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6 Proposed Attorneys for Petitioner  
Hen Ky Ton

8  
9 **United States District Court**  
**Central District of California**

10 Hen Ky Ton

11 Petitioner,

12 v.

13 Kristi Noem, et al.

14 Respondents.  
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No. 25-3348

**Application for Temporary  
Restraining Order and  
Preliminary Injunction**

18 Simultaneously with this document, Hen Ky Ton has filed a petition for a writ of  
19 habeas corpus under 28 U.S.C. § 2241. Because he is almost certain to prevail on at  
20 least one of his claims, he respectfully asks the Court to (1) issue a temporary  
21 restraining order ordering Respondent to: (a) immediately release Petitioner from  
22 custody, (b) refrain from removing Petitioner from the United States or taking him from  
23 the Central District of California, (c) restore Petitioner to the status quo prior to his  
24 detention by reinstating his prior order of supervision; and (d) show cause why  
25 Petitioner’s application for a preliminary injunction should not be granted; and (2)  
26 ultimately grant Petitioner a preliminary injunction.  
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1 “A plaintiff seeking a preliminary injunction must establish that he is likely to  
2 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
3 preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
4 in the public interest.” *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th  
5 825, 843-44 (9th Cir. 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d  
6 1127, 1131 (9th Cir. 2011)). “Alternatively, a preliminary injunction may issue where  
7 serious questions going to the merits were raised and the balance of hardships tips  
8 sharply in plaintiff’s favor if the plaintiff also shows that there is a likelihood of  
9 irreparable injury and that the injunction is in the public interest.” *Id.* at 844 (quoting  
10 *Alliance for the Wild Rockies*, 632 F.3d at 1135). The standards for granting a  
11 temporary restraining order are the same as the standards for granting a preliminary  
12 injunction. See *O.M. v. Nat’l Women’s Soccer League, LLC*, 541 F. Supp. 3d 1171,  
13 1177 (D. Or. 2021).

14 First, Ton is almost certain to succeed on the merits of his habeas petition for the  
15 reasons set forth in his petition. And this factor, after all, is “the most important factor.”  
16 *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023)  
17 (quoting *California ex. Rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) en  
18 banc)).

19 Second, illegal confinement is quintessentially irreparable harm, because “the  
20 deprivation of constitutional rights unquestionably constitutes irreparable injury.”  
21 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

22 Third, and finally, when the government is a party, as it is here, “the balance of  
23 equities and public interest factors merge.” *Pimentel-Estrada v. Barr*, 464 F. Supp. 3d  
24 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d  
25 1073, 1092 (9th Cir. 2014)). The risk of harm to Ton far outweighs the government’s  
26 interest in illegally detaining him, for it is “always in the public interest to prevent the  
27 violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002.

28 Therefore, the Court should:

- 1 (1) Immediately grant Petitioner a temporary restraining order, and order  
2 Respondent to:  
3 a. Immediately release Petitioner from custody;  
4 b. Refrain from removing Petitioner from the United States or taking  
5 him from the Central District of California;  
6 c. Restore Petitioner to the status quo prior to his re-detention by  
7 reinstating his prior order of supervision; and  
8 d. Show cause why Petitioner’s application for a preliminary injunction  
9 should not be granted.  
10  
11 (2) Ultimately grant Petitioner a preliminary injunction.

12 Lastly, Federal Rule of Civil Procedure 65(c) requires that, prior to granting  
13 injunctive relief, the Court require a movant to pay security “in an amount that the court  
14 considers proper to pay the costs and damages sustained by any party found to have  
15 been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). This rule “invests the  
16 district court with discretion as to the amount of security required, if any.” *Johnson v.*  
17 *Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting *Jorgensen v. Cassidy*, 320  
18 F.3d 906, 919 (9th Cir. 2003)) (internal quotation marks omitted). The Court should  
19 waive the bond requirement here, as it is unlikely that the government will incur any  
20 significant cost and requiring a bond “would have a negative impact on plaintiff’s  
21 constitutional rights, as well as the constitutional rights of other members of the  
22 public.” *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal.  
23 1996) (citation omitted).

24 Respectfully submitted,  
25 Cuauhtemoc Ortega  
Federal Public Defender

26 Dated: December 11, 2025 By: /s/ Daniel Lemer  
27 Daniel Lemer  
Deputy Federal Public Defender  
28 Proposed Attorneys for Petitioner  
Hen Ky Ton

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**DECLARATION OF DANIEL LEMER**

I, Daniel Lemer, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender with the Office of the Federal Public Defender for the Central District of California, licensed to practice law in California and admitted to practice in this Court.

2. On November 20, 2025, Hen Ky Ton’s family contacted my office seeking assistance filing a habeas corpus petition to challenge his detention at the Adelanto Detention Facility in Adelanto, California. I was assigned to consult with Mr. Ton and gather information about his case. Because the FPD had not been appointed to represent Mr. Ton, I was limited in how I could help him and unable to obtain discovery on his behalf from the U.S. Attorney’s Office or immigration officials.

3. Based on my investigation to date, I am informed and believe the following:

- a. Mr. Ton was born in Vietnam. He immigrated to the United States in 1990 as a refugee, and later gained lawful permanent resident status.
- b. Mr. Ton was convicted of a criminal offense in 1996 and, after serving his sentence, ordered removed from the United States on September 9, 1997. He appealed his order of removal, and his appeal was dismissed on June 29, 1998. He was then detained immigration authorities until July 21, 1999, at which time he was released on supervision.
- c. After his release, Mr. Ton checked in regularly with ICE, as was required under the conditions of his supervision. At his last check-in, on November 14, 2025, Mr. Ton was re-detained.

1 d. To the best of Mr. Ton’s knowledge, he was in full compliance with  
2 all conditions of his supervision at the time of his re-detention. He  
3 was not provided notice as to why his supervision was being  
4 revoked, he was not afforded an interview to address any alleged  
5 violations, and to his knowledge there are no changed circumstances  
6 that would justify a revocation of his supervision.

7 e. Mr. Ton has been in ICE custody continuously since his arrest on  
8 November 14, 2025.

9  
10 4. Mr. Ton has authorized me to make and file the foregoing motion, a  
11 petition for writ of habeas corpus challenging his detention under 28 U.S.C. § 2241,  
12 and other related documents in this Court as his proposed counsel. I assisted him  
13 with these documents so that he could raise his claims in this Court before they  
14 became moot by virtue of his deportation or before he could be transferred from the  
15 district. The FPD remains limited in its ability to represent Mr. Ton until formally  
16 appointed by the Court.

17 5. Mr. Ton is one of dozens of detainees who has either personally  
18 contacted my office, or has been referred to my office by prior counsel or agency, or  
19 whose family has contacted my office seeking assistance in challenging his  
20 detention. My office is endeavoring to assist all detainees who appear to have viable  
21 claims for habeas relief.

22 6. On December 10, 2025, I emailed Assistant United States Attorney  
23 Daniel A. Beck, Chief of the Complex and Defensive Litigation Section, the unit I  
24 understand to be tasked with defending the government in these matters. I informed  
25 AUSA Beck that I intended to file this application and the other documents filed  
26 concurrently herewith. Mr. Beck responded that the government opposes this  
27 application.  
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1 I declare under penalty of perjury under the laws of the United States of America  
2 that the foregoing is true and correct.

3 Executed on December 11, 2025 at Los Angeles, California.  
4

5 /s/ Daniel Lemer  
6 Daniel Lemer  
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