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*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

**EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER**

**POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION: HEARING REQUESTED**

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

**NOTICE OF MOTION**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner hereby moves this Court for an order enjoining Respondents Department of Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE"), and Pam Bondi, in her official capacity as the U.S. Attorney General, from re-detaining Petitioner Mr. Nghiep Ke LAM until he is afforded a hearing before a neutral adjudicator, as required by the Due Process clause of the Fifth Amendment, to determine whether 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. Mr. Lam additionally seeks to enjoin Respondents from removing him from the United States to any third country to which he does not have a removal order (i.e., any country other than Vietnam) without first providing him with constitutionally-compliant procedures.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the concurrently-filed Declaration of Zachary Nightingale with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner Mr. Lam raises that he warrants a temporary restraining order due to his weighty liberty and life interests under the Due Process Clause of the Fifth Amendment in preventing his unlawful re-incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden, and in preventing his summary removal to a third country, other than Vietnam, without first providing him with notice and an opportunity to apply for fear-based relief as to that third country.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from re-incarcerating him unless and until he is afforded a hearing before a neutral decisionmaker on the question of whether his re-incarceration would be lawful, and enjoining Respondents from removing him to a third country before he is provided with constitutionally-compliant procedures. Petitioner Mr. Lam is currently scheduled to appear for an ICE check-in before the ICE San Francisco Field

Office, as required by Respondents, **on November 21, 2025**, where Respondents likely intend to re-arrest and re-detain him, even though his removal to Vietnam is not reasonably foreseeable and he is not otherwise a flight risk or danger to the community, and where Respondents may seek to summarily remove him to a third country.

Dated: November 19, 2025

Respectfully Submitted

/s/Zachary Nightingale
Attorney for Petitioner-Plaintiff

## Table of Contents

## Table of Authorities

**Cases** **Pages(s)**

**Statutes**



**Rules**



**Regulations**

## I. INTRODUCTION

Petitioner-Plaintiff Mr. Nghiep Ke LAM, by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") from re-detaining him unless and until he is afforded notice and a hearing before a neutral adjudicator on the questions of whether his removal to Vietnam is reasonably foreseeable and otherwise whether there are changed circumstances showing he is now a danger and a flight risk such this his re-detention would be warranted. Petitioner Mr. Lam further seeks to enjoin Respondents from removing him to any third country without first providing him with constitutionally-compliant procedures.

Mr. Lam is a Vietnamese refugee who has lived in the United States, first as a refugee and then as a U.S. lawful permanent resident, since approximately 1980. Although he was ordered removed on January 20, 2016, and then held for several months while the government was to attempt to secure travel documents for his removal, he was released from detention due to ICE's inability to execute his removal, which was consistent with the binding international repatriation agreement preventing the repatriation of Vietnamese individuals who entered the United States before July 12, 1995.[1] Since his release from detention in 2016, Mr. Lam has lived at liberty for nine years while complying with all reporting requirements, and reconnecting with his loved ones. He also applied for and received a work authorization document, and for years he has been working at Asian Prisoner Support Committee as a Reentry as a Reentry and Facilities Manager. *Declaration of Zachary Nightingale ("ZN Decl.")* at Exhibit ("Exh.") A Letters of Support.

Mr. Lam is scheduled to attend a check-in at the ICE San Francisco Field Office on November 21, 2025. *Id.* In light of credible reports of ICE re-incarcerating individuals at their

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[1] *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….").

ICE check-ins[2]—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 that Mr. Lam will be arrested and detained at this appointment. *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 ICE Order of Supervision for years—after he was unlawfully re-detained at a routine check in at the San Francisco ICE Office); *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.[3] If Mr. Lam is arrested, he faces the very real possibility of being transferred outside of California with little or no notice, far away from his family and community. *Phan, et al.*, 2025 WL 1993735 (where petitioner was transferred from California to Louisiana).

**Of note, Mr. Lam previously attended his annual check in at the ICE San Francisco Field Office on October 21, 2025. *ZN Decl.* 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**

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[2] *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.

[3] *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.").

**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.***

Once a noncitizen is released from ICE detention, as Mr. Lam was in 2016, their re-detention is limited by regulation, statute and the constitution. By statute and regulation, only in specific circumstances (that do not apply here) does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability of ICE to simply re-arrest someone following their release from detention, however, is further limited by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. Here, this means that, *prior to any re-detention*, Mr. Lam be provided with notice and a hearing before a neutral adjudicator at which DHS bears the burden of justifying his re-detention.

That 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 released from detention in 2016 after findings that his removal was not reasonably foreseeable and that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify his re-arrest.

Therefore, at a minimum, in order to lawfully re-arrest Mr. Lam, the government must first establish before a neutral adjudicator that his removal is reasonably foreseeable, and otherwise that he is a danger to the community or a flight risk, such that his re-incarceration is necessary.

Additionally, Mr. Lam has a protected interest not only in his liberty, but also in his life. Here, this means that the government must provide him with constitutionally-complaint procedures prior to any removal to a third country (i.e. any country apart from Vietnam, which is the only country listed in his removal order): notice and an adequate opportunity to apply for fear-based relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as to that third country.

Mr. Lam meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court enjoining the government from arresting

him at his ICE check-in on November 21, 2025, unless and until he first receives a hearing before a neutral adjudicator, as demanded by the Constitution. He would also suffer immediate and irreparable harm if removed to a third country where his life could be in danger. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Petitioner Mr. Lam's favor.

## II. STATEMENT OF FACTS AND CASE

Mr. Lam first entered the United States in 1980 around the age of four as a refugee from Vietnam. His family fled by boat with him as a very young child. He later became a U.S. lawful permanent resident.

Mr. Lam was released on parole from his state prison incarceration in or around November 2015 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, and is suitable to return to, the community, after having served approximately 21 years in California state prison for a convictions he sustained in 1994.[4] After his release, he was detained by ICE and underwent removal proceedings before the Immigration Court while detained. Though he expressed a fear of return to Vietnam, Mr. Lam attended only one hearing before an Immigration Judge 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.[5] 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, at that point, the majority of his life. Because he could not be removed to Vietnam (the only country named in his removal order), and after several months it was clear that no party believed it was reasonably foreseeable that he ever would be so removed, and his ongoing detention would be unconstitutionally indefinite, Mr. Lam was released from ICE detention in approximately April 2016.

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[4] Mr. Lam was convicted of California Penal Code ("P.C.") § 187 in 1994 at the age of 18.
[5] *Supra* n. 1.

Upon release, Mr. Lam was thereafter placed on a Form I-220B, Order of Supervision ("OSUP") in 2016, 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 every year. *Id.* Mr. Lam applied for and received a work authorization document, and he began working at Asian Prisoner Support Committee as a Reentry and Facilities Manager. *Id.* at Exh. A (Letters of Support). He has also reintegrated into the community 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, California state senator.

On October 21, 2025, Mr. Lam attended his last check-in appointment with ICE. *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 provided an indication of its intention. *Id.*

Undersigned counsel has two similarly situated clients who arrived as Vietnamese refugees to the United States prior to 1995, served nearly 30 years in state incarceration in connection with convictions of California Penal Code ("P.C.") § 187(a), and were ordered removed but subsequently released from ICE detention on OSUPs for the past several years because they cannot be removed to Vietnam. *See ZN Decl.* Both clients were re-detained by ICE—without notice or an opportunity to be heard—at their check-ins at the San Francisco ICE Office in early June 2025. *Id.* They have since been ordered released by preliminary injunction orders in connection with petitions for writ of habeas corpus because their re-detention was unlawful. *Hoac v. Becerra, et al.*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D.C.A. July

16, 2025); *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D.C.A. July 16, 2025) (same). Additionally, 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.[6]

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.[7]

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 instructed to make 75 arrests per day.[8] Furthermore, recent changes in the leadership of ICE were attributed to perception that ICE officers were not

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[6] "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.

[7] *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).

[8] *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/.

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).[9]

In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins and undersigned counsel's own experiences, it is highly likely that Mr. Lam will be arrested and detained at his upcoming ICE check-in. This is true despite the fact that his removal to Vietnam is not reasonably foreseeable, and he is neither a flight risk nor a danger to the community. He faces the very real possibility of being re-detained and transferred out of California, far away from his family and community, and possibly summarily removed to a third country without notice or an opportunity to apply for fear-based relief.

## III. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies both standards.

## IV. ARGUMENT

### A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER

[9] *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.

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974).

Without intervention by this Court, Petitioner Mr. Lam is likely to be re-arrested absent notice or a hearing before a neutral adjudicator—even though his removal is not reasonably foreseeable and there is no change in circumstances—in violation of his due process rights. Given that he cannot be deported to Vietnam, he is also likely to be deported to a third country without notice or an opportunity to apply for fear-based relief. Mr. Lam will continue suffer irreparable injury if he is arrested and detained without due process, and if he is summarily removed to a third country—far away from his family and his community.

**1. Petitioner is Likely to Succeed on the Merits of His Claim That in This Case the Constitution Requires a Hearing Before a Neutral Adjudicator Prior to Any Re-Incarceration by ICE.**

Mr. Lam is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-arresting him without first providing a pre-deprivation hearing before a neutral adjudicator where the government must demonstrate that his removal is reasonably foreseeable and otherwise that there has been a change in circumstances such that he is now a danger or a flight risk.

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).

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.[10]

[10] 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

After this six 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.

By regulation, noncitizens with final removal orders who are released from detention after a post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an OSUP, the regulations further specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

Under the regulations, ICE has the authority to re-detain a noncitizen previously ordered removed *only* in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i).

However, ICE's power to re-arrest a noncitizen who is at liberty following release is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the regulations which specify that ICE may only re-detain a noncitizen on an OSUP in limited circumstances are insufficient to protect Mr. Lam's weighty interest in his freedom from detention.

Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to re-detain noncitizens require notice and a pre-deprivation hearing *before* 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

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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).

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).

Thus, it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See 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"). 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-arrest*.

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

**a. Petitioner Has a Protected Liberty Interest in His Release**

Mr. Lam's liberty from immigration custody, a form of civil detention, 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).

Since 2016, Mr. Lam exercised that freedom under his OSUP. Although he was released under supervision (and thus under government custody, as further demonstrated by his requirement to attend ICE check-ins), he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-detention. *See 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).

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. And he has already been detained for several months following his removal order, which means any additional detention is by definition prolonged to the point of being indefinite. *See Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) (the six-month clock begins to run after the issuance of the final removal order, and does not stop upon release or restart upon re-detention). Therefore, his re-detention would be unconstitutional.

Individuals—*including noncitizens*—released from incarceration have a liberty interest in their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that "[i]t is well-established that the due process clause applies to protect immigrants"). This is further reinforced by *Morrissey*, in which the Supreme Court recognized the protected liberty rights under the Due Process Clause of a *criminal* detainee who was released on parole from incarceration. 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"—thus, those released on parole have a protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482. *See also 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).

In fact, so fundamental to due process is the concept of liberty that it is even well-established that an individual maintains a protectable liberty interest where the individual obtains liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *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).

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. **Moreover, Mr. Lam is not a criminal detainee, but a civil detainee, and thus the due process considerations of his liberty should be even weightier than the courts have already found apply in the criminal context.**

Mr. Lam has complied with all conditions of his supervised release for the past nine years since his release from ICE detention in 2016, which came after approximately 21 years of incarceration. During this nine-year time period he has spent at liberty, Mr. Lam has been focused on rebuilding his life, including by reconnecting with family doing important volunteer work. Precedent from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his continued release from detention.

**b. Petitioner's Liberty Interest Mandated a Due Process Hearing Before any Re-Detention, and Once Released, Mandates Such a Hearing Prior to Any Re-Detention**

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.

"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)).

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.*

Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Lam with notice and a hearing *prior* to any re-detention and revocation of his release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *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.

**i. Petitioner's Interest in His Liberty is Profound**

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 also been released from prior ICE custody and are facing civil (not criminal) detention. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g.*, *United States 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.

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).

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

**ii. The Government's Interest in Re-Detaining Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing is Minimal**

The government's interest in detaining Mr. Lam without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting him unless and until he is provided a pre-deprivation hearing. It becomes abundantly clear that the *Mathews* test favors Mr. Lam when the Court considers that the process Petitioner seeks—notice and a hearing regarding whether his he should be re-detained—is a standard course of action for the government. Providing Mr. Lam with a future hearing before a neutral adjudication to determine whether his removal is reasonably foreseeable and if there is otherwise 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 his same circumstances, 8 C.F.R. § 241.4(e)-(f), and routinely conducts bond hearings.

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 effectuate removal *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 of the removal order is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. Lam due to alleged dangerousness, or due to a change in the foreseeability of his removal to Vietnam, as his circumstances have not changed since his release from ICE custody in 2016.

Moreover, Mr. Lam has always had a removal order since before his release, and yet is not a flight risk because 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).

Thus, as to the factor of 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 remains likely to present himself at any future ICE appearances, as he always has done. What has changed, however, is that ICE has a new policy to make a minimum number of arrests each day under the new administration – but that does not constitute a change in circumstances or increase the government's interest in detaining him.[11] Moreover, as discussed previously, nothing has changed regarding the lack of foreseeability of his removal to Vietnam.

Moreover, the "fiscal and administrative burdens" that a pre-deprivation bond 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-detained. Providing Mr. Lam with a hearing before a neutral adjudicator regarding his detention is a routine procedure that the government provides to those in immigration detention on a daily basis. At that hearing, the neutral adjudicator would have the opportunity to determine whether his removal is reasonably

[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/.

foreseeable and whether circumstances have changed sufficiently to warrant re-detention. But there is no justifiable reason to re-detain 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.

Enjoining Mr. Lam's re-arrest until ICE demonstrates at a hearing before a neutral adjudicator that his removal is reasonably foreseeable and that he is a flight risk or danger to the community is far *less* costly and burdensome for the government than detaining and 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.

**iii. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of 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**

Providing Mr. Lam with a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty.

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 are actually insufficient to protect his due process rights, as they permit ICE to unilaterally re-detain individuals, even for an accidental error in complying with the conditions of supervision, for example. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-(f).

By contrast, the procedure Mr. Lam seeks—a pre-deprivation hearing to assess whether

his removal is reasonably foreseeable and otherwise whether he is a danger or a flight risk—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 adjudicator, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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 there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Lam's re-incarceration is warranted.

As the above-cited authorities show, Mr. Lam is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to any* re-arrest and re-detention by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

**2. Petitioner is Likely to Succeed on the Merits of His Claim That he is Entitled to Constitutionally Adequate Procedures Prior to Any Third Country Removal.**

Mr. Lam is also likely to succeed on the merits of his claim that he must be provided with constitutionally adequate procedures—including notice and an opportunity to respond and apply for fear-based relief—prior to being removed to any third country.

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).

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). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

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.[12] Currently, DHS has a 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. *ZN Decl.* at Exh. B (Copy of DHS Policy).

Instead, the policy squarely violates the INA because it does not take into account, *or even mention*, an individual's designated country of removal—thereby fully contravening the statutory instruction that DHS must only remove an individual to the designated country of removal. U.S.C. § 1231(b)(2)(A)(ii).

Further, the policy plainly violates the United States' obligations under the Convention Against Torture and principles of due process because it allows DHS to provide individuals with

[12] 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.

*no notice whatsoever* prior to removal to a third country, so long as that country has provided "assurances" that deportees from the United States "will not be persecuted or tortured." *ZN Decl. at* Exh. B (Copy of DHS Policy). If, in turn, the country has not provided such an assurance, then DHS officers must simply inform an individual of removal to that third country, but are not required to inform them of their rights to apply for protection from removal to that country under the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their rights under this binding international treaty, and must affirmatively state a fear of removal to that country in order to receive a fear-based interview to screen for their eligibility for protection under the Convention Against Torture. *Id.* Even so, the screening interview is hardly a meaningful opportunity for individuals to apply for fear-based relief, because the interview happens within 24 hours after an individual states a fear of removal to a recently-designated third country, which hardly provides for any time to consult with an attorney or prepare any evidence for the interview. *Id.* And, in actuality, the screening interview is not a screening interview at all, because USCIS officers under the policy are instructed to determine at this interview "whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal"—which is the standard for protection under the Convention Against Torture that Immigration Judges apply after a full hearing in Immigration Court. *Id.* Then, if the USCIS officer determines that the noncitizen has not met this standard, they will then be removed to the third country to which they claimed, and tried to demonstrate within 24 hours, a fear of persecution or torture. *Id.* Finally, there is no indication that any of this process will occur in an individual's native language, or a language that they understand. *Id.* This is nothing more than a fig leaf of due process meant to deprive individuals of the protection that the law and treaty are supposed to provide them.

Clearly, this policy violates the Convention Against Torture, which instructs that the United States cannot remove individuals to countries where they will face torture, because the policy allows DHS to swiftly remove noncitizens to countries where they very well may face torture if those countries simply provide the United States with "assurances" that deportees will not be tortured. *Id.* Moreover, the policy puts the onus of individuals to be aware of their rights

under the Convention Against Torture—which is a treaty that binds the United States *government*—instead of ensuring that DHS officials make individuals aware of their rights, which would more squarely comport with *DHS's obligations* under the treaty not to remove individuals to countries where they face torture. *Id.* For similar reasons, the policy also violates principles of due process, because it does not provide individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.* Again, the policy allows individuals to be removed to third countries *without any notice or an opportunity to be heard* if that country merely promises that deportees will not face torture there, and if individuals are otherwise unaware of their right to seek fear-based relief. *Id.; see also 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.").

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. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al.*, 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.[13] This is made clear by the Court's decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025), where the Court explained that the putative class plaintiffs there had to seek relief in individual habeas actions (as opposed to injunctive relief in a class action) against the implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a third country. Regardless, ICE appears to be emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever—in violation of individuals' due process rights.[14]

Mr. Lam's removal to a third country would violate his due process rights unless he is *first* provided with sufficient notice and a meaningful opportunity to apply for protection under the Convention Against Torture. Intervention by this Court is necessary to protect those rights.

**3. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief**

Mr. Lam will suffer irreparable harm were he to be deprived of his liberty and subjected

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[13] The Supreme Court's July 3, 2025 order in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, 606 U. S. ____ (2025) further reinforces that the Supreme Court only disagrees with the means of a nationwide injunction, and not the underlying substance of the nationwide injunction. There, the Court held that the stay of the preliminary injunction divests remedial orders stemming from that injunction of enforceability, and cited to *United States v. Mine Workers*, 330 U. S. 258, 303 (1947) for the proposition that: "The right to remedial relief falls with an injunction which events prove was erroneously issued and *a fortiori* when the injunction or restraining order was beyond the jurisdiction of the court." *Id.* In any event, the remedial order at issue involved six individuals who had *already been removed* from the United States to a third country, and is therefore distinct from this case, where Mr. Lam remains in the United States and this Court therefore continues to have jurisdiction over his case.

[14] 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/.

to unlawful detention by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in civil ICE custody are held in "prison-like conditions" which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[15]

1. Mr. Lam has been out of ICE custody for nine years. During that time, he has been reconnecting with his family and community after spending approximately 21 years incarcerated in California state prison. He has been gainfully employed and serving the community at the non-profit Asian Prisoner Support Committee as a Reentry and Facilities Manager. *ZN Decl.* at Exh. A (Letters of Support). He has also reintegrated into the community 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

[15] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed June 27, 2025).

Wicks, member of the California State Assembly; Barbara Lee, mayor of Oakland; and Jesse Arreguín, California state senator. If he were detained, he would likely lose his job, as he could not work from detention. Detention would irreparably harm not only him, but also his family and community members who rely on him.

Further, Mr. Lam will suffer irreparable harm were he to be removed to a third country without first being provided with constitutionally-compliant procedures to ensure that his right to apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.[16] Others removed in violation of their prior grant of protection under the Convention Against Torture have reported that they have faced severe torture at the hands of government agents.[17] It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Lam from suffering irreparable harm by being subject to unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

**4. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order**

The balance of equities and the public interest undoubtedly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Mr. Lam. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the

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[16] NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available at: 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.

[17] 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.

government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring DHS to refrain from re-arresting Mr. Lam unless and until he is provided a hearing before a neutral adjudicator is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). Similarly, any burden of requiring Respondents *not* to remove Mr. Lam to any third country is outweighed by the substantial harm he may suffer if removed to a country where he will face persecution or torture. *See id.*

Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Mr. Lam, and/or to summarily remove him to any third country, in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

## V. CONCLUSION

For all the above reasons, this Court should find that Mr. Lam warrants a temporary restraining order and preliminary injunction ordering that Respondents refrain from re-arresting him unless and until he is afforded a hearing before a neutral adjudicator on whether his removal is reasonably foreseeable and further whether it is justified by evidence that he is a danger to the community or a flight risk, and refrain from removing him to any third country without first providing him with constitutionally-compliant procedures.

Dated: November 19, 2025

Respectfully submitted,

s/Zachary Nightingale
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