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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **EASTERN DIVISION**

12 BAT A. UNG,
13 Petitioner,
14 v.
15 KRISTI NOEM, et. al.,
16 Respondent.

Case No.: 5:25-cv-03349-SVW-ADS

**REPLY IN FURTHER SUPPORT OF
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

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1 Petitioner Bat Ung submits this reply in further support of his application for a
2 temporary injunction and preliminary injunction. (Dkt. 5.)

3 **I. ARGUMENT**

4 **A. Based on the evidence, including Respondents’ own filings, there is no**
5 **significant likelihood that Mr. Ung will be removed in the foreseeable**
6 **future.**

7 Respondents assert they have demonstrated that Mr. Ung is reasonably likely to
8 be removed. But their evidence shows only: (1) more than two months ago, “on or
9 about October 17, 2025, the Vietnam consulate was notified of Ung’s detention” for the
10 purpose of his removal, (2) Respondents failed to request travel documents from
11 Vietnam for Mr. Ung’s removal for approximately two weeks, but “on or about
12 October 31, 2025, Ung’s travel documents were requested”, (3) according to
13 Deportation Officer assigned to the Adelanto ICE Processing Center, ICE “is currently
14 awaiting the travel documents which are expected to arrive sooner than later.” (Dkt. 8-
15 1, Decl. of Deportation Officer Preciado, at ¶ 27.) This showing is inadequate to
16 establish a reasonable likelihood that Mr. Ung will be removed in the foreseeable
17 future.

18 More than two months after Mr. Ung’s supervision was revoked without required
19 process, Respondents now offer only the exceedingly vague and unsupported assertion
20 that “travel documents . . . are expected to arrive sooner than later.” (*Id.*) It is highly
21 significant that Respondents could not present *any evidence* that Mr. Ung’s deportation
22 is reasonably likely—not even the statement of any ICE employee who could aver that
23 the requisite test is met here—namely, *a reasonable likelihood of removal in the*
24 *foreseeable future*. Under similar circumstances, another Court in this district recently
25 ordered a petitioner’s release, explaining “[t]here is thus no current estimate as to when
26 a travel document will be issued, even though the 2020 Memorandum of Understanding
27 between the U.S. and Vietnam provides that within thirty days of a request for travel
28 documents, the travel document should be issued, or the individual should be notified

1 that it is insufficient.” *Dung Duc Luu, Petitioner, v. Mark Bowen, et al.*, No. 5:25-CV-
2 03145-MEMF-SP, 2025 WL 3552298, at *7 (C.D. Cal. Dec. 11, 2025).¹ Here, the 30
3 days provided in the 2020 MOU elapsed on November 30, 2025 without a response
4 from Vietnam, and Officer Preciado fails to acknowledged the missed deadline at all.
5 He asserts that “travel documents . . . are expected to arrive sooner than later,” but
6 offers no projected date and does not assert that it is *reasonably likely* the travel
7 documents will be issued. (Dkt. 8-1, Decl. of Deportation Officer Preciado, at ¶ 27.)
8 Indeed, he offers no estimate at all as to the likelihood that the travel documents will
9 actually arrive.

10 Respondents incorrectly assert that Petitioner relies on “an outdated Vietnamese
11 policy.” (Dkt. 8 at 1.) In fact, the Petition cites to and relies on the most recent formal
12 policy regarding deportation from the United States of pre-1995 Vietnamese
13 immigrants, the 2020 Memorandum of Understanding (“MOU”). (Dkt. 1 at 6-7.)
14 Attempting to rewrite both Mr. Ung’s Petition and the facts of this case, Respondents
15 claim: “Petitioner’s main idea is that over two decades ago, the government released
16 him when he could not be removed to Vietnam, so he cannot now be removed in 2025.”
17 (Dkt. 8 at 5.) That is not Mr. Ung’s “main idea”—nor any idea that Mr. Ung has ever
18 presented. ICE last released Mr. Ung *less than 3 years ago*, when the MOU was already
19 in place, and Respondents present nothing to show that the likelihood of his removal to
20 Vietnam has increased in the interim. As Deportation Officer Preciado *acknowledges*,
21 Mr. Ung was released from ICE custody pursuant to an Order of Supervision on June
22 22, 2023 (the “2023 OSUP”). (Dkt. 8-1 ¶ 20). Mr. Ung’s 2023 release reflects the fact
23 that there was (and is) no reasonable likelihood of his removal to Vietnam under the
24 current MOU.

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28 ¹ A redacted version of the 2020 MOU – the only version that Respondents have
made public – is available at [https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-
b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf](https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf).

1 Mr. Ung’s petition discussed Respondents’ lack of transparency and lack of
2 certainty concerning which individuals are likely to be removed under the MOU, and
3 Respondents’ Opposition makes no attempt to fill in these critical evidentiary gaps.
4 (*Compare* Dkt. 1 at 6-7 with Dkt. 8.) As one court has explained:

5 On November 21, 2020, the United States and Vietnam entered
6 into a Memorandum of Understanding (“MOU”) regarding
7 pre-1995 immigrants. The purpose of the MOU is to “establish
8 a process of review and issuance of travel documents for
9 Vietnamese citizens ordered removed from the United States
10 and to facilitate the acceptance of all such Vietnamese
11 citizens[.] ... The scope of this MOU is intended to apply to
12 individuals who arrived in the United States before July 12,
13 1995.” Section 4 of the MOU is titled “Eligibility for
14 Acceptance of Return.” Section 4 states that Vietnam intends
15 to accept the removal of individuals who meet four conditions.
16 The individual must (1) have Vietnamese citizenship and not
17 the citizenship of any other country; (2) have been ordered
18 removed by the United States and finished serving any U.S.
19 prison sentence; and (3) have resided in Vietnam before
20 arriving in the United States and not have the right to reside in
21 any other country. The fourth mandatory condition is redacted
22 in the publicly disclosed version of the MOU[.]

23 *Nguyen v. Scott*, 796 F. Supp. 3d 703, 714 (W.D. Wash. 2025) (cleaned up).²

24 Additional factors to be considered by Vietnam in determining whether to accept an
25 individual continue to be concealed by Respondents. *See id.* at 714-15.

26 Officer Preciado may indeed “expect[.]” travel documents “sooner than later,” but
27 he offers nothing to establish that his expectation is a reasonable one, and the fact
28 remains that discretion about issuance of travel documents is entirely Vietnam’s. By
failing to address Mr. Ung’s allegations regarding the redacted portions of the MOU,
Respondent has elected not to tell Mr. Ung or this Court what factors make it more or
less likely that Vietnam be willing to repatriate Mr. Ung. Further, Officer Preciado’s
personal (and highly generalized) “expect[ation]” of Mr. Ung’s removal does not

² Respondent cites *Trinh v. Homan* as relevant to the change in circumstances. However, that case does not address the Memorandum of Understanding at all because it predates it. Moreover, that case, which addresses the appropriateness of declarative relief in a class action, merely recognizes that “Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants.” *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020). Mr. Ung has never asserted that it does.

1 constitute admissible evidence. A court recently rejected a similar assertion, not based
2 on personal knowledge, as inadmissible under Federal Rule of Evidence 602,
3 explaining, “the declarant offers no context for or explanation of how a Deportation
4 Officer in a facility thousands of miles away from Washington D.C., would be privy to
5 negotiations or agreements between sovereign nations or would otherwise have
6 personal knowledge of what Vietnam has committed to . . . or what the government of
7 Vietnam will do.” *Thach Wana v. Bondi, et al.*, Case No. 2:25-cv-02321-RSL, 2025
8 WL 3628634, at *4 (W.D. Wash. Dec. 15, 2025).

9 Numerous courts have found pre-1995 immigrants from Vietnam should not be
10 detained without a showing of likelihood of removal beyond what has been shown
11 here—namely that travel documents were requested for Mr. Ung almost eight weeks
12 ago and the United States has been able to effectuate removal to Vietnam of at least a
13 few other individuals born in Vietnam (*see* Dkt. 8-1, Preciado Decl., at ¶ 27 (regarding
14 request for travel documents; Dkt. 8 at 7-8 (identifying three sealed cases in which ICE
15 effected removals to Vietnam without supplying all relevant details of those cases).)³ In
16 *Hoac v. Becerra*, No. 2:25-cv-1740, 2025 WL 1993771, at *4 (C.D. Cal. July 16,
17 2025), the Court ordered release where “Respondents have not provided any details
18 about why a travel document could not be obtained in the past, nor have they attempted
19

20 ³ Because substantive documents in these cases are typically sealed, counsel in
21 unable to review the underlying facts of the unpublished that Respondent cites in order
22 to assess whether the petitioners entered the United States prior to 1995 or whether they
23 had been detained by ICE after the 2020 MOU. The underlying facts of *Huynh v.*
24 *Semaia*, 2:24-cv-10901-MRA-DFM and *Tan Minh Vo v. DHS et al.*, 5:25-cv-02791-
25 *SVW-MBK* do not appear to be publicly available. While several documents regarding
26 *Le Van Minh v. DHS, et al.*, 5:25-cv-02245-HDV-JDE are available through Westlaw,
27 these do not mention the facts that led to his removal or even that he was removed to
28 Vietnam. *See* 2025 WL 2624361 (C.D. Cal. Sept. 10, 2025); 2025 WL 3079046 (C.D.
Cal. Nov. 3, 2025). Based on the scant publicly available information concerning *Van*
Minh, it is distinguishable from the present case. While Mr. Ung’s OSUP was issued in
2023, at a time when the current MOU was already in place, Mr. Van Minh’s OSUP
appears to have been issued in 2010. *See Van Minh*, 2025 WL 2624361, at *2 (“While
Petitioner otherwise alleges that the final order of removal was issued in 2010, he
alleges no facts regarding the intervening 15-year period . . .”). The fact that an
undisclosed number of pre-1995 Vietnamese immigrants have been deported based on
Vietnam’s discretionary application of undisclosed factors is woefully inadequate to
show that Mr. Ung is likely to be removed to Vietnam.

1 to show why obtaining a travel document is more likely this time around.” *See also*
2 *Tran v. Scott*, No. 2:25-CV-01886-TMC-BAT, 2025 WL 2898638, at * 5 (W.D. Wash.
3 Oct. 12, 2025) (finding evidence of other deportations of pre-1995 immigrants
4 insufficient to establish “a significant likelihood Vietnam will accept Petitioner in the
5 reasonably foreseeable future”); *Nguyen v. Hyde*, 788 F.Supp.3d 144, 151 (D. Mass.
6 June 20, 2025) (finding that a declaration stating that 328 individuals had been removed
7 to Vietnam—without distinguishing pre-1995 refugees from other deported
8 individuals—failed to establish a likelihood of deportation to Vietnam for a pre-1995
9 refugee).

10 In addition to the evidentiary gap created by Respondents’ concealment of the
11 factors that would make Vietnam more likely to issue travel documents to a pre-1995
12 refugee, there exists substantial evidence that removal to Vietnam is *unlikely* for Mr.
13 Ung. Both (a) the timing of Mr. Ung’s last release from ICE custody and (b) the
14 amount of time that has elapsed since ICE applied to the Vietnam for the issuance of
15 travel documents for Mr. Ung indicates that Mr. Ung is unlikely to be removed under
16 the procedures of the 2020 MOU.

17 **1. ICE concluded it would be unable to effect Mr. Ung’s**
18 **removal when he was in ICE custody in 2023.**

19 Mr. Ung was last in the custody of ICE in 2023, *after the process created by the*
20 *2020 MOU was already in effect*. With those procedures in place, ICE still placed Mr.
21 Ung on supervised release in 2023—evidently because it concluded it would be unable
22 to remove him to Vietnam. This fact alone suggests that it is still unlikely that Mr. Ung
23 can be removed under the process set forth in the MOU. This timing distinguishes Mr.
24 Ung’s case from several that Respondents rely on. *See Nghia Giang Nguyen v. Mark*
25 *Bowen et al.*, 5:25-cv-03109-MCD-ADS, Dkt. no. 12 (Petitioner initially detained and
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1 released in 2011 and re-arrested in 2025); *Van Minh*, 2025 WL 2624361, at *2
2 (Petitioner’s deportation order was dated in 2010 and he was re-arrested in 2025).⁴

3 The fact that the government submitted a request for travel documents almost
4 eight weeks ago and none have issued further undermines the suggestion that
5 documents are likely to issue in the foreseeable future. *See Hoac*, 2025 WL 1993771, at
6 *4 (ordering release in a case analogous to this one, where “Petitioner was unable to be
7 removed in 2023”).

8 Moreover, an official from the Vietnamese consulate interviewed detainees at
9 Adelanto on December 1, 2025. *Dung Duc Luu v. Kristi Noam et al.*, 5:25-cv-03145,
10 Dkt. #11 (Dec. 11, 2025) (Respondent’s opposition to TRO asserting that another
11 petitioner had been interviewed at Adelanto by a Vietnamese consular representative on
12 December 1, 2025). But Mr. Ung has never been interviewed by a consular
13 representative and was not interviewed at that time, which suggests that Vietnam was
14 not considering him for potential repatriation.

15 In *Nguyen v. Scott*, Respondent provided some numbers regarding travel
16 documents obtained from and individuals removed to Vietnam. *Nguyen*, 796 F. Supp.
17 3d at 712. Still, the district court found that showing (more than made here) inadequate,
18 concluding, “[t]he Court agrees that these developments show there is at least some
19 possibility that Vietnam will accept Petitioner at some point. But that is not the same as
20 a significant likelihood that he will be accepted in the reasonably foreseeable future.”
21 *Id.* at 725. Comparing this case to *Nguyen*, there is even less reason to believe here that
22 Mr. Ung will be removed in the foreseeable future. Petitioner Nguyen had not been in
23 ICE custody after the 2020 MOU was already in place. Rather he had been detained in
24 2001 and 2004. *Nguyen*, 796 F. Supp. 3d at 710. Here, Mr. Ung was determined to be
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27 ⁴ Mr. Ung’s proposed counsel has not been able to review the other unpublished
28 cases that Respondents rely on to establish that there have been isolated removals to
Vietnam, because the cases are sealed. The limited details provided in the Opposition
regarding these few other deportations do not include whether the individuals were
previously released by ICE after 2020.

1 unlikely to be removed in 2023—after the MOU was already in place. And,
2 Respondents do not identify any circumstances that make it more likely they can effect
3 his removal now.

4 **2. Mr. Ung’s detention has continued for weeks beyond the**
5 **deadline in the MOU for Vietnam to provide travel**
6 **documents.**

7 The 2020 MOU provides that within thirty days of a request for travel
8 documents, the travel document should be issued, or the individual should be notified
9 that it is insufficient. *Dung Duc Luu, Petitioner, v. Mark Bowen, et al.*, No. 5:25-CV-
10 03145-MEMF-SP, 2025 WL 3552298, at *7 (C.D. Cal. Dec. 11, 2025). To date, 53
11 *days* have elapsed since the date Respondents identify for their submission of travel
12 documents. (*See* Dkt. 8-1, Preciado Decl., at ¶ 27 (stating “on or about October 31,
13 2025, Ung’s travel documents were requested”).)

14 Thus, the fact that Respondents have been unable to obtain travel documents for
15 Mr. Ung within the timeframe provided by the 2020 MOU seriously undermines their
16 assertion that his removal to Vietnam is likely. The conclusion that the extended wait
17 for travel documents compels Mr. Ung’s release is in accord with a recent decision in
18 this district. *Dung Duc Luu, Petitioner, v. Mark Bowen, et al.*, No. 5:25-CV-03145-
19 MEMF-SP, 2025 WL 3552298, at *7 (C.D. Cal. Dec. 11, 2025) (ordering petitioner
20 released where request for travel documents had been submitted two and half months
21 earlier and “[t]here is thus no current estimate as to when a travel document will be
22 issued, even though the 2020 Memorandum of Understanding between the U.S. and
23 Vietnam provides that within thirty days of a request for travel documents, the travel
24 document should be issued, or the individual should be notified that it is insufficient”).

25 Given that that evidence in this case establishes there is no significant likelihood
26 of removal in the reasonably foreseeable future, the Court must reject Respondents’
27 argument that “including Petitioner’s initial detention in 1992 [following the order of
28

1 removal],⁵ Petitioner has been in custody for a little over 3 months total so far” and,
2 “[h]aving such a short total detention time, he cannot prove ‘there is no significant
3 likelihood of removal in the reasonably foreseeable future.’” *Id.* at 4 (quoting *Zadvydas*
4 *v. Davis*, 533 U.S. 678, 701 (2001)). *Zadvydas* does not provide the government a six-
5 month license to detain individuals whether or not removal is reasonably foreseeable.
6 *See Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 392 (D.N.J. June 24, 2025)
7 (rejecting the notion that *Zadvydas* “effectively allows the government to detain a
8 person for six months without judicial review”); *Hoang Trinh v. Homan*, 333 F. Supp.
9 3d 984, 994 (C.D. Cal. 2018) (“The Supreme Court in *Zadvydas* outlined a ‘guide’ for
10 approaching these detention challenges . . . not a prohibition on claims challenging
11 detention less than six months.”). Because Mr. Ung has demonstrated there is no
12 significant likelihood of his removal in the reasonably foreseeable future, his detention
13 is improper.

14 For all of these reasons, Mr. Ung shows a strong likelihood of success on his
15 *Zadvydas* claim.

16 **B. Petitioner is likely to succeed on his claim that Respondents failed to**
17 **comply with applicable regulations.**

18 Respondents have filed a copy of the letter given to Mr. Ung upon his arrest—the
19 same letter Mr. Ung quoted verbatim in his own declaration in support of the petition.
20 (Dkt. 8-2, Ex. A; *see also* Dkt. 1 at 18-19.) The boilerplate Notice of Revocation of
21 Release states that Mr. Ung’s supervision was revoked “based on a review of your file
22 and/or your personal interview on account of changed circumstances in your case.”
23 (*Id.*) But, the Notice of Revocation of Release fails to provide meaningful notice or a
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26 ⁵ To clarify this potentially confusing statement in the Opposition, Mr. Ung has
27 actually spent *more than six months* in immigration detention total, including the 130
28 days that he was detained in 1992 and 68 days thus far during the current detention.
(*See* Dkt. 8-1, Preciado Decl., at ¶¶ 11, 13, 26-27.) Respondents’ reference to “a little
over 3 months” includes only the time Mr. Ung has spent in detention after his
deportation order.

1 meaningful opportunity to respond in that it does not identify the circumstances that
2 had purportedly changed. (*Id.*)

3 Respondents point to only one sentence that they contend was intended to
4 identify a changed circumstance in the Notice of Revocation of Release, but it does not
5 do so. The Opposition asserts that the “Notice of Revocation of Release notified him of
6 changed circumstances in his case, including that there: ‘is no pending action with the
7 court that will impede the execution of your removal order at this time’” (Opposition at
8 8 (quoting Dkt. 8-2, Ex. A).) However, that was not a changed circumstance, because
9 there had been no pending action with any court to prevent Mr. Ung’s removal since
10 1992, when he was first ordered removed, and Mr. Ung has not been involved in any
11 court proceedings *of any kind* since 1996—decades before the 2023 Order of
12 Supervision. (*See* Dkt. 1 at (1992 removal order was not appealed); Dkt. 8-1, Preciado
13 Dec. ¶¶ 8-17 (listing criminal cases and sentences, with no court proceedings since
14 1996).) To the extent that the Notice of Revocation of Release was intended to *falsely*
15 convey that the absence of court actions was a changed circumstance that supported
16 revocation of the 2023 OSUP, such a blatantly false assertion could not satisfy the
17 requirements of due process. In any event, Mr. Ung did not understand the statement
18 that there were no pending court proceedings to be the identification of a “changed
19 circumstance,” because it was not one. The letter did not purport to identify any
20 circumstances that had *actually changed*, and therefore it was insufficient notice of any
21 changed circumstances that allegedly supported the revocation of Mr. Ung’s detention.

22 ICE’s own regulations required that it afford due process to an individual with an
23 OSUP who is being detained due to changed circumstances, including an initial
24 opportunity to contest the identified “changed circumstances” in an informal interview.
25 *See* 8 C.F.R. §§ 241.4(*l*) and 241.13(*i*). Although Respondents contend that Mr. Ung
26 was afforded an informal interview, they do not provide any statement under penalty of
27 perjury that this is true. Respondents, instead, submit documents, which on their face
28 establish that ICE did not accord Mr. Ung the due process required under 8 C.F.R. §§

1 241.4(l)(1), including that he “be notified of the reasons for revocation of his . . .
2 release [and] afforded an initial informal interview promptly after his or her return to
3 Service custody to afford the alien an opportunity to respond to the reasons for
4 revocation stated in the notification.”

5 Respondents present this Court with a form containing the unsworn statement of
6 ICE officer, K. Le, stating that he or she “conducted an initial informal interview of the
7 detainee listed above in order to afford the alien an opportunity to respond to the
8 reasons for revocation of his or her order of supervision stated in the notification
9 letter.” (Dkt. 8-2, Ex. B.) The document states that Mr. Ung did not make any
10 comment. (*Id.*) Officer K. Le has not provided a declaration in this case. Even if this
11 Court were to assume the truth of the statement by K. Le, this statement *demonstrates*
12 that Mr. Ung is likely to prevail on his due process claim. According to Officer Le, the
13 purported informal interview only allowed Mr. Ung “an opportunity to respond to the
14 reasons for revocation” that were “stated in the notification letter.” But, the Notification
15 of Revocation of Release only claimed the existence of “changed circumstances,”
16 without identifying anything that had actually changed since the 2023 OSUP.

17 To the extent there were actual changed circumstances supporting the revocation
18 of Mr. Ung’s OSUP, they had to be identified in the Notice of Revocation of Release.
19 Instead, Respondents failed to identify any changed circumstances and, even now,
20 Respondents’ Opposition fails to identify any circumstances that had changed between
21 the date of Mr. Ung’s 2023 OSUP and the revocation of that OSUP. Even if he was
22 offered a chance to respond to the letter, he was afforded no opportunity to
23 meaningfully respond to the circumstances that purportedly justified the revocation of
24 the 2023 OSUP. (*See* Dkt. 1 at 19 (Ung Declaration).)⁶ The letter also asserts that “ICE
25 ha[d] determined” Mr. Ung could be removed under the order of removal to Vietnam,
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27
28 ⁶ In the interest of time, Mr. Ung authorized counsel to sign a copy of Mr. Ung’s
declaration that was read to him verbatim and then attached to his petition. A copy of
the identical declaration signed directly by Mr. Ung is attached hereto.

1 but Respondents do not and cannot contend that statement was true. At the time of the
2 Notice of Revocation of Release, ICE had not taken any steps to determine whether Mr.
3 Ung could be removed to Vietnam and Respondents still do not contend there is any
4 certainty as to their ability to remove Mr. Ung to Vietnam. (Dkt. 8-1, Preciado Decl., at
5 ¶ 27 (describing efforts to obtain travel documents, all of which occurred after the
6 revocation of Mr. Ung’s OSUP).)

7 It was not enough to merely use the term, “changed circumstances” or to falsely
8 state that ICE had “determined” Mr. Ung could be removed to Vietnam. As the court
9 held in *Quan v. Bowen*, and as numerous courts have held “in this district, circuit, and
10 across the country,” “such a vague, generic statement is insufficient notice.” See *Quan*
11 *v. Bowen*, No. 5:25-cv-02546-HDV-PVC, Dkt. 14 at 10 (collecting cases).

12 Under similar circumstances, a court in this district has found that “re-detention
13 absent notice as to why [a petitioner’s order of supervision] was revoked, nor an
14 opportunity to challenge the revocation through a prompt, informal interview, amounts
15 to a Fifth Amendment due process violation.” See *Esmail v. Noem*, No. 2:25-CV-
16 08325-WLH-RAO, 2025 WL 3030590, at *5 (C.D. Cal. Sept. 12, 2025). As here,
17 because the Notice of Revocation in *Esmail* did “not ‘identify any specific changed
18 circumstances[,]’ it [wa]s insufficient to put Petitioner on notice as to what led to the
19 revocation.” *Id.* (quoting *Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 226 (D. Mass.
20 2025)).

21 ICE’s failure to provide notice of *any* “changed circumstances” supporting Mr.
22 Ung’s detention and the revocation of his OSUP requires his release. Indeed “[a]
23 growing number of courts have unequivocally found that the government’s failure to
24 follow its release revocation procedures—in particular the failure to give a detainee the
25 required notice and interview—renders the re-detention unlawful.” *Delkash v. Noem*,
26 No. 5:25-CV-01675-HDV-AGR, 2025 WL 2683988, at *5 (C.D. Cal. Aug. 28, 2025)
27 (collecting cases); *Hoac*, 2025 WL 1993771, at *4, *7 (concluding that petitioner must
28 be returned to the status quo by being released because “the last uncontested status of

1 Petitioner was before he was re-detained”); *Bui v. Warden of the Otay Mesa Det.*
2 *Facility*, No. 25-CV-2111-JES-DEB, 2025 WL 2988356, at *5 (S.D. Cal. Oct. 23,
3 2025) (determining that ICE failed to “state an adequate basis to revoke Petitioner’s
4 release” and to “provide Petitioner with a ‘prompt’ informal interview so that he could
5 contest the reasons for his revocation” and holding that these “failures constitute a
6 violation of Petitioner’s due process rights [which] justifies his release”). Under these
7 authorities, the Court should reject Respondents’ suggestion to overlook the due
8 process violations and deny a remedy “for any past procedural irregularity.”
9 (Opposition at 10.) Indeed, the reference to “past procedural irregularity” is inapt. The
10 failure to identify the changed circumstances that purportedly justified Mr. Ung’s
11 detention *is ongoing* in that the Opposition itself fails to identify any changed
12 circumstances.

13 In sum, Respondents’ own documents establish that they failed to comply with
14 regulations mandating that Petitioner be provided with an initial informal interview at
15 which he was afforded a meaningful opportunity to contest the reasons for revocation.
16 *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). Because ICE failed to follow its own
17 procedures and violated Petitioner’s due process rights in re-detaining him without
18 meaningful notice and an opportunity to be heard, Mr. Ung has shown a likelihood of
19 success on this claim as well.

20 **C. Respondents’ offer no opposition or response to Mr. Ung’s request for a**
21 **TRO and preliminary injunction concerning removal to a third county.**

22 The Opposition does not address the propriety of a TRO and preliminary
23 injunction as to removal of Mr. Ung to a third country. Respondents state that “a
24 request for removal to a third country has not been made.” (Dkt. 8 at 3.) But, neither the
25 Opposition nor the declaration provided in support of the Opposition state that the
26 government will not seek to deport Mr. Ung to a third country if it continues to be
27 unable to obtain Vietnamese travel documents for him.
28

1 The district court in *Nguyen v. Scott* noted evidence of pre-1995 Vietnamese
2 nationals who had been deported to Eswatini, South Sudan and El Salvador. *Nguyen*,
3 796 F.Supp.3d at 716-36. “[I]t is uncertain whether ICE provided any notice to [the
4 Vietnamese national], either in writing or orally, prior to being deported to Eswatini . . .
5 [the individual removed] remains incommunicado since his deportation to Eswatini.”
6 *Id.* at 717. In one instance, the district court found that *the deportation officer himself*
7 did not appear to know that a third country removal was about to take place: “The text
8 messages [from the deportation officer] also indicate that neither the deportation officer
9 nor his supervisors knew that Mr. Phan was about to be deported to South Sudan until it
10 happened.” *Id.* at 716.

11 Courts across the country have taken note of what is obvious: The government’s
12 third country removal scheme is intended to inflict punitive harm on the individual
13 being removed. *See id.* at 733-34 (collecting cases). And the lack of notice prior to third
14 country removals is traceable—not incidental—to the government’s desire to inflict
15 punishment on detainees like Mr. Ung. *See id.* (observing President Trump’s statement
16 that: “Illegal aliens face . . . *sudden deportation in a place and manner solely of our*
17 *discretion.*”) (emphasis added). Mr. Ung’s claim is not speculative, and he is likely to
18 succeed on it.

19 **D. Respondents’ attempt to suggest that the case involves only the “private**
20 **interest” of Mr. Ung misapprehends the balance of equities in a case**
21 **where the government is a party.**

22 In a final attempt to continue Mr. Ung’s unlawful detention, Respondents argue
23 that the public interest “in enforcement of the United States’s immigration laws”
24 “outweighs Petitioner’s private interest” in being free from unconstitutional detention.
25 This misapprehends the nature of the government’s interest, which is *not* to unlawfully
26 detain individuals. (Opposition at 11.)

27 In fact, the balance of interests tips heavily in favor of Mr. Ung. The risk of harm
28 to Mr. Ung—who has been removed from his family and his employment with

1 Homeboy Industries, where he serves our community—far outweighs the government’s
2 interest in illegally detaining him, for it is “always in the public interest to prevent the
3 violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002
4 (9th Cir. 2012). While Respondents “have an interest in enforcement of the United
5 States’s immigration laws,” that “includes an interest in ‘upholding procedural
6 protections against unlawful detention.’” *See Quan v. Bowen*, No. 5:25-cv-02546-
7 HDV-PVC, Dkt. 14 (C.D. Cal. Nov. 14, 2025) (citing *Pinchi v. Noem*, No. 5:25-cv-
8 05632-PCP, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025). Those procedural
9 protections against unlawful detention were not upheld here. The balance of equities
10 and public interest weighs heavily in favor of preliminary relief.

11 II. CONCLUSION

12 For the reasons stated above and, in the petition, as well as the application for a
13 temporary restraining order and preliminary injunction, the Court should grant the
14 requested relief.

15 Respectfully submitted,

16 CUAUHTEMOC ORTEGA
17 Federal Public Defender

18 DATED: December 23, 2025

19 By */s/ Katherine Farkas*

20

KATHERINE FARKAS
21 Deputy Federal Public Defender

22 Proposed Attorneys for Petitioner
23 BAT A. UNG
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner Bat A. Ung, certifies that this brief contains 4,869 words, which complies with the word limit of L.R. 11-6.1.

DATED: December 23, 2025

/s/ Katherine Farkas


KATHERINE FARKAS
Deputy Federal Public Defender

DECLARATION OF BAT A. UNG

DECLARATION OF BAT A. UNG

I, Bat A. Ung, declare:

1. I, Bat A. Ung, am the petitioner in this action.

2. I am currently detained by Immigration and Customs Enforcement (ICE) at the Adelanto Detention Facility in Adelanto, California. My A number is A 

3. I was born in Saigon, Vietnam. I was five years old in April 1975, when I left Vietnam with my mother, three brothers, and a sister. My father had worked with the United States government during the war, so he was able to get my mother, me, and my siblings onto a flight out of Saigon. He stayed in Vietnam to fight with the resistance against the North Vietnamese Army, and did not join us in the United States until 1982.

4. Before we were admitted to the United States, I spent several months living with my mother and siblings in a refugee camp in the Philippines. We were admitted to the United States as lawful permanent residents later in 1975.

5. My mother is still alive. She and my siblings all live in the United States. I have one child, who is a 32-year-old United States citizen, and she lives in the United States. I currently work as a production Cook for Homeboy Food Services, a catering subsidiary of Homeboy Industries. My supervisor has provided a letter to my attorney and me concerning my work. If I am released from ICE detention, I plan to immediately return to my work.

6. I have no immediate family in Vietnam and no ties to anyone still living in Vietnam. I do not speak Vietnamese. Before we left Vietnam as refugees, my family lived in the Chinatown area of Saigon together with other members of the Chinese ethnic minority in Vietnam and spoke Cantonese.

7. After completing a prison sentence in 1992, I was transferred to the custody of the Immigration and Naturalization Service (INS) for removal proceedings. I remained in immigration detention for a total of about nine months in 1992 and was ordered removed in August 1992. I do not recall the exact date of my removal order. I understand that the Automated Case Information available on a Department of Justice Website states

1 that an immigration judge ordered my deportation on August 18, 1992, but I received a
2 recent notice from Immigration and Customs and Enforcement (ICE) that says the date of
3 the order was August 19, 1992.

4 8. After completion of another prison sentence on June 28, 2023, I was
5 transferred to the custody of ICE. I was released after only a few hours and told to return
6 for a scheduled check-in in 2024. I have attended every scheduled check-in since being
7 placed on supervised release in 2023 and have complied with the terms of my supervised
8 release.

9 9. Being on supervised release since 2023 has allowed me to reenter my
10 community. I successfully participated in a reentry program for previously incarcerated
11 people operated by Homeboy Industries, which required me to attend training and group
12 sessions while I began working part-time. When I completed that program, I was hired
13 full-time. My supervisor, Nadine Rossier, has provided a letter regarding my work with
14 Homeboy Industries.

15 10. On September 26, 2025, I attended a regular check-in with ICE in Los
16 Angeles. At that time, a monitor was placed on my ankle, and I was told to return for
17 another check-in on October 16, 2025. Although I was given no explanation for the ankle
18 monitor and no reason that my next check-in would need to be so soon, I complied with
19 the instructions. When I returned on October 16, 2025, I was told I would be detained. I
20 was first placed in a holding cell in the building where I reported, which was at 300 North
21 Los Angeles Street.

22 11. After being detained in the holding cell for several hours, I was brought out
23 of the cell to meet with an agent who handed me a document titled "Notice of Revocation
24 of Release." I will file a copy of that Notice as soon as I am able to provide a copy of it to
25 the attorney who is assisting me. The Notice of Revocation of Release is dated October
26 16, 2025 and is addressed to me at the building where I was detained, 300 North Los
27 Angeles Street. The time noted after the signature of the deportation officer indicates that
28

1 the notice was provided to me at 14:00 on October 16, 2025. This is after I was already in
2 custody in a holding cell. The Notice of Revocation of Release reads as follows:

3 This letter is to inform you that your case has been reviewed, and
4 it has been determined that you will be kept in the custody of the
5 U.S. Immigration and Customs Enforcement (ICE) at this time.
6 This decision has been made based on a review of your file
7 and/or your personal interview on account of changed
8 circumstances in your case.

9 ICE has determined that you can be removed from the United
10 States pursuant to the outstanding order of removal against you.
11 On August 19, 1992, you were ordered removed to Vietnam by
12 an Immigration judge. The removal order is administratively
13 final, and your case is under current review. There is no pending
14 action with the court that will impede the execution of your
15 removal order at this time. It is expected that you will be removed
16 to Vietnam in the foreseeable future.

17 Based on the above and pursuant to 8 CFR 241.4(l) and 241.13(i),
18 you are to remain in ICE custody at this time. You will promptly
19 be afforded an informal interview at which you will be given the
20 opportunity to respond to the reasons for the revocation and to
21 provide any evidence to demonstrate that your removal is
22 unlikely. If you are not released following the informal interview,
23 you will receive notification of a new review, which will occur
24 within approximately three months from the date of this notice.

25 You are advised that you must demonstrate that you are making
26 reasonable efforts to comply with the order of removal and that
27 you are cooperating with ICE efforts to remove you by taking
28 whatever actions ICE requests to affect your removal. You are

1 also advised that any willful failure or refusal on your part to make
2 timely application in good faith for travel or other documents
3 necessary for your departure, or any conspiracy or actions to
4 prevent your removal or obstruct the issuance of a travel
5 document, may subject you to criminal prosecution under 8 USC
6 Section 1253(a).

7 12. An agent spoke to me briefly after I had already been in the cell for several
8 hours, but did not tell me the reasons my supervision was being revoked. Because I did
9 not know the reasons my supervised release had been revoked, I had no way to provide
10 any response to the undisclosed reasons for revocation. The agent told me I was being
11 detained because there was a final order of deportation and asked me about my current
12 ties to Vietnam. I told him the truth that I do not have family or other ties in Vietnam. I
13 complied with his request that I sign a form. The agent who spoke with me on October
14 16, 2025, did not tell me that Vietnam had issued any travel documents for me, and no one
15 has ever told me that Vietnam has agreed to allow me to travel there. To the best of my
16 knowledge, I have never had a passport or any other travel document that would permit
17 me to travel to Vietnam.

18 13. On December 10 and 11, 2025, I spoke with Deputy Federal Public
19 Defender Katherine Farkas. I gave her the information contained in this declaration. On
20 December 11, I called her again. She read this declaration to me over the phone. I
21 authorized her to sign it on my behalf.

22 I declare under penalty of perjury under the laws of the United States that the
23 foregoing is true and correct.

24 Executed on December 11, 2025, in Los Angeles, California.

25
26
27 Date: 12/15/25

Baty
28 BAT A. UNG