

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Tan Hoang BUI,

Petitioner,

v.

Bruce SCOTT, Warden, Northwest ICE
Processing Center; Camilla WAMSLEY,
Enforcement and Removal Operations,
Seattle Field Office Director, U.S.
Immigration and Customs Enforcement;
Kristi NOEM, Secretary of U.S.
Department of Homeland Security, in her
official Capacity; U.S. DEPARTMENT OF
HOMELAND SECURITY; Todd LYONS,
Acting Director and Senior Officer
Performing Duties of Director of ICE; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondents.

Civil Case No.:

A 

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

UNDER 28 USC 2241

I. INTRODUCTION AND RELIEF REQUESTED

Petitioner Tan Hoang BUI faces immediate irreparable harm absent this Court's intervention. He is experiencing unlawful prolonged immigration detention and, as a Vietnamese refugee with a 25-year-old removal order, he faces a real and imminent threat of removal to a third country in violation of his statutory and constitutional rights. He respectfully asks this Court to order his release, enjoin Respondents from re-detaining him absent a travel document and a travel date, enjoin Respondents from removing him to a third country without affording him his statutory and constitutional rights in reopened removal proceedings, and enjoin Respondents from removing him to a third country for a punitive purpose and effect.

II. FACTS

Petitioner Tan Hoang BUI is a 51-year-old national of Vietnam who born in Vietnam on September 10, 1974. *Exhibit A*. He was 9 years old when he was admitted to the United States at the age of nine, and he was approved for lawful permanent resident status based on his refugee status on March 14, 1988. *Id.*

Petitioner Bui resides in Portland, Oregon with her U.S. Citizen wife, Jennifer Lee Tu, their son J [REDACTED], a U.S. Citizen child age 6. *Exhibit B*. Mr. Bui also has another U.S. Citizen child from a prior relationship, Jonathan, age 31 who resides in California. *Id.* Mr. Bui also has a U.S. Citizen grandchild. His mother is a U.S. Citizen and his deceased father was a U.S. Citizen. *Id.* His wife currently suffers from asthma, hypertension, and recently experienced a significant concussion and syncope (loss of consciousness) for which she was placed on a cardiac monitor on October 23, 2025, for the next several weeks. She was headed to her follow up appointment on October 28, 2025, with her husband, when their car was surrounded by ICE and her husband was taken into custody. She again had to go to the emergency room on November 3, 2025, for chest pain and

MOTION FOR TEMPORARY RESTRAINING ORDER- 2

1 shortness of breath. She also had a follow up appointment on November 5, 2025. She works as a
2 registered nurse but has been out of work for the last few weeks and is still out of work due to
3 medical need. *Exhibit C*. Mr. Bui is well respected in his community and many individuals have
4 written letters of support regarding his character and difficult childhood. *Exhibit D*. He has
5 also received his GED, as well as positive certifications both at work and church. *Id*.

6 In 1996, when Petitioner was 22 years old, he was convicted in Orange County, California
7 of voluntary manslaughter. The conviction stemmed from an incident when Mr. Bui was 17 years
8 old. He received a 4-year sentence. At that time, Mr. Bui made the difficult choice to escape his
9 home from his abusive father and got involved with the wrong group of people and made an error
10 in judgement. He has subsequently turned his life around, got married, and raised children. He
11 completed his sentence and Court requirements. He has no other convictions. *Exhibit E*; *See*
12 *also Exhibit D*.

13 On July 7, 2000, the Immigration and Naturalization Service ("INS") detained him and
14 charged him with being removable for having an "aggravated felony." *Exhibit F*. On October 6,
15 2000, an immigration judge ordered him removed to Vietnam and denied his applications for
16 withholding of removal and protection under the Convention Against Torture. He did not appeal.
17 *Id*. Based on case law over sixteen after his removal order was entered, Mr. Bui's conviction in
18 fact may no longer be an "aggravated felony" under immigration law, thus rendering him
19 potentially no longer removable. Mr. Bui is currently in process of seeking by separate action in
20 Immigration Court to reopen his removal order.

21 Mr. Bui remained in immigration custody until June 18, 2001, and he was then placed on
22 an Order of Supervision beginning July 10, 2001. *Exhibit G*. Mr. Bui was released after a Habeas
23 petition was filed in the Central District of California, Case No. CV 01-00754 TJH (RZ), and there
24 was a stipulation to dismiss signed by all the parties on the basis he be placed on the Order of

MOTION FOR TEMPORARY RESTRAINING ORDER- 3

1 Supervision. *Id.* The Department of Justice confirmed during his time in custody they would be
2 unable to remove him from the United States. *Id.*

3 For over 24 years, Mr. Bui dutifully complied with the Order of Supervision, never
4 missing a check in. *See Exhibit G.* His most recent check in having taken place on June 4, 2025,
5 where he was informed to come back for his next check in on June 3, 2026. *Id.* He has had no
6 other convictions. In the time since his incarceration, he has dedicated himself to working and
7 raising his children. His oldest son works on cell phone towers in California, and Mr. Bui
8 recently became a grandfather to a granddaughter who is 1 year old. His youngest son is age 6,
9 and he is the primary caregiver to him, alongside his wife who works as a nurse with
unpredictable hours.

10 Without warning or notice, on October 28, 2025, while Mr. Bui and his wife were in
11 route to the hospital for a follow up appointment from her recent fall and concussion, his vehicle
12 was surrounded by ICE and other DHS agents in the middle of the road in traffic. ICE agents
13 ordered Mr. Bui to put the car in park, turn off the vehicle, and then ordered him out of the
14 vehicle. ICE then informed him they had a warrant for his arrest and put him in handcuffs. Mr.
15 Bui's wife was unable to drive but was left alone in the middle of the road to pull the car over out
of traffic until someone could pick her up and take her to the hospital.

16 ICE officers then took Mr. Bui into custody and took him to the Portland ICE office. There
17 Mr. Bui was told by an officer he didn't know why he had been targeted for pick up, but then the
18 officer provided him with a document in Vietnamese. He informed the officer he couldn't read the
19 document as he does not read Vietnamese. ICE did not give him any reasons for his re-detention.
20 He was then provided a document in English and asked to fill it out. He was given no further
21 information but was told it was to get his travel document, and he was not provided a copy.
22 However, Mr. Bui does not believe that form was not the Vietnamese self-declaration form
23 required to process travel document requests from the United States, as Petitioner says ICE has
24 MOTION FOR TEMPORARY RESTRAINING ORDER- 4

1 never shown him that form or asked him to complete it. Mr. Bui was also told he would be given
2 an Order of Deferral hearing within 10 days. He was then taken to the NWIPC in Tacoma,
3 Washington, and he has been detained since October 28, 2025. No Order of Deferral hearing has
4 been scheduled to date for Mr. Bui, and no officer at the NWIPC has since discussed his case with
5 him. He has not been provided with any documents revoking his release. The encounter on
6 October 28, 2025, was the last time an ICE officer has discussed his case with him.

7 At no time since his re-detention on October 28, 2025, has any ICE officer conducted an
8 initial interview to explain to him the reasons why his release on supervision was revoked or
9 provide him an opportunity to explain why his removal to Vietnam is not likely or foreseeable.
10 ICE has not conducted a revocation custody review. Additionally, ICE did not have a travel
11 document for Petitioner at the time of his re-detention. ICE has never asked Petitioner to complete
12 the Self-Declaration Form for Vietnam that is required for Vietnam to process a request by the
United States for a travel document.

13 Mr. Bui does not have a Vietnamese passport, but he does have a birth certificate from
14 Vietnam. DHS has had a copy of this document both before his removal proceedings, during the
15 duration of his removal proceedings, during the duration of his time in custody post-removal order,
16 and during the duration of his time post-release from custody in 2001, stemming back decades.
17 ICE has still been unable to secure a travel document for Mr. Bui to removed him from the United
States. Petitioner's removal to Vietnam is not reasonably foreseeable.

18 As indicated above, Mr. Bui filed a habeas petition in the district court for the central
19 district of California, challenging his re-detention back in 2001, Case. No. CV 01-00754 TJH(RZ).
20 *See Exhibit H.* He was represented by different counsel, but there was a Stipulation of Dismissal
21 filed by Mr. Bui's Counsel, John S. Gordon, and signed by Assistant U.S. Attorney Katherine M.
22 Hikida, to stipulated and agree to dismiss the action without prejudice based on Mr. Bui's release
from custody June 18, 2001, on an INS Order of Supervision. *Id.* At the time of that stipulated

23 MOTION FOR TEMPORARY RESTRAINING ORDER- 5
24

1 dismissal filed on July 2, 2001, Mr. Bui had been in ICE custody post-removal order over 8
2 months, for 254 days, well beyond the 180 consecutive period.

3 **Repatriation to Vietnam History**

4 In order for a Vietnamese immigrant without a passport or other travel document can be
5 repatriated, Vietnam must issue a passport or other travel document in response to a request from
6 ICE. *See Trinh v. Homan*, 466 F.Supp.3d 1077, 1083 (C.D. Cal. 2020). Between the end of the
7 Vietnam War and 2008, Vietnam refused to repatriate any Vietnamese immigrant who had been
8 ordered removed from the United States. *See id.*

9 In 2008, the United States and Vietnam reached a diplomatic agreement pursuant to which
10 Vietnam agreed to start considering repatriation requests for certain Vietnamese immigrants. *See*
11 *id.* The agreement obligated Vietnam to consider repatriation requests for Vietnamese immigrants
12 who had arrived in the United States after July 12, 1995. *See id.* The agreement also provided that
13 “Vietnamese citizens are not subject to return to Vietnam under this agreement if they arrived in
14 the United States before July 12, 1995.” *Id.* Relying on this provision, Vietnam maintained its
15 policy of non-repatriation for pre-1995 Vietnamese immigrants after signing the 2008 agreement.
16 *See id.*

17 Prior to 2017, ICE maintained that the removal of pre-1995 Vietnamese immigrants was
18 unlikely given Vietnam’s consistent refusal to repatriate them. *See id.* ICE adopted a policy of
19 detaining pre-1995 Vietnamese immigrants for no longer than ninety days after their removal
20 orders became final. *See id.* After ninety days, ICE generally released them into the community on
21 orders of supervision. *See id.* In 2017, after some negotiations with Vietnam led ICE to believe
22 Vietnamese officials would begin considering travel documents for pre-1995 Vietnamese
23 immigrants, ICE began re-detaining some Vietnamese individuals who had previously been
24 released on supervision and detaining individuals for longer than 90 days based on a possibility
that Vietnam would issue the requisite travel documents. *Id.* That possibility did not materialize.

1 After renewed discussions with Vietnam in August 2018, ICE reversed its position again
2 and acknowledged that the removal of pre-1995 immigrants to Vietnam was not significantly
3 likely. *Id.* In October 2018, ICE instructed field offices to resume the practice of releasing pre-
4 1995 Vietnamese immigrants within 90 days of a final order of removal. *Id.*

5 Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese
6 immigrants 251 times. Vietnam granted those requests only 18 times.

7 In November 2020, the United States and Vietnam signed a Memorandum of
8 Understanding that creates a process for deporting pre-1995 immigrants. Section 4 of the MOU
9 obliges the United States and Vietnam to consider specific factors prior to deciding to remove a
10 Vietnamese citizen and prior to deciding to accept for repatriation a Vietnamese citizen. *Id.* These
11 factors are not publicly known because the U.S. government redacted them in Freedom of
12 Information Act (FOIA) disclosures of the MOU, yet they appear to dictate which categories of
13 people may be deported to Vietnam. *Id.* Under Section 8 of the MOU, if a person meets the
14 designated criteria, ICE is expected to put together a documentation package for Vietnam to
15 include, inter alia, a self-declaration form of the individual to be removed (using a form attached
16 to the MOU), copies of identity and citizenship documents, and copies of the final order of removal
17 and any criminal records. *Id.* The MOU states that Vietnam intends to issue the travel document
18 within 30 calendar days of receiving the information package when the individual meets the
19 eligibility criteria. *Id.*

20 Between September 2021 to September 2023, the U.S. government deported only four pre-
21 1995 Vietnamese immigrants. *Id.*

ICE's Third Country Removal Policy

22 On July 9, ICE released a memo instructing staff that ICE may deport a person to a third
23 country not designated on the removal order without providing any notice or an opportunity to be
24 heard if the State Department confirms that it has received diplomatic assurances that individuals
MOTION FOR TEMPORARY RESTRAINING ORDER- 7

1 will not be persecuted or tortured.¹ There is no mention of assurances that a person will not be
2 arbitrarily or indefinitely imprisoned. *Id.*

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

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

18 Punitive Banishment to Third Countries

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21 ¹ U.S. Immigration and Customs Enforcement, “Third Country Removals Following the Supreme Court’s Order in
22 Department of Homeland Security v. D. V.D., No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025,
23 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf>; Washington
24 Post, “ICE memo outlines plan to deport migrants to countries where they are not citizens,” Maria Sacchetti, Carol
D. Leonnig and Marianne LeVine, July 13, 2025,
<https://www.washingtonpost.com/immigration/2025/07/12/immigrants-deportations-trump-ice-memo/>

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

6 Respondents reportedly have negotiated with at least 58 countries to accept deportees from
 7 other nations. On June 25, 2025, the New York Times reported that seven countries had agreed to
 8 accept deportees who are not their own citizens.² Since then, ICE has carried out third country
 deportations to South Sudan, Eswatini, Rwanda, Uganda, and Ghana.

9 The Administration’s third country removal scheme is designed to punish and deter. In an
 10 official video, President Donald Trump stated, “[I]f illegal aliens choose to remain in America,
 11 they’re remaining illegally, and they will face severe consequences,” such as “significant jail time,
 12 ... garnishment of all wages, imprisonment and incarceration, and *sudden deportation in a place*
 13 *and manner solely of our discretion.*”³ In January, President Trump announced a plan to detain
 14 immigrants at the Guantanamo Bay prison in Cuba because “it’s a tough place to get out” and “we
 15 don’t want them coming back.”⁴

16 Later, Secretary of State Marco Rubio announced that El Salvador had agreed to “accept
 17 for deportation any illegal alien in the [U.S.] who is a criminal”⁵ with the explicit understanding

18 ² The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda. Edward
 19 Wong et al., *Inside the Global Deal-Making Behind Trump’s Mass Deportations*, NY Times (June 25, 2025),
<https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html>.

20 ³ Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55 (emphasis added),
<https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/>
 21 (last visited July 24, 2025).

22 ⁴ 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>.

23 ⁵ 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-](https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk)
[deal-marco-rubio-intl-hnk](https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk).

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

7 In April, Secretary of State Rubio stated that the administration is “working with other
 8 countries ... to send [them] some of the most despicable human beings ... and the further away
 9 from America, the better, so they can’t come back.”¹⁰ Secretary Noem has publicly threatened
 10 noncitizens with criminal convictions to “leave America” or “be fined nearly \$1,000 per day,
 11 imprisoned, and deported.”¹¹ She stated, “President Trump and I have a clear message to those in
 12 our country illegally: LEAVE NOW. If you do not self-deport, we will hunt you down, arrest you,
 and deport you.”¹²

13 The Administration has negotiated with countries to have U.S. deportees imprisoned in
 14 prisons, camps, or other facilities. In February, Panama and Costa Rica took in hundreds of
 15 deportees from African and Central Asian countries and imprisoned them in hotels, a jungle camp,

16 ⁶ 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-](https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b)
 17 [237f06b7d4bdd9ff1396baf9c45a2c0b](https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b).

18 ⁷ 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-](https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/)
[bukele-el-salvador-april-14-2025/](https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/) (last visited July 24, 2025).

19 ⁸ Roll Call, *White House Press Conference: 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-](https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/)
[conference-white-house-june-27-2025/](https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/) (last visited July 24, 2025).

20 ⁹ Homeland Security (@DHSgov), X (June 24, 2025 at 4:17 PM), [https://x.com/DHSgov/status/](https://x.com/DHSgov/status/1937651350059327520)
[1937651350059327520](https://x.com/DHSgov/status/1937651350059327520).

21 ¹⁰ Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7, 2025),
<https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations>.

22 ¹¹ Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and International Ads Warning Illegal*
Aliens to Self-Deport and Stay Out (Apr. 21, 2025), [https://www.dhs.gov/news/2025/04/21/dhs-releases-new-](https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self)
[nationwide-and-international-ads-warning-illegal-aliens-self](https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self).

23 ¹² *Id.* (italics omitted).

1 and a detention center.¹³ In Panama, officials confiscated cell phones, denying deportees access to
 2 their attorneys.¹⁴ Deportees were “guarded like prisoners,” sleeping in structures made from plastic
 3 sheets and having toilet access only when escorted.¹⁵

4 The Costa Rican president announced an agreement to receive up to 200 deportees and to
 5 hold them for up to six weeks before sending them to their home countries, all paid for by the
 6 United States.¹⁶ The deportees were held at the Temporary Migrant Care Center (CATEM).¹⁷
 7 Migrants held there previously reported sleeping on the ground in tents, being held in cramped
 8 quarters like prisoners, and sanitation issues.¹⁸ On June 24, a Costa Rican court ordered the release
 9 of the deportees due to civil rights violations, finding “they had been deprived of their freedom of
 10 movement 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 status.”¹⁹
 12
 13

14 ¹³ The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal ‘Black Hole,’* CBC News
 15 (Feb. 28, 2025, 6:29 AM), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan
 16 Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try to Return Them to Their*
 17 *Countries*, AP World News (Feb. 18, 2025), [https://apnews.com/article/panama-trump-migrants-darien-](https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455)
 18 [d841c33a215c172b8f99d0aeb43b0455](https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455); Manuel Rueda, *Asylum Seekers Deported by the U.S. Are Stuck in Panama*
 19 *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)
 20 [5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-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).

21 ¹⁴ Julie Turkewitz et al, *Migrants, Deported to Panama Under Trump Plan, Detained in Remote Jungle Camp*, N.Y.
 22 Times (Feb. 19, 2025), [https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock)
 23 [camp.html?login=smartlock&auth=login-smartlock](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock).

24 ¹⁵ 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-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)
trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86.

¹⁶ Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President Says*, Reuters (Feb. 19,
 2025), [https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-](https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/)
 2025-02-19/.

¹⁷ The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in Costa Rica*, NBC News
 (Feb. 21, 2025 at 7:37 AM PST), [https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)
 costa-rica-rcna193148

¹⁸ *Id.*

¹⁹ Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported from US*, BBC News (June 25,
 2025), <https://www.bbc.com/news/articles/cwyrn42kp7no>.

1 In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200 deported
 2 Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as
 3 CECOT.²⁰ El Salvador's justice minister stated the only way out of CECOT is in a coffin.²¹

4 In May, ICE attempted to deport individuals from Vietnam, Laos, the Philippines, and
 5 Mexico to Libya.²² The aircraft sat on the runway for hours until the individuals were returned to
 6 a detention center after a court ordered the men not to be deported.²³

7 On July 4, ICE deported eight men, including one Vietnamese man, to South Sudan.²⁴ The
 8 government of South Sudan euphemistically said in a statement that the deportees were "under the
 9 care of the relevant authorities."²⁵ As of September 7, 2025, six of the eight men remained in South
 10 Sudanese custody.²⁶

11 On July 15, ICE deported five men to Eswatini, including one Vietnamese man. DHS
 12 referred to the men as "so uniquely barbaric that their home countries refused to take them back."²⁷
 13 Eswatini government officials have said the men are imprisoned in solitary confinement and that
 14

15 ²⁰ See, e.g., Wong, *supra* note 1; Michael Rios, *What We Know About the El Salvador 'Mega Prison' Where Trump*
 16 *Is Sending Alleged Venezuelan Gang Members*, CNN (Mar. 17, 2025).

17 ²¹ Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents Indicate Most Have No Apparent*
 18 *Criminal Records*, CBS News (Apr. 6, 2025), [https://www.cbsnews.com/news/what-records-show-about-migrants-](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/)
 19 [sent-to-salvadoran-prison-60-minutes-transcript/](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/).

20 ²² Human Rights Watch, *U.S.: Don't Forcibly Transfer Migrants to Libya*, May 9, 2025, [https://www.hrw.org/](https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya)
 21 [news/2025/05/09/us-dont-forcibly-transfer-migrants-libya](https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya).

22 ²³ *Id.*

23 ²⁴ Guardian, *US Judge Clears Path for Eight Immigrants to be Deported to South Sudan*, July 4, 2025,
 24 <https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted>.

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

31 ²⁶ Isa Cardona, *South Sudan repatriates Mexican man deported from US*, CNN, Sept. 7, 2025,
 32 <https://www.cnn.com/2025/09/06/americas/mexican-south-sudan-returns-latam-intl>.

33 ²⁷ Tricia McLaughlin (@TriciaOhio), X (July 15, 2025), <https://x.com/TriciaOhio/status/1945274627976200206>.

the U.S. is paying for the costs of their imprisonment.²⁸ An Eswatini government official estimated the men would be held for about 12 months.²⁹

In mid-August, ICE deported seven individuals to Rwanda.³⁰ Rwanda also reported reaching an agreement with the United States to receive up to 250 deportees.³¹

In September, ICE deported as many as 28 individuals to Ghana, at least 14 of whom had won protection against removal in immigration court. In court filings, five of these individuals alleged that ICE abruptly put them on a plane in the middle of the night, straightjacketed them, and did not tell them where they were being flown until they were already in flight. *D.A. v. Noem*, 2025 WL 2646888, at *1 (D.D.C. Sept. 15, 2025). In Ghana they were held in an open-air detention facility surrounded by armed military guards. *Id.* Now, Ghana has reportedly expelled eight to ten of these individuals to Togo without their passports.³²

This court may grant a temporary restraining order (“TRO”) pursuant to Fed. R. Civ. P. (“FRCP”) 65 if the plaintiff can “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit applies a “sliding scale” approach to the *Winter* standard, where “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiffs can support issuance of a [TRO],” so long as the other *Winter* factors are met. *Frailhat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021) (citation omitted). Under this

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

²⁹ *Id.*

³⁰ Daphne Psaledakis et al., Rwanda received migrants deported from US earlier this month, Reuters, Aug. 28, 2025, <https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-earlier-this-month-2025-08-28/>.

³¹ *Id.*

³² West Africans deported from US to Ghana ‘dumped without documents in Togo,’ The Guardian, Sept. 29, 2025, <https://www.theguardian.com/us-news/2025/sep/29/west-africans-deported-us-ice-ghana-togo>.

1 approach, the four *Winter* elements are “balanced, so that a stronger showing of one element may
2 offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
3 (9th Cir. 2011).

4 I. ARGUMENT

5 This Court should issue a TRO because “immediate and irreparable injury” has already
6 occurred and continues to occur and will do so in the absence of an order from the Court. Fed. R.
7 Civ. Pro. 65(b). Respondent did not violate his Order of Supervision and was in full compliance
8 when he was violently arrested and taken into custody. Respondents have re-detained Petitioner in
9 violation of his due process and statutory rights, and Respondents claim the ability to remove him
10 to a third country without adhering to constitutional and statutory procedural protections and in
11 violation of bedrock law prohibiting the government from imposing punitive measures on
12 noncitizens ordered removed. This Court should order Petitioner’s release and enjoin removal to
a third country.

13 In this case, emergency relief is necessary because Petitioner has already been unlawfully
14 detained for more than nine months, cumulatively. His immediate release to his prior conditions
15 of supervision is necessary to restore the status quo pending the resolution of this habeas petition.

16 A. Standard of Issuance of a Temporary Restraining Order

17 The standard for issuing a temporary restraining order is identical to the standard for a
18 preliminary injunction. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832,
19 839 n.7 (9th Cir. 2001); *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp.
20 1320, 1323 (N.D. Cal. 1995). To prevail on a motion for a preliminary injunction, the Plaintiff
21 must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm; (3)
that the balance of equities tip in his favor; and (4) that an injunction is in the public interest.
22 *Winter v. Natural Resources Defense Council, Inc.*, 55 U.S. 7, 20 (2008).

1 The Ninth Circuit employs a “sliding scale” approach to preliminary injunctions, “so that
2 a stronger showing of one element may offset a weaker showing of another.” *Alliance for the Wild*
3 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Within this “sliding scale” approach lays
4 the “serious question” test: “a preliminary injunction could issue where the likelihood of success
5 is such that ‘serious questions going to the merits were raised and the balance of hardships tips
6 sharply in [plaintiff’s] favor.’” *Id.* at 1131 (citation omitted). To succeed under the “serious
7 question” test, the plaintiff must show that he is likely to suffer irreparable harm and an injunction
8 is in the public’s interest. *Id.* at 1132.

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

10 **i. Petitioner Is Likely to Succeed on the Merits of His Claim That His**
11 **Detention Is Unconstitutional and Unlawful.**

12 Petitioner is likely to succeed on the merits of his claim that her detention violates
13 the Due Process Clause, 8 U.S.C. § 1231(a), and governing regulations. Petitioner has
14 been detained by the government for a cumulative period of more than nine months. The
15 law does not permit the government to continue to detain him. Additionally, the
16 government was required to follow procedures for revocation of Petitioner’s release
17 under governing regulations, which it altogether ignored. Here, there is simply no
18 justification for the continued detention of Petitioner as his continuing detention is
19 unlawful. This Court should order his immediate release.

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

21 The INA provides that after a removal order becomes final, the government “shall remove
22 the alien from the [U.S.] within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). This 90-day period
23 is often referred to as the initial removal period and during it, the government “shall detain the
24 alien.” *Id.* § 1231(a)(2). In some circumstances, federal immigration authorities can continue to
detain an alien beyond the initial removal period. Specifically, section 1231(a)(6) allows the
MOTION FOR TEMPORARY RESTRAINING ORDER- 15

1 government to detain certain enumerated classes of immigrants—including those ordered removed
2 due to criminal convictions—for more than 90 days. *Id.* § 1231(a)(6).

3 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court interpreted the detention
4 statute, 8 U.S.C. § 1231(a)(6), in light of the Due Process Clause and held that “[a] statute
5 permitting indefinite detention of an alien would raise a serious constitutional problem” because
6 it would become punitive. *Id.* at 690. “[G]overnment detention violates [the Fifth Amendment’s
7 Due Process Clause] unless the detention is ordered in a *criminal* proceeding with adequate
8 procedural protections, or, in certain special and narrow nonpunitive circumstances. . . where a
9 special justification, such as a harm-threatening mental illness, outweighs the individual’s
10 constitutionally protected interest in avoiding physical restraint.” *Id.* Civil immigration detention,
11 the Court said, is only authorized for the limited purpose of flight risk or a danger to the
12 community. *Id.* The Court held that section 1231(a)(6) “implicitly limits an alien’s detention to a
13 period reasonably necessary to bring about that alien’s removal.” *Id.* at 679. Thus, “once removal
14 is no longer reasonably foreseeable, continued detention is no longer authorized by [section
15 1231(a)(6)].” *Id.* at 699. “[F]or the sake of uniform administration in the federal courts,” the Court
16 found that post-order detention was “presumptively reasonable” for the first six months. *Id.* at 700–
17 01.

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

23 Here, Petitioner’s re-detention is presumptively unreasonable as it is well beyond the six-
24 month mark. The clock does not restart upon each new re-detention. *See Nguyen v. Scott*, 2025
25 WL 2419288, *13 (W.D. Wash. Aug. 21, 2025); *Said v. Nielsen*, 2018 WL 1876907, at *6 (N.D.

1 Cal. Apr. 18, 2018) (“the six month period does not reset when the government detains a[]
2 [noncitizen]. . . , releases him from detention, and then re-detains him again.”); *Chen v. Holder*,
3 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015) (“[s]urely, under the reasoning of *Zadvydas*,
4 a series of releases and re-detentions by the government. . . while technically not in violation of
5 the presumptively reasonable jurisprudential six month removal period, in essence results in an
6 indefinite period of detention, albeit executed in successive six month intervals.”).

7 Petitioner’s removal to Vietnam is not significantly likely in the reasonably foreseeable
8 future. Respondent’s have never asked Petitioner to complete the required Self-Declaration form
9 for Vietnam.

10 Petitioner has complied with his order of supervision for over twenty-four years. He is
11 categorically not a flight risk or a danger to society. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*,
12 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023). Moreover, to the extent detention is authorized at
13 all at this point under *Zadvydas*, even without a showing of flight risk or danger to society, it can
14 only be for the “narrow nonpunitive” purpose of securing a person’s removal “at the moment” of
15 removal. *Zadvydas*, 533 U.S. at 690, 699. “Reasonableness” is measured “in terms of the statute’s
16 basic purpose”: “assuring the [noncitizen’s] presence *at the moment* of removal.” *Id.* at 699.
17 Continued detention well-beyond the presumptively reasonable period and nearly six months
18 beyond the date the government requested a travel document is presumptively unreasonable, just
19 as is continued detention only to explore whether another country will take Petitioner. Detention
20 for that purpose has no definitive end and is not designed to facilitate the individual’s presence “at
21 the moment” of removal—indeed, there is no known moment of removal because it is not known
22 whether he can even be removed.

23 Further, there is no evidence that Vietnam will issue a travel document to Petitioner,
24 making his removal foreseeable. For 24 years, the government of Vietnam has refused to receive
25 Petitioner. He has a Vietnamese birth certificate, which DHS has had prior to removal proceedings

1 ever being initiated. There is therefore no evidence that Vietnam would accept him under the
2 known MOU criteria.

3 The fact that Vietnam is now accepting *some* pre-1995 arrivals for removal for the first
4 time in history, does not make it significantly likely that it will accept Petitioner. “Courts in this
5 circuit have regularly refused to find Respondents’ burden met where Respondents have offered little
6 more than generalizations regarding the likelihood that removal will occur,” and it should not do so
7 here. *Nguyen v. Scott*, 2025 WL 2419288, *16 (W.D. Wash. Aug. 21, 2025); *see id.* at *18 (“The
8 government has not provided any evidence of Vietnam’s eligibility criteria or why it believes
9 Petitioner now meets it.”); *Singh v. Gonzales*, 448 F.Supp.2d 1214, 1220 (W.D. Wash. 2006) (finding
10 ICE did not meet its burden where it “merely assert[ed] that it has followed up on its request for
11 travel documents”); *see also Chun Yat Ma v. Asher*, 2012 WL 1432229, at *4 (W.D. Wash Apr. 25,
2012); *Hoac v. Beccerra*, 2025 WL 1993771, at *3 (E.D. Cal. June 25, 2025).

12 **2. Post-Detention Procedural Violations**

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

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

1 relevant to the revocation and a determination whether the facts as determined warrant
2 revocation and further denial of release.” *Id.* § 241.13(i)(3).

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

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

19 Instead, after a seamless check in on June 3, 2025, where Petitioner was given his next date
20 to check in on June 4, 2025, on October 28, 2025, ICE and DHS officers surrounded his car in the
21 middle of traffic on the way to the hospital for an appointment for his wife. He was taken first to
22 Portland ICE and told by an officer they did not know why he was targeted for removal and was
23 asked to fill out a form in Vietnamese. When he informed them he did not speak Vietnamese, he
24 was given the form in English. He has never been given a Notice of Revocation of Release by any
ICE officer. As he has not been provided a Notice of Revocation of Release, he has not been able
MOTION FOR TEMPORARY RESTRAINING ORDER- 19

1 to respond to it. He was not offered an initial interview or review. Instead, ICE informed him he
2 would be scheduled for an Order of Deferral Hearing within 10 days that has also never
3 materialized. Petitioner was then transferred to the NWIPC in Tacoma, Washington and has not
4 heard any other information from ICE regarding his case.

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

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

11 **3. Procedural Due Process**

12 Petitioner had a procedural due process right to notice and a hearing before being suddenly
13 arrested and re-detained. As district courts throughout this circuit have found, “individuals released
14 from immigration custody. . . have a protectable liberty interest in remaining in the community on
15 supervision.” *See Zakzouk v. Becerra*, No. 25-cv-06254, 2025 WL 2097470, at *3 (N.D. Cal. July 26,
16 2025) (citing cases). Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) factors, notice and a
17 predeprivation hearing were required before the government could revoke Petitioner’s Order of
18 Supervision. *See, e.g., Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S.
19 471, 482 (1972); *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025); *Azarte v. Andrews*,
20 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025) (citing *Young v. Harper*, 520 U.S. 143, 147-49
21 (1997); *Sequen v. Kaiser*, 2025 WL 2203419 (N.D. Cal. Aug. 1, 2025); *Guillermo M.R. v. Kaiser*,
22 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Garcia v. Andrews*, 2025 WL 1927596 (E.D. Cal. July
23 14, 2025); *Romero v. Kaiser*, Case No. 22-cv-02508-TSH, 2022 WL 1443250, at *2 (N.D. Cal. May
24 6, 2022); *Chhoeun v. Marin*, 442 F.Supp.3d 1233, 1251 (C.D. Cal. 2020).

1 Like the post-order Petitioners in *Chhoeun* and *Zakzouk*, the private interest affected here
2 could not be stronger. As a lifelong resident of the United States, Petitioner has lived subject to a
3 “dormant” removal order for 21 years, duly complied with her order of supervision, has built a
4 settled life, and has no connections to Vietnam. The risk of erroneous deprivation absent notice and a
5 hearing to determine whether the government has the legal authority to revoke Petitioner’s order of
6 supervision is extremely high—a fact made plain by the allegations made in this petition. Absent any
7 check on the power of the government to detain, the government has detained Petitioner without a
8 legal basis to do so. *City of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (“The Due Process
9 Clause was intended to prevent government officials from abusing their power, or employing it as an
10 instrument of oppression.”). Finally, the government’s interest, by contrast, is extremely low. Indeed,
11 “[c]ivil immigration detention is permissible only to prevent flight or protect against danger to the
12 community.” *Zakzouk*, 2025 WL 2097470, at *3 (citing *Zadvydas*, 533 U.S. at 690). It has also been
13 25 years since Petitioner was ordered deported. As the court noted in *Chhoeun*, the government has
14 no legitimate claim that it is burdened by a slight delay of the execution of Petitioner’s removal order
15 when it “waited years or decades to execute these removal orders.” 442 F. Supp. 3d at 1249.

15 Additionally, Petitioner is in the process of seeking, by separate action in Immigration Court
16 to reopen his removal order as the crime for which he was charged under Section 237(a)(2)(A)(iii)
17 for having been convicted of an aggravated felony has been found it does not in fact constitute an
18 aggravated felony. Petitioner should never have been found removable in the first place.

18 **ii. Petitioner is Likely to Succeed on the Merits of the Claim That He is**
19 **Entitled to Procedural Protections Before Third Country Removal.**

20 Petitioner is likely to succeed on the merits of his claim that he may not be removed to a
21 third country absent Respondents complying with 8 U.S.C. § 1231(b) and due process.

1 In Petitioner's case, only Vietnam meet the criteria for removal under 8 U.S.C. §
2 1231(b)(2)(A)-(E).³³ Removing Petitioner to a third country requires the Attorney General to first
3 determine that it is "impracticable, inadvisable, or impossible" to remove Petitioner to Vietnam
4 and that the designated third country "will accept [Petitioner]." *Id.* § 1231(b)(2)(E)(vii); *see Himri*
5 *v. Ashcroft*, 378 F.3d 932, 939 n.4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(2)(E)(vii) "indisputably
6 requires the Attorney General to prove that the proposed country of removal is willing to accept
7 the alien"); *see also Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 344 (2005). The statute
8 authorizes the immigration judge to designate a third country for removal. 8 U.S.C. §
9 1231(b)(2)(E)(vii) ("the Attorney General shall remove the alien to ..."); *see also* 8 C.F.R. §
10 1240.10(f) (in removal proceedings the immigration judge "shall ... identify ... a country, or
11 countries in the alternative, to which the alien's removal may be made").

12 Here, removing Petitioner to a third country requires Respondents to move to reopen
13 Petitioner's 25-year-old removal proceedings to ask an immigration judge to designate a third
14 country under the statutory process. *See Nguyen v. Scott*, 2025 WL 2419288, at *19 ("Petitioner is
15 likely to succeed on his claim that removal to a third country under ICE's current policy, without
16 meaningful notice and reopening of his removal proceedings for a hearing, would violate due
17 process."); *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished) (holding that
18 "the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for
19 full adjudication of his claim of withholding of removal from" the third country); *Aden v. Nielsen*,
20 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings "shall be
21 reopened and a hearing shall be held before the immigration judge so that petitioner may apply for
22 relief from removal" to a different country not previously designated).

23 ³³ Respondents' Notice of Revocation of Release claims that Thailand was designated as the
24 alternate country of removal in the removal order, but Petitioner has no awareness of that. The
removal order in her A-File states only Vietnam. *See Pasquarella Decl.* ¶8.

1 Adherence to that process also ensures Petitioner's statutory right to claim protection in
2 immigration court against removal to a third country where she may be persecuted or tortured, a
3 form of protection known as withholding of removal, 8 U.S.C. § 1231(b)(3)(A); *see also* 8
4 C.F.R. §§ 208.16, 1208.16, as well as her right to claim deferral of removal under the CAT; *see*
5 28 C.F.R. § 200.1 ("A removal order ... shall not be executed in circumstances that would
6 violate [the CAT]"); 8 C.F.R. §§ 208.17-18, 1208.17-18.

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

23 Due process also demands that the government "ask the noncitizen whether he or she
24 fears persecution or harm upon removal to the designated country and memorialize in writing the
25 noncitizen's response. This requirement ensures DHS will obtain the necessary information from
26 MOTION FOR TEMPORARY RESTRAINING ORDER- 23

1 the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and
2 noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.

3 Respondents’ third country removal program skips over these statutory and constitutional
4 procedural protections. According to ICE’s July 7 guidance, individuals can be removed to third
5 countries “without the need for further procedures,” so long as “the [U.S.] has received
6 diplomatic assurances.”³⁴ Petitioner is likely to succeed on the merits of his claim on this fact
7 alone, because the policy instructs officers to violate the statutory and constitutional
8 requirements. The same is true of the minimal procedures ICE offers when no diplomatic
9 assurances are present. The policy provides no meaningful notice (6-24 hours), instructs officers
10 *not* to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based
11 claim (6-24 hours), let alone reopen removal proceedings. In sum, it directs ICE officers to
12 violate the rights of those whom they seek to subject to the third country removal program.

13 **iii. Petitioner Is Likely to Succeed on the Merits of His Claim That the**
14 **Constitution Prohibits Punitive Third Country Removals.**

15 Petitioner is likely to succeed on the merits of his claim that the Constitution prohibits
16 him from being subjected to Respondents’ punitive third country removal program. The
17 prohibition against imposing punitive measures on an individual subject to a final order of
18 removal is as old as immigration law. *Wong Wing v. United States*, 163 U.S. 228 (1896). The
19 Supreme Court in *Wong Wing* struck down a provision of the Chinese Exclusion Act that
20 imposed one year of imprisonment at hard labor as an immigration sanction before deportation.
21 *Id.* at 237. The Court distinguished “deportation,” described as a sanction for noncompliance
22 with U.S. residency legal requirements that may be imposed by executive authorities, from
23 “punishment,” which may not. *Id.* at 236-37. The Court held that the government could not
24

³⁴ The government claimed in court proceedings—without presenting evidence—that it had diplomatic assurances the deportees to South Sudan would not be persecuted or tortured, but the deportees have been held by the South Sudanese government incommunicado ever since their deportation nearly a month ago. Pasq. Decl. ¶12.

1 attach a punishment to deportation (here, imprisonment) without criminal charges, a judicial
2 trial, and the concomitant protections of the Fifth, Sixth and Eighth Amendments. *Id.*

3 The government's third country removal program defies 130 years of constitutional
4 immigration law between civil penalty and infamous punishment. *See, e.g., Zadvydas*, 533 U.S.
5 at 694. Respondents' third country removal program is designed to punish those it deports by
6 subjecting them to imprisonment upon their arrival in the receiving countries. Respondents'
7 program is not just about removing individuals to third countries. It is about removing them to be
8 imprisoned upon arrival and paying countries to carry out said imprisonment; selecting countries
9 and overseas prisons notorious for cruelty, torture, lawlessness, and other human rights abuses;
10 and publicly broadcasting these third country removals to demonize deportees and strike extreme
11 fear in immigrants to entice self-deportation. This program is about punitive banishment.

12 To determine whether a given sanction constitutes punishment, courts look to intent. If
13 the government's intent is to punish, "that is the end of the inquiry." *Am. Civ. Liberties Union of*
14 *Nev. v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92
15 (2003)). Here, the government's own statements show intent to deport individuals, particularly
16 those with criminal convictions, into situations of forever confinement or substantial harm.

17 When the government's intent to punish is unclear, courts move to the second step of the
18 inquiry to determine whether the practices are "so punitive either in purpose or effect as to
19 negate the [government's] intention to deem it civil." *Id.* (quoting *Smith*, 538 U.S. at 92). To
20 determine punitive purpose or effect, courts often turn to the factors laid out in *Kennedy v.*
21 *Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963); *see also Hudson v. United States*, 522 U.S. 93,
22 99 (1997) ("the factors listed in *Kennedy v. Mendoza-Martinez* [citation], provide useful
23 guideposts"). Those factors are: "[w]hether the sanction involves an affirmative disability or
24 restraint, whether it has historically been regarded as a punishment, whether it comes into play
only on a finding of scienter, whether its operation will promote the traditional aims of

1 punishment—retribution and deterrence, whether the behavior to which it applies is already a
2 crime, whether an alternative purpose to which it may rationally be connected is assignable for it,
3 and whether it appears excessive in relation to the alternative purpose assigned.” *Mendoza-*
4 *Martinez*, 372 U.S. at 168-69 (footnotes omitted).

5 The government’s third country removal program undeniably constitutes punishment
6 meets all these factors. Under the first factor, the government’s practices of deporting people
7 only to have them imprisoned or subjected to other forms of physical harm, is an “affirmative
8 disability or restraint.” The “paradigmatic affirmative disability” is the “punishment of
9 imprisonment.” *Smith*, 538 U.S. at 100. And under this factor, “we inquire how the effects of the
10 [sanction] are felt by those subject to it. If the disability or restraint is minor and indirect, its
11 effects are unlikely to be punitive.” *Id.* at 99-100. Undoubtedly, deportation to be imprisoned or
12 suffer other extreme harm will be felt as a significant and direct disability or restraint. Indeed, as
13 this court held in a similar case, “Respondents’ practice of third-country removal paired with
14 imprisonment violates due process.” *Nguyen v. Scott*, 2025 WL 2419288, at *25 (W.D. Wash.
15 Aug. 21, 2025).

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

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

1 Here, the irreparable harm to Petitioner and his family is severe. His wife was already left
2 abandoned in the middle traffic with a concussion on the way to a medical appointment due to
3 the actions of ICE and DHS. He has already been unreasonably deprived of nine months of his
4 life in prolonged immigration detention following the issuance of his removal order. Since his
5 most recent detention, his wife has had to go to the ER for additional medical concerns. She is
6 still unable to drive and work. The family now has no income coming in to support their son.
7 Absent relief, Petitioner will remain detained in an indefinite and prolonged state, denied his
8 liberty, removed from his livelihood, separated from and unable to provide critical care and
9 support to his medically vulnerable wife and their child, and removed from his family and
community where he belongs.

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

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

1 noncitizens “from being wrongfully removed, particularly to countries where they are likely to
2 face substantial harm”).

3 Accordingly, the balance of hardships and the public interest overwhelmingly favor
4 emergency relief to ensure Petitioner’s freedom and prevent unlawful third country removal.

5 **II. CONCLUSION**

6 For the above reasons, the Court should immediately grant Tan Hoang BUI’s Temporary
7 Restraining Order.

8 *I certify that this memorandum contains 9,173 words, in compliance with the Local Civil Rules.*
9

10 RESPECTFULLY SUBMITTED this 13th of November, 2025.

11
12 By: /s/ Jeffrey C. Gonzales

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21
22

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2025, I caused a true and correct copy of the foregoing document to be filed with the Clerk of the Court for the United States District Court – Western District of Washington by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Jeffrey C. Gonzales

Jeffrey C. Gonzales