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11
 12 UNITED STATES DISTRICT COURT
 13 DISTRICT OF NEVADA

14 Yiming Luo,

15 Petitioner,

16 v.

17 John Mattos, NSDC Warden; Michael
 18 Bernacke, Field Director, West Valley City
 Office of ICE ERO; Todd Lyons, ICE
 19 Acting Director; Kristi Noem DHS
 Secretary; Pam Bondi, U.S. Attorney
 20 General

21 Respondents.

Case No. 2:25-cv-02460-CDS-EJY

Motion for Preliminary Injunction

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1 **POINTS AND AUTHORITIES**

2 Petitioner Yiming Luo faces immediate irreparable harm: (1) revocation of
3 his release on immigration supervision, despite ICE’s failure to follow its own
4 revocation procedures; (2) indefinite immigration detention with no reasonable
5 prospect of removal in the reasonably foreseeable future to the country designated
6 by the immigration judge (“IJ”); and (3) potential removal to a third country never
7 considered by an IJ. Beyond that, Petitioner’s family faces extraordinary hardship
8 during his illegal detention because, upon belief, he is the primary breadwinner for
9 his household. This Court should grant injunctive relief to immediately order Luo
10 released.

11 On information and belief, Luo entered this country in 2019 and has lived in
12 Los Angeles since. On October 21, 2024, Luo was arrested in Henderson, Nevada,
13 for theft. He made bail and continued to return to Henderson Justice Court for
14 hearings on January 15, May 14, and June 12, 2025. At the June 12, 2025, court
15 hearing, Luo was detained by ICE officers. He had been fully compliant with his
16 pre-trial conditions. He has been detained ever since. In the 200 days—and
17 counting—since his detention, the United States has been unable to remove him.
18 ICE does not appear to have a travel document in hand. Worse yet, ICE’s own
19 policies allow ICE to remove him to a third country never before considered by an
20 IJ, with either 6-to-24-hour notice or no notice at all.

21 Petitioner is therefore facing both unlawful detention and the threat of
22 removal to a dangerous third country without due process. The requested injunctive
23 relief would preserve the status quo while Petitioner litigates these claims by (1)
24 releasing Petitioner on supervision, (2) prohibiting the government from revoking
25 his supervision without first following the required statutory procedures and (3)
26 prohibiting the government from removing him to a third country without an
27 opportunity to file a motion to reopen with an IJ.

1 In granting this motion, this Court would not break new ground. This Court
2 has granted temporary restraining orders or preliminary injunctions mandating
3 release for post-final-removal-order immigrants like Petitioner. *See e.g. Brunnel v.*
4 *Neom*, No. 2:25-cv-02259-GMN-EJY (D. Nev. Dec. 22, 2025); *Shadalo v. Mattos*, No.
5 2:25-cv-02076-RFB-BNW (D. Nev. Dec. 14, 2025).

6 This Court has likewise granted temporary restraining orders preventing
7 third-country removals without due process. *See e.g. Brunnel*, No. 2:25-cv-02259-
8 GMN-EJY; *Cavieres Gomez v. Mattos*, No. 2:25-cv-00975-GMN-BNW (D. Nev. Nov.
9 11, 2025).

10 Other courts have ordered release for petitioners whose immigration cases
11 are still pending.¹ *See e.g., Hiestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL
12 2606983, at *2 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK,
13 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-
14 CV-01141-KES-SKO (HC), 2025 WL 2617255, at *6 (E.D. Cal. Sept. 9, 2025). These
15 courts have determined that, for these long-term releasees, liberty is the status quo,
16 and only a return to that status quo can avert irreparable harm.

17 STATEMENT OF FACTS

18 Concurrent with this motion, Petitioner files his amended § 2241 petition.
19 Petitioner incorporates by reference the statements of fact set forth in those
20 pleadings.

21 ARGUMENT

22 Pursuant to Federal Rule of Civil Procedure 65(b), a court may grant a
23 preliminary injunction to prevent “immediate and irreparable injury.” A
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26 ¹ Because immigration detainees whose cases have not been adjudicated are
27 entitled only to a bond hearing-not to outright release-some of these TROs require
release unless ICE provides that hearing. But because *Zadvydas* requires outright
release on supervision, a TRO fitted to Petitioner's claims should order that relief.

1 preliminary injunction is “an extraordinary remedy that may only be awarded upon
2 a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def.*
3 *Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted). To obtain such relief, a
4 plaintiff “must show that: (1) [they are] likely to succeed on the merits, (2) [they are]
5 likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance
6 of equities tips in [their] favor, and (4) an injunction is in the public interest.”
7 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citation omitted).

8 The Ninth Circuit recognizes a “sliding scale” variant of the *Winter* standard,
9 where a strong showing of one factor can offset a weaker showing of another factor.
10 *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).
11 According to this test, “serious questions going to the merits and a balance of
12 hardships that tips sharply towards the plaintiff can support issuance of a
13 preliminary injunction, so long as the plaintiff also shows that there is a likelihood
14 of irreparable injury and that the injunction is in the public interest.” *Id.* at 1135
15 (quotation marks omitted). A “serious question” is one on which the movant “has a
16 fair chance of success on the merits.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*,
17 739 F.2d 1415, 1421 (9th Cir. 1984).

18 Here, this Court should issue a preliminary injunction because “immediate
19 and irreparable injury . . . or damage” is occurring and will continue in the absence
20 of an order. Fed. R. Civ. P. 65(b). Respondents continue to detain Petitioner in
21 violation of his due process, statutory, and regulatory rights. ICE policy also allows
22 them to remove him to a third country in violation of his due process, statutory, and
23 regulatory rights. This Court should order Petitioner’s release and enjoin removal to
24 a third country with no or inadequate notice.
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1 **I. Petitioner will likely succeed on the merits, or at a minimum,**
2 **Petitioner raises serious merits questions.**

3 In his amended § 2241 petition, Petitioner argues he has been
4 unconstitutionally detained and that he cannot be removed to a third country.
5 Petitioner addresses the merits of each claim below:

6 **A. Petitioner is likely to succeed on the merits of his claim that**
7 **his detention violates *Zadvydas* and the Immigration and**
8 **Nationality Act, 8 U.S.C. § 1231(a)(6). (Grounds 1 and 2).**

9 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a
10 problem affecting people like Petitioner: Federal law requires ICE to detain an
11 immigrant during the “removal period,” which typically spans the first 90 days after
12 the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that 90-day
13 removal period expires, ICE may detain the migrant while continuing to try to
14 remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow for
15 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
16 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
17 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.*
18 at 689. As an initial matter, *Zadvydas* held that detention is “presumptively
19 reasonable” for six months after the removal order becomes final. *Id.* at 701.

20 After six months, detention ceases to be presumptively reasonable. Courts
21 use a burden-shifting framework to decide whether detention remains authorized.
22 First, the petitioner must prove that there is “good reason to believe that there is no
23 significant likelihood of removal in the reasonably foreseeable future.” *Id.* If he does
24 so, the burden shifts to “the Government [to] respond with evidence sufficient to
25 rebut that showing.” *Id.* Ultimately, then, the burden of proof rests with the
26 government: The government must prove that there is a “significant likelihood of
27 removal in the reasonably foreseeable future,” or the immigrant must be released.
Id.

1 Here, Luo was ordered removed on July 2, 2025.² He has also been detained
2 since June 25, 2025.³ As of yesterday, December 29, 2025, Luo has been detained
3 180 days. Upon belief, Respondents have no reasonably foreseeable plans to remove
4 him. Thus, this Court will likely find that Luo warrants *Zadvydas* relief.

5 **B. Petitioner is likely to succeed on the merits of his claim that he**
6 **is entitled to adequate notice and an opportunity to be heard**
7 **prior to any third country removal (Grounds 3 and 4).**

8 Petitioner is likely to succeed on the merits of his claim that he may not be
9 removed to a third country absent adequate notice and an opportunity to be heard.

10 U.S. law enshrines protections against dangerous and life-threatening
11 removal decisions. By statute, the government is prohibited from removing an
12 immigrant to any third country where a person may be persecuted or tortured, a
13 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
14 The government “may not remove [a noncitizen] to a country if the Attorney
15 General decides that the [noncitizen's] life or freedom would be threatened in that
16 country because of the [noncitizen's] race, religion, nationality, membership in a
17 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
18 1208.16. Withholding of removal is a mandatory protection.

19 Similarly, Congress codified protections enshrined in the Convention Against
20 Torture (CAT) prohibiting the government from removing a person to a country
21 where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231
22 note) (“It shall be the policy of the United States not to expel, extradite, or
23 otherwise effect the involuntary return of any person to a country in which there
24 are substantial grounds for believing the person would be in danger of being
25 subjected to torture, regardless of whether the person is physically present in the

26 ² *See* Amended Petition Ex. 2.

27 ³ ECF No. 1-1 at 1.

1 United States.”); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT
2 protection is also mandatory.

3 To comport with the requirements of due process, the government must
4 provide notice of the third country removal and an opportunity to respond. Due
5 process requires “written notice of the country being designated” and “the statutory
6 basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v.*
7 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t*
8 *of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May
9 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

10 Due process also requires the following: “[A]sk[ing] the noncitizen whether he
11 or she fears persecution or harm upon removal to the designated country and
12 memorialize in writing the noncitizen's response. This requirement ensures DHS
13 will obtain the necessary information from the noncitizen to comply with section
14 1231(b)(3) and avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at
15 1019. “Failing to notify individuals who are subject to deportation that they have
16 the right to apply for asylum in the United States and for withholding of
17 deportation to the country to which they will be deported violates both INS
18 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
19 1041.

20 If the noncitizen claims fear, measures must be taken to ensure that the
21 noncitizen can seek asylum, withholding, and relief under CAT before an
22 immigration judge in reopened removal proceedings. The amount and type of notice
23 must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
24 circumstances, he would have a reasonable opportunity to raise and pursue his
25 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing
26 *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405,
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1 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring a minimum of 15
2 days notice).

3 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
4 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
5 for good reason: To have a meaningful opportunity to apply for fear-based protection
6 from removal, immigrants must have time to prepare and present relevant
7 arguments and evidence. Merely telling a person where they may be sent, without
8 giving them a chance to look into country conditions, does not give them a
9 meaningful chance to determine whether and why they have a credible fear.

10 Respondents’ third country removal policy skips over these statutory and
11 constitutional procedural protections. According to ICE’s July 9, 2025 Directive,
12 individuals can be removed to third countries “without the need for further
13 procedures,” so long as “the [U.S.] has received diplomatic assurances.”⁴ Petitioner
14 is likely to succeed on the merits of his claim on this fact alone, because the policy
15 instructs officers to provide no notice or opportunity to be heard of any kind. The
16 same is true of the minimal procedures ICE offers when no diplomatic assurances
17 are present. The policy provides no meaningful notice (only 6-to-24 hours), instructs
18 officers not to ask about fear, and provides no actual opportunity to see counsel and
19 prepare a fear-based claim (6-24 hours), let alone reopen removal proceedings. In
20 sum, it directs ICE officers to violate the rights of those whom they seek to subject
21 to the third country removal program.

22 Faced with similar arguments, this Court has likewise granted temporary
23 restraining orders preventing third-country removals without due process. *See e.g.*
24 *Brunnel*, No. 2:25-cv-02259-GMN-EJY; *Cavieres Gomez*, No. 2:25-cv-00975-GMN-
25 BNW.

26
27 ⁴ Amended Petition Ex. 5.

1 Because ICE's new policies for third country removal fail to comply with
2 existing law, they also violate the Administrative Procedures Act. Furthermore,
3 given the blatant unlawfulness and unconstitutionality of ICE's policies,
4 Petitioner's detention under the color of those policies is unlawful.

5 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

6 Petitioner also meets the second factor: irreparable harm. "It is well
7 established that the deprivation of constitutional rights 'unquestionably constitutes
8 irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
9 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged deprivation
10 of a constitutional right is involved, most courts hold that no further showing of
11 irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th
12 Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*,
13 § 2948.1 (2d ed. 2004)).

14 Here, the potential irreparable harm to Luo is even more concrete. Luo has
15 been detained for six months and has been unable to work as the breadwinner to
16 support his family, including his two minor daughters and his ill mother.
17 Furthermore, unlawful detention itself "constitutes extreme or very serious damage,
18 and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d
19 976, 999 (9th Cir. 2017) (internal citations omitted).

20 Third-country deportations pose that risk and more. Recent third-country
21 deportees have been held, indefinitely and without charge, in hazardous foreign
22 prisons.⁵ They have been subjected to solitary confinement.⁶ They have been

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

27 ⁶ Gerald Imray, *Men deported by US to Eswatini in Africa will be held in*
solitary confinement for undetermined time, Associated Press (Jul. 18, 2025),

1 removed to countries so unstable that the U.S. government recommends making a
2 will and appointing a hostage negotiator before traveling to them.⁷ These and other
3 threats to Petitioner’s health and life independently constitute irreparable harm.

4 **III. The balance of hardships and the public interest weigh heavily in**
5 **Petitioner’s favor**

6 The final two factors for a TRO—the balance of hardships and public interest—
7 “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S.
8 418,435 (2009). That balance tips decidedly in Petitioner’s favor.

9 The government “cannot reasonably assert that it is harmed in any legally
10 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d
11 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent
12 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at
13 436 (describing public interest in preventing noncitizens “from being wrongfully
14 removed, particularly to countries where they are likely to face substantial harm”);
15 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when
16 government’s treatment “is inconsistent with federal law, . . . the balance of
17 hardships and public interest factors weigh in favor of a preliminary injunction.”).

18 Petitioner also faces weighty hardships: unlawful, indefinite detention and
19 removal to a third country where he is likely to suffer imprisonment or other serious
20 harm. The balance of equities thus favors preventing the violation of “requirements
21 of federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir.
22 2014), by granting emergency relief to protect against unlawful detention and
23 prevent unlawful third country removal.

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26 available at <https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbcbfe6caff87d0bb8>

27 ⁷ See Wong, *supra*.

CONCLUSION

For those reasons, Petitioner Yiming Luo requests that this Court issue a preliminary injunction.

Dated December 30, 2025.

Respectfully submitted,

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/s/ Ron Y. Sung


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on December 30, 2025. I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

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