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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13 **PHOENIX DIVISION**
14

15 **Chi Thien Bui,**

16 *Petitioner,*

17 v.

18 **Gregory J. Archambeault, in his official**
19 *capacity as Field Office Director, San Diego*
20 *Field Office, U.S. Immigration and Customs*
21 *Enforcement,*

22 **David R. Rivas, in his official capacity as**
23 *Warden, San Luis Regional Detention Center,*

24 **United States Department of Homeland**
25 **Security,**

26 **United States Immigration and Customs**
27 **Enforcement,**

28 *Respondents.*

Case No.

MOTION FOR A TEMPORARY
RESTRAINING ORDER AND A
MEMORANDUM OF LAW IN SUPPORT
OF A TEMPORARY RESTRAINING
ORDER

MOTION FOR A TEMPORARY RESTRAINING ORDER AND A MEMORANDUM OF LAW IN SUPPORT OF A TEMPORARY RESTRAINING ORDER

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I. MOTION FOR A TEMPORARY RESTRAINING ORDER

1 Petitioner, Chi Thien Bui (“Petitioner”), is a national of Vietnam who faces immediate
2 irreparable harm absent this Court’s intervention. This Court should issue a temporary restraining
3 order because “immediate and irreparable injury . . . or damage” is occurring and will continue in
4 the absence of an order. Fed. R. Civ. P. 65(b). Respondents have re-detained Petitioner in
5 violation of his due process and statutory rights, have threatened to remove him to a third country
6 without adhering to constitutional and statutory procedural protections, and in violation of
7 bedrock law prohibiting the government from imposing punitive measures on noncitizens ordered
8 removed. This Court should order Mr. Bui’s immediate release and enjoin his removal to a third
9 country, where he may be imprisoned or harmed, absent legally required protections.
10

II. MEMORANDUM OF LAW IN SUPPORT OF MOTION

A. STATEMENT OF FACTS

11
12
13 Petitioner is a forty-nine-year-old national of Vietnam who first entered the United States
14 on June 15, 1984. Exhibit A (Declaration of Linh Ha Bui). Mr. Bui became a lawful permanent
15 resident in 1991, and settled in the San Diego area. *Id.* Petitioner’s parents, spouse, daughter, and
16 stepdaughter are United States citizens. *Id.* Mr. Bui has six siblings who reside in the United
17 States: two are lawful permanent residents and four are United States citizens. *Id.*
18

19 On January 21, 2015, a removal order was entered against Petitioner. Exhibit D (Order of
20 Supervision). The U.S. government placed Mr. Bui under an order of supervision with periodic
21 check-ins. *Id.* Mr. Bui has complied with the order of supervised release. In 2022, ICE began
22 allowing Mr. Bui to electronically check-in using a kiosk at the San Diego Field Office. While
23 using this system on April 17, 2025, officers apprehended Mr. Bui. Prior to his detention, ICE did
24 not provide Petitioner with advance notice that his order of supervision was revoked. ICE
25 previously provided Petitioner with notice that the agency would provide him with an opportunity
26 to prepare and orderly depart the United States. No circumstances had changed that would make
27 the Petitioner a flight risk or danger to the community.

1 The government does not have travel documents necessary to return Mr. Bui to Vietnam
2 and the circumstances are unlikely to change. Exhibit A, Exhibit B (Declaration of Tin Nguyen,
3 Esq.), Exhibit C (OSUP and Memorandum of Understanding with Vietnam). ICE has begun to
4 remove Vietnamese nationals held at the San Luis Regional Detention Center, without providing
5 the detainees with notice and an opportunity to express a reasonable fear of return to third
6 countries, such as Eswatini. Exhibit B.

7 **1. Repatriation to Vietnam History**

8 Before a Vietnamese immigrant without a passport or other travel document can be
9 repatriated, Vietnam must issue a passport or other travel document in response to a request from
10 ICE. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). Between the end of the
11 Vietnam War and 2008, Vietnam refused to repatriate any Vietnamese immigrant who had been
12 ordered removed from the U.S. *See id.* In 2008, Vietnam agreed to consider repatriation requests
13 for Vietnamese immigrants who had arrived in the U.S. after July 12, 1995, but not those who
14 arrived before. *See id.* Between 2017 and 2019, ICE requested travel documents for pre-1995
15 Vietnamese immigrants 251 times; Vietnam granted those requests only 18 times. *Id.* at 1087-88.

16 **2. Pre-1995 Repatriation to Vietnam Is Not Reasonably Foreseeable**

17 There are no known changes to Vietnam's acceptance rate of pre-1995 deportees, which
18 upon information and belief, is very low. The process to secure a travel document from Vietnam
19 for a pre-1995 immigrant is multilayered and lengthy, requiring interviews and verification by
20 authorities in Vietnam. Exhibit B. ¶¶10-13; Exhibit C. The only known change is ICE's policy
21 and practice of deporting individuals to third countries. Exhibit B ¶¶7-9; Exhibit C.

22 On June 23, and July 3, 2025, the Supreme Court issued a stay of a national class-wide
23 preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-
24 10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), pending appeal, that required
25 ICE to follow the statutory and constitutional requirements, before removing an individual to a
26 third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*,

1 No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025). Following those decisions, on July 9, 2025,
2 ICE issued a new memo to staff, instructing that ICE may deport a person to a third country not
3 designated on the removal order, without any procedures for notice or an opportunity to be heard,
4 if the State Department confirms that it has received diplomatic assurances that removed
5 individuals will not be persecuted or tortured.

6 If no diplomatic assurances are received, the memo instructs officers to serve on the
7 individual a Notice of Removal that includes the intended country of removal. It tells officers not
8 to ask whether the individual is afraid of removal to that country, and states that officers should
9 “generally wait at least 24 hours following service of the Notice of Removal before effectuating
10 removal.” *Id.* Further, “[i]n exigent circumstances, [ICE] may execute a removal order six (6) or
11 more hours after service of the Notice of Removal as long as the [noncitizen] is provided
12 reasonable means and opportunity to speak with an attorney prior to removal.” *Id.*

13 The memo instructs that if the noncitizen “does not affirmatively state a fear of persecution
14 or torture if removed to the country of removal listed on the Notice of Removal within 24 hours,
15 [ICE] may proceed with removal to the country identified on the notice.” If the noncitizen “does
16 affirmatively state a fear if removed to the country of removal,” then ICE will refer the case to
17 U.S. Citizenship and Immigration Services (“USCIS”) for a screening of eligibility for
18 withholding of removal and protection under the Convention Against Torture. “USCIS will
19 generally screen within 24 hours.” If USCIS determines that the [noncitizen] does not meet the
20 standard, the individual will be removed. *Id.* If USCIS determines that they have met the standard,
21 then the policy directs ICE to either move to reopen removal proceedings “for the sole purpose
22 of determining eligibility for [withholding of removal protection] and [Convention Against
23 Torture (‘CAT’)] or designate another country for removal.”

24 25 **3. Punitive Banishment to Third Countries**

26 Since January 2025, Respondents have developed and implemented a policy and practice
27 of removing individuals to third countries, without first following the Immigration and
28 MOTION FOR A TEMPORARY RESTRAINING ORDER AND A MEMORANDUM OF LAW IN SUPPORT
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1 Nationality Act (“INA”) procedures for designation and removal to a third country, and without
2 providing fair notice and an opportunity to contest their removal in immigration court. These
3 removals are unconstitutionally punitive, crossing the line from the civil sanction of deportation
4 to blatant punitive banishment.¹ The Administration has negotiated with countries to have U.S.
5 deportees detained in prisons, camps or other facilities. Deportees sent to third countries have, in
6 fact, been incarcerated. In February, Panama and Costa Rica took in hundreds of deportees from
7 countries in Africa and Central Asia, and imprisoned them in hotels; a jungle camp, and a
8 detention center.² In Panama, officials confiscated cell phones, and did not allow the detainees
9 access to their attorneys.³ Deportees slept in structures made from plastic sheets and had to be
10 escorted to the toilet.⁴ They were “guarded like prisoners.”⁵

11 On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to
12 South Sudan.⁶ The government of South Sudan said in a statement that the deportees were, “under
13 the care of the relevant authorities,” but their families and legal teams have been unable to contact
14

15
16 ¹ Roll Call, *Donald Trump Vlog Self-Deportation Program - May 9, 2025*, at 00:00:55
17 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> (last visited July 24, 2025).

18 ² The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal ‘Black Hole,’* CBC News (Feb. 28, 2025, 6:29 AM), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try to Return Them to Their Countries*, AP World News (Feb. 18, 2025), <https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455>; Manuel Rueda, *Asylum Seekers 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-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

22 ³ Julie Turkewitz et al, *Migrants, Deported to Panama Under Trump Plan, Detained 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>.

24 ⁴ Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from 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>.

26 ⁵ *Id.*

27 ⁶ Guardian, *US Judge Clears Path for Eight Immigrants to be Deported to South Sudan, July 4, 2025*, <https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted>.

1 them, and have not heard from the men since the deportation was completed.⁷ DHS spokesperson,
2 Tricia McLaughlin, referred to the men as “depraved monsters,” and “so uniquely barbaric that
3 their home countries refused to take them back.”⁸ Thabile Mdluli, spokesperson for the
4 government of Eswatini, announced that the men are being held in solitary confinement in its
5 prisons.⁹

6 The Administration has selected countries known for human rights abuses. For example,
7 Eswatini is ruled by a monarch with complete power, and many of its citizens live on less than
8 four dollars a day.¹⁰ The prison system is overcrowded, with prisoners receiving one meal a day.¹¹
9 The U.S. Department of State advises Americans to “exercise increased caution in Eswatini due
10 to crime and civil unrest.”¹²

11 III. LEGAL STANDARD

12 To obtain a Temporary Restraining Order, movant “must establish that he is likely to
13 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
14 relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”
15 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D.*
16 *Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary
17 injunction involve “substantially identical” analysis). Courts also employ “an alternative ‘serious
18

19
20 ⁷ Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to Distant*
21 *Countries*, N.Y. Times (July 13, 2025), [https://www.nytimes.com/2025/07/13/us/politics/south-](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html)
22 [sudan-third-country-deportations.html](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html).

23 ⁸ Tricia McLaughlin (@TriciaOhio), X (July 15, 2025),
24 <https://x.com/TriciaOhio/status/1945274627976200206>.

25 ⁹ Nimi Princewill et al., *‘Not Trump’s Dumping Ground’: Outrage Over Arrival of Foreign US*
26 *Deportees in Tiny African Nation*, CNN World (July 18, 2025),
27 <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>.

28 ¹⁰ Nimi Princewill et al., *‘Not Trump’s Dumping Ground’: Outrage Over Arrival of Foreign US*
29 *Deportees in Tiny African Nation*, CNN World (July 18,
30 2025), <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>.

¹¹ *Id.*

¹² 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-](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html)
[advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html).

1 question' standard, also known as the 'sliding scale' variant of the *Winter* standard." *Fraihat v.*
2 *U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 635 (9th Cir. 2021) (citation omitted). Under this
3 approach, the four *Winter* elements are "balanced, so that a stronger showing of one element may
4 offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
5 (9th Cir. 2011). A TRO may be granted where there are "'serious questions going to the merits'
6 and a hardship balance. . . tips sharply toward the plaintiff," and so long as the other *Winter* factors
7 are met. *Id.* at 1132.

8 IV. ARGUMENT

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

10 1. Petitioner's Re-Detention Is Unconstitutional and Unlawful

11 Petitioner is likely to succeed on the merits of his claim that his re-detention violates the
12 Due Process Clause, 8 U.S.C. § 1231(a), and governing regulations. The INA provides that after
13 a removal order becomes final, the government "shall remove the alien from the [U.S.] within a
14 period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This 90-day period is often referred to as the initial
15 removal period, and during it, the government "shall detain the alien." *Id.* § 1231(a)(2). In some
16 circumstances, federal immigration authorities can continue to detain an alien beyond the initial
17 removal period. Specifically, section 1231(a)(6) allows the government to detain certain
18 enumerated classes of immigrants—including those ordered removed due to criminal
19 convictions—for more than 90 days. *Id.* § 1231(a)(6).

20 The Supreme Court, in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), rejected the
21 government's position that section 1231(a)(6) permitted indefinite detention following the initial
22 removal period. It held that "[a] statute permitting indefinite detention of an alien would raise a
23 serious constitutional problem" because it would become punitive. *Id.* at 690. "[G]overnment
24 detention violates [the Fifth Amendment's Due Process Clause] unless the detention is ordered in
25 a *criminal* proceeding with adequate procedural protections." *Id.* The Court held that section
26 1231(a)(6) "implicitly limits an alien's detention to a period reasonably necessary to bring about
27

1 that alien's removal." *Id.* at 679. Thus, "once removal is no longer reasonably foreseeable,
2 continued detention is no longer authorized by [section 1231(a)(6)]." *Id.* at 699. "[F]or the sake
3 of uniform administration in the federal courts," the Court found that post-removal detention was
4 "presumptively reasonable" for the first six months. *Id.* at 700-01.

5 After that "presumptively reasonable" six-month period ends, once the noncitizen
6 "provides good reason to believe that there is no significant likelihood of removal in the
7 reasonably foreseeable future, the Government must respond with evidence sufficient to rebut
8 that showing. And for detention to remain reasonable, as the period of prior postremoval
9 confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to
10 shrink." *Id.* at 701.

11 Upon release from custody, a noncitizen subject to a final order of removal must comply
12 with certain conditions of release. 8 U.S.C. §§ 1231(a)(3), (6). The regulations at 8 C.F.R. §
13 241.4(l)(1)-(2) and 8 C.F.R. § 241.13(i) set forth the process for revoking orders of supervision.
14 For instance, a designated official 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. § 241.13(i)(1), or
16 if, "on account of changed circumstances, the Service determines that there is a significant
17 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." *Id.* §
18 241.13(i)(2).

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

1 revocation and further denial of release.” *Id.* § 241.13(i)(3).

2 ICE’s decision to re-detain is governed by the factors laid out in 8 C.F.R. § 241.13(f),
3 including “the history of the [noncitizen’s] efforts to comply with the order of removal, the history
4 of [ICE’s] efforts to remove [noncitizens] to the country in question or to third countries,
5 including the ongoing nature of [ICE’s] efforts to remove [the noncitizen] and the [noncitizen’s]
6 assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of
7 the Department of State regarding the prospects for removal of [noncitizens] to the country or
8 countries in question.” *See also Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3
9 (E.D. Cal. July 16, 2025). A court may not make this determination in the first instance, but may
10 review it for compliance with the regulation. *See id.*; *Nguyen v. Hyde*, No. 25-cv-11470-MJJ,
11 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608,
12 620 (1st Cir. 2023)).

13 Here, there is no lawful justification for Petitioner’s re-detention and continued
14 detention. Mr. Bui’s removal to Vietnam is not reasonably foreseeable. Respondents had not
15 requested a travel document from Vietnam before they detained Petitioner on April 17, 2025.
16 “Respondents’ intent to complete a travel document request for Petitioner does not make it
17 significantly likely he will be removed in the foreseeable future” or constitute a changed
18 circumstance. *Phan*, 2025 WL 1993735, *5; *see Liu v. Carter*, No. 25-cv-03036-JWL, 2025
19 WL 1696526, at *2 (D. Kan. June 17, 2025).

20 As Petitioner is a pre-1995 Vietnamese immigrant, there is no evidence that Vietnam is
21 likely to issue a travel document. Exhibit B ¶¶13-14. Indeed, as several courts have recently
22 pointed out, there is no evidence that Vietnam is accepting any pre-1995 deportees at greater rates
23 that would make removal significantly likely in the reasonably foreseeable future. *See, e.g., Hoac*
24 *v. Becerra*, No. 25-cv-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025)
25 (adopting the court’s analysis in *Nguyen v. Hyde*, 2025 WL 1725791, at *4, and concluding there
26 was “no evidence regarding the percentage of successful requests to Vietnam to demonstrate
27

1 changed circumstances”); *Phan*, 2025 WL 1993735, at *4 (same). The mere existence of the 2020
2 MOU is “not enough to show that a changed circumstance had occurred.” *Hoac*, 2025 WL
3 1993771, at *4; *see Nguyen*, 2025 WL 1725791, at *4 (same).

4 Moreover, the government’s acceptance of the terms and conditions of Mr. Bui’s release
5 make Respondents re-detention of him now, without any likely prospect of removal to Vietnam,
6 unconstitutional. *See Zadvydas*, 533 U.S. at 701 (“as the period of prior postremoval confinement
7 grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”).
8 Moreover, eleven years have passed since Mr. Bui was first ordered removed, diminishing the
9 government’s prospect of removal even further. *See, e.g., Tadros v. Noem*, No. 25-cv-4108-EP,
10 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (“Tadros has demonstrated there is no significant
11 likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by
12 without the Government securing. . . his removal.”).

13 Petitioner can show that Respondents did not comply with the procedural requirements of
14 8 C.F.R. § 241.13(i) and §§ 241.4(l)(1)-(2) in revoking his release. ICE is required to follow its
15 own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see*
16 *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that agencies may be
17 required to abide by certain internal policies is well-established.”). “Where the rights of
18 individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so
19 even where the internal procedures are possibly more rigorous than otherwise would be required.”
20 *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

21 There are no “changed circumstances” which make it significantly likely that Petitioner
22 will be removed in the foreseeable future. 8 C.F.R. § 241.13(i)(2). ICE did not notify Petitioner
23 of the “reasons for revocation of his [] release,” conduct “an initial informal interview promptly
24 after his . . . return to [ICE] custody to afford [him] an opportunity to respond to the reasons for
25 revocation stated in the notification,” allow Petitioner to “submit any evidence or information that
26 he or she believes shows there is no significant likelihood he or she [will] be removed in the
27

1 reasonably foreseeable future,” or provide a written “revocation custody review.” *Id.* §
2 241.13(i)(3); *see also Phan*, 2025 WL 1993735, at *3. Moreover, ICE did not consider the factors
3 in § 241.13(f) that govern the decision to re-detain. Accordingly, Petitioner is likely to succeed
4 on his claim that his re-detention was unlawful, as several courts in recent weeks have held in
5 analogous, pre-1995 Vietnamese re-detention cases presenting similar facts. *See Phan*, 2025 WL
6 1993735; *Hoac*, 2025 WL 1993771; *Nguyen v. Hyde*, 2025 WL 1725791.

7
8 **2. Petitioner Is Entitled to Legally Required Procedures Prior to Any
Nonpunitive Third Country Removal**

9 Mr. Bui is likely to succeed on the merits of his claim that he may not be removed to a
10 third country, absent Respondents following the legally required multistep procedures set out in
11 8 U.S.C. § 1231(b) and required by due process. No country other than Vietnam meets the criteria
12 for removal under 8 U.S.C. § 1231(b)(2)(A)-(E). Moreover, to remove Petitioner to a third
13 country, the statute requires that the Attorney General—here, an immigration judge—first
14 determine that it is “impracticable, inadvisable, or impossible” to remove Petitioner to Vietnam,
15 and that the designated third country “will accept [Petitioner] into that country.” *Id.* §
16 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. §
17 1231(b)(E)(vii) (“indisputably requires the Attorney General to prove that the proposed country
18 of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S.
19 335, 344 (2005). It is the immigration judge, not DHS, that the statute authorizes to designate a
20 third country for removal. 8 U.S.C. § 1231(b)(2)(E)(vii) (“the Attorney General shall remove the
21 alien to. . .”); *see also* 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge “shall.
22 . . . identify for the record a country, or countries in the alternative, to which the alien’s removal
23 may be made”). Here, to remove Petitioner to a third country would require Respondents to move
24 to reopen the removal proceedings and to then ask an immigration judge to designate a third
25 country, as mandated under the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x
26 648, 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be
27

1 designated, “the agency must provide [the noncitizen] with notice and an opportunity to reopen
2 his case for full adjudication of his claim of withholding of removal from” the third country);
3 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal
4 proceedings “shall be reopened and a hearing shall be held before the immigration judge so that
5 petitioner may apply for relief from removal” as to a country not designated in prior proceedings).

6 Adherence to that process also ensures Petitioner’s statutory right to claim protection in
7 immigration court against removal to a third country where he may be persecuted or tortured, a
8 form of protection known as withholding of removal. 8 U.S.C. § 1231(b)(3)(A); *see also* 8
9 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under the
10 Convention Against Torture (“CAT”). *See* 28 C.F.R. § 200.1 (“A removal order. . . shall not be
11 executed in circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-
12 1208.18.

13 Notice cannot be “last minute,” because that would deprive an individual of a
14 meaningful opportunity to apply for fear-based protection from removal. *Andriasian v. INS*, 180
15 F.3d 1033, 1041 (9th Cir. 1999). Individuals must have time to prepare and present relevant
16 arguments and evidence, and to seek reopening of their removal case. “[W]ritten notice of the
17 country being designated” is required, and “the statutory basis for the designation, i.e., the
18 applicable subsection of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see*
19 *also D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
20 (D. Mass. May 21, 2025) (“All removals to third countries, i.e., removal to a country other than
21 the country or countries designated during immigration proceedings as the country of removal
22 on the non-citizen’s order of removal, must be preceded by written notice to both the non-
23 citizen and the non-citizen’s counsel in a language the non-citizen can understand.” (internal
24 citation omitted)); *Andriasian*, 180 F.3d at 1041 (due process requires notice to the noncitizen
25 of the right to apply for asylum and withholding to the country where they will be removed).
26
27

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

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

17
18 Several courts have recently granted individual TROs against removal to third countries
19 under similar circumstances. *See generally See Van Tran v. Noem*, 25-cv-2334-JES-MSB, 2025
20 U.S. Dist. LEXIS 191834, 7-8 (S.D. Cal. September 29, 2025) (ordering release after examining
21 nearly identical facts); *J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun.
22 30, 2025) (immediately enjoining removal to “Cuba, Libya, or any third country in the world
23 absent prior approval from this Court”); *Phan*, 2025 WL 1993735, at *7 (enjoining Respondents
24 from “re-detaining or removing Petitioner to a third country without notice and an opportunity
25 to be heard”); *Hoac*, 2025 WL 1993771, at *7 (same); *Vaskanyan v. Janecka*, 25-cv-01475-
26 MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-JST,
27 2025 WL 1771438 (N.D. Cal. June 26, 2025).

28 MOTION FOR A TEMPORARY RESTRAINING ORDER AND A MEMORANDUM OF LAW IN SUPPORT
OF A TEMPORARY RESTRAINING ORDER - 12

3. The Constitution Prohibits Third Country Removals Without Due Process

1 Mr. Bui is likely to succeed on the merits of his claim that the Constitution prohibits him
2 from being subjected to Respondents' punitive third country removal program. The prohibition
3 against imposing punitive measures on an individual subject to a final order of removal is as old
4 as immigration law. *Wong Wing v. United States*, 163 U.S. 228 (1896). In *Wong Wing*, the
5 Supreme Court struck down a provision of the Chinese Exclusion Act that imposed one year of
6 imprisonment at hard labor as an immigration sanction before their deportation. *Id.* at 237. The
7 Court drew a distinction between "deportation," which it described as a sanction for failure to
8 comply with the legal requirements of residency in the U.S. that may be imposed by executive
9 authorities, and "punishment," which may not. *Id.* at 236-37. The Court held that the
10 government could not attach a punishment to deportation—here, imprisonment—without
11 criminal charges, a judicial trial, and the concomitant protections of the Fifth, Sixth and Eighth
12 Amendments. *Id.*

14 The government's third country removal program defies 130 years of constitutional
15 immigration law distinguishing between civil penalty and infamous punishment. *See, e.g.,*
16 *Zadvydas*, 533 U.S. at 694. To determine whether a given sanction constitutes punishment,
17 courts look to intent. If the government's intent is to punish, "that is the end of the inquiry." *Am.*
18 *Civ. Liberties Union of Nevada v. Mastro*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v.*
19 *Doe*, 538 U.S. 84, 92 (2003)). As shown above, the government's own statements show intent
20 to deport individuals, particularly those with criminal convictions, into situations of forever
21 confinement or substantial harm.

22 When the government's intent to punish is unclear, courts move to the second step of the
23 inquiry, and determine whether the practices are "so punitive either in purpose or effect as to
24 negate the [government's] intention to deem it civil." *Id.* (quoting *Smith*, 538 U.S. at 92). To
25 determine punitive purpose or effect, courts often turn to the factors laid out in *Kennedy v.*
26 *Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963). *See also Hudson v. United States*, 522 U.S.

1 93, 99 (1997) (“the factors listed in *Kennedy v. Mendoza-Martinez* [citation], provide useful
2 guideposts”). Those factors are: “[w]hether the sanction involves an affirmative disability or
3 restraint, whether it has historically been regarded as a punishment, whether it comes into play
4 only on a finding of scienter, whether its operation will promote the traditional aims of
5 punishment—retribution and deterrence, whether the behavior to which it applies is already a
6 crime, whether an alternative purpose to which it may rationally be connected is assignable for
7 it, and whether it appears excessive in relation to the alternative purpose assigned.” *Mendoza-*
8 *Martinez*, 372 U.S. at 168-69 (footnotes omitted).

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

18 The second factor is also satisfied. “[D]evices of banishment and exile have throughout
19 history been used as punishment.” *Mendoza-Martinez*, 372 U.S. at 168 n.23. In 1791, the year
20 the Bill of Rights was ratified, deportation was *exclusively* used and understood as punishment.
21 *Fong Yue Ting v. U.S.*, 149 U.S. 698, 740-41 (1893) (Brewer, J. dissenting) (citing President
22 James Madison); *see id.* at 740 (“[I]t needs no citation of authorities to support the proposition
23 that deportation is punishment. Everyone knows that to be forcibly taken away from home and
24 family and friends and business and property, and sent across the ocean to a distant land, is
25 punishment, and that oftentimes most severe and cruel.”). Banishment as a form of punishment
26 dates to ancient times, and was used on citizens and noncitizens alike. Peter L. Markowitz,

1 *Deportation is Different*, 13 U. Pa. J. Const. L. 1299, 1308-09 (2011) (tracing the use of
2 banishment from medieval England through colonial America).

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

16
17 The program satisfies the third, fifth, sixth and seventh factors, because Respondents
18 have designed this program specifically for those being deported for criminal convictions, there
19 is no logical nonpunitive rationale for deporting people into dangerous conditions of
20 imprisonment or other harm, and the program is designed to be patently excessive in relation to
21 the purpose of simply removing people from the country.

22 **B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief**

23 “It is well established that the deprivation of constitutional rights ‘unquestionably
24 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting

25
26
27 ¹³ Secretary Kristi Noem (@sec_noem), Instagram (Mar. 27, 2025),
28 <https://www.instagram.com/p/DHtVvbgSHhh/>

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

7 Here, the irreparable harm to Petitioner and his family is severe. Exhibit A. He has
8 already been unreasonably deprived of his liberty, placed in detention without notice that his
9 order of supervision was revoked. Exhibit A. Absent relief, Petitioner will remain detained in an
10 indefinite and prolonged state, denied his liberty, removed from his livelihood, and separated
11 from and unable to provide critical care and support to his spouse, children and his family.
12 Exhibit A.

13
14 **C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner’s
Favor**

15 The final two factors for a preliminary injunction—the balance of hardships and public
16 interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418,
17 435 (2009). “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with
18 such a conflict between financial concerns and preventable human suffering.” *Hernandez*, 872
19 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Here, the balance
20 of hardships tips in Petitioner’s favor. Petitioner faces weighty hardships: deprivation of his
21 liberty, and removal to a third country where he is likely to suffer imprisonment or other serious
22 harm. “[T]he [government] cannot reasonably assert that it is harmed in any legally cognizable
23 sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727
24 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S.
25 Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in
26 preventing noncitizens “from being wrongfully removed, particularly to countries where they
27

1 are likely to face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218
2 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with federal law, . . . the
3 balance of hardships and public interest factors weigh in favor of a preliminary injunction.”).
4 Accordingly, the balance of hardships and the public interest overwhelmingly favor emergency
5 relief to ensure Petitioner’s freedom and prevent unlawful third country removal.

6 **V. CONCLUSION**

7 For the foregoing reasons, the Court should immediately grant Petitioner’s TRO and order
8 his release from detention.

9 October 14, 2025

Respectfully Submitted,

10 /s/Jesse M. Bless

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18 *Admitted Pro Hac Vice*

19 Attorney for Petitioner

20 **CERTIFICATE OF SERVICE**

21 I, Jesse M. Bless, hereby certify that on October 14, 2025, I served the above and
22 foregoing, by causing a true and accurate copy of such papers to be filed and served on all
23 counsel of record via the Court’s CM/ECF electronic filing system.

24 /s/ Jesse M. Bless

25 Jesse M. Bless