family in Vietnam.
14 Significantly, Mr. Tran’s common-law wife and toddler daughter live here in
15 Washington. Until his arrest, Mr. Tran was their primary supporter because his wife has
16 a medical condition that limits her ability to work. Mr. Tran has provided strong
17 evidence and “good reason to believe that there is no significant likelihood of removal
18 in the reasonably foreseeable future,” and has not been provided evidence from the
19 government to rebut this. *Zadvydas*, 533 U.S. at 701.

20 Once Mr. Tran has met his burden, the burden thus shifts to the government to
21 “respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701.
22 Petitioner anticipates the government cannot meet that burden. *See Nguyen*, 2025 WL
23 2419288, at *16 (finding that government has not met its burden merely by showing
24 “there is at least some possibility of removal” and observing “[c]ourts in this circuit
25 have regularly refused to find Respondents’ burden met where Respondents have
26 offered little more than generalizations regarding the likelihood that removal will

1 occur”) (citing as examples *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D.
2 Wash. 2006); *Chun Yat Ma v. Asher*, No. 11-CV-1797 MJP, 2012 WL 1432229, at *4–
3 5 (W.D. Wash. Apr. 25, 2012); *Hoac v. Becerra*, No. 25-CV-1740-DC-JDP, 2025 WL
4 1993771, at *3 (E.D. Cal. July 16, 2025)).

5 **B. Petitioner will suffer irreparable harm absent an injunction.**

6 Second, illegal confinement is a quintessentially irreparable harm. “It is well
7 established that the deprivation of constitutional rights ‘unquestionably constitutes
8 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
9 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation of a
10 constitutional right is involved, most courts hold that no further showing of irreparable
11 injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005)
12 (citing 11A Charles Alan Wright, et al., *Federal Practice and Procedure*, § 2948.1
13 (2d ed. 2004)). “Unlawful detention certainly constitutes ‘extreme or very serious’
14 damage, and that damage is not compensable in damages.” *Hernandez v. Sessions*, 872
15 F.3d 976, 999 (9th Cir. 2017).

16 As the *Nguyen* court stated in granting a preliminary injunction under *Zadvydas*:

17 The Ninth Circuit has recognized “the irreparable harms imposed on
18 anyone subject to immigration detention.” *Rodriguez v. Bostock*, 779 F.
19 Supp. 3d 1239, 1253 (W.D. Wash. 2025) (citing *Hernandez*, 872 F.3d
20 at 995) (“For example ... subpar medical and psychiatric care in ICE
21 detention facilities, the economic burdens imposed on detainees and their
22 families as a result of detention, and the collateral harms to children of
23 detainees whose parents are detained.”). “In the absence of an injunction,
24 harms such as these will continue to occur needlessly on a daily basis.”
25 *Hernandez*, 872 F.3d at 995.

26 2025 WL 2419288, at *25.

Here, the irreparable harm to Petitioner and his family is severe. His wife has a
medical condition that limits her ability to work. As such, Mr. Tran was previously the
primary support for her and their toddler daughter. Mr. Tran’s family is presently

1 suffering not only from the impact of Mr. Tran’s physical absence but also from the
2 emotional trauma of his abrupt detention without notice. Mr. Tran suffers similar
3 emotional trauma while separated from his family. And he has had to endure extremely
4 crowded detention conditions with less than sanitary spaces and less than adequate
5 food. Indeed, when Mr. Tran fell ill during his detention, Respondents placed him in
6 isolation and provided delayed and insufficient medical care. Mr. Tran continues to
7 suffer through these painful conditions of detention. Absent relief, Petitioner will
8 remain detained in an indefinite and prolonged state, denied his liberty, removed from
9 his livelihood, separated from and unable to provide critical care and support to his
10 medically vulnerable wife and young child, and removed from his family and
11 community where he belongs.

12 **C. The balance of hardships and the public interest weigh heavily in**
13 **Petitioner’s favor.**

14 The final two factors for a preliminary judgment—the balance of hardships and
15 public interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
16 556 U.S. 418, 435 (2009). Here, the balance of hardships tips in Petitioner’s favor,
17 given the deprivation of liberty.

18 “[T]he [government] cannot reasonably assert that it is harmed in any legally
19 cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*,
20 753 F.2d 719, 727 (9th Cir. 1983). And it is always in the public interest to prevent
21 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436
22 (describing public interest in preventing noncitizens “from being wrongfully removed,
23 particularly to countries where they are likely to face substantial harm”). Accordingly,
24 the balance of hardships and the public interest overwhelmingly favors emergency
25 relief to ensure Petitioner’s freedom.
26

1 There is a countervailing “public interest in prompt execution of removal
2 orders,” *Nken*, 556 U.S. at 436, but here there is no significant likelihood of removal—
3 indeed, Respondents have not taken basic steps to even seek Vietnam’s acceptance of
4 Petitioner for removal. Furthermore, it is well established that “our system does not
5 permit agencies to act unlawfully even in pursuit of desirable ends.” *Nguyen*, 2025 WL
6 2419288, at *28 (quoting *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594
7 U.S. 758, 766 (2021)).

8 **VI. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
9 **BARRING DEPORTATION TO A THIRD COUNTRY PURSUANT TO**
10 **RESPONDENTS’ PUNITIVE POLICY.**

11 Essentially the same analysis applies to Petitioner’s second claim. First, as to
12 likelihood on the merits, there can be no reasonable dispute that Respondents’ current
13 deportation policy is punitive. Nor can there be any reasonable dispute that deportation
14 may not be used for punitive purposes. *Wong Wing v. United States*, 163 U.S. 228, 237
15 (1896). *See Nguyen*, 2025 WL 2419288, at *23 (“Petitioner has shown a likelihood of
16 success on his claim that ICE’s practice of removing noncitizens to countries where
17 they face imprisonment violates the Constitution’s prohibition on ‘punitive’ third
18 country removal.”).

19 Petitioner risks irreparable harm in two ways. First, Petitioner may suffer
20 punishment—potentially horrible punishment—at the hands of the third country to
21 which he is deported. Second, Petitioner may be irreparably harmed by being deported
22 when he will then have no way to undo the harm by being returned to the United States,
23 although, were the law followed, Petitioner could not lawfully be deported from the
24 United States. *See Nguyen*, 2025 WL 2419288, at *26 (“It is beyond dispute that
25 Petitioner would face irreparable harm from removal to a third country.”); *A.A.R.P. v.*
26 *Trump*, — U.S. —, 145 S. Ct. 1364, 1367 (2025) (detainees with pending habeas

1 petitions facing removal under Alien Enemies Act faced “an imminent threat of severe,
2 irreparable harm”).

3 The balance of equities analysis is comparable to that for Petitioner’s first claim.

4 **VII. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
5 **BARRING DEPORTATION TO A THIRD COUNTRY WITHOUT**
6 **NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD.**

7 As to Petitioner’s final claim, the analysis starts, of course, with likelihood of
8 success on the merits. As to this issue, the *Nguyen* court walked through the various
9 steps establishing that likelihood.

10 First, a “noncitizen must be given sufficient notice of a country of deportation
11 that, given his capacities and circumstances, he would have a reasonable opportunity to
12 raise and pursue his claim for withholding of deportation.” *Nguyen*, 2025 WL 2419288,
13 at *18 (quoting *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (in turn
14 first citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976), and then citing *Kossov v.*
15 *I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)).

16 As the *Aden* court explained, “The guarantee of due process includes the right to
17 a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or
18 her particular claim.” 409 F. Supp. 3d at 1010. “[B]oth the due process clause and the
19 governing statute place the burden on the government—regardless of whether the
20 country of deportation is designated during or after the removal hearing—to provide a
21 meaningful opportunity to be heard on asylum and withholding claims.” 409 F. Supp.
22 3d at 1010. *Nguyen* elaborated: “This cannot be satisfied by simply allowing the
23 noncitizen to file a motion to reopen their removal proceedings; rather, the removal
24 proceedings must be reopened so that a hearing can be held.” 2025 WL 2419288, at
25 *18.

1 As pointed out in *Nguyen*, these requirements “flow directly from binding Ninth
2 Circuit precedent about due process protections before removal to a third country.”

3 2025 WL 2419288, at *18. *Nguyen* explained:

4 “Failing to notify individuals who are subject to deportation that they
5 have the right to apply ... for withholding of deportation to the country to
6 which they will be deported violates both INS regulations and the
7 constitutional right to due process.” *Andriasian v. I.N.S.*, 180 F.3d 1033,
8 1041 (9th Cir. 1999) (citing *Kossov*, 132 F.3d at 408–09); *see also*
9 *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (“[S]hould
10 circumstances change such that Azerbaijan is the designated country of
11 removal, the agency must provide Sadychov with notice and an
12 opportunity to reopen his case for full adjudication of his claim of
13 withholding of removal from Azerbaijan.”). “In the context of country of
14 removal designations, last minute orders of removal to a country may
15 violate due process if an immigrant was not provided an opportunity to
16 address his fear of persecution in that country.” *Najjar v. Lynch*, 630 Fed.
17 App'x 724 (9th Cir. 2016) (citing *Andriasian*, 180 F.3d at 1041); *El Himri*
18 *v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004).

19 2025 WL 2419288, at *18.

20 In *Nguyen*, Respondents initially represented that they would continue to follow
21 the procedures set forth in *Aden*. Subsequently, they withdrew that commitment and
22 stated that the July 9, 2025, ICE memo ““sets forth Respondents’ current policy on third
23 country removals both nationwide and in the Western District of Washington where
24 Respondents are no longer fully following the process discussed’ in *Aden*.” 2025 WL
25 2419288, at *19. The *Nguyen* court held that “[t]his policy contravenes Ninth Circuit
26 law, as laid out above. It would be impossible to comply both with Ninth Circuit
precedent and the policy.” 2025 WL 2419288, at *19. In fact, Respondents did not even
contest the merits of the petitioner’s claim in *Nguyen*. The *Nguyen* court accordingly
held that “Petitioner is likely to succeed on his claim that removal to a third country
under ICE’s current policy, without meaningful notice and reopening of his removal
proceedings for a hearing, would violate due process.”

1 The other components of the *Winters* test clearly favor Petitioner as they did in
2 the other two claims. There is a significant risk of irreparable injury, because if
3 Petitioner is removed to a country without due process, he might be removed to a
4 country that would subject him to persecution or torture. Petitioner also would likely be
5 unable to have the harm undone, in that he would be unable to return to the U.S. to have
6 objections to removal properly considered.

7 The balance of equities favors Petitioner for the reasons discussed in the other
8 two claims.

9 **VIII. CONCLUSION**

10 This Court should grant the preliminary injunction.

11 DATED this 1st day of October 2025.

12 Respectfully submitted,

13
14 *s/ Rebecca Fish*
15 Assistant Federal Public Defender
Attorney for Mr. Tran

16 I certify this motion complies with the page limits specified in LCR 7(e)(3).
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