Zachary Nightingale (California Bar # 184501)
Christine Raymond (Massachusetts Bar #711907)*
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
ndca@vblaw.com

**Application for PHV forthcoming*

Attorneys for Petitioner-Plaintiff
Nghiep Ke LAM

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Nghiep Ke LAM,

Petitioner-Plaintiff,

v.

Sergio ALBARRAN, Acting Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

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

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

Respondents-Defendants.

Case No. 3:25-cv-09980

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

INTRODUCTION

1. Petitioner, Nghiep Ke LAM ("Mr. Lam" or "Petitioner"), by and through undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE") from returning him to immigration detention without first providing him a due process hearing where the government bears the burden of demonstrating that his removal to Vietnam is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified—that is, whether he poses a danger or a flight risk.

2. Mr. Lam has a removal order to Vietnam (and Vietnam only) from 2016 which the Respondents have not been able to execute, and there is no credible evidence that they will ever be able to execute it due to the existence of a treaty with Vietnam governing the repatriation of Vietnamese individuals who, like Mr. Lam, came to the U.S. before 1995. Therefore, his removal is not reasonably foreseeable.

3. Mr. Lam has also never been ordered removed to any third country apart from Vietnam, nor has he been notified of such potential removal. He thus seeks to additionally prevent ICE from summarily removing him to a third country without first being provided constitutionally-compliant procedures—in this instance, notice of any third-country removal and an adequate opportunity to apply for fear-based relief as to that country. Given the order of the Supreme Court of the United States on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever[1]—in violation of clear statutory obligations set forth in

[1] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/; International Refugee Assistance Project, "Trump Administration's Third Country Removals Put Migrants in Harm's Way," available at:

the Immigration and Nationality Act ("INA"), binding treaty, and due process. In the absence of the nation-wide injunction, individual lawsuits like the instant case are the only method to challenge the illegal third-country removals.

4. Mr. Lam and his parents fled Vietnam by boat in approximately 1978 when he was about two years old. The boat, which held a group of approximately 50 Vietnamese refugees, was stranded at sea for around six months before they were rescued.

5. Mr. Lam then entered the United States in 1980 around the age of four as a refugee. He later became a U.S. lawful permanent resident.

6. In 1994, at the young age of 18, Mr. Lam sustained a conviction for California Penal Code ("Cal. P.C.") § 187. Given a sentence to life with the possibility of parole at such a young age, he used his time incarcerated to mature and grow for the next 21 years. In or around November 2015, Mr. Lam was granted parole and released from incarceration by the California Board of Parole Hearings, and the Governor of California, after meeting the required showing that he had been fully rehabilitated and that he does not pose a danger to the community. After his release, he was detained by ICE and underwent removal proceedings before the Immigration Court while still detained. Although he expressed a fear of return to Vietnam, Mr. Lam attended only one hearing before an Immigration Judge on January 20, 2016, at which he accepted a removal order. At that time (and currently to this day), he was covered by the agreement between Vietnam and the U.S. government that he could not be repatriated to Vietnam by reason of having entered the United States before July 1995.[2] Thus, his primary goal was not to remain detained while fighting his case before the Immigration Court, but rather to be released as quickly as possible after having been incarcerated for 21 years. Mr. Lam was released from ICE detention after approximately five months.

---

https://refugeerights.org/news-resources/trump-administrations-third-country-removals-put-migrants-in-harms-way (last visited No. 19, 2025).

[2] *See* U.S. Department of State, "Repatriation Agreement Between the United States of America and Vietnam" (Jan. 22, 2008), available at: https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf ("Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995….").

7. When Mr. Lam was released from ICE custody, he was placed on an Order of Supervision ("OSUP") with Form I-220B, which permitted him to remain free from custody following his removal proceedings because his removal to Vietnam was not reasonably foreseeable and he is otherwise neither a flight risk nor a danger to the community. The OSUP also requires him to attend regular check in appointments at the ICE San Francisco Office, and permits him to apply for work authorization. 8 C.F.R. § 241.5. For the past nine years, Mr. Lam has complied with the terms of his OSUP, attending his appointments on an annual basis. Mr. Lam applied for and received a work authorization document, and he continued serving his community by helping others re-entering the community following incarceration by working at the Asian Prisoner Support Committee as a Reentry and Facilities Manager. *Declaration of Zachary Nightingale ("ZN Decl.")* at Exhibit ("Exh.") A (Letters of Support). He has also reintegrated into the community himself in many other positive ways, including by serving as a youth mentor and volunteering his time at many local community organizations. *Id.* He currently has an application for a pardon of his sole conviction pending before the Governor of California's Office. *See id.* Among his supporters for the pardon are Buffy Wicks, member of the California State Assembly; Barbara Lee, mayor of Oakland; and Jesse Arreguín, member of the California state senate..

8. Mr. Lam is scheduled to attend a check-in at the ICE San Francisco Field Office on November 21, 2025. *ZN Decl.* He previously attended his annual check in at the ICE San Francisco Field Office on October 21, 2025. *Id.* At that time, he was instructed to return for another check-in only a month later. *Id.* Undersigned counsel has been communicating with counsel for the Respondents regarding whether ICE intends to detain Mr. Lam at this upcoming appointment. *Id.* By the time of filing, ICE has not indicated its intention. *Id.*

9. Credible and recent reports of ICE re-incarcerating individuals at their ICE check-ins[3]—including undersigned counsel's own experience with two similarly situated clients who were

[3] *See, e.g.*, "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/; "They followed the government's rules. ICE held them anyway," LAist (June 11, 2025), https://laist.com/news/politics/ice-raids-los-angeles-family-detained.

recently re-arrested and re-detained during routine check-in appointments at ICE's San Francisco Field Office—suggest it is highly likely that Mr. Lam will be arrested and detained at this appointment, despite the fact that his removal is not reasonably foreseeable as he cannot be repatriated to Vietnam, and he is neither a flight risk nor a danger to the community. *Hoac v. Becerra, et al.*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D.C.A. July 16, 2025) (ordering the immediate release of petitioner—a Vietnamese individual who arrived to the United States as a refugee prior to 1995, who also has a final removal order and was released from ICE detention and had been complying with an OSUP for years—after he was unlawfully re-detained at a routine check (despite no changed circumstances) in at the ICE office in San Francisco); *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D.C.A. July 16, 2025) (same). This is particularly true given that ICE has received multiple directives to meet untenable daily arrest quotas that leave the agency no other option but to arrest noncitizens whose incarceration is not necessary or justified.[4] If Mr. Lam were to be arrested, he would face the very real possibility of being transferred outside of California with little or no notice, far away from his family—including his U.S. citizen fiancée and U.S. citizen son—, his job, and his community.

10. Since his release from incarceration and then ICE custody in 2016, ICE has not sought to re-detain Mr. Lam. Instead, for the past nine years, Mr. Lam has been attending his routine check-in appointments as required, and working to rebuild his life and reconnect with family and community after having been incarcerated for 21 years.

11. By statute and regulation, ICE has the authority to re-detain a noncitizen on an OSUP previously ordered removed *only in specific circumstances*, including where an individual

---

[4] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/ ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

violates any condition of release,[5] changed circumstances show that their removal is reasonably foreseeable because the country of removal has issued a travel document, or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That unilateral authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Lam's case, due process requires notice and a hearing, *prior to any re-detention*, at which the government bears the burden of demonstrating that his removal to Vietnam is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified (whether he poses a danger or a flight risk), and he is afforded the opportunity to advance his arguments as to why he should not be re-detained.

12. Here, during his nine years of release, Respondents have created a reasonable expectation that Mr. Lam is permitted to live and work in the United States without being subject to arbitrary arrest and removal. This reasonable expectation creates constitutionally-protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.") (internal quotations omitted).

13. Further, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months, because removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *see Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) (this six-month clock begins to run after the issuance of the final removal

[5] On information and belief, Mr. Lam has not violated any condition of his release.

order, and does not stop upon release or restart upon re-detention). Because the United States and Vietnam have an agreement not to remove Vietnamese individuals who entered the United States before July 12, 1995,[6] Mr. Lam's removal is not reasonably foreseeable in this case.

14. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Mr. Lam was *already* previously released first from state incarceration after being granted parole by the California Board of Parole Hearings (which by necessity had to have made a finding that he was suitable to return to the community, subject to review by the Governor, before he could be granted release), and then subsequently from ICE detention nine years ago, after which he began to rebuild his life, including by securing employment and reconnecting with his family.

15. Therefore, at a minimum, in order to lawfully re-arrest Mr. Lam, the government must first establish before a neutral decision maker that his removal to Vietnam is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified (whether he poses a danger or a flight risk), such that his re-detention is necessary.

16. Moreover, under the INA, Respondents' only statutory obligation is to remove Mr. Lam to the country designated for removal—in this case, Vietnam. 8 U.S.C. § 1231(b)(2)(A)(ii). Before Mr. Lam could be removed to a third country, Respondents *must* first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE *must* provide him with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[7] Currently, Defendants' practice, detailed in a written policy, does not comply with this legal requirement. Specifically, DHS has a stated policy of removing or seeking to remove individuals to third countries *without* first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See ZN*

---

[6] *Supra* at n.2.

[7] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

Decl. at Exh. B (DHS Policy Regarding Third Country Removal). The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction. Thus, in this individual habeas petition, Mr. Lam submits that he cannot be removed to any third country unless he is first provided with adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture. Several federal district courts have already issued similar relief. *See Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025) (TRO prohibiting the government from "arresting, detaining, or removing" the petitioner to a third country "without notice and a hearing."); *J.R. v. Bostock*, et al., 2:25- cv-01161-JNW (W.D. Wash. June 30, 2025) (TRO prohibiting the government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGR (C.D. Cal. Jul. 14, 2025) (TRO prohibiting government barring [the petitioner's] removal to a third country."); *Vaskanyan v. Janecka*, No. 25-cv-1475 (C.D. Cal. Jun. 25, 2025) (TRO prohibiting government from "removing the petitioner "to a third country, i.e., a country other than the countries designated as he countries of removal in Petitioner's final order of removal…without written notice to both Petitioner and Petitioner's counsel in a language the Petitioner can understand. Following notice, Petitioner must be given a meaningful opportunity, and a minimum of ten (10) days, to raise a fear-based claim for protection under the Convention Against Torture prior to removal. If Petitioner demonstrates 'reasonable fear' of removal to the third country, Respondents must move to reopen Petitioner's removal proceedings. If Petitioner is not found to have demonstrated a

'reasonable fear' of removal to the third country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15) days, for the non-citizen to seek reopening of his immigration proceedings.").

CUSTODY

17. Petitioner Mr. Lam is currently released from custody on an OSUP issued by ICE. The terms of his OSUP require him to attend check-ins with the San Francisco ICE Field Office on an annual basis, or as required, and comply with other conditions of release, including updating his address. Such stringent requirements "impose[] conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 ("*Rodriguez I*") (holding that comparable supervision requirements constitute "custody" sufficient to support habeas jurisdiction).

JURISDICTION

18. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

19. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis added).

20. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and

imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

21. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

VENUE

22. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of California; because Petitioner Mr. Lam is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California;[8] and because there is no real property involved in this action.

INTRADISRICT ASSIGNMENT

23. Petitioner Mr. Lam lives in San Francisco, and any decision to re-arrest and re-detain him will be made by the San Francisco Field Office of ICE. Therefore, the assignment to the San Francisco Division of this Court is proper under Local Rule 3-2(d).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner Mr. Lam asserts that exhaustion is satisfied as there is no

[8] U.S. Immigration and Customs Enforcement, *ICE Field Office*, https://www.ice.gov/contact/field-offices (stating the San Francisco ICE Field Office's area of responsibility is, as relevant here, "Northern California.").

administrative jurisdiction over this detention status because he already has a final order of removal.

25. No statutory exhaustion requirements apply to Petitioner Mr. Lam's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

PARTIES

26. Petitioner Mr. Nghiep Ke LAM was born in Vietnam and fled to the United States as a refugee in 1980, where he subsequently became a U.S. lawful permanent resident. He previously served approximately 21 years of incarceration in California state prison, and several months in ICE detention, after which he was released and placed on an OSUP. He has attended regular check-ins at the ICE San Francsico Office for the past nine years, and he has worked pursuant to his work authorization document and has begun to rebuild his life and reconnect with family during this time.

27. Respondent Sergio ALBARRAN is the Acting Field Office Director of ICE, in San Francisco, California and is named in her official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In her official capacity, she is the legal custodian of Petitioner Mr. Lam.

28. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner Mr. Lam.

29. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and

enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner Mr. Lam.

30. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

31. Mr. Lam left his native Vietnam at age two when his family fled by boat for six months at sea, and he first entered the United States in 1980 at the age of approximately four as a refugee with his family. He later became a U.S. lawful permanent resident.

32. Mr. Lam was released on parole from incarceration in 2016, after the required showing to the California Board of Parole Hearings and the California Governor that he had been fully rehabilitated and suitable to return to the community after serving approximately 21 years in California state prison for a Cal. P.C. § 187 conviction he sustained in 1994 (at the age of 18). After his release, he was detained by ICE and underwent removal proceedings, to determine his removability, while detained. At that time, Vietnamese individuals like Mr. Lam who entered the United States before July 1995 would have been aware of the repatriation agreement between the United States and Vietnam that applied to them which prevented repatriation to Vietnam.[9] He was ordered removed by the Immigration Judge on January 20, 2016, after attending one hearing before an Immigration Judge at the Immigration Court in Adelanto, California. Though he did indeed fear removal to Vietnam, he accepted the removal order after one hearing because he knew he would not actually be deported, and his primary goal was to be released from detention as quickly as possible so that he could begin to rebuild his life after being incarcerated for 21 years.

[9] *See supra* n.2.

33. Due to the existing repatriation agreement, Mr. Lam could not (and still cannot) be removed to Vietnam, and therefore his continued detention by ICE would be indefinite and unconstitutionally prolonged if he were to remain in ICE detention. Therefore, consistent with Supreme Court law, he was thereafter released from ICE custody and placed on an OSUP in 2016, requiring him to attend regular check in appointments at the ICE San Francisco Office.

34. For the past nine years, Mr. Lam has complied with the terms of his OSUP by regularly checking in at the ICE San Francisco Office on an annual basis. He also applied for and received a work authorization document, and he has been serving his community by working at the non-profit Asian Prisoner Support Committee as a Reentry and Facilities Manager.

35. On October 21, 2025, Mr. Lam attended his annual check-in appointment with ICE. *Id.* At that time, he was instructed to return for another check in only a month later. *Id.* Between November 11 and November 19, 2025, undersigned counsel has been communicating with counsel for the Respondents regarding whether ICE intends to detain Mr. Lam at this upcoming appointment. *Id.* By the time of filing, ICE has not provided an indication of its intention. *Id.*

36. Multiple credible reports demonstrate that numerous noncitizens in the San Francisco Bay Area, Sacramento Area, Los Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[10] On information and belief, on January 25, 2025, officials in the new Trump administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically, per public reporting, each field office was

---

[10] "ICE arrests at Sacramento immigration courts raises fear among immigrant community," KCRA (June 3, 2025), https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405; "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025), https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php; "Cincinnati high school graduate faces deportation after routine ICE check-in," ABC News (June 9, 2025), https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262.

instructed to make 75 arrests per day.[11] Furthermore, recent changes in the leadership of ICE were attributed to perception that ICE officers were not sufficiently aggressive in meeting the expected number of immigration arrests, which left the impression that ICE would be engaging in additional actions to arrest any non-citizen that it is able to encounter who is amenable to arrest (lawfully or otherwise).[12]

37. In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.[13]

38. In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins[14]—including undersigned counsel's own experience with two similarly situated clients who were re-arrested and re-detained during routine check-in appointments at ICE's San Francisco Field Office—, it is highly likely Mr. Lam will be arrested and incarcerated at this appointment. *See Hoac v. Becerra, et al.*, 2:25-cv-01740-DC-JDP (E.D.C.A. July 16, 2025) (ordering the

---

[11] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

[12] *See* Politico, "Shake-up at ICE will boost immigration numbers — just not the ones that matter most to Trump" (Oct. 29, 2025), available at: https://www.politico.com/news/2025/10/29/ice-shake-up-will-increase-arrest-numbers-that-doesnt-mean-there-will-be-more-deportations-00628718.

[13] *See, e.g.*, McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), *available at* https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754 (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

[14] *See, e.g.*, "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/; "They followed the government's rules. ICE held them anyway," LAist (June 11, 2025), https://laist.com/news/politics/ice-raids-los-angeles-family-detained.

immediate release of petitioner—a Vietnamese individual who arrived to the United States as a refugee prior to 1995, who also has a final removal order and was released from ICE detention and had been complying with an OSUP for years—after he was unlawfully re-detained at a routine check in at the ICE office in San Francisco); *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP (E.D.C.A. July 16, 2025) (same, after petitioner was transferred from California to Louisiana).

39. Mr. Lam is also at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture, in violation of the INA, binding international treaty, and due process. Currently, DHS has a policy of removing or seeking to remove individuals to third countries *without* first providing adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* ZN Decl. at Exh. B (DHS Policy Regarding Third Country Removal). The U.S. government is actively following this policy and deporting individuals to numerous, and seemingly random, third countries including El Salvador, Panama, South Sudan, and Eswatini. [15]

40. Intervention from this Court is therefore required to ensure that Mr. Lam is not unlawfully re-arrested, re-detained, and subjected to irreparable harm and further violation of his rights in the form of summary removal to a third country.

LEGAL BACKGROUND

[15] CNN, "Eswatini receives 10 third-country deportees from USNPR," (Oct. 6, 2025), available at: https://www.cnn.com/2025/10/06/africa/eswatini-deportees-united-states-intl-latam. "U.S. deports hundreds of Venezuelans to El Salvador, despite court order" (Mar. 16, 2025), available at: https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-trump; AP, "Panama releases dozens of detained deportees from US into limbo following human rights criticism" (Mar. 9, 2025), available at: https://apnews.com/article/trump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5; The New York Times, "Trump Administration Poised to Ramp Up Deportations to Distant Countries" (July 13, 2025), available at: https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html; The Guardian, "Venezuelans deported by Trump are victims of 'torture', lawyers allege" (May 16, 2025), available at: https://www.theguardian.com/us-news/2025/may/16/venezuelans-deported-trump-lawyers-torture ("Lawyers hired by Venezuela have been unable to confirm 'proof of life' for 252 migrants imprisoned in El Salvador."); NPR, "Abrego Garcia says he was severely beaten in Salvadoran prison" (July 3, 2025), available at: https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture.

Right to a Hearing Prior to Re-incarceration

41. In Mr. Lam's particular circumstances, the Due Process clause of the Constitution makes it unlawful for Respondents to re-detain him without first providing a pre-deprivation hearing before a neutral decisionmaker to determine whether his removal is reasonably foreseeable, or whether circumstances have changed since his release from immigration custody in 2016 such that detention would now be warranted on the basis that he is a danger or a flight risk.

42. Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

43. If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

44. Post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six (6) month period, if a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

45. That said, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable). Moreover, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas* at 701.

46. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community).

47. The government's own regulations contemplate this requirement. They dictate that even after ICE determines that removal is reasonably foreseeable—and that detention therefore does not per se exceed statutory authority—the government must still determine whether continued detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that where removal is reasonably foreseeable, "detention will continue to be governed under the established standards" in 8 C.F.R. § 241.4).

48. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed even before *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE to conduct "90-day custody reviews" prior to expiration of the ninety-day removal period and to consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are "ties to the United States such as the number of close relatives residing here lawfully"; whether the noncitizen "is a significant flight risk"; and "any other information that is probative of whether" the noncitizen is likely to "adjust to life in a community," "engage in future acts of violence," "engage in future criminal activity,"

pose a danger to themselves or others, or "violate the conditions of his or her release from immigration custody pending removal from the United States." *Id.*

49. Individuals with final orders who are released after a post-order custody review are subject to Forms I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been released on an order of supervision, as Mr. Lam was, ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

50. Federal district courts in California and throughout the country have repeatedly recognized that the demands of due process and the limitations on DHS's authority to re-detain a noncitizen both require a pre-deprivation hearing *before* ICE re-detention by ICE. *See M.R. v. Kaiser*, et al., 25-cv-05436-RFL (N.D. Cal. July 17, 2025) (TRO prohibiting government from re-detaining the petitioner without notice and a hearing before a neutral adjudicator); *Rodriguez Diaz v. Kaiser*, et al., 3:25-cv-05071 (N.D. Cal. June 14, 2025) (same); *T.P.S. v. Kaiser*, et al., 3:25-cv-05428 (N.D. Cal. June 30, 2025) (same); *Soto Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR (E.D.C.A. July 14, 2025) (same); *Singh v. Andrews, et al.,* 1:25-cv-00801-KES-SKO (HC) (E.D.C.A. July 11, 2025) (same); *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025) (same); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

Petitioner's Protected Liberty Interest in His Release

51. Petitioner Mr. Lam's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

52. Since 2016, Mr. Lam has exercised that freedom pursuant to his OSUP. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration, which is not diminished by the supervised nature of his release. *Zadvydas*, 533 U.S. at 679 ("[A] noncitizen's liberty interest is not diminished by their lack of a legal right to live at large, for the choice at issue here is between imprisonment and supervision under release conditions that may not be violated and their liberty interest is strong enough to raise a serious constitutional problem with indefinite detention."); *see also Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

53. Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. In this case, in the absence of a repatriation agreement that actually permits Mr. Lam's removal to Vietnam, his removal is not foreseeable at all, let alone reasonably. Therefore, his re-detention would be indefinite and thus unconstitutional.

54. Just as importantly, Mr. Lam has continued presenting himself before ICE for his regular check-in appointments for the past nine years, where ICE has not sought to re-arrest him during this time. ICE instead has given him a future date and time to appear again each year.

55. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts

a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

56. This basic principle—that individuals have a liberty interest in their release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

57. In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

58. Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are

strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Lam's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

59. Since his release in 2016, Mr. Lam has complied with all conditions of his release. He has been focused on rebuilding his life, including by reconnecting with family and securing employment after having been incarcerated for 21 years.

Petitioner's Liberty Interest Mandates a Due Process Hearing Before any Re-Detention

60. Petitioner Mr. Lam asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for nine years, during which time he has diligently complied with ICE's reporting requirements on a regular basis, (3) where his removal is not reasonably foreseeable, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

61. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or

substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

62. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

63. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner Mr. Lam with notice and a hearing *prior* to any re-detention. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

Petitioner's Private Interest in His Liberty is Profound

64. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Lam, who have been released after civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal

conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g.*, *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Lam retains a truly weighty liberty interest even though he is under supervised release.

65. What is at stake in this case for Mr. Lam is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

66. Thus, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

The Government's Interest in Re-Detaining Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from Re-Detaining Him Unless and Until he is Provided a Hearing That Comports with Due Process is Minimal

67. The government's interest in re-detaining Mr. Lam without a due process hearing is low, and when weighed against Mr. Lam's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-detaining Mr. Lam unless and until the government demonstrates that his removal is reasonably foreseeable and that circumstances have changed such that he is now a danger or a flight risk. It becomes abundantly clear that the *Mathews* test favors Mr. Lam when the Court considers that the process he seeks— notice and a hearing prior to his re-detention—is a standard course of action for the government. Providing

Mr. Lam with a hearing before a neutral decisionmaker to determine whether Mr. Lam's removal is reasonably foreseeable and there is evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely conducts these reviews for individuals in Mr. Lam's same circumstances. 8 C.F.R. § 241.4(e)-(f).

68. As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country in the removal order is unconstitutional. In this case, the government cannot plausibly assert that it has any basis for detaining Mr. Lam in November 2025 when he has lived at liberty complying with the terms of his release since 2016.

69. Mr. Lam was previously granted parole by the California Board of Parole Hearings and the California Governor after meeting the required showing that he had been fully rehabilitated. Since being released from ICE detention in 2016, he has continued to appear before ICE on a regular basis for each and every appointment that has been scheduled. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

70. As to flight risk, Mr. Lam's post-release conduct in the form of full compliance with his check-in requirements further confirms that he is not a flight risk and that he is likely to present himself at any future ICE appearances, as he always has done. The government's interest in detaining him at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[16] Moreover, nothing has changed regarding the lack of foreseeability of his removal to Vietnam.

[16] *Id.*

71. Moreover, the "fiscal and administrative burdens" that a pre-deprivation hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Lam does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his release should be revoked and whether he should be re-incarcerated.

72. In the alternative, providing Mr. Lam with a hearing before a neutral decisionmaker regarding detention is a routine procedure that the government provides to those in immigration jails on a daily basis. At that hearing, the neutral decisionmaker would have the opportunity to determine whether his removal is reasonably foreseeable and otherwise whether circumstances have changed sufficiently such that he is now a danger or a flight risk and his re-detention is warranted. But there is no justifiable reason to re-incarcerate Mr. Lam prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

73. Enjoining Mr. Lam's re-arrest until he is provided a hearing being a neutral decisionmaker is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

74. Providing Mr. Lam with a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Lam can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that his removal is reasonably foreseeable and otherwise whether circumstances have changed such that he is a danger to the community or a flight risk.

75. Under the process that ICE maintains is lawful—which affords Mr. Lam no process

whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Lam will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations permit ICE to unilaterally re-detain individuals, even for an oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold Petitioner Mr. Lam. 8 C.F.R. § 241.4(e)-(f).

76. By contrast, the procedure Petitioner Mr. Lam seeks—a hearing before a neutral adjudicator *before* any re-arrest—is much more likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

77. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to detention must be considered in determining whether Mr. Lam's re-detention is warranted.

Right to Constitutionally Adequate Procedures Prior to Third Country Removal

78. Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal *only* to the designated country of removal. The statute explicitly states that a noncitizen "*shall* remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate

the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).

79. As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019) ("Shall" means "[h]as a duty to; more broadly, is required to . . . . This is the mandatory sense that drafters typically intend and that courts typically uphold."); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that "shall" language in a statute was unambiguously mandatory). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

80. Moreover, prior to any third country removal, ICE must provide Mr. Lam with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[17] Currently, DHS has a policy—stated in writing—of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *ZN Decl.* at Exh. B (DHS Policy Regarding Third Country Removal). This policy clearly violates due process and the United States' obligations under the Convention Against Torture.

81. The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the

[17] *See supra* n.7.

Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with nature, and not the substance, of the nationwide preliminary injunction.

82. Thus, it is clear that if Mr. Lam were to be removed to any third country, it would violate his due process rights unless he is first provided with constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture. In the absence of any other injunction, intervention by this Court is necessary to protect those rights.

FIRST CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Indefinite Detention

U.S. Const. amend. V

83. Petitioner Mr. Lam re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

84. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

85. Mr. Lam has a vested liberty interest in his supervised release. Due Process does not permit the government to strip him of that liberty without a hearing before a neutral adjudicator. *See Morrissey*, 408 U.S. at 487-488.

86. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether his removal is reasonably foreseeable and otherwise whether circumstances have changed such that he now poses a danger or a flight risk. During any custody redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

87. Petitioner Mr. Lam re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

88. The Due Process Clause of the Fifth Amendment forbids the government from depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend. V.

89. Mr. Lam has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

90. Since 2016, Mr. Lam has fully complied with the terms of his supervised release imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

91. For these reasons, Mr. Lam's re-arrest without first being provided a hearing would violate the Constitution.

92. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether his removal is reasonably foreseeable and otherwise whether circumstances have changed such that he now poses a danger or a flight risk. During any custody redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

THIRD CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third Country Removal

U.S. Const. amend. V

93. Petitioner Mr. Lam re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

94. The Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D. Cal. 1994) ("[D]ue process requires that government action falling within the clause's mandate may only be taken where there is notice and an opportunity for hearing.").

95. Mr. Lam has a protected interest in his life. Thus, prior to any third country removal, he must be provided with constitutionally-compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country.

96. For these reasons, Mr. Lam's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate his due process rights. The only remedy for this violation is for this Court to order that he not be summarily removed to any third country unless and until he is provided constitutionally adequate procedures.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from re-arresting Petitioner unless and until a hearing is held before a neutral adjudicator to determine whether his re-detention would be lawful because the government has shown that his removal is reasonably foreseeable and otherwise whether circumstances have changed such that he is now a danger or a flight risk, and that the neutral adjudicator must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish;

(3) Order that Petitioner cannot be removed to any third country without first being provided constitutionally-compliant procedures, including:

a. Written notice to Petitioner and counsel of the third country to which he may be removed, in a language that Petitioner can understand, provided at least 21 days before any such removal;

b. A meaningful opportunity for Petitioner to raise a fear of return for eligibility for protection under the Convention Against Torture, including a reasonable fear interview before a DHS officer;

c. If Petitioner demonstrates a reasonable fear during the interview, DHS must move to reopen his underlying removal proceedings so that he may apply for relief under the Convention Against Torture;

d. If it is found that Petitioner does not demonstrate a reasonable fear during the interview, a meaningful opportunity, and a minimum of 15 days, for Petitioner to seek to move to reopen his underlying removal proceedings to challenge potential third-country removal;

(4) Award Petitioner reasonable costs and attorney fees; and

(5) Grant such further relief as the Court deems just and proper.

Dated: November 19, 2025

Respectfully submitted,

s/ Zachary Nightingale
Zachary Nightingale
Christine Raymond
Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this November 19, 2025, in San Francisco, California.

/s/ Zachary Nightingale
Zachary Nightingale
Attorney for Petitioner