

1 CUAUHTEMOC ORTEGA (Bar No. 257443)  
Federal Public Defender  
2 EMILY J.M. GROENDYKE (Bar No. 264102)  
(E-Mail: Emily\_Groendyke@fd.org)  
3 Deputy Federal Public Defender  
321 East 2nd Street  
4 Los Angeles, California 90012-4202  
Telephone: (213) 894-2061  
5 Facsimile: (213) 894-0081

6 Attorneys for Petitioner  
KHOANH A. LAM

7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9 **EASTERN DIVISION - RIVERSIDE**

10  
11 KHOANH A. LAM,  
12  
13 Petitioner,  
14 v.  
15 KRISTI NOEM, et.al.,  
16 Respondents.

Case No. 5:25-cv-03344-CV-RAO

**EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

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26  
27  
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**TABLE OF CONTENTS**

	Page
1 I. FACTUAL AND PROCEDURAL BACKGROUND.....	3
2 II. ARGUMENT.....	4
3 A. Mr. Lam is likely to succeed on the merits of his petition.....	4
4 1. Mr. Lam is likely to succeed on the merits of his Due Process	
5 claim.....	5
6 2. Mr. Lam is likely to succeed on the merits of his Zadvydas	
7 claim.....	5
8 a. The Court can and should consider this claim now. ....	5
9 b. Because it is not reasonably likely that Mr. Lam will be	
removed in the foreseeable future, he is likely to succeed.....	9
10 B. Mr. Lam is suffering irreparable harm by being improperly detained	
11 and the public interest favors an injunction. ....	10
12 III. CONCLUSION .....	11
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

**TABLE OF AUTHORITIES**

	Page(s)
<b>1 Federal Cases</b>	
2 <i>Ali v. Dep't of Homeland Security,</i>	
3 451 F.Supp. 3d 703 (S.D. Tex. 2020).....	6
4 <i>Baca v. Moreno Valley Unified Sch. Dist.,</i>	
5 936 F.Supp. 719 (C.D. Cal. 1996).....	12
6 <i>Cesar v. Achim,</i>	
7 542 F.Supp. 2d 897 (E.D. Wis. 2008) .....	6, 8
8 <i>Chamber of Commerce of the United States v. Bonta,</i>	
9 62 F.4th 473 (9th Cir. 2023).....	4
10 <i>Clark v. Martinez,</i>	
11 543 U.S. 371 (2005).....	6
12 <i>Hoang Trinh v. Homan,</i>	
13 333 F.Supp. 3d 984 (C.D. Cal. Sept. 6, 2018).....	6
14 <i>Johnson v. Couturier,</i>	
15 572 F.3d 1067 (9th Cir. 2009) .....	12
16 <i>Medina v. Noem,</i>	
17 794 F.Supp. 3d 365 (D.Md. 2025).....	7
18 <i>Melendres v. Arpaio,</i>	
19 695 F.3d 990 (9th Cir. 2012) .....	10, 11
20 <i>Munoz-Saucedo v. Pittman,</i>	
21 2025 WL 1750346 (D.N.J. June 24, 2025).....	6, 7
22 <i>Ndandu v. Noem,</i>	
23 2026 WL 25848 (Jan. 5, 2026) .....	7
24 <i>O.M. v. Nat'l Women's Soccer League,</i>	
25 541 F.Supp. 3d 1171 (D. Or. 2021).....	2, 4
26 <i>Pham v. Kristi Noem,</i>	
27 2025 WL 3763374 (Dec. 22, 2025).....	8
28 <i>Ta v. Kristi Noem et al.,</i>	
2025 WL 3716155 (C.D. Cal. Nov. 10, 2025) .....	7

**TABLE OF AUTHORITIES**

	Page(s)
1 <i>Pimentel-Estrada v. Barr</i> ,	
2 464 F.Supp. 3d 1225 (W.D. Wash. 2020) .....	10
3 <i>Planned Parenthood Great Northwest v. Labrador</i> ,	
4 122 F.4th 825 (9th Cir. 2024) .....	2, 4
5 <i>Portela-Hernandez v. Trump</i> ,	
6 2026 WL 74042 (D. Md. Jan. 9, 2026) .....	6
7 <i>Singh v. Gonzales</i> ,	
8 448 F.Supp. 2d 1214 (W.D. Wash. 2006) .....	10
9 <i>Ton v Noem</i> ,	
10 2025 WL 4058327 (C.D. Cal. Dec. 22, 2025).....	9
11 <i>Villanueva v. Tate</i> ,	
12 801 F.Supp.3d 689 (S.D.Tex. 2025).....	7
13 <i>Zadvydas v. Davis</i> ,	
14 533 U.S. 678 (2001).....	6
15 <i>Zavvar v. Scott</i> ,	
16 ___ F.Supp. 3d ___, No. CV 25-2104-TDC, 2025 WL 2592543	
17 (D. Md. Sept. 8, 2025) .....	6, 7
18 <b>Federal Statutes</b>	
19 28 U.S.C. § 2241 .....	2
20 <b>Regulations</b>	
21 8 C.F.R. § 241.13(i)(1) .....	5, 8
22 <b>Other Authorities</b>	
23 Available at <a href="https://www.latimes.com/california/story/2026-01-26/lawsuit-alleges-inhumane-conditions-at-adelanto-ice-facility">https://www.latimes.com/california/story/2026-01-26/lawsuit-</a>	
24 <a href="https://www.latimes.com/california/story/2026-01-26/lawsuit-alleges-inhumane-conditions-at-adelanto-ice-facility">alleges-inhumane-conditions-at-adelanto-ice-facility</a> .....	10
25 Federal Rule of Civil Procedure 65(c).....	12
26 Salvador Hernandez and Ruben Vives, <i>Adelanto ICE facility isn't meant to</i>	
27 <i>hold immigrants, it's meant to break them, lawsuit alleges</i> .....	10

1 Simultaneously with this document, Khoanh Lam has filed a petition for a writ of  
2 habeas corpus under 28 U.S.C. § 2241. Because he is almost certain to prevail on at  
3 least one of his claims, he respectfully asks the Court to:

4 (1) issue a temporary restraining order ordering Respondent to:

5 (a) immediately release Petitioner from custody,

6 (b) restore Petitioner to the status quo prior to his detention by reinstating  
7 his prior order of supervision; and

8 (c) show cause why Petitioner’s application for a preliminary injunction  
9 should not be granted; and

10 (2) grant Petitioner a preliminary injunction barring his continued detention or  
11 re-detention unless the government provides an informal interview to inform him  
12 about the reasons for revocation of his supervision and provide him an  
13 opportunity to respond OR in fact obtains a Vietnamese travel document for him  
14 and makes concrete plans for his transportation.

15 “A plaintiff seeking a preliminary injunction must establish that he is likely to  
16 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
17 preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
18 in the public interest.” *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th  
19 825, 843-44 (9th Cir. 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d  
20 1127, 1131 (9th Cir. 2011)). “Alternatively, a preliminary injunction may issue where  
21 serious questions going to the merits were raised and the balance of hardships tips  
22 sharply in plaintiff’s favor if the plaintiff also shows that there is a likelihood of  
23 irreparable injury and that the injunction is in the public interest.” *Id.* at 844 (quoting  
24 *Alliance for the Wild Rockies*, 632 F.3d at 1135). The standards for granting a  
25 temporary restraining order are the same as the standards for granting a preliminary  
26 injunction. *See O.M. v. Nat’l Women’s Soccer League, LLC*, 541 F.Supp. 3d 1171,  
27 1177 (D. Or. 2021).

28

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 Khoanh Lam was born in Vietnam. (Dkt. #1, Ex. A, Lam Decl., ¶ 3.) He fled to  
3 the United States as a refugee in 1979 when he was 11 years old. (*Id.*) In 2005 he was  
4 convicted of conspiracy and attempted murder. Upon his release from prison in 2021,  
5 he was detained by ICE. On October 21, 2021 he was ordered removed from the United  
6 States. (*Id.* ¶¶ 4-5.) While he was detained, he signed the self-declaration form required  
7 to apply for a passport from Vietnam. He never received the passport. He was released  
8 on supervision on January 18, 2022. (*Id.* ¶¶ 6-7.) While on supervision, Mr. Lam  
9 attempted to obtain a passport through a travel agency. Months later, no passport has  
10 issued. (*Id.* ¶¶ 9.) After missing one supervision check-in, he was re-arrested on August  
11 24, 2025. Again on September 15, he signed the self-declaration form required to apply  
12 for a Vietnamese passport. Over four months later, he has not received one. (*Id.* ¶¶ 10-  
13 11.)

14 As a result of the instant litigation, this Court issued a preliminary injunction,  
15 ordering that:

16 1. Respondents are enjoined from continuing to detain  
17 Petitioner unless he was provided with an informal interview  
18 to afford him an opportunity to respond to the reasons for  
19 revocation stated in the Notice of Revocation of Release dated  
20 August 24, 2025, pursuant to 8 C.F.R. sections 241.13(i)(3)  
21 and 241.4(l)(1) within seven calendar days of the filing date of  
22 the TRO.

23 2. To preserve the Court's jurisdiction, respondents are  
24 enjoined from transferring, relocating, or removing Petitioner  
25 outside of the Central District of California pending final  
26 resolution of this case or further order of the Court, unless  
27 executing a final order of removal issued against Petitioner.

28 (Dkt. #11.) Mr. Lam was released from ICE custody on December 27, 2025—never  
having been provided an opportunity to respond to the reasons for the revocation of his  
supervision. (Dkt. #12, Ex. A, Suppl. Decl. of Khoanh Lam, ¶¶ 3.)

On January 9, 2026, Mr. Lam attended his check-in with ICE, as instructed. He  
was detained. (*Id.* ¶¶ 4-5.) To date, Mr. Lam still has not had any informal interview

1 relating to the revocation of his supervision. (Ex. A, 2nd Suppl. Decl. of Khoahn Lam,  
2 ¶ 2.) Although an officer told him upon his re-detention that his passport has been  
3 obtained, he has since been informed that the request for his passport is “still pending.”  
4 (*Id.* ¶ 6.) His subsequent inquiries about whether the government has Vietnamese travel  
5 documents for him and when he can expect to be removed have gone unanswered. (*Id.*  
6 ¶¶ 7-8.)

## 7 II. ARGUMENT

8 “A plaintiff seeking a preliminary injunction must establish that he is likely to  
9 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
10 preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
11 in the public interest.” *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th  
12 825, 843-44 (9th Cir. 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d  
13 1127, 1131 (9th Cir. 2011)). “Alternatively, a preliminary injunction may issue where  
14 serious questions going to the merits were raised and the balance of hardships tips  
15 sharply in plaintiff’s favor if the plaintiff also shows that there is a likelihood of  
16 irreparable injury and that the injunction is in the public interest.” *Id.* at 844 (quoting  
17 *Alliance for the Wild Rockies*, 632 F.3d at 1135). The standards for granting a  
18 temporary restraining order are the same as the standards for granting a preliminary  
19 injunction. See *O.M. v. Nat’l Women’s Soccer League, LLC*, 541 F.Supp. 3d 1171,  
20 1177 (D. Or. 2021).

### 21 A. Mr. Lam is likely to succeed on the merits of his petition.

22 Mr. Lam is almost certain to succeed on the merits of his habeas petition for the  
23 reasons set forth in his petition. And this factor, after all, is “the most important  
24 factor.”” *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473, 481 (9th  
25 Cir. 2023) (quoting *California ex. Rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir.  
26 2020) (en banc)). To the extent that he is being detained based on an alleged violation  
27 of the terms of his supervision, the facts relating to his claim are unchanged—  
28 Respondent has not provided him with notice and the opportunity to be heard regarding

1 the alleged violation. To the extent that the detention is to facilitate his removal to  
2 Vietnam, it is not reasonably likely that he will be removed in the foreseeable future.

3 **1. Mr. Lam is likely to succeed on the merits of his Due Process**  
4 **claim.**

5 To the extent that the government re-detained Mr. Lam based on an alleged  
6 violation of the conditions of his supervision, the situation has not changed since the  
7 time the Court issued its preliminary injunction. (Dkt. #12.) He has not been provided  
8 with notice regarding the alleged violation nor the opportunity to be heard regarding  
9 these allegations. (Ex. A, 2nd Suppl. Decl. of Khoahn Lam, ¶ 2.) Accordingly, the  
10 Court should order that Mr. Lam be released.

11 **2. Mr. Lam is likely to succeed on the merits of his Zadvydas**  
12 **claim.**

13 **a. The Court can and should consider this claim now.**

14 The Court previously declined to consider Mr. Lam's *Zadvydas* claim. (Dkt. #10  
15 at 6.) In that order, the Court treats a *Zadvydas* claim as effectively unripe before six  
16 months of detention have passed, and then cites 8 C.F.R. § 241.13(i)(1) for the point  
17 that the clock resets when conditions of supervision are violated. Of course, as the  
18 Court recognized, Mr. Lam hasn't had any meaningful opportunity to address whether  
19 he actually violated the terms of his supervision. But regardless of when the clock  
20 started, the Court can and should conduct the *Zadvydas* analysis now—as Respondent  
21 apparently conceded by addressing this analysis in its opposition to the prior  
22 application for TRO. (Dkt. #7 at 5-8 (arguing not that the *Zadvydas* claim was unripe,  
23 but only that there is are is a reasonable likelihood of removal).)

24 *Zadvydas* did not provide that six months of detention is *always* reasonable or  
25 permissible under the Constitution. Rather, the Supreme Court held that the  
26 Constitution limits [a non-citizen's] post-removal-period detention to a period  
27 reasonably necessary to bring about that [non-citizen's] removal from the United  
28

1 States. It does not permit indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678, 689  
2 (2001). Consistent with constitutional mandates, “once removal is no longer  
3 reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at  
4 699. That is, *whenever* removal is no longer reasonably foreseeable, detention  
5 becomes unconstitutional. *Id.* at 699-700 (“Thus, if removal is not reasonably  
6 foreseeable, the court should hold continued detention unreasonable and no longer  
7 authorized by statute.”).

8  
9 Thus, relief need not wait six months, for *Zadvydas*’s presumption of  
10 reasonableness “is just that—a presumption.” *Clark v. Martinez*, 543 U.S. 371, 387  
11 (2005) (O’Connor, J., concurring). What *Zadvydas* provides is a “guide” for lower  
12 court determinations, *Zadvydas*, 533 U.S. at 701, “not a prohibition on claims  
13 challenging detention less than six months.” *Hoang Trinh v. Homan*, 333 F.Supp. 3d  
14 984, 994 (C.D. Cal. Sept. 6, 2018); *accord Zavvar v. Scott*, \_\_ F.Supp. 3d \_\_, No.  
15 CV 25-2104-TDC, 2025 WL 2592543, at \*5 (D. Md. Sept. 8, 2025). “Multiple  
16 courts have reached the same conclusion.” *Zavvar*, 2025 WL 2592543; *see also*  
17 *Portela-Hernandez v. Trump*, No. 25-1633-BAH, 2026 WL 74042, at \*8 (D. Md.  
18 Jan. 9, 2026) (“*Zadvydas* did not announce a bright line rule that permits detention  
19 for at least six months.”); *Munoz-Saucedo v. Pittman*, No. 25-2258-CPO, 2025 WL  
20 1750346, at \*5-6 (D.N.J. June 24, 2025) (collecting cases); *Ali v. Dep’t of Homeland*  
21 *Security*, 451 F.Supp. 3d 703, 707 (S.D. Tex. 2020) (holding that the “six-month  
22 presumption is not a bright line” and that *Zadvydas* “did not require a detainee to  
23 remain in detention for six months . . . before a habeas court could find that the  
24 detention is unconstitutional”); *Cesar v. Achim*, 542 F.Supp. 2d 897, 905 (E.D. Wis.  
25 2008) (concluding that “while detention pursuant to § 1231(a)(6) for up to six  
26 months is presumptively lawful, a [noncitizen] may still state a claim for and  
27  
28

1 demonstrate a constitutional violation within the six-month window”); *Medina v.*  
2 *Noem*, 794 F.Supp. 3d 365, 375 (D.Md. 2025) (noting that “what *Zadvydas* did make  
3 clear was that it was adopting a presumption—not a conclusive bar to adjudication of  
4 whether continued detention is authorized that lifts only after six months have  
5 elapsed”).

6 For example, the Southern District of Texas conducted the *Zadvydas* analysis  
7 and found in Petitioner’s favor where he had been detained for about 160 days total  
8 after his final order of removal. *Villanueva v. Tate*, 801 F.Supp.3d 689 (S.D.Tex.  
9 2025). That court explained, “[e]ven within the presumptively constitutional  
10 detention period, whether a noncitizen’s detention is constitutional hinges on  
11 whether his removal from the United States is reasonably likely in the foreseeable  
12 future, not on how long the noncitizen has been detained.” Similarly, the Southern  
13 District of California conducted the *Zadvydas* analysis and ultimately granted relief  
14 to a petitioner who had been detained for less time than Mr. Lam has been since  
15 August of 2025 when he was re-detained based on a purported violation of his  
16 supervision. *Ndandu v. Noem*, 2026 WL 25848 (Jan. 5, 2026) (granting relief under  
17 *Zadvydas* to a petitioner detained about four months). *See also Zavvar*, 2025 WL  
18 2592543 (about 162 days); *Munoz-Saucedo*, 2025 WL 1750346 (164 days); *Phu Van*  
19 *Ta v. Kristi Noem et al.*, 2025 WL 3716155 (Nov. 10, 2025) (conducting *Zadvydas*  
20 analysis and granting release after petitioner conceded that he had not been detained  
21 more than six months).  
22

23 This makes sense, given the purpose of the current detention—effectuating  
24 removal. Indeed, this is fully consistent with the code provision cited by the Court,  
25 which provides that the noncitizen “may be continued in detention for an additional  
26 six months in order to effect the alien’s removal, if possible, and to effect the  
27  
28

1 conditions under which the alien had been released.” 8 C.F.R. § 241.13(i)(1).

2 Whether removal is “possible” is exactly the question that the *Zadvydas* analysis  
3 asks. If it is not likely that the government will actually be able to remove the  
4 detainee, detention no longer serves any valid purpose and should cease. *Cesar v.*  
5 *Achim*, 542 F.Supp. 2d 897, 902 (E.D. Wis. 2008) (“[W]here removal seems a  
6 remote possibility at best, detention’s goal is no longer practically attainable and it  
7 no longer ‘bear[s][a] reasonable relation to the purpose for which the individual  
8 [was] committed.’”) (quoting *Zadvydas*).

9  
10 While caselaw addressing this specific scenario is sparse, at least one district  
11 court in the Central District have recently addressed *Zadvydas* claims for petitioners  
12 detained less than six months after revocation based on a purported violation of  
13 conditions of supervision. *See Dung Pham v. Kristi Noem*, 5:25-cv-3373-MEMF-PD,  
14 2025 WL 3763374 (Dec. 22, 2025) (granting TRO, finding likelihood of success on  
15 *Zadvydas* claim where petitioner had been re-detained on October 31, based on  
16 alleged violation of conditions of supervised release). Significantly, in *Pham*—as  
17 here—Respondent did not argue that violation resets the clock for a *Zadvydas*  
18 claim—as they did not here—suggesting that Respondent does not interpret the  
19 regulations as barring the *Zadvydas* analysis before six months have elapsed after a  
20 purported violation.

21  
22 Thus, even assuming that a violation restarted the clock and Mr. Lam has “only”  
23 been detained for about five months, the Court can and should consider the likelihood  
24 of removal now. Doing so is fully consistent with *Zadvydas* and the holdings of  
25 numerous courts. If the presumption is rebutted—a question that can only be answered  
26 by evaluating the relevant evidence and factors—Mr. Lam must be released.

1                   **b. Because it is not reasonably likely that Mr. Lam will**  
2                   **be removed in the foreseeable future, he is likely to**  
3                   **succeed.**

4           Mr. Lam presents substantial evidence that he is unlikely to be removed to  
5 Vietnam in the foreseeable future. This is the third time he has been in ICE custody  
6 since the current procedures for removal of pre-1995 Vietnamese immigrants were put  
7 in place. The fact that he has not been removed on prior occasions suggests that it is not  
8 possible.

9           Respondent previously submitted a declaration of Jorge Preciado attesting that  
10 on September 18, 2025 “ICE submitted a request to the government of Vietnam to  
11 obtain travel documents” for Mr. Lam. (Dkt. #7-1, Declaration of Jorge Preciado, at ¶  
12 17.) This declaration does not assert that Mr. Preciado was personally involved in  
13 submitting the request or how he otherwise has knowledge of the submission. But  
14 assuming that the request was submitted that day, the fact that the request for  
15 Vietnamese travel documents has been pending for about four months suggests that  
16 such documents are not likely to be produced in the foreseeable future.

17           Mr. Preciado states (again without clarifying the basis of his understanding) that  
18 he understands that Vietnam “is issuing” travel documents people who immigrated  
19 before 1995. But he does not state in what percentage of cases this is happening in  
20 order to demonstrate that it is reasonably foreseeable that *Mr. Lam in particular* will  
21 receive such documents. *See Ton v Noem*, No. CV 25-3348-DMG (DSR), 2025 WL  
22 4058327, at \*6 (C.D. Cal. Dec. 22, 2025) (“The Government’s citation to another case  
23 and Officer Suarez’s conclusory statement that Vietnam ‘has been issuing travel  
24 documents’ for pre-1995 immigrants without any discussion of when or how often this  
25 has occurred are inadequate to show Ton’s removal is likely in the reasonably  
26 foreseeable future, given the context.”).

27           As for the timeline, in other litigation, the government has asserted that Vietnam  
28 provides documents in 30 to 60 days. *Id.* at \*3. In this case, the vague claim is that

1 travel documents “timely” issue. (Dkt. #7-1, Declaration of Jorge Preciado, at ¶ 17.)  
2 Given that the request in Mr. Lam’s case has been pending for about 130 days, none of  
3 these claims are borne out here. These government’s vague assertions are insufficient to  
4 demonstrate that it is reasonably foreseeable that Mr. Lam will be removed to Vietnam  
5 in the reasonably foreseeable future. The situation is comparable to that in *See Singh v.*  
6 *Gonzales*, 448 F.Supp. 2d 1214, 1220 (W.D. Wash. 2006). In that case, the district  
7 court found that the government failed to carry its burden under *Zadvydas* where “ICE .  
8 . . has provided no substantive indication regarding how or when it expects to obtain  
9 the necessary travel document from the Indian government. Rather, ICE merely asserts  
10 that it has followed up on its request for travel documents from India and done all it  
11 can.” Here, ICE has not even claimed to follow up on the request that has been pending  
12 for months.

13 **B. Mr. Lam is suffering irreparable harm by being improperly detained**  
14 **and the public interest favors an injunction.**

15 Regarding the second and third factors for injunctive relief: Second, illegal  
16 confinement is quintessentially irreparable harm, because “the deprivation of  
17 constitutional rights unquestionably constitutes irreparable injury.” *Melendres v.*  
18 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Although detention alone is a  
19 fundamentally irreparable harm, the detention here is worse. Recent reports of neglect  
20 and abuse at Adelanto Detention Center make the harm all the more acute here. *See*  
21 *Salvador Hernandez and Ruben Vives, Adelanto ICE facility isn’t meant to hold*  
22 *immigrants, it’s meant to break them, lawsuit alleges*, L.A. Times, Jan. 26, 2026.<sup>1</sup>

23 Third, and finally, when the government is a party, as it is here, “the balance of  
24 equities and public interest factors merge.” *Pimentel-Estrada v. Barr*, 464 F.Supp. 3d  
25 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d  
26 1073, 1092 (9th Cir. 2014)). The risk of harm to Mr. Lam far outweighs the

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27  
28 <sup>1</sup> Available at <https://www.latimes.com/california/story/2026-01-26/lawsuit-alleges-inhumane-conditions-at-adelanto-ice-facility>

1 government's interest in illegally detaining him, for it is "always in the public interest  
2 to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002.

3 **III. CONCLUSION**

4 For all of the reasons discussed herein, the Court should:

5 (1) issue a temporary restraining order ordering Respondent to:

6 (a) immediately release Petitioner from custody,

7 (b) restore Petitioner to the status quo prior to his detention by reinstating  
8 his prior order of supervision; and

9 (c) show cause why Petitioner's application for a preliminary injunction  
10 should not be granted; and

11 (2) grant Petitioner a preliminary injunction barring his continued detention or  
12 re-detention unless the government provides an informal interview to inform him  
13 about and the opportunity to respond to the reasons for revocation of his  
14 supervision OR in fact obtains a Vietnamese travel document for him and makes  
15 concrete plans for his transportation.

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17 ///

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20 ///

