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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

OUSIN SAEPHANH,

Petitioner,

vs.

TONYA ANDREWS, in her official capacity, Facility Administrator, Golden State Annex;
SERGIO ALBARRAN, in his official capacity, Field Office Director for the San Franciso Field Office, U.S. Immigration and Customs Enforcement;
TODD LYONS, in his official capacity, Acting Director, U.S. Immigration and Customs Enforcement;
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.

Case No: 25-cv-01668-DAD-SCR

PETITIONER OUSIN SAEPHANH'S NOTICE OF MOTION ANDMOTION FOR PRELIMINARY INJUNCTION

Date: No Hearing (Dkt. No. 18)
Time: None
Dept: 10
Before: Hon. Dale A. Drozd

Date Action Filed: November 26, 2025

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Petitioner, Ousin Saephanh (Petitioner or "Mr. Saephanh") will and hereby does move for a motion for a preliminary injunction. This motion is submitted pursuant to the deadlines established in this Court's January 21, 2026 Order. Dkt. 20. Pursuant to this Court's Order on January 27, 2026, this motion is submitted without oral argument. Dkt. 18.

For more than 28 years, Mr. Saephanh has been living in the United States pursuant to an Order of Supervision ("OSUP"). Because his removal was not reasonably foreseeable and he was neither a flight risk nor a danger to the community, the OSUP allowed Mr. Saephanh to remain in the United States, building his life in his community, free from U.S. Immigration and Customs Enforcement ("ICE") custody.

On the morning of August 6, 2025, as Mr. Saephanh left his home to commute to work, ICE agents in an unmarked car accosted him and detained him in immigration custody. They provided him no notice or reasons for re-detaining him and revoking his OSUP, in violation of the Department of Homeland Security's ("DHS") own regulations and the Constitution. Mr. Saephanh's detention infringed on his constitutionally protected liberty interest in his physical freedom and was unlawful pursuant to the agency's own regulations.

Since he was initially taken into custody in August 2025, ICE has not provided Mr. Saephanh an informal interview regarding reasons for the alleged revocation of his OSUP ICE has not provided Mr. Saephanh with any purported reasons for the alleged revocation of his release provided by his OSUP. ICE has failed to follow its own procedures when re-detaining a noncitizen. 8 C.F.R. § 241.4(l)(1). ICE has also failed to follow its own "special review procedures". 8 C.F.R. § 241.13.

Further, ICE has violated the Due Process Clause of the United States Constitution, which constrains ICE's ability to re-detain a noncitizen who was previously released on an order of supervision. Substantive due process requires that a noncitizen's detention bear a reasonable relationship to the purposes of immigration detention, to prevent flight and to protect the community. Procedural due process requires that a noncitizen's detention be accompanied by

strong procedural protections such as a hearing before a neutral adjudicator. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

The Court should enjoin ICE from re-detaining Mr. Saephanh for any purpose, without providing Mr. Saephanh notice and a pre-detention hearing before a neutral adjudicator. For reasons outlined in the Memorandum of Points and Authorities, Mr. Saephanh further requests that any such pre-detention hearing occur before this Court to ensure it is conducted by a neutral adjudicator as due process requires.

Mr. Saephanh respectfully seeks a preliminary injunction that Respondents, Tonya Andrews, in her official capacity, Facility Administrator, Golden State Annex; Sergio Albarran, in his official capacity, Field Office Director for the San Francisco Field Office, U.S. Immigration and Customs Enforcement; Todd Lyons, in his official capacity, Acting Director, U.S. Immigration and Customs Enforcement; 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, (hereafter "Respondents") and all of Respondents' officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in concert or participation with them, are enjoined and restrained from re-arresting Mr. Saephanh unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that his removal is reasonably foreseeable and that he is a danger or a flight risk by clear and convincing evidence; and at any such hearing, the neutral arbiter must consider whether, in lieu of incarceration, alternatives to detention exist to mitigate any risk established by the government; removing Mr. Saephanh to any third country without first being provided constitutionally compliant procedures, including 1) written notice to Mr. Saephanh and his counsel of the third country to which he may be removed, in a language that Mr. Saephanh can understand, providing at least twenty-one (21) days before any such removal and 2) a meaningful opportunity for Mr. Saephanh to raise a fear of return for eligibility for protection under the Convention Against Torture, including a reasonable fear interview before a DHS officer.

Further, Mr. Saephanh respectfully requests a preliminary injunction that 1) Respondents

cannot re-arrest Mr. Saephanh unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful, *i.e.*, whether the government has demonstrated to a neutral adjudicator that his removal is reasonably foreseeable and that he is a danger or a flight risk by clear and convincing evidence and at any such hearing, the neutral arbiter must consider whether, in lieu of incarceration, alternatives to detention exist to mitigate any risk established by the government; 2) if Petitioner demonstrates a reasonable fear during the required interview before removing him to a third country, move to reopen his underlying removal proceedings so that he may apply for relief under the Convention Against Torture; and 3) if it is found that Petitioner does not demonstrate a reasonable fear during the required interview before removing him to a third country, provide a meaningful opportunity, and a minimum of sixty days, for Petitioner to seek to move to reopen his underlying removal proceedings to challenge potential third country removal.

This motion is based upon the memorandum of points and authorities, the Declarations of Ousin Saephanh, Kamalpreet Chohan and Christopher Hughes, and exhibits filed therewith, the pleadings and all other papers and records on file in this matter, and any other materials or argument the Court may receive at or before the hearing on this motion.

Date: February 10, 2026

NOSSAMAN LLP

By: */s/Christopher D. Hughes*
Christopher D. Hughes
Attorneys for Plaintiff, OUSIN SAEPHANH

Date: February 10, 2026

ASIAN LAW CAUCUS

By: */s/ Evelyn Wiese*
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

OUSIN SAEPHANH,

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TONYA ANDREWS, in her official capacity, Facility Administrator, Golden State Annex; SERGIO ALBARRAN, in his official capacity, Field Office Director for the San Franciso Field Office, U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity, Acting Director, U.S. Immigration and Customs Enforcement; 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.

Case No: 25-cv-01668-DAD-SCR

PETITIONER OUSIN SAEPHANH'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: No Hearing (Dkt. No. 18)
Time: None
Dept: 10
Before: Hon. Dale A. Drozd

Date Action Filed: November 26, 2025

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

On December 3, 2025, this Court entered an order granting in part Petitioner's Ex Parte Motion for a Temporary Restraining Order ("TRO"). Dkt. No. 11. On December 17, 2025, this Court entered a minute order extending the TRO to remain in effect until one day after the issuance of an order on a preliminary injunction. Dkt. No. 15.

For more than 28 years, Mr. Saephanh has been living in the United States pursuant to an Order of Supervision ("OSUP"). Because his removal was not reasonably foreseeable and he was neither a flight risk nor a danger to the community, the OSUP allowed Mr. Saephanh to remain in the United States, building his life in his community, free from U.S. Immigration and Customs Enforcement ("ICE") custody.

On the morning of August 6, 2025, as Mr. Saephanh left his home to commute to work, ICE agents in an unmarked car accosted him and detained him in immigration custody. They provided him no notice or reasons for re-detaining him and revoking his OSUP, in violation of the Department of Homeland Security's ("DHS") own regulations and the Constitution. Mr. Saephanh's continued detention infringes on his constitutionally protected liberty interest in his physical freedom and is unlawful pursuant to the agency's own regulations.

Since he was initially taken into custody in August 2025, ICE has not provided Mr. Saephanh an informal interview regarding reasons for the alleged revocation of his OSUP. ICE has not provided Mr. Saephanh with any purported reasons for the alleged revocation of his release provided by his OSUP. ICE has failed to follow its own regulations and procedures when re-detaining a noncitizen. 8 C.F.R. § 241.4(l)(1). ICE has also failed to follow its own "special review procedures". 8 C.F.R. § 241.13.

Further, ICE has violated the Due Process Clause of the United States Constitution, which constrains ICE's ability to re-detain a noncitizen who was previously released on an order of supervision. Substantive due process requires that a noncitizen's detention bear a reasonable relationship to the purposes of immigration detention, to prevent flight and to protect the community. Procedural due process requires that a noncitizen's detention be accompanied by

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strong procedural protections such as a hearing before a neutral adjudicator. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

The Court should enjoin ICE from re-detaining Mr. Saephanh for any purpose, without providing Mr. Saephanh notice and a pre-detention hearing before a neutral adjudicator. For reasons outlined below, Mr. Saephanh further requests that any such pre-detention hearing occur before this Court to ensure it is conducted by a neutral adjudicator as due process requires.

II. FACTUAL BACKGROUND

A. Mr. Saephanh's Background and Other Related Facts

Petitioner Ousin Saephanh is a 59-year-old citizen of Laos. Declaration of Kamalpreet Chohan ("Chohan Decl.") ¶ 1, Exh. 1, p. 22 (Exh. A). He was admitted to the United States as a Lawful Permanent Resident on September 10, 1987. *Id.* He and his family fled Laos for their lives in 1976 when he was 10 years old because they faced persecution in their home country. *Id.* After being persecuted several times, they escaped to a refugee camp in Thailand; for eleven year, they were constantly forced to move from one camp to another for eleven years. *Id.* They then came to the United States on September 10, 1987 when Mr. Saephanh was 21 years old. *Id.*

Thirty-five years ago, when he was a young man, Mr. Saephanh made a serious mistake, which he deeply regrets. *Id.* He was convicted on November 29, 1990, of offenses under 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 952. *Id.* He acknowledged his wrongdoing and became committed to rehabilitating himself. *Id.* Mr. Saephanh served fifty-three months for these offenses. *Id.* Mr. Saephanh was issued a removal order on March 27, 1995. Chohan Decl. ¶ 2, Exh. 1, pp. 58-59 (Exh. C). Mr. Saephanh applied for a 212(c) waiver, which was denied. Chohan Decl. ¶ 2, Exh. 1, pp. 134-143 (Exh. J).

After being released from criminal custody, Mr. Saephanh was transferred to immigration custody, and on August 15, 1994, an Order to Show Cause was issued charging Mr. Saephanh as deportable under INA section 241(a)(2)(A)(iii), due to his two criminal convictions under 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 952. Chohan Decl. ¶ 2, Exh. 1, pp. 61-64 (Exh. D). Mr. Saephanh was later issued a removal order on March 27, 1995. Chohan Decl. ¶ 2, Exh. 1, pp. 58-59 (Exh. C). Mr. Saephanh was released from ICE custody shortly after being ordered removed

(Chohan Decl. ¶ 3, Exh. 2), presumably due to an inability to secure travel documents from his historically recalcitrant country of origin.[1] As such, for more than 28 years, Mr. Saephanh has been living in the United States pursuant to an OSUP. Chohan Decl. ¶ 3, Exh. 2. Because his removal was not reasonably foreseeable and he was neither a flight risk nor a danger to the community, the OSUP allowed Mr. Saephanh to remain in the United States, building his life in his community, free from ICE custody. *Id.*

Since his release from immigration custody in 1997, Mr. Saephanh has lived in the United States with his family. Chohan Decl. ¶ 2, Exh. 1, pp. 22-56 (Exhs. A-B.) From 1997 until 2014, he lived in Seattle, Washington with his parents and siblings. *Id.* More than nine years ago, on July 14, 2016, he married his wife, who is a United States citizen. *Id.* Prior to marrying, in 2014 he moved to Elk Grove, California. *Id.* He has not been re-arrested since his convictions in 1990 (over 35 years), and he has positively contributed to his community and family. *Id.*

Mr. Saephanh helped raise his wife's three U.S. citizen children. Chohan Decl. ¶ 2, Exh. 1, pp. 24-56 (Exh. B). His stepchildren attest to the emotional and financial support he has provided them and the meaningful relationships he created with them, and the emotional and financial support he has provided to their family. *Id.* Mr. Saephanh is currently a caregiver for his 91-year-old mother-in-law and, as stated in her letter, she would suffer great hardship if he was not able to take care of her since she relies on him for financial, medical, physical, and emotional support. *Id.*

Mr. Saephanh is very involved in his community. Since his convictions and removal order in 1995, Mr. Saephanh has mentored and guided youth and community members facing poverty, language barriers and cultural challenges. *Id.* There are over 70 signatures of community members attesting to Mr. Saephanh's rehabilitation, commitment, and dedication to his community. *Id.* Mr. Saephanh has built a strong family and community network in both Washington and California, and his deportation would cause significant hardship to many who rely on his presence and support. *Id.*

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[1] *See* Congressional Research Service, Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals (July 10, 2020), *available at*: https://www.congress.gov/crs-product/IF11025.

Mr. Saephanh has a significant employment history, having worked steadily to support not only himself, but his wife, stepchildren, mother-in-law and community. Chohan Decl. ¶ 2, Exh. 1, pp. 24-56 (Exh. B). He has applied and was granted an Employment Authorization Document ("EAD") under the C18 category and has been working since his release in 1997. Chohan Decl. ¶ 2, Exh. 1, pp. 84-121 (Exh. F). His employers have stated that he "is one of the most dedicated, hardworking, and compassionate individuals [they] have ever had the privilege of employing." Chohan Decl. ¶ 2, Exh. 1, pp. 24-56 (Exh. B). He has paid taxes every year that he earned income and has filed jointly with his wife since 2017. Chohan Decl. ¶ 2, Exh. 1, pp. 66-82 (Exh. E.).

Since 1995, Mr. Saephanh has gained significant property and business ties here in the Unites States. See Chohan Decl. ¶ 2, Exh. 1, pp. 127-132 (Exh. I). Mr. Saephanh's wife purchased a home in 2002. *Id.* He has consistently helped pay the mortgage, property taxes, and utility bills and has taken on the primary responsibility for upkeep and maintenance of the home. *Id.* She also relies on Mr. Saephanh for household expenses and will not be able to continue making her mortgage payment without him. *Id.*

Since his last conviction in 1990, over 35 years ago, Mr. Saephanh has demonstrated clear and consistent rehabilitation. Chohan Decl. ¶ 2, Exh. 1, p. 22 (Exh. A). He has complied fully with all requirements imposed by ICE, including attending all scheduled check-ins. Chohan Decl. ¶¶ 3-6 Exhs. 2, 3. His long-standing compliance, personal growth, and commitment to lawful living reflect the depth of his rehabilitation and his strong moral character. *Id.*

On August 6, 2025, at approximately 7:00 a.m., several individuals arrested Mr. Saephanh. Declaration of Ousin Saephanh ("Saephanh Decl.") ¶¶ 1-6. Shortly before the arrest, Mr. Saephanh had left his house around 7:00 a.m. and was headed to work at Murphy's Magic Supplies in Rancho Cordova, a store that sells magic-related books, playing cards and supplies, where he has worked for the past 11 years. *Id.*; Chohan Decl. ¶ 2, Exh. 1, pp. 24-56 (Exh. B). After pulling out of his driveway, Mr. Saephanh saw an unmarked black Sports Utility Vehicle ("SUV") with no license plate parked around the corner from his house. *Id.* The SUV made an immediate U-turn and started to follow Mr. Saephanh. *Id.* After Mr. Saephanh passed through a second stoplight, the SUV turned on its lights, and two other nearby vehicles also activated their

lights. *Id.* The SUV cut Mr. Saephanh off, and a total of three to four cars boxed him in. About seven to eight people got out of the vehicles. *Id.* One of the people said he was an ICE agent. *Id.* They handcuffed Mr. Saephanh and put him into a small car. *Id.* No one told Mr. Saephanh why he was being detained. *Id.* He was taken to the Sacramento Field Office of ICE Enforcement and Removal Operations and kept there for three days before being taken to the Golden State Annex where he remains today. *Id.* Mr. Saephanh has not been provided with any explanation from the government about why his OSUP was revoked. *Id.* He has not been provided with a notice of revocation of the OSUP, in violation of 8 CFR § 241.4(l)(i), 8 CFR § 241.13(i)(2) and 8 CFR § 241.13(i)(3).

Mr. Saephanh has attended numerous check-ins with ICE in the 28 years since he was first ordered removed. Chohan Decl. ¶¶ 3, 6, Exhs. 2 & 3. Mr. Saephanh's last ICE check-in was on March 31, 2025. *Id.* At that time, he was given a card indicating that his next ICE check-in would not be until March 28, 2026 – approximately 1 year later. *Id.*

Prior to August 6, 2025, he could not recall ever being instructed to request travel documents from Laos. Chohan Decl. ¶ 7.

Mr. Saephanh's detention infringed on his constitutionally protected liberty interest in his physical freedom and is unlawful pursuant to the agency's own regulations. The Court should enjoin ICE from re-initiating this course of conduct.

B. Facts Related to Increased DHS Re-Detentions

On January 25, 2025, officials in the new Trump administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office was instructed to make seventy-five arrests per day.[2]

Multiple credible reports demonstrate that, in recent weeks, numerous noncitizens in the Sacramento Area, San Francisco Bay Area, Los Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[3]

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

[3] *See* Nidia Cavazos, "Immigrants at ICE check-ins detained, held in basement of federal building in Los

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.[4]

Decisions issued by other courts in this District and the Eastern of District of California further corroborate that ICE is re-arresting and re-incarcerating individuals who are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable. *See, e.g.*, *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *3 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *2 (N.D. Cal. July 24, 2025); *Doe v. Becerra*, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11,

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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/; Mark Betancourt and Julia Barajas, "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; Carolina Estrada, "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), Doc Louallen, "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.

[4] *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); Gloria Pazmino, "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).

2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

Furthermore, since early 2025, ICE has escalated efforts to remove noncitizens with final orders of removals to "third countries," *i.e.*, countries that the immigration judge never designated as potential countries for removal during the noncitizen's removal proceedings. *See Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025) ("Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that "things are different now."); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025).

Because the "third country" was not at issue during the original removal proceedings, a noncitizen who is threatened with removal to the third country has never had an opportunity to seek legal protection from removal to that country.

The U.S. government has conducted negotiations with at least 58 countries to accept deportees who are not citizens of those countries.[5]

On July 9, 2025, ICE issued a memo to staff that represents the agency's current policy with respect to third country removals.[6] Declaration of Christopher Hughes ("Hughes Decl.") ¶ 2, Exh. 4. The memo provides that if the United States has received "diplomatic assurances" from a third country, deemed credible by the State Department, that deportees will not be persecuted or tortured, ICE may deport a noncitizen to that third country without notice or an opportunity to be heard. *Id.*

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[5] *See* Edward Wong *et al.*, "Inside the Global Deal-Making Behind Trump's Mass Deportations," N.Y. Times (Jun. 25, 2025), *available at*: https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html.

[6] *See* Nate Raymond and Ted Hesson, "ICE May Deport Migrants to Countries Other Than Their Own With Just Six Hours Notice, Memo Says, Reuters" (July 14, 2025), *available at*: https://www.reuters.com/world/us/ice-may-deport-migrants-countries-other-than-their-own-with-just-six-hours-2025-07-13/; Maria Sacchetti, Carol D. Leonnig and Marianne LeVine, "ICE memo outlines plan to deport migrants to countries where they are not citizens," The Washington Post (July 13, 2025), *available at*: https://www.washingtonpost.com/immigration/2025/07/12/immigrants-deportations-trump-ice-memo/.

The memo provides that if the United States has not received such diplomatic assurances, ICE officers must serve on the noncitizen a "Notice of Removal" stating the intended country of removal, but need not ask whether the noncitizen fears removal to that country. *Id.* Although officers should "generally wait at least 24 hours following service of the Notice of Removal before effectuating removal," they may under certain conditions effectuate removal six hours after service of the Notice of Removal. *Id.*

Under the memo, if the noncitizen "does not affirmatively state a fear of persecution or torture if removed" to the third country, ICE may proceed with removal. *Id.* Only if the noncitizen "does affirmatively state a fear" will they be screened for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.*

There have been multiple credible reports of Laotian citizens, in particular, being subjected to these third country removals.[7]

This Court's intervention is needed to ensure that Mr. Saephanh's due process rights are protected, that his unjust detention does not become prolonged and indefinite, and that he is not unjustly removed to a third country.

C. ICE's Failure to Comply with Procedural Laws

As noted above, Mr. Saephanh was released under an OSUP on April 22, 1997. Chohan Decl. ¶ 3, Exh. 2 (OSUP).

Mr. Saephanh has complied with the requirements of his OSUP at all times since its issuance. Chohan Decl. ¶ 2, Exh. 1, p. 22 (Exh. A).

Mr. Saephanh was taken into ICE custody on August 6, 2025. Saephanh Decl. ¶¶2-7.

Mr. Saephanh has complied with and assisted with all efforts related to his removal since the issuance of the OSUP. Saephanh Decl. ¶¶12, 19.

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[7] Rachel Savage, "Lawyers say men deported by US to Eswatini are being imprisoned illegally," The Guardian (Sept. 3, 2025), *available at*: https://www.theguardian.com/us-news/2025/sep/02/lawyers-say-men-deported-by-us-to-eswatini-are-being-imprisoned-illegally; "South Sudan says US deportees are in government's care," Reuters (July 8, 2025), *available at*: https://www.reuters.com/world/africa/south-sudan-says-us-deportees-are-governments-care-2025-07-08/.

ICE detained Mr. Saephanh without providing him any information on any changed circumstances related to his removal. Saephanh Decl. ¶¶ 5, 9-19. Since he was returned to custody on August 6, 2025, ICE has not provided Mr. Saephanh an informal interview regarding any reasons for the alleged revocation of his OSUP. *Id.* ICE has not provided Mr. Saephanh with any purported reasons for the alleged revocation of his release provided by his OSUP. *Id.* ICE has not provided his counsel of record, Kamalpreet Chohan, with any notice of the revocation of his release provided by his OSUP. Chohan Decl. ¶ 9. ICE has not provided Mr. Saephanh with any facts supporting the alleged revocation of his release provided by his OSUP. Saephanh Decl. ¶¶ 5, 9-19. ICE has not provided Mr. Saephanh with the opportunity to submit evidence or information that he believes shows there is no significant likelihood he will be removed in the reasonably foreseeable future or that he has not violated his OSUP. *Id.* ICE has not provided Mr. Saephanh any opportunity to respond to the, currently unstated, reasons for the revocation of his release provided by his OSUP. *Id.* ICE has not provided Mr. Saephanh with any evaluation of any contested facts relevant to the revocation OSUP or a determination whether the facts as determined warrant revocation and further denial of release. *Id.* ICE has not provided Mr. Saephanh with a revocation custody review or evaluation of any contested facts related to the alleged revocation of his release. *Id.* ICE has not provided any facts or arguments to demonstrate that unless Mr. Saephanh is re-detained, he would be unwilling or unable to provide the information needed to pursue his removal. *Id.*

D. Due process also requires a neutral adjudicator, which Respondent DOJ is currently unable to provide

"A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than DHS alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

Should Petitioner be subjected to a pre-deprivation hearing at any point during the current executive administration, due process requires that the hearing occur before this Court because

Respondent DOJ is unable to provide neutral adjudication. *See L.G.M. v. Larocco*, No. 25-CV-2631-PKC, 2025 WL 2173577 (E.D.N.Y. July 31, 2025) (conducting bond hearing); *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) (collecting cases where district court conducted bond hearing). *See also Roman*, 977 F.3d at 941 ("Once a [constitutional] right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.").

To begin, IJs are not independent adjudicators. They are career attorneys who report to the Attorney General, an appointee of the executive branch, making them "very susceptible to pressure from above to decide cases in a certain way." *Accord* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024); Holper, 74 Duke L.J. at 1010 (describing an IJ as "a prosecutor masquerading as a judge.").

Since the current presidential administration took office early this year, it has fired IJs *en masse*, "many seemingly because their judicial philosophies did not align with the administration's priorities."[8] One recently-fired IJ who served in that position for twenty years observed: "I think the current administration . . . does not see the immigration courts as neutral decision-makers. I think that they see immigration courts as a tool for this administration to advance its policy objectives." [9] Respondent DOJ has also launched a campaign to hire new IJs that advertises the position as "deportation judges" and describes it as an opportunity to "[b]ring the hammer down on criminal illegal aliens . . . Defend your communities, your very way of life."[10]

The risk of erroneous deprivation for Petitioner is high if they are subjected to a hearing before Respondent DOJ under current conditions, such that any such hearing must instead occur

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[8] Levin, Sam, "'Hell on earth': immigrants held in new California detention facility beg for help," THE GUARDIAN.

[9] Bennett, Geoff and Ali Schmitz, "Ousted immigration judge describes deepening court backlog" PBS NEWS HOUR (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog.

[10] *See* Gutierrez, Hilda and Michael Bott, "'An all-out attack on immigration court:' SF immigration judges speak out after firings" NBC BAY AREA (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/.

before this Court to ensure it is conducted by a neutral adjudicator as due process requires. *Zheng v. Albarran* 1:25-cv-01685-CJC-CKD (E.D. Cal. Dec 16, 2025) (Calbretta, D.) Dkt. No. 13.

III. ARGUMENT

A. The Showing and Standard Required to Establish a Right to Preliminary Injunctive Relief

The standards for issuing a temporary restraining order and a preliminary injunction are "substantially similar." *See Stuhlbarg Int'l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (overruled on other grounds in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). To obtain preliminary injunctive relief, Plaintiff must show: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter, supra*, 555 U.S. at 20.

In this case Mr. Saephanh is likely to succeed on the merits as a matter of law, the irreparable injury to Mr. Saephanh is clear, the balance of hardships tips in favor of Mr. Saephanh, and the equitable relief requested is not adverse to the public interest.

B. Mr. Saephanh is Likely to Succeed on the Merits of the Petition

Petitioner hereby incorporates by reference the full arguments and law citied in his Habeas Petition in support of his argument that he is likely to succeed on the merits of his case.

1. Mr. Saephanh is Likely to Succeed on His Substantive and Procedural Due Process Claims for Relief (First and Second Claims for Relief)

"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). While that freedom *may* ultimately be revocable should circumstances materially change, people nonetheless retain a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. See *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (superseded by statute on other grounds); *Morrissey v. Brewer*, 408 U.S. 471, 482-83 (1972).

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court observed that subject to parole conditions, "[a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that when freed, "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* Given this, the Court reasoned that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parole and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and *must* be seen within the protection of the [Constitution]." *Id.* (italics added).

Morrissey's basic principle, that individuals have a liberty interest in their conditional release, has been reinforced by both the Supreme Court and circuit courts on numerous occasions. *See, e.g.*, *Young*, *supra*, 520 U.S. at 152 (holding that individuals released into a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, *supra*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process); *Zadvydas*, *supra*, 533 U.S. at 690 (holding that due process protects "all 'persons' within the United States . . . whether their presence here is lawful, unlawful, temporary or permanent" who face immigration detention). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (noting 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) (citing *Young*, *supra*, 520 U.S. at 152, *Gagnon*, *supra*, 411 U.S. at 782, and *Morrissey*, *supra*, 408 U.S. at 482).

The Due Process Clause of the Fifth Amendment applies to all "persons" within the

borders of the United States, regardless of immigration status. *Zadvydas v. Davis* 533 U.S. 678, 693 (2001).

Here, Mr. Saephanh has a protected liberty interest in remaining free and a constitutional right to notice and a pre-deprivation hearing. The Due Process Clause constrains ICE's power to re-detain a noncitizen who was previously released on an order of supervision without first providing a hearing before a neutral adjudicator where the government justifies the necessity of his retention by clear and convincing evidence. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Mr. Saephanh has developed "endearing attachments of normal life" for the past 28 years by being a devote husband, stepfather, and son to his 91-year-old mother-in-law, who depends on him to pick up prescriptions, drive her to medical appointments, and help her with chores and maintenance around the house. Chohan Decl. ¶ 2, Exh. 1, pp. 24-56 (Exh. B). Mr. Saephanh has been meaningfully employed at the same place for the last 11 years. *Id.* His wife attests that he has equal ownership of their home and that he consistently helped pay the mortgage, property taxes, and utility bills for the property, as well as taking on the primary responsibility for upkeep and maintenance of the home. *Id.* He has helped to establish a Mien Community Center for seniors and youth to gather to learn the Mien language, culture and traditions and he has helped to remodel the center and served as a cultural resource teacher. *Id.* Unquestionably, Mr. Saephanh has a protected liberty interest as characterized by *Morrisey*. See *Morrisey* supra, 408 U.S. at 482-83.

With respect to his claims for relief related to procedural due process, courts typically consider three factors, sometimes referred to as the *Eldridge* factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

As to the first *Eldridge* factor, the length of time and the connections Mr. Saephanh made with his community during these 28 years create a powerful interest for him in his continued liberty.

As to the second *Eldridge* factor, the risk of erroneous deprivation, the risk is high if ICE can unilaterally re-detain Mr. Saephanh without a pre-deprivation hearing before a neutral adjudicator to determine whether his re-detention serves a permission purpose, i.e., a material change in circumstances. A pre-deprivation hearing before a neutral decisionmaker 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). Where the petitioner does not receive a hearing, "the risk of an erroneous deprivation [of liberty] is high" because neither party "has had an opportunity to determine whether there is any valid basis for [the petitioner's] detention." *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025).

Given that, for the last 28 years, and as recently as March 31, 2025, Mr. Saephanh was previously found to not be a danger or a flight risk, the risk of erroneous deprivation without a hearing is high, particularly here, where Mr. Saephanh continues to follow ICE's supervision requirements including routine check-ins. Chohan Decl. ¶¶ 2, 3, 6, Exhs. 1, 2, & 3).

As to the third, *Eldridge* factor, Respondents' interest in re-detaining Mr. Saephanh, and keeping Mr. Saephanh in detention without a hearing and the burden of providing such hearing is quite low, and does not outweigh Mr. Saephanh's private interests. After 28 years of complying with the conditions of his OSUP, including attending consistent check-ins, there is no reason to believe that Mr. Saephanh's behavior or actions will suddenly change. Thus, Respondents' interest in placing Mr. Saephanh back in detention without a hearing is quite low. Further, the effort and cost required to provide Mr. Saephanh with procedural safeguards is minimal. Indeed, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,'" and that "[s]upervised release programs cost much less by comparison...." *Hernandez v. Sessions*, 872 F.3rd 976, 996 (9th Cir. 2017). Thus, Respondents' burden does not outweigh Mr. Saephanh's substantial liberty interest and risk of erroneous deportation.

Courts in this district have determined that a noncitizen subject to conditional release has a liberty interest in that release such that a pre-deprivation hearing before a neutral adjudicator is required prior to any redetention. *See e.g. Guillermo M. R.*, 2025 WL 1983677, at *5 ("The fact

that Petitioner is subject to discretionary conditions of release likewise does not mean he lacks a protectable liberty interest and can be re-detained without process."); *Pinchi*, 2025 WL 2084921, at *3. That is because, generally, the Due Process Clause "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).

Consequently, since Mr. Saephanh has a liberty interest and due process requires Mr. Saephanh receive a hearing to determine whether detention is warranted, Mr. Saephanh has demonstrated that he is likely to succeed on the merits of his First and Second Claims for Relief.

2. Mr. Saephanh is Likely to Succeed on the Merits of His Claims That His Detention Violated Binding Agency Regulations (Third Claim for Relief)

Respondents' revocation of Mr. Saephanh's OSUP was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an OSUP and under what circumstances. Government agencies are required to follow their own regulations. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Nat'l Ass'n of Home Builders v. Norton,* 340 F.3d 835, 852 (9th Cir. 2003). Courts have found that when ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered. *See Ceesay v. Kurzdorfer,* 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp.3d 383, 387 (D. Mass. 2017); *Khamba v. Albarran*, No. 1:25-CV-01227 JLT SKO, 2025 WL 2959276, at *9 (E.D. Cal. Oct. 17, 2025). As Mr. Saephanh did not receive any revocation notice citing the authority for revocation, he brings challenges pursuant to revocation of his release under both regulations.

a. Legal Background

The authority of the government to detain noncitizens with a final order of removal derives from 8 U.S.C. § 1231. Subsection (a)(1)(A) directs ICE to remove a noncitizen "within a period of 90 days" following a final order of removal, known as the "removal period." ICE "shall detain" the noncitizen during the 90-day removal period. 8 U.S.C. § 1231(a)(2)(A). If ICE does not effectuate removal during the removal period, the noncitizen is released "subject to supervision," 8 U.S.C. § 1231(a)(3), except that certain categories of noncitizens "may be

detained" beyond the removal period, 8 U.S.C. § 1231(a)(6). In light of the due process concerns that indefinite detention would raise, the Supreme Court has construed section 1231(a)(6) to limit a noncitizen's "post-removal period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

Two regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, govern release and re-detention following a final order of removal.

8 C.F.R. § 241.4 creates a system of custody reviews for noncitizens whom ICE detains beyond the 90-day removal period. ICE may grant release if the noncitizen demonstrates that "his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such [noncitizen's] removal from the United States." § 241.4(d)(1). The regulation provides that ICE may re-detain a noncitizen who was released under § 241.4 for specified reasons and following specified procedures. *See* § 241.4(l).

8 C.F.R. § 241.13 creates "special review procedures" where the noncitizen "has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future." § 241.13(a); *see also* § 241.13(b)(1) (providing that § 241.4 governs unless ICE "makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future"). The regulation provides that ICE may re-detain a noncitizen who was released under § 241.13 for specified reasons and following specified procedures. *See* § 241.13(i).

b. ICE violated 8 C.F.R. § 241.4(l)(2)

The regulations in 8 C.F.R. § 241.4(l) permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay*, 781 F. Supp. 3d at 161 (citing 8 C.F.R. §§ 1.2, 241.4(l)(2)[11] and explaining that the

[11] 8 C.F.R. § 241.4(l)(2) states the following: Determination by the Service. The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody [noncitizen] previously approved for release under the procedures in this section. A district director may also revoke release of [noncitizen] when, in the district director's opinion, revocation is in

Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intend to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2).

There is no indication that Mr. Saephanh's OSUP was revoked by the ICE Executive Associate Director or that any other official made findings that that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. *See M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *12 (D. Or. Aug. 21, 2025) ("In cases where the local official makes the decision, rather than the Executive Associate Director of ICE, they must conclude that revocation is in the public interest and that the circumstances prevent referral of the case to the Executive Associate Director of ICE."); *Ceesay*, 781 F. Supp. 3d at 162 (holding that the noncitizen's release was not lawfully revoked and that he is entitled to release "on that basis alone," where there was "no evidence that [the local ICE official – assistant field office director] made the findings that a district director is required to make before revoking" release); *Rombot*, 296 F. Supp. 3d at 387 (concluding revocation was unlawful where the Field Office Director did not make "threshold determination," among other errors).

c. ICE violated 8 C.F.R. § 241.4(l)(2)(i)-(iv)

Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not *ultra vires* or unconstitutional, Respondents did not comply with them. *See M.S.L.*, 2025 WL 2430267, at *12 ("Plainly, 8 C.F.R. § 241.4(l) involves the exercise of discretion, but that discretion is limited by the terms of the regulation itself.") Respondents do not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, as he had not. Nor could

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the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official: (i) The purposes of release have been served; (ii) The [noncitizen] violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against [noncitizen]; or (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.

Respondents make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because—as Petitioner's approximately three months in ICE custody demonstrate— at the time of his re-detention, ICE had yet to make final arrangements for Petitioner's removal. See *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (concluding that the government violated the regulations that it was "appropriate to enforce a removal order" where the documents only show that a "travel document appears forthcoming"). As such, the Court should find that Respondents' revocation of Mr. Saephanh's OSUP was in violation of the regulation.

d. Burden for 8 C.F.R. § 241.13(i) Claims

The regulations in 8 C.F.R. § 241.13(i) place the burden of proving compliance or lack of compliance on ICE. *See* 8 C.F.R. § 241.13(i)(2) ("The Service may revoke [a noncitizen's] release ... if ... *the Service determines*) (italics added). Case law supports this conclusion. *See, e.g., Sun, supra*, 2005 WL 2800037 at *2 ("ICE's own regulations thus place the burden on ICE to show changed circumstances that make removal significantly likely in the reasonably foreseeable future"); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB) --- F.Supp.3d ----, 2025 WL 2443453 at *4 (D. Minn. Aug. 25, 2025) ("*Robel*"), ("the regulations at issue in this case place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future"); *Nguyen v. Hyde*, (D. Mass. 2025) 788 F.Supp.3d 144, 150 fn. 2 (holding that putting the burden on the applicant was "improper burden shifting" and that ICE's regulations put the burden on it).

Accordingly, it is ICE's burden to prove that it complied with the requirements in 8 C.F.R. § 241.13(i).

e. ICE Cannot Carry its Burden of Proving Compliance with the Requirements in 8 C.F.R § 241.13(i)

i. ICE Violated 8 C.F.R § 241.13(i)(2)

ICE's decision to re-detain a noncitizen ... who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619-620 (1st Cir. 2023).

ICE's determination to re-detain a noncitizen who has been granted supervised release

pursuant to 8 C.F.R. § 241.13 must be based on the factors in 8 C.F.R § 241.13(f), which provides that ICE "shall consider all the facts of the case including, but not limited to, the history of the [noncitizen's] efforts to comply with the order of removal, the history of the Service's efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of the Service's efforts to remove this [noncitizen] and the [noncitizen's] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question. *Id.* at 620; 8 C.F.R § 241.13(f).

Case law is clear what types of information is insufficient to allow ICE to carry its burden of proving compliance with section (i)(2). A pro forma notice with no information specific to the noncitizen is insufficient. *Sun*, *supra*, No. 3:25-cv-02433-CAB-MMP at *2. It is a failure to provide facts or arguments about what makes this removal attempt distinct from past attempts. *Id.* So is "threadbare evidence of changed circumstances." *Id.* at 3 (and cases cited therein); *see also Roble*, *supra*, 2025 WL 2443453 at *5 (collecting cases dealing with "paltry evidence"; *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), --- F.Supp.3d ----, 2025 WL 2533673 at *4-*6 (D. Minn. Sept. 3, 2025) (holding that ICE must provide the reasons for the changed circumstances and analyzing the regulation, its context, and case law). ICE instead is required to describe the specific changed circumstances that made revocation of the release proper. *See, e.g.*, *Roble*, *supra*, 2025 WL 2443453 at *3.

Case law is equally clear on what types of evidence oppose a finding that ICE properly considered the factors in (f). That includes compliance with the terms of the noncitizen's release and with criminal laws and local ties such as employment and family. *Sun*, *supra*, No. 3:25-cv-02433-CAB-MMP at *3.

ICE has not even attempted to comply with any of the requirements in 8 C.F.R § 241.13 (i)(2). Mr. Saephanh never received an individualized determination from ICE or elsewhere. He still has not even been informed of any reasons for the revocation of his release. *See* Saephanh Decl. at ¶¶ 5, 9-19. Regulations specify that notices or decisions related to custody reviews must be forwarded to the attorney or representative of record. 8 C.F.R. § 241.14(b)(2); 8 C.F.R. §

103.8. Yet, his attorney of record has not received any notice with respect to Mr. Saephanh, let alone a notice of revocation of the OSUP. Chohan Decl. ¶ 9.

If threadbare/paltry evidence is insufficient, *a fortiori*, **zero evidence** is insufficient.

Had ICE completed an individualized assessment of Mr. Saephanh, it would not support revocation of his release. Mr. Saephanh has complied with all ICE actions. He has complied with all terms of his release and all criminal laws. He has long-term employment, a wife, and step kids. He has ties to the community and does not represent any flight risk or anything comparable thereto. There is nothing to support the revocation of his release.

The court in *Roble* held under much stronger evidence than ICE can provide here that "[t]his case is not a close call." *Roble*, *supra*, 2025 WL 2443453 at *5. This call is even easier to make – ICE plainly violated its requirements under 8 C.F.R § 241.13(i)(2). Thus, it cannot carry its burden of proving compliance. Mr. Saephanah is reasonably likely to prevail on the merits of his petition.

ii. ICE Violated 8 C.F.R § 241.13(i)(3)

Pursuant to 8 CFR § 241.13(i)(3), ICE is required to (1) provide a noncitizen the reasons for revocation of his release; (2) conduct an informal interview with the noncitizen to afford them an opportunity to respond to the reasons for revocation stated in the notification; (3) provide the noncitizen an opportunity to submit any evidence or information that he believes shows there is no significant likelihood he be removed in the reasonably foreseeable future; and (4) provide a revocation custody review an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release. These requirements are an essential part of a noncitizen's due process rights. See, e.g., *Roble*, *supra*, 2025 WL 2443453 at *3 [holding that these rights are "[t]he essence of due process" and that ICE's denial thereof "border[ed] on the Kafkaesque"]; see also *Hashemi v. Noem*, No. 2:25-cv-10335-HDV-SR, Order Granting Preliminary Injunction at 12 (C.D. Cal. Nov. 19, 2025) ("*Hashemi*") ("These procedures are not optional or discretionary; they must be followed and failure to do so renders the detention unlawful" … "Rules matter. Hearings matter." [quoting *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGR, 2025 WL 2683988, at *1,

*6 (C.D. Cal. Aug. 28, 2025)]).

Hence, the analysis here is simple – did ICE comply with the above requirements? Cases have consistently held that ICE's failure to do so meant they failed to comply with their regulations and thus violated the law. See, *e.g.*, *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP (E.D. Cal. July 16, 2025) at *4 ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful") (see also cases cited to support this point); *Sarail A.*, *supra*, 2025 WL 2533673 at *6 ("Because ICE provided insufficient Notice, it failed to comply with the subsequent procedural requirements as well."); *Constantinovici v. Bondi*, No. 3:25-cv-02405-RBM-AHG, --- F.Supp.3d ----, 2025 WL 2898985 at *3, *6 (S.D. Cal. Oct. 10, 2025) ("The Court further concludes that ICE violated Petitioner's due process rights in revoking Petitioner's release without complying with the applicable statutory and regulatory provisions that afford fundamental procedural safeguards to noncitizens."); *Hashemi*, *supra,* at 12 ("The government's failure to provide Petitioner a *meaningful* notice of revocation and informal interview is in clear violation of the requirements of sections 241.4(l)(1) and 241.13(i)(3)).

Hashemi provides an example of the process utilized by ICE and how it is legally insufficient. There, a noncitizen who had been released on an OSUP and had "a mixed record of compliance with his conditions of release" had his release revoked at his regular check-in. *Hashemi, supra,* at 5. He was provided with a notice of revocation of his release that essentially just stated there were changed circumstances as the justification for the revocation. *Id.* at 5-6. ICE conducted what it characterized as an "initial informal interview" of the noncitizen. *Id.* at 6. The noncitizen did not provide any testimony or even understand that that meeting was supposed to be an "informal interview" and the noncitizens' counsel was not informed of this meeting. *Id.* The noncitizen "assert[ed] that no one told him why he was detained or when or where he would be deported." *Id.*

The Central District held that the noncitizen "has demonstrated a likelihood of success on his claim that the government did not comply with the process laid out in sections 241.4(l)(1) and 241.13(i)(3)." *Id.* at 9 (footnote omitted). It held that ICE failed to comply with the

requirement to provide the noncitizen the reasons for his release, including that the notice he was provided was general and did not provide information specific to the noncitizen. *Id.* at 9-10 (and cases cited therein that show that "Courts in this district, circuit, and across the country have held that such a vague, generic statement is insufficient notice."). The court also held that ICE failed to comply with the requirement to provide the noncitizen with a meaningful informal interview, largely focusing on the noncitizens' lack of understanding of what was going on, which was caused by ICE's failure to provide him with the reasons for his detention and supported by the fact that he did not provide any oral or written response. *Id.* at 10. The Court ultimately held that, "[t]he government's failure to provide Petitioner a *meaningful* notice of revocation and informal interview is in clear violation of the requirements of sections 241.4(l)(1) and 241.13(i)(3)." *Id.* It then held that "A growing number of courts . . . have unequivocally found that the government's failure to follow its release revocation procedures renders the re-detention unlawful and requires release." *Id.* (collecting cases and providing additional context).

ICE has not even attempted to comply with any of the requirements under 8 C.F.R § 241.13(i)(3). It has not provided Mr. Saephanh with any sort of notice about the reasons for revocation for his release; the reasons for that revocation in any format; an informal interview; an opportunity to submit evidence to support his case; or a revocation custody review. Saephanh Decl. at ¶¶ 5, 9-19.

Mr. Saephanh was provided far less process than the noncitizen in *Hashemi*. Unlike the noncitizen there, Mr. Saephanh was never provided with any sort of notice or explanation of the reason his release was revoked. Mr. Saephanh was in an even worse position than the noncitizen there since Mr. Saephanh's lack of a notice provided him even less information than the inadequate notice provided the noncitizen there. As with the noncitizen in *Hashemi*, Mr. Saephanh had no idea what was going on and did not provide any sort of comment when questioned by ICE. Mr. Saephanh received even less process than the noncitizen received in *Hashemi*, which the Central District easily held was insufficient. *A fortiori*, ICE violated Mr. Saephanh's rights under 8 C.F.R § 241.13(i)(3).

ICE's numerous violations of 8 C.F.R § 241.13(i)(3), any one of which is sufficient to

justify his release from his unlawful detention, are plain and egregious. Thus, it cannot carry its burden of proving compliance.

3. Mr. Saephanh is Likely to Succeed on the Merits of His Claims Regarding the Unconstitutionally Inadequate Procedures Regarding Third Country Removal

Congress has established a multi-step process for designating countries to which noncitizens may be removed. 8 U.S.C. § 1231(b). First, ICE shall remove the noncitizen to the country that the noncitizen chooses to designate, with certain limitations on that choice. *Id.* §§ 1231(b)(2)(A)-(B). ICE may disregard the noncitizen's designation only under specified circumstances. *Id.* § 1231(b)(2)(C). Second, if the noncitizen is not removed to the country they designated, ICE shall remove the noncitizen to an "alternative country"—*i.e.*, "a country of which the [noncitizen] is a subject, national, or citizen"—unless that country does not cooperate with ICE's removal efforts. *Id.* § 1231(b)(2)(D). Third, if the noncitizen is not removed to the country they designated or to an alternative country, then ICE may pursue a list of "[a]dditional removal countries," including the country from which the noncitizen was admitted to the United States and the country in which the noncitizen was born. *Id.* § 1231(b)(2)(E). Only if "impracticable, inadvisable, or impossible" to remove the noncitizen to any of the additional removal countries may ICE depart from the list and pursue removal to any country willing to accept the noncitizen. *Id.* § 1231(b)(2)(E)(vii).

Importantly, the statute prohibits removal to any country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *Id.* § 1231(b)(3)(A) (providing that ICE "may not remove" a noncitizen to a country if "the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion"). Congress has also codified the protections of the Convention Against Torture ("CAT") prohibiting the government from removing a person to a country where they face torture. See Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the

involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.").

Courts have held repeatedly that ICE may not remove a noncitizen to a country that was not properly designated by an immigration judge if the noncitizen has a fear of persecution or torture in that country. See, e.g., *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Due process requires meaningful notice and an opportunity to present a fear-based claim prior to deportation. See *id.*. See also *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *8 (N.D. Cal. Aug. 6, 2025); *Y.T.D. v. Andrews,* No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *1 (E.D. Cal. Sept. 18, 2025); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 392-93 (D. Mass. 2025) (in challenge to third country removal policy, requiring the government to provide written notice and a "meaningful opportunity" to "raise a fear of return for eligibility for CAT protections," to move to reopen removal proceedings if the noncitizen demonstrates a reasonable fear of return, and to provide a minimum of 15 days for the noncitizen to move to reopen removal proceedings if not found to have demonstrated a reasonable fear). A "last minute" designation of a country for removal, affording no meaningful opportunity to apply for protection, "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

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

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

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C. Mr. Saephanh is Likely to Suffer Irreparable Injury Absent Injunctive Relief

Incarceration "has a detrimental impact on the individual" because "it often means loss of a job" and "disrupts family life." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972). The "irreparable harms" of immigration detention include 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.3rd at 995.

Re-detaining Mr. Saephanh, and then continuing to detain Mr. Saephanh will irreparably harm him. His initial detention already separated Mr. Saephanh from his family and his means of earning income. His wife has stated that without Mr. Saephanh's income, she may not be able to afford to pay the mortgage and they may lose their home to foreclosure. Chohan Decl. ¶ 2, Exh. 1, pp. 127-32 (Exh. I).

Moreover, "[i]t is well established 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)). The Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Court of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement alleged). Where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting *Wright, Miller & Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004). The Ninth Circuit has also noted that "unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." *Hernandez*, 872 F.3d at 999.

D. Any Balancing of the Hardship Tips in Mr. Saephanh's Favor and the Public Interest Supports Granting Mr. Saephanh's Requested Relief

Courts must "balance the interests of all parties and weigh damage to each" when determining the balance of equities. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (internal citations and quotations omitted).

The public interest factor takes into account the interests of non-parties and considers whether equitable relief will be adverse to the public interest. See *Winter*, *supra*, 555 U.S. at 24.

Where the government is the opposing party, the balancing of the equities and the public interest analyses merge. See *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Faced with "preventable human suffering, [the Ninth Circuit has] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor.'" *Hernandez*, *supra*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). See also *Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) (finding that courts may consider hardship to families when determining public interest).

The public has a strong interest in ensuring that Mr. Saephanh is not re-detained without first receiving the due process he is owed, as "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)). Without an injunction, DHS would effectively be granted permission to detain Mr. Saephanhin violation of the Constitution.

Furthermore, the public has an interest in upholding constitutional rights. See *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."); *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (overruled on other grounds in *Phelps–Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir.2012) ("[I]t is always in the public interest to protect constitutional rights."); see also *Hashemi*, *supra,* at 13 [discussing the balance of equities and public interest in the case of an unlawful detention. "[I]t 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)).

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The government, on the other hand, cannot suffer harm from an injunction that simply requires it to follow the law. 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."). Further, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,'" and that "[s]upervised release programs cost much less by comparison...." *Hernandez*, 872 F.3d at 996.

The government and the public may have a significant interest in enforcement of the United States' immigration laws, but that includes an interest in upholding procedural protections against unlawful detention. *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, * at 7 (N.D. Cal. July 24, 2025) (citation omitted). Without these procedures, the government cannot guarantee the accuracy of outcome. See *Ceesay v. Kurzhorfer*, 781 F.Supp.3d 137, 144 (W.D.N.Y. 2025) ("[F]air process – not just the correct outcome—matters. After all, without due process, there is no way to tell whether the result is in fact correct.").

E. The Proper Remedy Here is Continuing the Release Mr. Saephanh from His Unconstitutional Detention

Courts are consistent that the proper remedy here is releasing the noncitizen from custody. See, e.g., *Constantinovici v. Bondi*, No. 3:25-cv-02405-RBM-AHG, 2025 WL 2898985 at *6 (and cases therein); *Roble*, *supra*, 2025 WL 2443453 at *1, *3; see also *Hashemi*, *supra*, Order Granting Preliminary Injunction at 13.

As above, ICE violated Mr. Saephanh's due process rights flagrantly and in numerous different ways. The only proper remedy is Mr. Saephanh's continuing release from detention.

IV. CONCLUSION

For all the foregoing reasons, Mr. Saephanh respectfully requests that the Court grant the Motion for a Preliminary Injunction and enter an order directing that Respondents are enjoined and restrained from re-detaining Mr. Saephanh for any purpose, without providing Mr. Saephanh notice and a pre-detention hearing before a neutral adjudicator. Mr. Saephanh further requests that any such pre-detention hearing occur before this Court to ensure it is conducted by a neutral adjudicator as due process requires.

Date: February 10, 2026

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