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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 OUNONG SAYSANAVONG,

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of the  
14 Department of Homeland Security,  
15 PAMELA JO BONDI, Attorney General,  
16 TODD M. LYONS, Acting Director,  
17 Immigration and Customs Enforcement,  
18 JESUS ROCHA, Acting Field Office  
19 Director, San Diego Field Office,  
20 CHRISTOPHER LAROSE, Warden at  
21 Otay Mesa Detention Center,

22 Respondents.

CIVIL CASE NO. **'25CV3624 CAB DEB**

**MOTION AND MEMORANDUM  
OF LAW FOR TEMPORARY  
RESTRAINING ORDER**

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**Table of Contents**

**INTRODUCTION** ..... 1

**STATEMENT OF FACTS** ..... 1

    A. Petitioner’s Facts..... 1

    B. Repatriation to Laos History..... 4

    C. ICE’s Third Country Removal Policy ..... 5

    D. Punitive Banishment to Third Countries ..... 6

**LEGAL STANDARD**..... 13

**ARGUMENT**..... 13

    A. Petitioner is Likely to Succeed on the Merits of His Claims..... 14

        1. Petitioner is likely to succeed on the merits of his claim that his detention is unconstitutional and unlawful..... 14

        2. Petitioner is Likely to Succeed on the Merits of the Claim that He is Entitled to Procedural Protections Before Third Country Removal..... 22

        3. Petitioner is Likely to Succeed on the Merits of His Claim that the Constitution Prohibits Punitive Third Country Removals. .... 25

    B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief..... 27

    C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner’s Favor..... 28

**CONCLUSION** ..... 28

1 **INTRODUCTION**

2 Petitioner Ounong Saysanavong (“Mr. Saysanavong” or “Petitioner”), an  
3 elderly man, faces immediate irreparable harm absent this court’s intervention. Mr.  
4 Saysanavong is experiencing unlawful prolonged immigration detention without  
5 necessary healthcare and medication. As a Laotian refugee with a 17-year-old  
6 removal order, he faces a real and imminent threat of removal to a third country in  
7 violation of his statutory and constitutional rights which would further jeopardize  
8 his health. He respectfully asks this court to order his release, enjoin Respondents  
9 from re-detaining him absent a travel document and a travel date, enjoin  
10 Respondents from removing him to a third country without affording him his  
11 statutory and constitutional rights in reopened removal proceedings, and enjoin  
12 Respondents from removing him to a third country for a punitive purpose and  
13 effect.

14 **STATEMENT OF FACTS**

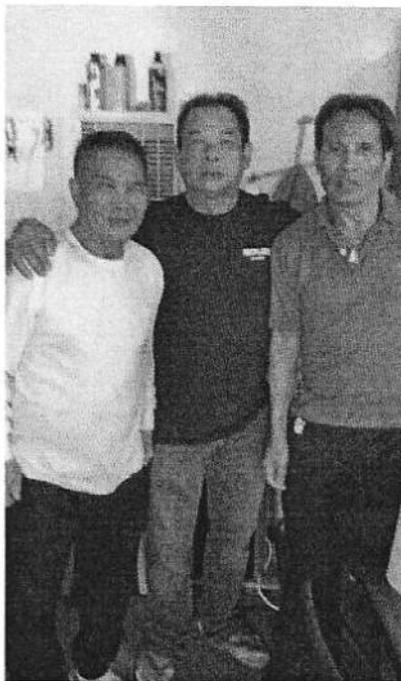
15 **A. Petitioner’s Facts**

16 Mr. Saysanavong is a 63-year-old man born in Laos in 1962. (Exhibit A,  
17 Declaration of Ounong Saysanavong (“Saysanavong Decl.”), ¶ 1.) His father served  
18 in the Laotian military before and during the Vietnam War and was captured by  
19 communist forces during the conflict. (Exhibit C, Declaration of Vikki  
20 Vannabouathong (“Vannabouathong Decl.”), ¶ 2.) Near the end of the war, he  
21 escaped from captivity. (*Id.*) After the war ended in 1975, Mr. Saysanavong and his  
22 family fled to Thailand, where they lived in a refugee camp. (*Id.*)

23 Mr. Saysanavong was 19 years old when he came to the United States with  
24 his family in 1981 as a refugee, soon became a lawful permanent resident, and has  
25 spent the last forty-four years building a life in the United States. (Saysanavong  
26 Decl., ¶ 2.)  
27  
28

1 Mr. Saysanavong resides in San Diego, California. (Vannabouathong Decl.  
2 ¶ 4.) He has six siblings who also live in the United States. (*Id.* ¶ 1.) Mr.  
3 Saysanavong is the cornerstone of support for his family and plays an active role in  
4 their care, including helping to look after his sisters and their young children, as  
5 well as assisting his brother with household tasks such as cleaning and home  
6 renovations. (*Id.* at ¶¶ 5–8.)

7 Mr. Saysanavong is pictured on the right with his brothers:



20 Mr. Saysanavong suffers from several health conditions, including a serious  
21 heart condition that requires treatment and medication, as well as hypertension and  
22 high cholesterol. (Saysanavong Decl. ¶ 11.) He was previously hospitalized for  
23 heart failure. (*Id.*) Prior to his arrest by Immigration and Customs Enforcement  
24 (“ICE”), Mr. Saysanavong had stopped working because of his heart condition.  
25 (*Id.*) Mr. Saysanavong also has a history of other health conditions, including  
26 kidney disease and diabetes. (*Id.*) Given his multiple health conditions and his age  
27 of 63, without further intervention and management, his detainment has placed him  
28 in significant risk.

1 In 2003, Mr. Saysanavong was convicted in Lincoln, Nebraska for a  
2 nonviolent felony drug offense. (*Id.* ¶ 4.) In or about 2008, he was detained and  
3 charged with being removable for having a felony. (*Id.*) In September 2008, an  
4 immigration judge ordered him removed to Laos. (*Id.* at ¶ 5.) He remained in  
5 immigration custody for about five to six months before being released on an order  
6 of supervision. (*Id.* at ¶ 7.)

7 Mr. Saysanavong remained on supervision for the next 17 years. He dutifully  
8 complied with the Order of Supervision and checked in with ICE every year,  
9 missing only a single appointment, which occurred several years ago while he was  
10 hospitalized for heart failure. (*Id.* at ¶ 8.) He accrued no new criminal convictions,  
11 not even a traffic citation. (*Id.*)

12 Since being released on supervision, Mr. Saysanavong has dedicated himself  
13 to building a productive and meaningful life. He has engaged in long-term  
14 employment, has deep roots in the community, and has been the foundation of  
15 support for his family. (Saysanavong Decl. ¶ 3; Vannabouathong Decl. ¶¶ 5–8.)

16 On November 12, 2025, ICE suddenly and without notice arrested Mr.  
17 Saysanavong when he went for his routine check-in appointment. (Saysanavong  
18 Decl. ¶ 9.) At no time since his detention on November 12, 2025, has any ICE  
19 officer conducted an initial interview to explain to him the reasons why his release  
20 on supervision was revoked or provide him an opportunity to explain why his  
21 removal to Laos is not likely or foreseeable. (*Id.* ¶ 9.) ICE has not conducted a  
22 revocation custody review. (*Id.*) ICE did not have a travel document for Mr.  
23 Saysanavong at the time of his detention. (*Id.* at ¶12.)

24 Mr. Saysanavong does not have a Laotian passport. (*Id.* at ¶13.) He does not  
25 have a birth certificate from Laos. (*Id.*)

26 Mr. Saysanavong’s removal to Laos is not reasonably foreseeable.  
27  
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1           **B.     Repatriation to Laos History**

2           No repatriation agreement exists between Laos and the United States. Laos  
3 has also been historically unwilling to accept deportees from the United States  
4 through informal negotiations. As a result, there are around 4,800 nationals of Laos  
5 living in the United States with final removal orders who have not been removed.<sup>1</sup>

6           Last year, zero people were removed to Laos; in the five years before that,  
7 between 0 and 11 people were removed per year.<sup>2</sup>

8           In 2018, the United States issued visa sanctions on Laos “due to lack of  
9 cooperation in accepting their citizens who have been ordered removed.”<sup>3</sup> The  
10 federal government explained that Laos had not “established repeatable processes  
11 for issuing travel documents to their nationals ordered removed from the United  
12 States.”<sup>4</sup>

13           In June of this year, President Trump reiterated, “Laos has historically failed  
14 to accept back its removable nationals.”<sup>5</sup> As a result, he included Laos as one of 19  
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17           <sup>1</sup> Asian Law Caucus, *Status of Ice Deportations to Southeast Asian*  
18 *Countries: Laos* (Oct. 9, 2025), [https://www.asianlawcaucus.org/news-](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation)  
19 [resources/guides-reports/resources-southeast-asian-refugees-facing-deportation](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation).

20           <sup>2</sup> See U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal*  
21 *Year 2024*, at 100 (Dec. 19, 2024), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

22           <sup>3</sup> *DHS Announces Implementation of Visa Sanctions*, HOMELAND SECURITY  
23 (July 8, 2018), [https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-](https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions)  
[implementation-visa-sanctions](https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions).

24           <sup>4</sup> *Id.*

25           <sup>5</sup> See Presidential Proclamation, *Restricting the Entry of Foreign Nationals*  
26 *to Protect the United States from Foreign Terrorists and Other National Security*  
27 *and Public Safety Threats*, Sec. 3(c)(i) (June 4, 2025), [https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)  
28 [foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)  
[national-security-and-public-safety-threats/](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/).

1 countries in his travel ban, banning all Lao immigrants, tourists, students, and  
2 exchange visitors from entering the United States.<sup>6</sup> In response, the Lao  
3 government has issued travel documents to a few dozen nationals of Laos with final  
4 removal orders.<sup>7</sup>

5 Since then, several courts have rejected the Trump administration's efforts  
6 to re-detain a Laotian immigrant without following its own regulations. *See*  
7 *Phetsadakone v. Scott*, No. 25-CV-1678 (JNW), 2025 WL 2579569, at \*2–6 (W.D.  
8 Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the government's  
9 failure to follow its regulations regarding re-detention and questions regarding the  
10 validity of his underlying criminal conviction); *Khambounheuang v. Noem*, No. 25-  
11 CV-2575 (JO) (SBC), ECF No. 12 (S.D. Cal. Oct. 9, 2025) (granting habeas petition  
12 for Laotian citizen and ordering immediate release); *Truong v. Noem*, No. 25-CV-  
13 2597 (JES), ECF No. 10 (S.D. Cal. Oct. 10, 2025) (same); *Sphabmixay v. Noem*,  
14 No. 25-CV-2648 (LL) (VET) (S.D. Cal. Oct. 30, 2025) (same); *Sayvongsa v. Noem*,  
15 No. 25-CV-2867 (AGS) (DEB) (S.D. Cal. Oct. 31, 2025) (same); *Thammavongsa*  
16 *v. Noem*, No. 25-CV-2836 (JO) (AHG) (S.D. Ca. Nov. 3, 2025) (same).

### 17 C. ICE's Third Country Removal Policy

18 On July 9, 2025, ICE released a memo instructing staff that ICE may deport  
19 a person to a third country not designated on the removal order without providing  
20 any notice or an opportunity to be heard if the State Department confirms that it has  
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23 <sup>6</sup> *Id.*; *see also* American Immigration Council, *Trump's 2025 Travel Ban*  
24 (Aug. 6, 2025), <https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/>.

25 <sup>7</sup> *See* Ben Warren, *Hmong Refugees from Michigan Among Those Deported*  
26 *to Laos, Despite Calls for Release*, THE DETROIT NEWS (Aug. 15, 2025, at 6:04 p.m.  
27 ET), <https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/> (noting that 32 Laotian  
28 nationals were deported on a flight in August).

1 received diplomatic assurances that individuals will not be persecuted or tortured.  
2 (Exhibit D, July 9, 2025 Memo (“ICE Memo”).) There is no mention of assurances  
3 that a person will not be arbitrarily or indefinitely imprisoned. (*Id.*)

4 If no diplomatic assurances are received, officers are instructed to serve on  
5 the individual a Notice of Removal (“Notice”) that includes the intended country  
6 of removal. (*Id.* at 1.) It tells officers not to ask whether the individual is afraid of  
7 removal to that country and states that officers should “generally wait at least 24  
8 hours following service of the [Notice] before effectuating removal.” (*Id.*) The  
9 memo states that “[i]n exigent circumstances, [ICE] may execute a removal order  
10 six (6) or more hours after service of the [Notice] as long as the [noncitizen] is  
11 provided reasonable means and opportunity to speak with an attorney prior to  
12 removal.” (*Id.*)

13 The memo states that if the noncitizen “does not affirmatively state a fear of  
14 persecution or torture if removed to the country of removal listed on the [Notice]  
15 within 24 hours, [ICE] may proceed with removal to the country identified on the  
16 notice.” (*Id.* at 2.) If the noncitizen “does affirmatively state a fear if removed to  
17 the country of removal,” then ICE will refer the case to U.S. Citizenship and  
18 Immigration Services (“USCIS”) to screen for eligibility for withholding of  
19 removal and protection under the Convention Against Torture (“CAT”). (*Id.*)  
20 “USCIS will generally screen within 24 hours.” (*Id.*) If USCIS determines that the  
21 noncitizen does not meet the standard, the individual will be removed, but if it  
22 determines that they have met the standard, then ICE may reopen removal  
23 proceedings “for the sole purpose of determining eligibility for [withholding of  
24 removal protection] and CAT . . . [or] designate another country for removal.” (*Id.*)

#### 25 **D. Punitive Banishment to Third Countries**

26 Since January 2025, Respondents implemented a policy and practice of  
27 removing individuals to third countries, without (1) following the Immigration and  
28

1 Nationality Act (“INA”) procedures for designation and removal to a third country  
2 and (2) providing fair notice and an opportunity to contest the removal in  
3 immigration court. These removals are unconstitutional and amount to punitive  
4 banishment.

5 Respondents reportedly have negotiated with at least 58 countries to accept  
6 deportees from other nations. On June 25, 2025, the New York Times reported that  
7 seven countries had agreed to accept deportees who are not their own citizens.<sup>8</sup>  
8 Since then, ICE has carried out third country deportations to South Sudan, Eswatini,  
9 Rwanda, Uganda, and Ghana.

10 The Administration’s third country removal scheme is designed to punish  
11 and deter. In an official video, President Donald Trump stated, “[I]f illegal aliens  
12 choose to remain in America, they’re remaining illegally, and they will face severe  
13 consequences,” such as “significant jail time, . . . garnishment of all wages,  
14 imprisonment and incarceration, and *sudden deportation in a place and manner*  
15 *solely of our discretion.*”<sup>9</sup> In January, President Trump announced a plan to detain  
16 immigrants at the Guantanamo Bay prison in Cuba because “it’s a tough place to  
17 get out” and “we don’t want them coming back.”<sup>10</sup>  
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22 <sup>8</sup> The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo,  
23 Mexico, Panama, and Rwanda. See Edward Wong et al., *Inside the Global Deal-*  
24 *Making Behind Trump’s Mass Deportations*, N.Y. TIMES (June 25, 2025),  
[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).

25 <sup>9</sup> Roll Call, Donald Trump Vlog: Self-Deportation Program - May 9, 2025,  
26 at 00:00:55 (emphasis added),  
[https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-](https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/)  
[program-may-9-2025/](https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/) (last visited Dec. 14, 2025).

27 <sup>10</sup> Benedict Garman & Matt Murphy, *Migrant Tents Removed from*  
28 *Guantanamo Bay, Satellite Images Show*, BBC NEWS (Apr. 17, 2025),  
<https://www.bbc.com/news/articles/crm3x27vw70o>.

1 Later, Secretary of State Marco Rubio announced that El Salvador had  
2 agreed to “accept for deportation any illegal alien in the [U.S.] who is a criminal”<sup>11</sup>  
3 with the explicit understanding that “[President Bukele] will put them in his jails.”<sup>12</sup>  
4 Respondent Department of Homeland Security (“DHS”) Secretary Kristi Noem  
5 said, “[i]t has been wonderful for us to be able to have somewhere to send the worst  
6 of the worst and someone to partner with. And we’d like to continue that partnership  
7 because it’s been a powerful message of consequences.”<sup>13</sup> President Trump recently  
8 spoke about the deterrent effect of the El Salvador banishments: “we bring people  
9 there and . . . they don’t get out.”<sup>14</sup> DHS agreed, posting, “Illegal aliens are turning  
10 back because they know . . . they will ultimately leave in handcuffs.”<sup>15</sup>

11 In April 2025, Secretary of State Rubio stated that the administration is  
12 “working with other countries . . . to send [them] some of the most despicable  
13 human beings . . . and the further away from America, the better, so they can’t come  
14 back.”<sup>16</sup> Secretary Noem has publicly threatened noncitizens with criminal  
15

16  
17 <sup>11</sup> Stefano Pozzebon et al., *El Salvador Offers to House Violent US Criminals*  
18 *and Deportees of any Nationality in Unprecedented Deal*, CNN WORLD (Feb. 4,  
2025), <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

19 <sup>12</sup> Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US*  
20 *of Any Nationality, Including Americans*, AP NEWS (Feb. 4, 2025).  
21 <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>.

22 <sup>13</sup> Roll Call, Remarks: Donald Trump Holds a Bilateral Meeting with Nayib  
23 Bukele of El Salvador - April 14, 2025, at 00:06:45 (emphasis added),  
<https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/> (last visited Dec. 15, 2025).

24 <sup>14</sup> Roll Call, White House Press Conference: Press Conference: Donald  
25 Trump Hosts a Press Conference at the White House - June 27, 2025, at 00:20:29,  
<https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> (last visited Dec. 4, 2025).

26 <sup>15</sup> Homeland Security (@DHSgov), X (June 24, 2025, at 4:17 PM),  
27 <https://x.com/DHSgov/status/1937651350059327520>.

28 <sup>16</sup> Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*,  
NPR (May 7, 2025), <https://www.npr.org/2025/05/07/nx-s1-5389739/libya->

1 convictions to “leave America” or “be fined nearly \$1,000 per day, imprisoned, and  
2 deported.”<sup>17</sup> She stated, “President Trump and I have a clear message to those in  
3 our country illegally: LEAVE NOW. If you do not self-deport, we will hunt you  
4 down, arrest you, and deport you.”<sup>18</sup>

5 The Administration has negotiated with countries to have U.S. deportees  
6 imprisoned in prisons, camps, or other facilities. In February 2025, Panama and  
7 Costa Rica took in hundreds of deportees from African and Central Asian countries  
8 and imprisoned them in hotels, a jungle camp, and a detention center.<sup>19</sup> In Panama,  
9 officials confiscated cell phones, denying deportees access to their attorneys.<sup>20</sup>  
10 Deportees were “guarded like prisoners,” sleeping in structures made from plastic  
11 sheets and having toilet access only when escorted.<sup>21</sup>

12  
13 \_\_\_\_\_  
14 immigration-crackdown-trump-deportations.

15 <sup>17</sup> Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide*  
16 *and International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21,  
2025), <https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self>.

17 <sup>18</sup> *Id.* (italics omitted).

18 <sup>19</sup> The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama*  
19 *in a Legal ‘Black Hole,’* CBC NEWS (Feb. 28, 2025, at 8:29 AM CST),  
20 <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan  
21 Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try*  
22 *to Return Them to Their Countries*, AP WORLD NEWS (Feb. 18, 2025),  
23 <https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455>; Manuel Rueda, *Asylum Seekers Deported*  
24 *by the U.S. Are Stuck in Panama and Unable to Return Home, All Things*  
25 *Considered*, NPR (May 5, 2025), <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

24 <sup>20</sup> Julie Turkewitz et al., *Migrants, Deported to Panama Under Trump Plan,*  
25 *Detained in Remote Jungle Camp*, N.Y. TIMES (Feb. 19, 2025),  
26 <https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock>.

27 <sup>21</sup> Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’*  
28 *Deportee from US Details Legal Limbo in Panama Camp Near Darien Gap*, AP  
WORLD NEWS (Feb. 22, 2025), <https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86>.

1 The Costa Rican president announced an agreement to receive up to 200  
2 deportees and to hold them for up to six weeks before sending them to their home  
3 countries, all paid for by the United States.<sup>22</sup> The deportees were held at the  
4 Temporary Migrant Care Center (“CATEM”).<sup>23</sup> Migrants held there previously  
5 reported sleeping on the ground in tents, being held in cramped quarters like  
6 prisoners, and sanitation issues.<sup>24</sup> On June 24, 2025, a Costa Rican court ordered  
7 the release of the deportees due to civil rights violations, finding “they had been  
8 deprived of their freedom of movement without a prior individual ruling, that their  
9 communications with the outside had been restricted, and that they had not been  
10 told about the possibility of applying for refugee status.”<sup>25</sup>

11 In March 2025, the U.S. paid El Salvador \$5 million to indefinitely imprison  
12 over 200 deported Venezuelans in a maximum-security prison notorious for gross  
13 human rights abuses, known as CECOT.<sup>26</sup> El Salvador’s justice minister stated the  
14 only way out of CECOT is in a coffin.<sup>27</sup>

15  
16  
17 <sup>22</sup> Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks,*  
18 *President Says*, REUTERS (Feb. 19, 2025),  
<https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/>.

19 <sup>23</sup> The Associated Press, *Group of Mostly Asian Migrants Deported from*  
20 *U.S. Arrive in Costa Rica*, NBC NEWS (Feb. 21, 2025, at 9:37 AM CST),  
<https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148>.

21 <sup>24</sup> *Id.*

22 <sup>25</sup> Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants*  
23 *Deported from US*, BBC NEWS (June 25, 2025),  
<https://www.bbc.com/news/articles/cwyrn42kp7no>.

24 <sup>26</sup> *See, e.g.,* Wong, *supra* note 1; Michael Rios, *What We Know About the El*  
25 *Salvador ‘Mega Prison’ Where Trump is Sending Alleged Venezuelan Gang*  
26 *Members*, CNN (Mar. 17, 2025, at 5:04 PM EDT),  
<https://www.cnn.com/2025/03/17/americas/el-salvador-prison-trump-deportations-gangs-intl-latam>.

27 <sup>27</sup> Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison;*  
28 *Documents Indicate Most Have No Apparent Criminal Records*, CBS NEWS (Apr.  
6, 2025), <https://www.cbsnews.com/news/what-records-show-about-migrants->

1 In May 2025, ICE attempted to deport individuals from Vietnam, Laos, the  
2 Philippines, and Mexico to Libya.<sup>28</sup> The aircraft sat on the runway for hours until  
3 the individuals were returned to a detention center after a court ordered the men not  
4 to be deported.<sup>29</sup>

5 On July 4, 2025, ICE deported eight men, including one Laotian man, to  
6 South Sudan.<sup>30</sup> The government of South Sudan euphemistically said in a statement  
7 that the deportees were “under the care of the relevant authorities.”<sup>31</sup> As of  
8 September 7, 2025, six of the eight men remained in South Sudanese custody.<sup>32</sup>

9 On July 15, 2025, ICE deported five men to Eswatini, including one Laotian  
10 man.<sup>33</sup> DHS referred to the men as “so uniquely barbaric that their home countries  
11 refused to take them back.”<sup>34</sup> Eswatini government officials have said the men are

12  
13 sent-to-salvadoran-prison-60-minutes-transcript/.

14 <sup>28</sup> *U.S.: Don't Forcibly Transfer Migrants to Libya*, Human Rights Watch  
15 (May 9, 2025), <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>.

16 <sup>29</sup> *Id.*

17 <sup>30</sup> *US Judge Clears Path for Eight Immigrants to be Deported to South*  
18 *Sudan*, THE GUARDIAN (July 4, 2025, at 21:53 PM EDT),  
19 <https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted>.

20 <sup>31</sup> Mattathias Schwartz, *Trump Administration Poised to Ramp Up*  
21 *Deportations to Distant Countries*, N.Y. TIMES (July 13, 2025),  
22 <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html>; see also Press Statement, Republic of South Sudan, Official  
23 Statement on the Arrival of Third-Country Nationals and South Sudanese Deported from the United States of America to South Sudan, July 8, 2025,  
<https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/>.

24 <sup>32</sup> Isa Cardona, *South Sudan repatriates Mexican man deported from US*,  
25 CNN, Sept. 7, 2025, <https://www.cnn.com/2025/09/06/americas/mexican-south-sudan-returns-latam-intl>.

26 <sup>33</sup> Kanishka Singh, *US Says It Has Sent Third-Country Deportees to Southern*  
27 *Africa's Eswatini*, REUTERS (July 15, 2025, at 10:05 PM CDT),  
28 <https://www.reuters.com/world/us/us-says-it-has-sent-third-country-deportees-southern-africas-eswatini-2025-07-16/>.

<sup>34</sup> Tricia McLaughlin (@TriciaOhio), X (July 15, 2025),

1 imprisoned in solitary confinement and that the U.S. is paying for the costs of their  
2 imprisonment.<sup>35</sup> An Eswatini government official estimated the men would be held  
3 for about 12 months.<sup>36</sup>

4 In mid-August 2025, ICE deported seven individuals to Rwanda.<sup>37</sup> Rwanda  
5 also reported reaching an agreement with the United States to receive up to 250  
6 deportees.<sup>38</sup>

7 In September 2025, ICE deported as many as 28 individuals to Ghana, at  
8 least 14 of whom had won protection against removal in immigration court. In court  
9 filings, five of these individuals alleged that ICE abruptly put them on a plane in  
10 the middle of the night, straightjacketed them, and did not tell them where they  
11 were being flown until they were already in flight. *D.A. v. Noem*, \_\_\_F. Supp. 3d\_\_\_,  
12 No. 25-CV-3135 (TSC), 2025 WL 2646888, at \*1 (D.D.C. Sept. 15, 2025). In  
13 Ghana, they were held in an open-air detention facility surrounded by armed  
14 military guards. *Id.* Now, Ghana has reportedly expelled eight to ten of these  
15 individuals to Togo without their passports.<sup>39</sup>

16  
17  
18 <https://x.com/TriciaOhio/status/1945274627976200206>.

19 <sup>35</sup> Nimi Princewill et al., *'Not Trump's Dumping Ground': Outrage Over*  
20 *Arrival of Foreign US Deportees in Tiny African Nation*, CNN WORLD (July 18,  
21 2025), [https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-](https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl)  
22 [deportees-intl](https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl); Rachel Savage et al., *Eswatini Opposition Attacks US Deal as*  
23 *'Human Trafficking Disguised as Deportation'*, THE GUARDIAN (Jul. 23, 2025),  
24 <https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>.

25 <sup>36</sup> *Id.*

26 <sup>37</sup> Daphne Psaledakis & George Obulutsa, *Rwanda Received Migrants*  
27 *Deported from US Earlier This Month*, REUTERS (Aug. 28, 2025, at 1:51 PM CDT),  
28 [https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-](https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-earlier-this-month-2025-08-28/)  
[earlier-this-month-2025-08-28/](https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-earlier-this-month-2025-08-28/).

<sup>38</sup> *Id.*

<sup>39</sup> *West Africans Deported from US to Ghana 'Dumped Without Documents*  
*in Togo'*, THE GUARDIAN (Sept. 29, 2025, at 12:20 EDT),  
[https://www.theguardian.com/us-news/2025/sep/29/west-africans-deported-us-](https://www.theguardian.com/us-news/2025/sep/29/west-africans-deported-us-ice-ghana-togo)  
[ice-ghana-togo](https://www.theguardian.com/us-news/2025/sep/29/west-africans-deported-us-ice-ghana-togo).

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**LEGAL STANDARD**

This court may grant a temporary restraining order (“TRO”) pursuant to Federal Rule of Civil Procedure 65 if the plaintiff can “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit applies a “sliding scale” approach to the *Winter* standard, where “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiffs can support issuance of a [TRO],” so long as the other *Winter* factors are met. *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021) (citation omitted). Under this approach, the four *Winter* elements are “balanced, so that a stronger showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

**ARGUMENT**

This court should issue a TRO because “immediate and irreparable injury” is occurring and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Respondents have detained Petitioner, a 63-year-old man with significant health conditions, in violation of his due process and statutory rights and threaten to remove him to a third country without adhering to constitutional and statutory procedural protections and in violation of bedrock law prohibiting the government from imposing punitive measures on noncitizens ordered removed. This court should order Petitioner’s release and enjoin removal to a third country.

Emergency relief is necessary because Petitioner has already been unlawfully re-detained for more than one month, since his unlawful arrest on November 12, 2025, and he is an elderly man with significant health conditions, including having suffered heart failure in the past and having a history of kidney

1 disease and diabetes. Continuing to detain him, or worse, sending him to another  
2 country could be detrimental to his health and his life. His immediate release to his  
3 prior conditions of supervision is necessary to restore the status quo pending the  
4 resolution of this habeas petition.

5  
6 **A. Petitioner is Likely to Succeed on the Merits of His Claims.**

7 **1. Petitioner is likely to succeed on the merits of his claim that**  
8 **his detention is unconstitutional and unlawful.**

9 Petitioner is likely to succeed on the merits of his claim that his detention  
10 violates the Due Process Clause, 8 U.S.C. § 1231(a), and governing regulations.  
11 Petitioner has been detained by the government for a cumulative period of at least  
12 six months. The law does not permit the government to continue to detain him. The  
13 government was also required to follow procedures for revocation of Petitioner's  
14 release under governing regulations, which it altogether ignored. For all these  
15 reasons, serious questions going to the merits suggest that Petitioner's continuing  
16 detention is unlawful, and this court should order his immediate release to restore  
17 the status quo and return him to his prior order of supervision.

18 **a. Substantive due process and 8 U.S.C. §1231(a)(1)(A)**

19 The INA provides that after a removal order becomes final, the government  
20 "shall remove the alien from the [U.S.] within a period of 90 days." 8 U.S.C.  
21 § 1231(a)(1)(A). This 90-day period is often referred to as the initial removal period  
22 and during it, the government "shall detain the alien." *Id.* § 1231(a)(2). In some  
23 circumstances, federal immigration authorities can continue to detain an alien  
24 beyond the initial removal period. Specifically, Section 1231(a)(6) allows the  
25 government to detain certain enumerated classes of immigrants—including those  
26 ordered removed due to criminal convictions—for more than 90 days. *Id.*  
27 § 1231(a)(6).

28 In *Zadvydas v. Davis*, the Supreme Court interpreted the detention statute, 8

1 U.S.C. § 1231(a)(6), in light of the Due Process Clause and held that “[a] statute  
2 permitting indefinite detention of an alien would raise a serious constitutional  
3 problem” because it would become punitive. 533 U.S. 678, 690 (2001).  
4 “[G]overnment detention violates [the Fifth Amendment’s Due Process Clause]  
5 unless the detention is ordered in a criminal proceeding with adequate procedural  
6 protections, or, in certain special and narrow nonpunitive circumstances . . . where  
7 a special justification, such as a harm-threatening mental illness, outweighs the  
8 individual’s constitutionally protected interest in avoiding physical restraint.” *Id.*  
9 Civil immigration detention, the Court said, is only authorized for the limited  
10 purpose of flight risk or a danger to the community. *Id.* The Court held that Section  
11 1231(a)(6) “implicitly limits an alien’s detention to a period reasonably necessary  
12 to bring about that alien’s removal.” *Id.* at 679. Thus, “once removal is no longer  
13 reasonably foreseeable, continued detention is no longer authorized by [Section  
14 1231(a)(6)].” *Id.* at 699. “[F]or the sake of uniform administration in the federal  
15 courts,” the Court found that post-order detention was “presumptively reasonable”  
16 for the first six months. *Id.* at 700–01. After that “presumptively reasonable” six-  
17 month period ends, once the noncitizen “provides good reason to believe that there  
18 is no significant likelihood of removal in the reasonably foreseeable future, the  
19 Government must respond with evidence sufficient to rebut that showing.” *Id.* at  
20 701. And for detention to remain reasonable, as the period of prior post-removal  
21 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely  
22 would have to shrink.” *Id.*

23 Here, Mr. Saysanavong’s detention is presumptively unreasonable as it is  
24 beyond the six-month mark. (Saysanavong Decl. ¶¶ 7–8.) For his initial ICE  
25 detention, Mr. Saysanavong was detained for at least five to six months in total  
26 before being released from custody. (*Id.*) As of the date of this filing, he has been  
27 re-detained for over one month. (*Id.* ¶ 8.) The clock does not restart upon each  
28 new re-detention. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 721–22 (W.D. Wash.

1 2025); *Said v. Nielsen*, No. 17-CV-6785 (LB), 2018 WL 1876907, at \*6 (N.D. Cal.  
2 Apr. 18, 2018) (noting that “the six month period does not reset when the  
3 government detains a[] [noncitizen]. . . , releases him from detention, and then re-  
4 detains him again”); *Chen v. Holder*, No. 6:14-CV-2530, 2015 WL 13236635, at  
5 \*2 (W.D. La. Nov. 20, 2015) (“Surely, under the reasoning of *Zadvydas*, a series of  
6 releases and re-detentions by the government . . . while technically not in violation  
7 of the presumptively reasonable jurisprudential six month removal period, in  
8 essence results in an indefinite period of detention, albeit executed in successive six  
9 month intervals.”).

10 In addition, even if the Court finds that the period of Mr. Saysanavong’s  
11 confinement has not yet reached the six-month mark, he must still be released  
12 because Laos’s refusal to accept Mr. Saysanavong, along with its longstanding  
13 policy of not accepting deportees, provides good reason to believe that Mr.  
14 Saysanavong will not likely be removed in the reasonably foreseeable future.  
15 Notably, the “*Zadvydas* presumption . . . is rebuttable.” *Munoz-Saucedo v. Pittman*,  
16 789 F. Supp. 3d 387, 397 (D.N.J. 2025). As courts in this Circuit and around the  
17 country have found, the “six-month presumption of reasonableness is merely a tool  
18 to ‘guide lower court[s]’ in making those ‘determinations.’ To hold otherwise  
19 would condone detention in cases where removal is not reasonably foreseeable or  
20 even functionally impossible, so long as it did not exceed six months.” *Id.* (internal  
21 citations omitted). Therefore, “[a]lthough the Supreme Court established a six-  
22 month period of presumptively reasonable detention, it did not preclude a detainee  
23 from challenging the reasonableness of his detention before such time.” *Id.* at 395.  
24 Courts in this Circuit and around the country have concluded that an alien being  
25 detained pursuant to § 1231(a)(6) may bring a constitutional challenge to his  
26 confinement even if the period of confinement has not yet reached the six-month  
27 mark, *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At  
28 no point did the *Zadvydas* Court preclude a noncitizen from challenging their

1 detention before the end of the presumptively reasonable six-month period. Instead,  
2 it held that detention for less than six months was *presumptively* reasonable but left  
3 the lower courts to determine whether detention has ‘exceed[ed] a period  
4 reasonably necessary to secure removal’ in individual cases. . . . *Zadvydas*  
5 established a ‘guide’ for approaching detention challenges, not a categorical  
6 prohibition on claims challenging detention less than six months.” (internal  
7 citations omitted)); *Sweid v. Cantu*, No. 25-CV-3590 (DWL), 2025 WL 3033655,  
8 at \*4 (D. Ariz. Oct. 30, 2025) (noting that the petitioner was not foreclosed from  
9 bringing a *Zadvydas* claim when his detention had not yet exceeded the six-month);  
10 *Zavvar v. Scott*, No. 25-CV-2104 (TDC), 2025 WL 2592543, at \*6 (D. Md. Sept.  
11 8, 2025) (“[T]he fact that Zavvar has not yet been detained for six months does not  
12 preclude his argument that his detention is unlawful, both because the six-month  
13 presumption does not necessarily control in cases in which the petitioner was not  
14 subject to continuous detention from the issuance of the removal order, and because  
15 the six-month presumption is rebuttable.”); *Munoz-Saucedo v. Pittman*, 789 F.  
16 Supp. 3d 387, 396 (D.N.J. 2025) (“Although some courts have read *Zadvydas* as  
17 creating a bright-line rule—one that effectively allows the government to detain a  
18 person for at least six months without judicial review, even if there was no  
19 possibility of removal—a close reading of *Zadvydas* does not support that  
20 interpretation.”); *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008)  
21 (“Nothing about this scheme supports the conclusion drawn by many courts that  
22 the presumptive legality of detention within the first six months is irrebuttable. The  
23 *Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing  
24 inherent in the operation of the presumption itself that requires it to be  
25 irrebuttable.”); *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 706–07 (S.D.  
26 Tex. 2020) (“This six-month presumption is not a bright line, . . . and *Zadvydas* did  
27 not automatically authorize all detention until it reaches constitutional limits.”); *see*  
28 *also* Ian Bratlie & Adriana Lafaille, *A 180-Day Free Pass? Zadvydas and Post-*

1 *Order Detention Challenges Brought Before the Six-Month Mark*, 30 GEO. IMMIGR.  
2 L.J. 213, 239 (2016) (“[T]he Supreme Court did not hold that it would be  
3 impossible for detention to violate the statute or the Constitution until six months  
4 have expired.”). “The presumption of reasonableness is the default, but if a person  
5 ‘can prove’ that his removal is not reasonably foreseeable, then he can overcome  
6 that presumption. *Munoz-Saucedo*, 789 F. Supp. 3d at 397.

7 Here, if the Court were to somehow find Petitioner has not met the six-month  
8 threshold, he nevertheless would be able to rebut any presumption that his detention  
9 is reasonable because his removal to Laos is not significantly likely in the  
10 reasonably foreseeable future. There is no evidence that Laos will issue a travel  
11 document to Petitioner, making his removal foreseeable. As explained above, Laos  
12 generally does not accept deportees. In 2024, zero people were removed to Laos;  
13 in the five years before that, between 0 and 11 people were removed per year.<sup>40</sup>  
14 Although President Trump has pressured Laos to begin accepting deportees, that  
15 has resulted in Laos issuing travel documents for only a few dozen nationals out of  
16 thousands of Laotians. And since then, multiple courts have rejected the Trump  
17 administration’s efforts to re-detain Laotian immigrants without following its own  
18 regulations. *See, e.g., Khambounheuang*, No. 25-CV-2575 (JO) (SBC), ECF No.  
19 12 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-CV-1678 (JNW), 2025  
20 WL 2579569, at \*6 (W.D. Wash. Sept. 5, 2025).

21 In addition, Mr. Saysanavong’s own experience further shows that his  
22 removal to Laos is not significantly likely in the reasonably foreseeable future. ICE  
23 has now had 17 years to deport him. He has no new criminal convictions, not even  
24 a traffic ticket, and has dutifully complied with the terms of his order of supervision  
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27 <sup>40</sup> *See* U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal*  
28 *Year 2024*, at 100 (Dec. 19, 2024),  
<https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

1 since his release from ICE custody. (Saysanavong Decl. ¶ 8.) Yet ICE has proved  
2 unable to remove him. A 63-year-old man, Petitioner is categorically not a flight  
3 risk or a danger to society. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F. Supp.  
4 3d 1163, 1172 (W.D. Wash. 2023). To the contrary, he has been the foundation of  
5 support for his family. Moreover, to the extent detention is authorized at all at this  
6 point under *Zadvydas*, even without a showing of flight risk or danger to society, it  
7 can only be for the “narrow nonpunitive” purpose of securing a person’s removal  
8 “at the moment” of removal. *Zadvydas*, 533 U.S. at 690, 699. “Reasonableness” is  
9 measured “in terms of the statute’s basic purpose”: “assuring the [noncitizen’s]  
10 presence at the moment of removal.” *Id.* at 699. Continued detention is  
11 presumptively unreasonable, just as is continued detention only to explore whether  
12 another country will take Petitioner. Detention for that purpose has no definitive  
13 end and is not designed to facilitate the individual’s presence “at the moment” of  
14 removal—indeed, there is no known moment of removal because it is not known  
15 whether he can even be removed.

16 b. Post-detention procedural violations

17 Re-detention and the revocation of release on an order of supervision is  
18 governed by 8 C.F.R. § 241.13(i). ICE may revoke a noncitizen’s release and return  
19 them to ICE custody due to failure to comply with any of the conditions of release,  
20 8 C.F.R. § 241.13(i)(1), or if, “on account of changed circumstances, [ICE]  
21 determines that there is a significant likelihood that the [noncitizen] may be  
22 removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(2).

23 Upon such a determination by ICE to re-detain, “the alien will be notified of  
24 the reasons for revocation of his or her release. [ICE] will conduct an initial  
25 informal interview promptly after his or her return to [ICE] custody to afford the  
26 alien an opportunity to respond to the reasons for revocation stated in the  
27 notification. The [noncitizen] may submit any evidence or information that he or  
28 she believes shows there is no significant likelihood he or she [will] be removed in

1 the reasonably foreseeable future, or that he or she has not violated the order of  
2 supervision. The revocation custody review will include an evaluation of any  
3 contested facts relevant to the revocation and a determination whether the facts as  
4 determined warrant revocation and further denial of release.” *Id.* § 241.13(i)(3).

5 Here, Petitioner can show that Respondents did not comply with the  
6 procedural requirements of 8 C.F.R. § 241.13(i) in revoking his release. ICE is  
7 required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*,  
8 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004)  
9 (“The legal proposition that agencies may be required to abide by certain internal  
10 policies is well-established.”). “Where the rights of individuals are affected, it is  
11 incumbent upon agencies to follow their own procedures. This is so even where the  
12 internal procedures are possibly more rigorous than otherwise would be required.”  
13 *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

14 As discussed, no “changed circumstances” make it significantly likely that  
15 Petitioner will be removed in the foreseeable future. 8 C.F.R. § 241.13(i)(2). ICE  
16 did not notify Petitioner of the “reasons for revocation of [] [his] release,” conduct  
17 “an initial informal interview promptly after [] his return to [ICE] custody to afford  
18 [him] an opportunity to respond to the reasons for revocation stated in the  
19 notification,” allow Petitioner to “submit any evidence or information that [] [he]  
20 believes shows there is no significant likelihood [] [he] [will] be removed in the  
21 reasonably foreseeable future,” or provide a written “revocation custody review.”  
22 *Id.* § 241.13(i)(3); *see also Phan v. Beccerra*, No. 2:25-CV-1757 (DC) (JDP), 2025  
23 WL 1993735, at \*3 (E.D. Cal. July 16, 3025)

24 Instead, ICE has not shown Petitioner a Notice of Revocation, has not  
25 explained any changed circumstances or why it believes it can “expeditiously  
26 remove” him. (Saysanavong Decl. ¶¶ 9, 10.) As a result, there would be nothing for  
27 him to respond to, even if he was given an initial interview, which he was not.

28 Accordingly, as numerous courts have held in recent months, Petitioner is

1 likely to succeed on his claim that his re-detention was unlawful under the  
2 governing regulations and release is warranted. *See, e.g., Ceesay v. Kurzdorfer*, 781  
3 F. Supp. 3d 137, 170 (W.D.N.Y. 2025); *Phan*, 2025 WL 1993735, at \*7; *Hoac v.*  
4 *Becerra*, No. 2:25-CV-1740 (DC) (JDP), 2025 WL 1993771, at \*7 (E.D. Cal. June  
5 30, 2025); *Nguyen v. Hyde*, No. 25-CV-11470 (MJJ), 2025 WL 1725791, at \*5 (D.  
6 Mass June 20, 2025).

7 For all these reasons, Petitioner is likely to succeed on his claim that his re-  
8 detention was unlawful.

9 c. Procedural due process

10 Petitioner had a procedural due process right to notice and a hearing before  
11 being suddenly arrested and re-detained. As district courts throughout this Circuit  
12 have found, “individuals released from immigration custody . . . have a protectable  
13 liberty interest in remaining in the community on supervision.” *See Zakzouk v.*  
14 *Becerra*, No. 25-CV-6254, 2025 WL 2097470, at \*3 (N.D. Cal. July 26, 2025)  
15 (citing cases). Applying the factors in *Mathews v. Eldridge*, notice and a  
16 predeprivation hearing were required before the government could revoke  
17 Petitioner’s Order of Supervision. *See* 424 U.S. 319 (1976); *see, e.g., Gagnon v.*  
18 *Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482  
19 (1972); *Ortega v. Kaiser*, No. 25-CV-5259 (JST), 2025 WL 2243616, at \*5–6 (N.D.  
20 Cal. Aug. 6, 2025); *Azarte v. Andrews*, No. 1:25-CV-942 (KES) (SKO) (HC), 2025  
21 WL 2230521, at \*4 (E.D. Cal. Aug. 4, 2025) (citing *Young v. Harper*, 520 U.S.  
22 143, 147–49 (1997)); *Sequen v. Kaiser*, 793 F. Supp. 3d 1114, 1119–21 (N.D. Cal.  
23 2025); *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1038 (N.D. Cal. 2025);  
24 *Garcia v. Andrews*, No. 2:25-CV-1884 (TLN) (SCR), 2025 WL 1927596, at \*3–6  
25 (E.D. Cal. July 14, 2025); *Romero v. Kaiser*, No. 22-CV-2508 (TSH), 2022 WL  
26 1443250, at \*2 (N.D. Cal. May 6, 2022); *Chhoeun v. Marin*, 442 F. Supp. 3d 1233,  
27 1251 (C.D. Cal. 2020).

28 Like the post-order Petitioners in *Chhoeun* and *Zakzouk*, the private interest

1 affected here could not be stronger. As a long-term resident of the United States,  
2 Petitioner has lived subject to a “dormant” removal order for 17 years, duly  
3 complied with his order of supervision, has built a settled life, and has no  
4 connections to Laos. The risk of erroneous deprivation absent notice and a hearing  
5 to determine whether the government has the legal authority to revoke Petitioner’s  
6 order of supervision is extremely high—a fact made plain by the allegations made  
7 in this petition. Absent any check on the power of the government to detain, the  
8 government has detained Petitioner without a legal basis to do so. *City of*  
9 *Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (“The Due Process Clause was  
10 intended to prevent government officials from abusing their power, or employing  
11 it as an instrument of oppression.”). Finally, the government’s interest, by contrast,  
12 is extremely low. Indeed, “[c]ivil immigration detention is permissible only to  
13 prevent flight or protect against danger to the community.” *Zakzouk*, 2025 WL  
14 2097470, at \*3 (citing *Zadvydas*, 533 U.S. at 690). It has also been 17 years since  
15 Petitioner was ordered deported. As the court noted in *Chhoeun*, the government  
16 has no legitimate claim that it is burdened by a slight delay of the execution of  
17 Petitioner’s removal order when it “waited years or decades to execute these  
18 removal orders.” 442 F. Supp. 3d at 1249.

19 **2. Petitioner is Likely to Succeed on the Merits of the Claim**  
20 **that He is Entitled to Procedural Protections Before Third**  
21 **Country Removal.**

22 Petitioner is likely to succeed on the merits of his claim that he may not be  
23 removed to a third country absent Respondents complying with 8 U.S.C. § 1231(b)  
24 and due process.

25 In Petitioner’s case, only Laos meets the criteria for removal under 8 U.S.C.  
26 § 1231(b)(2)(A)-(E). Removing Petitioner to a third country requires the Attorney  
27 General to first determine that it is “impracticable, inadvisable, or impossible” to  
28 remove Petitioner to Laos and that the designated third country “will accept

1 [Petitioner].” *Id.* § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n.4  
2 (9th Cir. 2004) (noting that 8 U.S.C. § 1231(b)(2)(E)(vii) “indisputably requires the  
3 Attorney General to prove that the proposed country of removal is willing to accept  
4 the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 344 (2005).  
5 The statute authorizes the immigration judge to designate a third country for  
6 removal. 8 U.S.C. § 1231(b)(2)(E)(vii) (stating that “the Attorney General shall  
7 remove the alien to . . .” a country); *see also* 8 C.F.R. § 1240.10(f) (noting that in  
8 removal proceedings the immigration judge “shall . . . identify . . . a country, or  
9 countries in the alternative, to which the alien’s removal may be made”). Here,  
10 removing Petitioner to a third country requires Respondents to move to reopen  
11 Petitioner’s 17-year-old removal proceedings to ask an immigration judge to  
12 designate a third country under the statutory process. *See Scott*, 796 F. Supp. 3d at  
13 728–29 (“Petitioner is likely to succeed on his claim that removal to a third country  
14 under ICE’s current policy, without meaningful notice and reopening of his  
15 removal proceedings for a hearing, would violate due process.”); *Sadychov v.*  
16 *Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (unpublished) (holding that “the  
17 agency must provide [the noncitizen] with notice and an opportunity to reopen his  
18 case for full adjudication of his claim of withholding of removal from” the third  
19 country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019)  
20 (finding that removal proceedings “shall be reopened and a hearing shall be held  
21 before the immigration judge so that petitioner may apply for relief from removal”  
22 to a different country not previously designated).

23 Adherence to that process also ensures Petitioner’s statutory right to claim  
24 protection in immigration court against removal to a third country where he may be  
25 persecuted or tortured, a form of protection known as withholding of removal, 8  
26 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right  
27 to claim deferral of removal under the CAT, *see* 28 C.F.R. § 200.1 (“A removal  
28 order . . . shall not be executed in circumstances that would violate [the CAT]”); 8

1 C.F.R. §§ 208.17-18, 1208.17-18.

2 Of course, the statutory framework is entirely meaningless without notice of  
3 a third country removal and an opportunity to respond that comports with Fifth  
4 Amendment due process. *See U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct.  
5 2153, 2163 (2025) (Sotomayor, J., dissenting) (“The Fifth Amendment  
6 unambiguously guarantees that right” to notice of a third country removal so that a  
7 noncitizen “learn[s] about it in time to seek an immigration judge’s review.”).  
8 Notice cannot be “last minute” because that would deprive an individual of a  
9 meaningful opportunity to apply for fear-based protection from removal.  
10 *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). There must be time to  
11 prepare and present relevant arguments and evidence and to seek reopening of their  
12 removal case. “[W]ritten notice of the country being designated” is required and  
13 “the statutory basis for the designation, i.e., the applicable subsection of [Section]  
14 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v.*  
15 *U.S. Dep't of Homeland Sec.*, No. 25-CV-10676 (BEM), 2025 WL 1453640, at \*1  
16 (D. Mass. May 21, 2025) (“All removals to third countries, . . . must be preceded  
17 by written notice to both the non-citizen and the non-citizen’s counsel in a language  
18 the non-citizen can understand.” (internal quotation marks and citation omitted));  
19 *Andriasian*, 180 F.3d at 1041 (noting that due process requires notice to the  
20 noncitizen of the right to apply for asylum and withholding to the country of  
21 removal).

22 Due process also demands that the government “ask the noncitizen whether  
23 he or she fears persecution or harm upon removal to the designated country and  
24 memorialize in writing the noncitizen’s response. This requirement ensures DHS  
25 will obtain the necessary information from the noncitizen to comply with Section  
26 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said].” *Aden*,  
27 409 F. Supp. 3d at 1019.

28 Respondents’ third country removal program skips over these statutory and

1 constitutional procedural protections. According to ICE’s July 9, 2025 guidance,  
2 individuals can be removed to third countries “without the need for further  
3 procedures,” so long as “the [U.S.] has received diplomatic assurances.” (ICE  
4 Memo, at 1.) Petitioner is likely to succeed on the merits of his claim on this fact  
5 alone, because the policy instructs officers to violate the statutory and constitutional  
6 requirements. The same is true of the minimal procedures ICE offers when no  
7 diplomatic assurances are present. The policy provides no meaningful notice (6-24  
8 hours), instructs officers not to ask about fear, and provides no actual opportunity  
9 to see counsel and prepare a fear-based claim (6-24 hours), let alone reopen removal  
10 proceedings. In sum, it directs ICE officers to violate the rights of those whom they  
11 seek to subject to the third country removal program.

12 **3. Petitioner is Likely to Succeed on the Merits of His Claim**  
13 **that the Constitution Prohibits Punitive Third Country**  
14 **Removals.**

15 Petitioner is likely to succeed on the merits of his claim that the Constitution  
16 prohibits him from being subjected to Respondents’ punitive third country removal  
17 program. The prohibition against imposing punitive measures on an individual  
18 subject to a final order of removal is as old as immigration law. *Wong Wing v.*  
19 *United States*, 163 U.S. 228 (1896). The Supreme Court in *Wong Wing* struck down  
20 a provision of the Chinese Exclusion Act that imposed one year of imprisonment at  
21 hard labor as an immigration sanction before deportation. *Id.* at 237. The Court  
22 distinguished “deportation,” described as a sanction for noncompliance with U.S.  
23 residency legal requirements that may be imposed by executive authorities, from  
24 “punishment,” which may not. *Id.* at 236–37. The Court held that the government  
25 could not attach a punishment to deportation (here, imprisonment) without criminal  
26 charges, a judicial trial, and the concomitant protections of the Fifth, Sixth, and  
27 Eighth Amendments. *Id.*

28 The government’s third country removal program defies 130 years of

1 constitutional immigration law between civil penalty and infamous punishment.  
2 *See, e.g., Zadvydas*, 533 U.S. at 694. Respondents’ third country removal program  
3 is designed to punish those it deports by subjecting them to imprisonment upon  
4 their arrival in the receiving countries. Respondents’ program is not just about  
5 removing individuals to third countries. It is about removing them to be imprisoned  
6 upon arrival and paying countries to carry out said imprisonment; selecting  
7 countries and overseas prisons notorious for cruelty, torture, lawlessness, and other  
8 human rights abuses; and publicly broadcasting these third country removals to  
9 demonize deportees and strike extreme fear in immigrants to entice self-  
10 deportation. This program is about punitive banishment.

11 To determine whether a given sanction constitutes punishment, courts look  
12 to intent. If the government’s intent is to punish, “that is the end of the inquiry.”  
13 *Am. Civ. Liberties Union of Nev. v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012)  
14 (citing *Smith v. Doe*, 538 U.S. 84, 92 (2003)). Here, the government’s own  
15 statements show intent to deport individuals, particularly those with criminal  
16 convictions, into situations of forever confinement or substantial harm.

17 When the government’s intent to punish is unclear, courts move to the second  
18 step of the inquiry to determine whether the practices are “so punitive either in  
19 purpose or effect as to negate the [government’s] intention to deem it civil.” *Id.*  
20 (quoting *Smith*, 538 U.S. at 92). To determine punitive purpose or effect, courts  
21 often turn to the factors laid out in *Kennedy v. Mendoza-Martinez*. *See* 372 U.S.  
22 144, 168–69 (1963); *see also Hudson v. United States*, 522 U.S. 93, 99 (1997)  
23 (“[T]he factors listed in *Kennedy v. Mendoza-Martinez* . . . provide useful  
24 guideposts” (internal citation omitted)). Those factors are: “[w]hether the sanction  
25 involves an affirmative disability or restraint, whether it has historically been  
26 regarded as a punishment, whether it comes into play only on a finding of scienter,  
27 whether its operation will promote the traditional aims of punishment—retribution  
28 and deterrence, whether the behavior to which it applies is already a crime, whether

1 an alternative purpose to which it may rationally be connected is assignable for it,  
2 and whether it appears excessive in relation to the alternative purpose assigned.”  
3 *Mendoza-Martinez*, 372 U.S. at 168–69 (footnotes omitted).

4 The government’s third country removal program undeniably constitutes  
5 punishment and meets all these factors. Under the first factor, the government’s  
6 practice of deporting people only to have them imprisoned or subjected to other  
7 forms of physical harm is an “affirmative disability or restraint.” The “paradigmatic  
8 affirmative disability” is the “punishment of imprisonment.” *Smith*, 538 U.S. at  
9 100. And under this factor, “we inquire how the effects of the [sanction] are felt by  
10 those subject to it. If the disability or restraint is minor and indirect, its effects are  
11 unlikely to be punitive.” *Id.* at 99–100. Undoubtedly, deportation to be imprisoned  
12 or suffer other extreme harm will be felt as a significant and direct disability or  
13 restraint. Indeed, as this court held in a similar case, “Respondents’ practice of  
14 third-country removal paired with imprisonment violates due process.” *Scott*, 796  
15 F. Supp. 3d at 735.

16 **B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.**

17 “It is well established that the deprivation of constitutional rights  
18 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d  
19 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).  
20 Where the “alleged deprivation of a constitutional right is involved, most courts  
21 hold that no further showing of irreparable injury is necessary.” *Warsoldier v.*  
22 *Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (citing 11A Charles Alan Wright  
23 et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). “Unlawful detention  
24 certainly constitutes ‘extreme or very serious damage, and that damage is not  
25 compensable in damages.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir.  
26 2017).

27 Here, the irreparable harm to Petitioner and his family is severe. He has  
28 already been unreasonably deprived of at least six months of his life in prolonged

1 immigration detention. Absent relief, Petitioner will remain detained in an  
2 indefinite and prolonged state, denied his liberty, and removed from his family and  
3 community where he belongs. Even worse, given his health conditions, particularly  
4 his heart condition which requires consistent and proper medical care, such  
5 prolonged detention is perilous and could put his health and life in jeopardy.

6 **C. The Balance of Hardships and Public Interest Weigh Heavily in**  
7 **Petitioner's Favor.**

8 The final two factors for a TRO—the balance of hardships and public  
9 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
10 556 U.S. 418, 435 (2009). “[T]he balance of hardships tips decidedly in plaintiffs’  
11 favor” when “[f]aced with such a conflict between financial concerns and  
12 preventable human suffering.” *Hernandez*, 872 F.3d at 996 (citing *Lopez v.*  
13 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Here, the balance of hardships tips  
14 in Petitioner’s favor. Petitioner faces weighty hardships: deprivation of his liberty  
15 and removal to a third country where he is likely to suffer imprisonment or other  
16 serious harm. “[T]he [government] cannot reasonably assert that it is harmed in any  
17 legally cognizable sense by being enjoined from constitutional violations.” *Zepeda*  
18 *v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). And it is always in the public interest  
19 to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,  
20 556 U.S. at 436 (describing public interest in preventing noncitizens “from being  
21 wrongfully removed, particularly to countries where they are likely to face  
22 substantial harm”). Accordingly, the balance of hardships and the public interest  
23 overwhelmingly favor emergency relief to ensure Petitioner’s freedom and prevent  
24 unlawful third country removal.

25 **CONCLUSION**

26 For the foregoing reasons, the Court should immediately grant Petitioner’s  
27 TRO.  
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Dated: December 16, 2025

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