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9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11

12 Nghiep Ke LAM,

13 Petitioner-Plaintiff,

14 v.

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

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

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

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

26 Respondents-Defendants.  
27  
28

Case No. 5:25-cv-09980-NW

**PETITIONER-PLAINTIFF'S  
REPLY IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

Challenge to Unlawful  
Incarceration; Request for  
Declaratory and Injunctive Relief

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1           **I. INTRODUCTION**

2           Petitioner Nghiep Ke Lam (“Mr. Lam”) fears that Respondents will arbitrarily re-detain  
3 him in violation of his due process rights and Respondents’ own regulations. Mr. Lam’s concerns  
4 are neither speculative nor hypothetical, as demonstrated by Respondents’ assertion—unsupported  
5 by any evidence—that his removal is reasonably foreseeable. Here, in granting the TRO, this  
6 Court has already found that Mr. Lam is likely to succeed on the merits of his claim that his re-  
7 detention is not speculative, and that Respondents failed to provide evidence or argument  
8 regarding the reasonable foreseeability of Mr. Lam’s specific removal. Dkt. 11. Respondents were  
9 then directed to file such evidence, and still have not done so. Dkts. 11, 15. Thus, the TRO should  
10 be converted into a preliminary injunction.

11           Respondents do not have a travel document for Mr. Lam and have not indicated when they  
12 might obtain one from Vietnam, if ever. Dkt. 15-1 (Declaration of Deportation Officer  
13 Gwendolyn Ng) (“Ng Decl.”). In fact, Respondents acknowledge that Mr. Lam was released from  
14 immigration custody in April 2016—nearly ten years ago—while the U.S. Department of  
15 Homeland Security’s (“DHS”) efforts to obtain Mr. Lam’s travel document from Vietnam  
16 “remained ongoing.” *Id.* In other words, for nearly ten years now, despite Respondents’ ongoing  
17 efforts to obtain a travel document for Mr. Lam from Vietnam, they have failed to obtain it.  
18 Instead, without providing any evidence *specific* to the reasonable foreseeability of Mr. Lam’s  
19 removal, and despite this Court’s request that Respondents provide such specific evidence (Dkt.  
20 10), Respondents merely allege that because Mr. Lam is subject to a final order of removal, he  
21 remains subject to the DHS’ detention authority under INA § 241. Dkt. 15-1, Ng. Decl. This is  
22 not specific evidence regarding the reasonable foreseeability of his removal, and fails to address  
23 the Court’s request.

24           Respondents further fail to even address whether there is currently a request for a  
25 Vietnamese travel document pending for Mr. Lam or whether Vietnam has ever indicated that it  
26 will issue a travel document for him. This only underscores Mr. Lam’s fears that Respondents  
27 will unconstitutionally detain him on the mere speculation that a travel document will be issued,

1 and when that speculative outcome does not occur, then compound the violation by continuing to  
2 hold him indefinitely. Thus, this Court should enjoin Respondents from unlawfully detaining Mr.  
3 Lam, and order that Respondents provide him with a pre-deprivation hearing before a neutral  
4 adjudicator where Respondents must establish, by clear and convincing evidence, that there is a  
5 significant likelihood of his removal in the reasonably foreseeable future (e.g., that Vietnam has  
6 issued a travel document specifically to Mr. Lam).

7 Moreover, the government continually tries to have it both ways with regard to its ability  
8 to remove detainees to third countries—they claim it is not happening (i.e., speculative), and also  
9 that when it does, there is no need to provide notice. Thus, neither Mr. Lam nor this Court can  
10 know whether the government will try an end-run around the lack of ability to remove Mr. Lam  
11 to Vietnam by trying to remove him without notice or an opportunity to apply for fear-based relief  
12 to an undisclosed third country. Such third-country removal without notice is not only practically  
13 possible, but is expressly *permitted* under the government’s own current policy. Dkt. 1-1 at Exh.  
14 C. Moreover, it is already documented that such third country removals are *not* speculative, as  
15 they are actively occurring.<sup>1</sup> Given the practical and legal impossibility for Mr. Lam to learn  
16 ahead of time that he is going to be removed to a third country, the Court should thus order that  
17 such removal be enjoined unless and until he is provided with constitutionally-compliant  
18 procedures, because there is no existing system to provide him with either adequate notice of such  
19 removal, or the opportunity for him to request the legally required protection from torture or death  
20 that he might face in such third countries.

21 **II. ARGUMENT**

22 **A. Mr. Lam’s Habeas and Related Motion for TRO are Appropriate Because his**  
23 **Re-Detention is a Reality—Not Speculative or Hypothetical—and he Meets**  
24 **the “Constructive Custody” Requirement.**

25 As an initial matter, the Court should reject Respondents’ assertion that Mr. Lam’s motion  
26 is inappropriate and premature because it is hypothetical. *See* Dkt. 6, Respondents’ Opposition  
27 (“Opp.”) at 2-4. In this case, a TRO preventing Mr. Lam’s unlawful re-detention (which

28 <sup>1</sup> *See infra* Section II.b.4.

1 necessarily requires revocation of his order of supervision) would prevent the irreparable  
2 violation of his due process rights and would merely maintain the status quo that has existed since  
3 Mr. Lam was released on his Order of Supervision (“OSUP”) on April 13, 2016.

4 **i. Mr. Lam’s unlawful re-detention is neither speculative nor  
hypothetical**

5 Respondents ignore reality by arguing that Mr. Lam’s detention is speculative and thus his  
6 habeas and TRO requests are “both inappropriate and premature.” Opp. at 2-3. Both the legal  
7 databases and the general news reports contain widespread documentation regarding the re-  
8 detention of individuals from Vietnam like Mr. Lam who have been unlawfully re-arrested despite  
9 being under conditional release, including OSUP, and in contravention to both the Due Process  
10 Clause and ICE’s own regulations.

11 Undersigned Counsel’s office alone has several clients who, like Mr. Lam, are pre-1995  
12 Vietnamese arrivals who have been re-detained absent the issuance of a travel documents. In each  
13 of those cases, the courts ordered the clients’ release after finding that the government’s re-  
14 detention violated due process and the regulations, and in each of those cases, the government was  
15 unable to obtain travel documents from Vietnam. *See Hoac v. Becerra*, 2:25-cv-01740-DC-JDP,  
16 2025 WL 1993771 (E.D.C.A. July 16, 2025); *Phan v. Becerra*, 2:25-CV-01757-DC-JDP, 2025  
17 WL 1993735 (E.D.C.A. July 16, 2025); *Hoang v. Cruz*, No. EDCV 25-2766 JGB (JCx), 2025 LX  
18 466860 (C.D. Cal. Oct. 28, 2025). Other courts in this jurisdiction and elsewhere have ordered  
19 similar relief after finding the same. *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL  
20 3114341 (E.D. Cal. Nov. 6, 2025); *Vo v. Noem*, 3:25-cv-03031-JO-SBC (S.D. Cal. Nov. 19, 2025);  
21 *Tran v. Noem*, No. 25-cv-2391BTM-BLM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025); *Nguyen*  
22 *v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, (W.D. Wash. Aug. 21, 2025); *Nguyen v. Hyde*,  
23 788 F. Supp. 3d 144, 150 (D. Mass. June 20, 2025).

24 Accordingly, Mr. Lam’s fears are neither hypothetical nor speculative, and his request is  
25 therefore not improper. Rather, his request is necessary to ensure that the status quo is maintained  
26 and that he is not subjected to the irreparable harm of an unlawful and unconstitutional detention  
27 during the pendency of these proceedings.

1                   **ii. Mr. Lam’s relief is appropriate because he meets the “custody”**  
2                   **requirement.**

3                   In addition, Mr. Lam’s request is appropriate because he meets the “custody” requirement,  
4 as he is in “constructive custody.” Respondents in fact acknowledge that habeas relief does not  
5 require an individual to be in actual physical custody, and that the “in custody” requirement may  
6 be satisfied where an individual is released from detention subject to specific conditions or  
7 restraints. Opp. at 2-3. Respondents further concede that Mr. Lam was released on an OSUP and  
8 subject to certain conditions of release. *Id.* Despite this, Respondents allege that Mr. Lam does  
9 not meet the “in custody” requirement and that his habeas fails because it does not challenge his  
10 custodial arrangement and that challenges to future detention are outside habeas jurisdiction. *Id.*

11                   Respondents’ assertion has been squarely rejected by numerous other courts. That is  
12 because when an individual like Mr. Lam is released from custody on an OSUP, the OSUP  
13 imposes a number of restrictions on his liberty, including the requirement that he report to ICE  
14 whenever instructed. Such stringent requirements “impose[] conditions which significantly  
15 confine and restrain his freedom; this is enough to keep him in the ‘custody’ of [the DHS] within  
16 the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963); *see*  
17 *also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (“*Rodriguez I*”) (holding that comparable  
18 supervision requirements constitute “custody” sufficient to support habeas jurisdiction).  
19 Moreover, courts have granted TROs to prevent unlawful re-arrest and erroneous detention for an  
20 indefinite period of time in situations like Mr. Lam’s, where an individual is on an OSUP and  
21 there is no reasonable foreseeability of removal. *Yang v. Kaiser*, No. 25-CV-06323-JD, 2025 WL  
22 2792130, at \*2 (N.D. Cal. July 30, 2025); *see also Hoac*, 2025 WL 1993771; *Phan*, 2025 WL  
23 1993735; *Hoang*, 2025 LX 466860; *Vu*, 2025 WL 3114341; *Vo*, 3:25-cv-03031-JO-SBC (S.D.  
24 Cal. Nov. 19, 2025); *Tran*, 2025 WL 3005347; *Nguyen*, 2025 WL 2419288; *Nguyen*, 788 F. Supp.  
25 3d 144.

26                   Thus, because Mr. Lam is in “constructive custody” pursuant to his OSUP, he properly  
27 seeks an order to prevent his unlawful re-arrest and erroneous detention.

1  
2 **B. Mr. Lam Establishes a Likelihood of Success on the Merits Because his**  
3 **Removal is not Reasonably Foreseeable.**

4 Mr. Lam's removal to Vietnam is not reasonably foreseeable because, as an individual  
5 from Vietnam who arrived to the United States as a refugee prior to 1995, he is subject to the  
6 existing repatriation agreement between the United States and Vietnam,<sup>2</sup> and there is no evidence  
7 in this case that Respondents will ever be able to obtain a travel document for him (which they  
8 have already attempted to do since at least April 2016). Without providing any evidence *specific*  
9 to the reasonable foreseeability of Mr. Lam's removal, and despite this Court's request that  
10 Respondents provide this specific evidence (Dkt. 10), Respondents merely allege that because Mr.  
11 Lam is subject to a final order of removal, he remains subject to the agency's detention authority  
12 under INA § 241 (8 U.S.C. § 1231). Dkt. 15-1, Ng. Decl. That explanation is not responsive or  
13 even relevant to this issue, and Respondents wholly fail to even address whether there is a request  
14 for a travel document pending with Vietnam for Mr. Lam, which is clearly a required precursor to  
15 the issuance of a document. While attention is focused in news reports on the cases which are the  
16 exception (and thus newsworthy), there is no evidence that the issuance of travel documents to  
17 pre-1995 Vietnamese individuals is common or even occurs beyond a small isolated group which  
18 may have special circumstances. Nothing indicates that Mr. Lam is in such a group or that there is  
19 any chance a travel document will be issued in his case. Thus, there is no credible evidence that  
20 Mr. Lam's removal is reasonably foreseeable.

21 The regulations provide that ICE may revoke an individual's supervised release and return  
22 them to custody if the individual violates their OSUP or for removal if, on account of changed  
23 circumstances, ICE determines that there is a significant likelihood that the individual may be  
24 removed in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(i), 241.4. The determination of

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

1 changed circumstances, pursuant to 8 C.F.R. § 241.13(i)(2), must be made *on or before* the  
2 revocation. *Tran v. Noem*, No. 25-cv-2391BTM-BLM, 2025 WL 3005347, at \*2 (S.D. Cal. Oct.  
3 27, 2025). This Court has held that a “significant likelihood” requires something *more* than a mere  
4 possibility that removal will occur. *Yan-Ling X. v. Lyons*, No. 1:25-cv-01412-KES-CDB (HC),  
5 2025 WL 3123793, at \*4 (E.D. Cal. Nov. 7, 2025). Evidence that “there is at least some possibility  
6 that” the designated country of removal “will accept the petitioner at some point . . . is not the  
7 same as a significant likelihood that the petitioner will be accepted in the reasonably foreseeable  
8 future.” *Id.* (cleaned up).

9 In this case, Mr. Lam was released on an OSUP. The OSUP specified the conditions  
10 imposed on him, and he has complied with all those conditions. If ICE plans to revoke his OSUP,  
11 then must be based on “changed circumstances.” However, there is no evidence of changed  
12 circumstances to indicate that there is a significant likelihood that Vietnam will issue a travel  
13 document to Mr. Lam, or that his removal is therefore reasonably foreseeable. This evidence of  
14 changed circumstances does not exist, first and foremost, because there is no evidence that there  
15 is any currently pending travel document request for Mr. Lam, and Respondents’ mere intent to  
16 file or obtain a travel document for Mr. Lam “does not make it significantly likely” that he will be  
17 removed. *Phan*, 2025 WL 1993735, at \*5. As in *Phan*, Mr. Lam is still subject to the repatriation  
18 agreement, ICE has been unable to obtain a travel document for Mr. Lam since 2016 (which led  
19 to his release on OSUP), and he is not eligible for return to Vietnam under the terms of the  
20 agreement. *Id.* Thus, nothing has changed to indicate a significant likelihood of removal in the  
21 reasonably foreseeable future. *Id.* (“Respondents have not provided any details about why a travel  
22 document could not be obtained in the past, nor have they attempted to show why obtaining a  
23 travel document is more likely this time around. Respondents’ intent to eventually complete a  
24 travel document request for Petitioner does not constitute a changed circumstance.”)

25 Even if a travel document is requested, Vietnam still has total discretion as to whether to  
26 issue a travel document to any individual, and there is no evidence that Vietnam has ever indicated  
27 to ICE that it will violate the terms or spirit of the repatriation agreement *in this case* and issue Mr.

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1 Lam a travel document. *Phan*, 2025 WL 1993735, at \*4; *see also Vu*, 2025 WL 3114341 at \*6.  
2 “The 2020 [Memorandum of Understanding (“MOU”)] does not mandate that Vietnam accept all  
3 eligible pre-1995 Vietnamese refugees with orders of removal; it ‘constitutes an understanding  
4 only between the Participants and does not give rise to any rights or obligations under domestic or  
5 international law;’ it ‘does not create or confer any rights, privileges, or benefits on any  
6 individual.’” *Id.* at \*6 (quoting *Nguyen*, 788 F. Supp. 3d at 151 (quoting 2020 MOU)). “Therefore,  
7 even if petitioner met all criteria for eligibility under the 2020 MOU, the government ‘may only  
8 request his removal; Vietnam has total discretion whether to issue a travel document to any  
9 individual.’” *Id.*

10 Courts have thus determined that to establish a “significant likelihood” of removal in the  
11 reasonably foreseeable future, ICE must offer statistics or supporting facts, as opposed to mere  
12 conclusory statements regarding changed circumstances (e.g., that ICE has begun removing  
13 individuals to Vietnam consistent with the 2020 MOU). *See Phan*, 2025 WL 1993735; *Nguyen*,  
14 788 F. Supp. 3d 144. Respondents fail to abide by those requirements, citing in their November  
15 19, 2025 opposition merely to a declaration by an ICE officer *in a different case* in which the  
16 officer states that over 300 pre-1995 Vietnamese citizens have been removed (Dkt. 6)—language  
17 that courts have already held was “missing some very pertinent information” as it lacks, for  
18 instance, the “total number of requests made to Vietnam...If DHS submitted 350 requests and  
19 Vietnam issued travel documents for 328 individuals, Respondents may very well have shown that  
20 removal is significantly likely in the reasonably foreseeable future. On the other hand, if DHS  
21 submitted 3,500 requests and only 328 individuals received travel documents, Respondents would  
22 not be able to meet their burden.” *Nguyen*, 788 F. Supp. 3d at 151. Thus, this declaration is  
23 unpersuasive and insufficient to support that there is a “significant likelihood” that Respondents  
24 will be able to obtain a travel document for Mr. Lam because it continues to fail to provide the  
25 “very pertinent information” that the courts in *Nguyen* and *Phan* held was necessary.<sup>3</sup> *Id.* Other

26 <sup>3</sup> It should also be noted that the court presiding over the case for which ICE’s declaration was  
27 submitted has already granted the petitioner’s habeas corpus. *See Vo*, 3:25-cv-03031-JO-SBC,  
28 (S.D. Cal. Nov. 19, 2025). The court granted the habeas petition and enjoined the government from

1 courts have held similarly. *See Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502, at \*4 (D.  
2 Kan. Sep. 26, 2025). Moreover, in their December 5, 2025 filing, Respondents have provided no  
3 further information regarding any relevant statistics. Dkt. 15.

4 Respondents cite to *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020) to  
5 support their claim that “ICE is now routinely obtaining travel documents” to Vietnam and thus  
6 that Mr. Lam’s removal is possible, despite the still-binding repatriation agreement in place. Opp.  
7 at 1. However, Respondents’ assertion both misconstrues reality for the reasons discussed above,  
8 and is also contradicted by *Trinh* itself, which only further supports that the removal of pre-1995  
9 arrivals to the United States from Vietnam is exceedingly unlikely. Indeed, the government  
10 conceded in *Trinh* that Vietnam only “issues travel documents in a small, but non-negligible  
11 portion of cases.” *Id.* at 1090. This is because:

12 On August 6, 2018, ICE met with Vietnamese officials again to continue  
13 discussions about the status of pre-1995 Vietnamese immigrants. (Dkt. 67-1  
14 [Declaration of Michael V. Bernacke, hereinafter “Bernacke Decl.”] ¶ 2.) After that  
15 meeting, ICE reversed its position again. ICE conceded that, despite Vietnam’s  
16 verbal commitment to consider travel document requests for pre-1995 immigrants,  
17 in general, the removal of these individuals was still not significantly likely. (Resp.  
18 Statement ¶ 12.) In October 2018, ICE instructed field offices to resume the practice  
19 of releasing pre-1995 Vietnamese immigrants within 90 days of a final order of  
20 removal. (Dkt. 119-2 [Declaration of Tuan V. Uong, hereinafter “Uong Decl.”] at  
21 Ex. F; Schultz Dep. at 178:9-22.) That policy remains in place today. (Resp.  
22 Statement ¶ 12.)

19 *Id.* at 1084. Whether or not the U.S. government would like there to be a change, the fact remains  
20 that there is still no evidence of any *actual* change in the attitude or actions of the government of  
21 Vietnam (and certainly nothing since Mr. Lam’s 2016 release) regarding the issuance of travel  
22 documents to pre-1995 arrivals from Vietnam.

23 In addition, courts have also held that a single occasion where Vietnam has issued a travel  
24 document and effectuated removal for another individual is also “hardly persuasive” to

25 \_\_\_\_\_  
26 re-detaining the petitioner unless “[3(a)] the government has obtained travel documents for  
27 Petitioner and made concrete arrangements for his flight in the reasonably foreseeable future; and  
28 [3(b)] the government has provided notice and an informal interview allowing Petitioner to contest  
the grounds for revocation of his release before any redetention.” *Id.*

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1 demonstrate changed circumstances. *Phan*, 2025 WL 1993735, at \*4. Thus, absent *individualized*  
2 *and specific* evidence that Vietnam will accept Mr. Lam in the reasonably foreseeable future,  
3 Respondents cannot show that there is a significant likelihood that Mr. Lam will be removed in  
4 the foreseeable future. *See also Wing Nuen Liu*, 2025 WL 1696526, at \*2 (finding that “a single  
5 example of documentation being received in March from the Chinese Embassy for one Chinese  
6 alien is hardly persuasive” to demonstrate changed circumstances).

7 Thus, Mr. Lam’s removal to Vietnam is not reasonably foreseeable, and Respondents have  
8 not shown otherwise.

9 **C. Mr. Lam’s Claims Relate to the Lawfulness of his Civil Detention and are  
10 Not Barred by 8 U.S.C. § 1252.**

11 The Court should reject Respondents’ assertion that Mr. Lam’s claims are barred by 8  
12 U.S.C. § 1252(g), which is simply not implicated here. Contrary to Respondents’ assertions, Mr.  
13 Lam does not challenge his removal order or Respondents’ execution of the order. *Opp.* at 8-9.  
14 Rather, Mr. Lam’s claims focus only on his civil detention status, a core aspect of habeas corpus  
15 protection, and Mr. Lam requests an order that Respondents provide him with constitutionally-  
16 compliant procedures and abide by their own regulations prior to re-detaining him.

17 The Supreme Court has held that the scope of section 1252(g) is “narrow,” and rejected  
18 as “implausible” Respondents’ assertion that section 1252 deprives jurisdiction over any claim or  
19 cause of action arising from any decision related to deportation proceedings. *Dep’t of Homeland*  
20 *Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (quoting 8 U.S.C. § 1252(g)). Courts  
21 have held they have jurisdiction to consider due process claims brought by a petitioner with a  
22 final order of removal contesting the government’s detention in violation of mandatory duties  
23 under certain statutes, regulations, and the Constitution. *Duong v. Charles*, No. 1:25-CV-01375-  
24 SKO, 2025 WL 3187313, at \*2 (E.D. Cal. Nov. 14, 2025). Habeas relief, the Court has held, is at  
25 its “core” a remedy for release from unlawful executive detention, not the right to remain in a  
26 country. *Rauda v. Jennings*, 55 F.4th 773, 779 (9th Cir. 2022) (citing *DHS v. Thuraissigiam*, 140  
27 S. Ct. 1959, 1975 (2020)).

28 Here, Mr. Lam requests that Respondents abide by their own regulations and provide him

1 with constitutionally-compliant procedures prior to re-detaining him—at the “core” of habeas  
2 relief. Moreover, such an order would only serve to maintain the status quo in this case during the  
3 pendency of proceedings. Thus, this action falls outside of the narrow scope of section 1252(g)  
4 and is within the Court’s jurisdiction.

5 **D. This Court has Jurisdiction Over Mr. Lam’s Third Country Removal Claim.**

6 At the outset, this Court has jurisdiction over Mr. Lam’s third country removal claim  
7 because, as the Ninth Circuit has held, Respondents cannot be insulated from judicial review over  
8 “any post-hearing decision by ICE to remove noncitizens to third countries where they would be  
9 in danger of persecution, torture, and even death.” *Ibarra-Perez v. United States*, 154 F.4th 989,  
10 997 (9th Cir. 2025) (finding that jurisdiction is not foreclosed by 8 U.S.C. § 1252(g)). In addition,  
11 Respondents err in contending that Mr. Lam’s claim that he should be provided with  
12 constitutionally adequate procedures prior to third country removal is not a controversy and thus  
13 outside of the Court’s jurisdiction. Opp. at 9-10.

14 First, Mr. Lam’s fear that he may be removed, without notice or process, to a third country  
15 apart from Vietnam is not speculative (despite ICE’s *current* indication that they do not seek to  
16 remove him to a third country). In fact, third country removals—*without notice*—are the current  
17 policy of the U.S. Department of Homeland Security (“DHS”). Mr. Lam has already provided this  
18 Court with a copy of this policy, along with an internal ICE memorandum, dated July 9, 2025,  
19 which further confirms that officers are instructed to follow the March 30, 2025 memorandum.  
20 Dkt. 1-1 Exhs. B, C.

21 Second, not only does this DHS policy exist, but the government is actively following this  
22 policy and has removed other detainees with either no, or virtually no, notice. Individuals have  
23 found themselves unlawfully deported to third countries such as El Salvador, Panama South  
24 Sudan, or Eswatini—a reality that is surely not speculative.<sup>4</sup> Some individuals who have been

25 <sup>4</sup> NPR, “U.S. deports hundreds of Venezuelans to El Salvador, despite court order” (Mar. 16, 2025),  
26 available at: <https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-trump>; AP, “Panama  
27 releases dozens of detained deportees from US into limbo following human rights criticism” (Mar. 9, 2025),  
28 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:

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1 sent to third countries have already faced torture and, for others, their attorneys have been unable  
 2 to confirm that they are alive.<sup>5</sup> Even if Respondents have not indicated that they seek to  
 3 specifically remove Mr. Lam to a third country at this time, that they are actively following their  
 4 policy of third country removal is explicit and real. Thus, Mr. Lam’s fear of being removed to a  
 5 third country without due process is a real and immediate threat of future injury jeopardizing his  
 6 life and safety, and depriving him of any constitutional rights.<sup>6</sup>

7 Third, the third-country removal policy is not limited to situations where removal to the  
 8 country stated in the removal order is not possible, as illustrated, for example, by the reports that  
 9 a citizen of Mexico was sent to South Sudan.<sup>7</sup> Respondents are engaged in a policy of effectuating  
 10 removal however they determine they want to do so, and are proudly broadcasting to the world  
 11 their ability to do so. DHS itself has publicly announced that it has the “undisputed authority to  
 12 deport criminal illegal aliens—who are not wanted in their home country—to third countries that

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 15 <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html>; Politico,  
 16 “Trump launches next round of third country deportations with new flight to Eswatini” (July 16, 2025),  
 17 available at: <https://www.politico.com/news/2025/07/16/trump-third-country-deportations-eswatini-00455757> (“The Trump administration deported five migrants from Vietnam, Jamaica, Laos, Cuba and  
 18 Yemen to the small Southern African nation of Eswatini...”); Associated Press, “Men deported by US to  
 19 Eswatini in Africa will be held in solitary confinement for undetermined time” (July 18, 2025), available  
 20 at: <https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbbcf6caff87d0bb8>; The Intercept, “State Dept: Trump’s ‘Third Countries’ for  
 21 Immigrants Have Awful Human Rights Records” (July 29, 2025), available at:  
 22 <https://theintercept.com/2025/07/29/trump-deport-immigrants-third-country-human-rights/>.

23 <sup>5</sup> The Guardian, “Venezuelans deported by Trump are victims of ‘torture’, lawyers allege” (May 16, 2025),  
 24 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  
 25 imprisoned in El Salvador.”); NPR, “Abrego Garcia says he was severely beaten in Salvadoran prison”  
 26 (July 3, 2025), available at: <https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture>.

27 <sup>6</sup> It gets worse. Human Rights experts from the United Nations have already expressed that the  
 28 government’s own explicit policy is not compliant with the United States’s obligations under international  
 law. See United Nations, “UN experts alarmed by resumption of US deportations to third countries, warn  
 authorities to assess risks of torture” (July 8, 2025), available at: <https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn>.

<sup>7</sup> The Guardian, “US border czar says he doesn’t know fate of eight men deported to South Sudan” (July  
 11, 2025), available at: <https://www.theguardian.com/us-news/2025/jul/11/trump-immigration-tom-homan-south-sudan-deportees>.

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1 have agreed to accept them.”<sup>8</sup> Such third country removal could be arranged by Respondents at  
2 any time, with no notice required—so the lack of a plan today indicates nothing about the  
3 possibility for an active removal tomorrow.

4 Fourth, courts have already determined that due process challenges to the third-country  
5 removal policy are likely to succeed on the merits because the policy exists and is being executed,  
6 resulting in the deportation of noncitizens to third countries with little or no notice in violation of  
7 the Due Process Clause. *Vu*, 2025 WL 3114341, at \*9 (E.D. Cal. Nov. 6, 2025). That is because  
8 the policy is carried out absent proper notice, through last-minute orders of removal, and through  
9 the failure to notify individuals of their due process rights and rights under the Convention  
10 Against Torture. *Id.*; see e.g., *Nguyen v. Scott*, 2025 WL 2419288, at \*18-23; *Zakzouk v. Becerra*,  
11 No. 25-CV-06254-KAW, 2025 WL 2899220, at \*4 (N.D. Cal. Oct. 10, 2025); *Baltodano v.*  
12 *Bondi*, No. C25-1958RSL, 2025 WL 2987766, at \*2-3 (W.D. Wash. Oct. 23, 2025). Accordingly,  
13 the existence of the policy and the unconstitutional manner in which it is carried out support that  
14 Mr. Lam’s concerns are not speculative, but rather a real threatened injury, and the Court therefore  
15 has jurisdiction over this claim.

16 Finally, to vitiate a third-country removal claim, it is not sufficient for Respondents to  
17 merely note that there is no plan to remove Mr. Lam to a third country. *Vu*, 2025 WL 3114341,  
18 at \*8 (where ICE has offered “no argument in response” to the petitioner’s third-country argument  
19 and ICE “do[es] not state whether they are attempting or will attempt to remove petitioner to a  
20 country other than Vietnam . . . [t]hat silence is telling.”). Here, Respondents offer no indication  
21 that they will *not* remove Mr. Lam to a third country. See Opp. at 9-10. They merely argue that  
22 they have not indicated they will seek third-country removal. *Id.* This silence is insufficient to  
23 guarantee the absence of a threat of injury, particularly as the policy is conducted absent notice

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25 <sup>8</sup> DHS, “DHS Releases Statement on Major Victory for Trump Administration and the American People  
26 on Deporting Criminal Illegal Aliens to Third Countries” (June 23, 2025), available at:  
27 <https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-american-people>; CBS News, “Supreme Court lets Trump administration resume deportations to third  
28 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/>.

1 and due process.

2 For all the above reasons, Mr. Lam’s fear of being summarily removed to a third  
3 country—without first being provided with notice or any constitutionally-compliant procedures—  
4 is not “speculative,” but is grounded in the reality that many other detainees are already  
5 experiencing, and is unconstitutional. Therefore, immediate intervention by this Court is  
6 necessary to protect Mr. Lam’s due process rights.

7 **III. CONCLUSION**

8 For all the aforementioned reasons, the Court should convert Mr. Lam’s TRO into a  
9 preliminary injunction.

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Dated: December 10, 2025

Respectfully submitted,

/s/ Christine Raymond  
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Zachary Nightingale  
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