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10 Tien VO

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 Tien VO,

14 Petitioner-Plaintiff,

15 v.

16 Sergio ALBARRAN, Acting Field Office
17 Director of San Francisco Office of Detention
18 and Removal, U.S. Immigrations and Customs
19 Enforcement; U.S. Department of Homeland
20 Security;

21 Todd M. LYONS, Acting Director, Immigration
22 and Customs Enforcement, U.S. Department of
23 Homeland Security;

24 Kristi NOEM, in her Official Capacity,
25 Secretary, U.S. Department of Homeland
26 Security; and

27 Pam BONDI, in her Official Capacity, Attorney
28 General of the United States;

Respondents-Defendants.

Case No. 3:26-cv-1489

**EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION: HEARING
REQUESTED**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

1
2 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local
3 rules of this Court, Petitioner hereby moves this Court for an order enjoining Respondents
4 Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement
5 (“ICE”), and Pam Bondi, in her official capacity as the U.S. Attorney General, from re-detaining
6 Petitioner Mr. Tien VO (“Mr. Vo”) until he is afforded a hearing before this Court, or a federal
7 district court, as required by the Due Process clause of the Fifth Amendment, to determine whether
8 his removal to Vietnam is reasonably foreseeable and otherwise whether circumstances have
9 changed such that his re-detention would be justified—that is, whether he poses a danger or a flight
10 risk. Mr. Vo additionally seeks to enjoin Respondents from removing him from the United States
11 to any third country to which he does not have a removal order (i.e., any country other than
12 Vietnam) without first providing him with constitutionally-compliant procedures.

13 The reasons in support of this Motion are set forth in the accompanying Memorandum of
14 Points and Authorities. This Motion is based on the concurrently-filed Declaration of Lorena C.
15 Castillo with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex
16 Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in
17 support of this Motion, Petitioner Mr. Vo raises that he warrants a temporary restraining order due
18 to his weighty liberty and life interests under the Due Process Clause of the Fifth Amendment in
19 preventing his unlawful re-incarceration absent a pre-deprivation due process hearing before a
20 neutral adjudicator, this Court, where the government bears the burden, and in preventing his
21 summary removal to a third country, other than Vietnam, without first providing him with notice
22 and an opportunity to apply for fear-based relief as to that third country.

23 WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining
24 order and a preliminary injunction enjoining Respondents from re-incarcerating him unless and
25 until he is afforded a hearing before a neutral decisionmaker on the question of whether his re-
26 incarceration would be lawful, and enjoining Respondents from removing him to a third country
27 before he is provided with constitutionally-compliant procedures. Petitioner Mr. Vo is currently
28 scheduled to appear for an ICE check-in before the ICE San Francisco Field Office, as required by

1 Respondents, **on February 26, 2026**, where Respondents likely intend to re-arrest and re-detain
2 him, even though his removal to Vietnam is not reasonably foreseeable and he is not otherwise a
3 flight risk or danger to the community, and where Respondents may seek to summarily remove
4 him to a third country. **Currently, ICE alleges to have a travel permit without providing**
5 **undersigned counsel with a copy despite requests to do so. Given the high likelihood of**
6 **detention during his check-in, Petitioner respectfully requests that, if this TRO cannot be**
7 **adjudicated before his check-in, that Respondents be enjoined from detaining Mr. Vo during**
8 **his upcoming check-in to allow proper adjudication of this TRO.**

9
10 Dated: February 19, 2026

Respectfully Submitted

11 /s/Lorena C. Castillo
12 Zachary Nightingale
13 Lorena C. Castillo
14 Attorneys for Petitioner-Plaintiff
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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. Tien VO (“Mr. Vo”), by and through undersigned counsel, hereby
3 files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S.
4 Department of Homeland Security’s (“DHS”) Immigration and Customs Enforcement (“ICE”)
5 from re-detaining him unless and until he is afforded notice and a hearing before a neutral
6 adjudicator (i.e. a federal district court) on the questions of whether his removal to Vietnam is
7 reasonably foreseeable and otherwise whether there are changed circumstances showing he is now
8 a danger and a flight risk such this his re-detention would be warranted. Petitioner Mr. Vo further
9 seeks to enjoin Respondents from removing him to any third country without first providing him
10 with constitutionally-compliant procedures. **Currently, ICE alleges to have a travel permit**
11 **without providing undersigned counsel with a copy despite requests to do so. Given the high**
12 **likelihood of a detention during his check-in, and the unusual and suspicious circumstances**
13 **regarding the Vietnamese documentation¹, Petitioner respectfully requests that, if this TRO**
14 **cannot be adjudicated before his check-in, that Respondents be enjoined from detaining Mr.**
15 **Vo during his upcoming check-in to allow proper adjudication of this TRO. See *F.T.C. v.***
16 ***Dean Foods Co.*, 384 U.S. 597, 604 (1966) (noting court's "express authority under the All**
17 **Writs Act to issue such temporary injunctions as may be necessary to protect its own**
18 **jurisdiction").**

19 Mr. Vo is a Vietnamese refugee who has lived in the United States, first as a refugee and
20 then as a U.S. lawful permanent resident, since approximately 1980. Although he was ordered
21 removed on 2000, and then held for several months while the government was to attempt to secure
22 travel documents for his removal, he was released from detention due to ICE’s inability to execute
23 his removal, which was consistent with the binding international repatriation agreement preventing
24
25

26 ¹ Aside from the evidence provided in this TRO and habeas petition, Mr. Vo intends to provide
27 further evidence at a pre-deprivation hearing that calls into question the validity of his travel
28 permit but also evidence of how this is not an unfounded concern that only a pre-detention
hearing can solve.

1 the repatriation of Vietnamese individuals who entered the United States before July 12, 1995.²
2 Since his release from detention in 2000, Mr. Vo lived at liberty for over twenty-five years while
3 complying with all reporting requirements, and reconnecting with his loved ones. However, on
4 September 5, 2025, ICE re-detained Mr. Vo. *Id.* On January 22, 2026, Judge Jennifer Thurston
5 ordered Mr. Vo's release in the grant of writ of habeas corpus, finding that the government
6 unlawfully detained him. *Id.*

7 Mr. Vo is scheduled to attend a check-in at the ICE San Francisco Field Office on February
8 26, 2026. *Id.* On February 17, 2026, ICE, through an assistant US Attorney, claimed to have a
9 travel permit without providing a copy despite undersigned counsel's request. Recent cases show
10 a concerning pattern of ICE obtaining travel permits under false pretenses for deportees who, like
11 Mr. Vo, are purportedly not citizens of their country of removal. *Id.* ICE has not confirmed the
12 country the alleged travel document comes from, which also does not remove the likelihood that
13 they could remove Mr. Vo to a third country. *Id.*

14 In light of the above and credible reports of ICE re-incarcerating individuals at their ICE
15 check-ins³—including Mr. Vo's own experience previously and undersigned counsel's experience
16 with two similarly situated clients who were re-arrested and re-detained during routine check-in
17 appointments at ICE's San Francisco Field Office and the Fresno Field Office—, it is highly likely
18 that Mr. Vo will be arrested and detained at this appointment. *Hoac v. Becerra, et al.*, 2:25-cv-
19 01740-DC-JDP, 2025 WL 1993771 (E.D.C.A. July 16, 2025) (ordering the immediate release of
20 petitioner—a Vietnamese individual who arrived to the United States as a refugee prior to 1995,
21 who also has a final removal order and was released from ICE detention and had been complying

22
23 ² See U.S. Department of State, "Repatriation Agreement Between the United States of America
24 and Vietnam" (Jan. 22, 2008), available at: [https://www.state.gov/wp-](https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf)
25 [content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf](https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf) ("Vietnamese citizens are not
subject to return to Vietnam under this Agreement if they arrived in the United States before July
12, 1995....").

26 ³ See, e.g., "Immigrants at ICE check-ins detained, held in basement of federal building in Los
27 Angeles, some overnight," CBS News (June 7, 2025),
28 [https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/)
[of-federal-building-in-los-angeles/](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/); "They followed the government's rules. ICE held them
anyway," LAist (June 11, 2025), [https://laist.com/news/politics/ice-raids-los-angeles-family-](https://laist.com/news/politics/ice-raids-los-angeles-family-detained)
[detained](https://laist.com/news/politics/ice-raids-los-angeles-family-detained).

1 with an ICE Order of Supervision for years—after he was unlawfully re-detained at a routine check
2 in at the San Francisco ICE Office); *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP, 2025 WL
3 1993735 (E.D.C.A. July 16, 2025) (same). This is particularly true given that ICE has received
4 multiple directives to meet untenable daily arrest quotas that leave the agency no other option but
5 to arrest noncitizens whose incarceration is not necessary.⁴ If Mr. Vo is arrested, he faces the very
6 real possibility of being transferred outside of California with little or no notice, far away from his
7 family and community. *Phan, et al.*, 2025 WL 1993735 (where petitioner was transferred from
8 California to Louisiana).

9 **Of note, Mr. Vo previously attended his first check-in since his 2026 release at the**
10 **ICE San Francisco Field Office on January 26, 2026. Castillo Decl. At that time, he was**
11 **instructed to return for another check in only a month later. *Id.* Between February 5, 2026,**
12 **and February 19, 2025, undersigned counsel has been communicating with counsel for the**
13 **Respondents regarding whether ICE intends to detain Mr. Vo at this upcoming appointment.**
14 ***Id.* On February 17, 2026, ICE alleged to have a travel permit for Mr. Vo without providing**
15 **requested copies. *Id.***

16 Once a noncitizen is released from ICE detention, as Mr. Vo was in 2000 and 2026, their
17 re-detention is limited by regulation, statute and the constitution. By statute and regulation, only
18 in specific circumstances (that do not apply here) does ICE have the authority to re-detain a
19 noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)–(2). The ability
20 of ICE to simply re-arrest someone following their release from detention, however, is further
21 limited by the Due Process Clause because it is well-established that individuals released from
22

23 ⁴ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January
24 26, 2025), available at: [https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/)
25 [raids-trump-quota/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/); “Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,”
26 *Forbes* (June 9, 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
27 [order-likely-sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) (“At the end of May 2025, ‘Stephen
28 Miller, a senior White House official, told Fox News that the White House was looking for ICE to
arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than
66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a
day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests
in a calendar year.”).

1 incarceration have a liberty interest in their freedom. Here, this means that, *prior to any re-*
2 *detention*, Mr. Vo be provided with notice and a hearing before this Court at which DHS bears the
3 burden of justifying his re-detention.

4 That basic principle—that individuals placed at liberty are entitled to process before the
5 government imprisons them—has particular force here, where Mr. Vo was already released from
6 detention both in 2000 and 2026 after findings that his removal was not reasonably foreseeable
7 and that he need not be incarcerated to prevent flight or to protect the community, and no
8 circumstances have changed that would justify his re-arrest. An alleged travel permit does not
9 change this because (1) ICE never provided the requested copy of this alleged travel permit, let
10 alone the communication with the Vietnamese embassy in procurement, (2) there is a likelihood
11 that the travel permit is made under false pretenses since Mr. Vo is not a Vietnamese citizen as
12 prior documentation from the Vietnamese consulate indicates, and (3) there is no confirmation
13 that this alleged travel permit is not for a country other than Vietnam.

14 Therefore, at a minimum, in order to lawfully re-arrest Mr. Vo, the government must first
15 establish before this Court that his removal is reasonably foreseeable, and otherwise that he is a
16 danger to the community or a flight risk, such that his re-incarceration is necessary.

17 Additionally, Mr. Vo has a protected interest not only in his liberty, but also in his life.
18 Here, this means that the government must provide him with constitutionally-complaint
19 procedures prior to any removal to a third country (i.e. any country apart from Vietnam, which is
20 the only country listed in his removal order): notice and an adequate opportunity to apply for fear-
21 based relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading
22 Treatment or Punishment as to that third country.

23 Mr. Vo meets the standard for a temporary restraining order. He will suffer immediate and
24 irreparable harm absent an order from this Court enjoining the government from arresting him at
25 his ICE check-in on February 26, 2026, unless and until he first receives a hearing before a neutral
26 adjudicator, as demanded by the Constitution. He would also suffer immediate and irreparable
27 harm if removed to a third country where his life could be in danger. Because holding federal
28 agencies accountable to constitutional demands is in the public interest, the balance of equities and

1 public interest are also strongly in Petitioner Mr. Vo's favor.

2 **II. STATEMENT OF FACTS AND CASE**

3 Mr. Vo survived a gruesome war in Vietnam as a child, and he fled Vietnam in 1980 when
4 he was about five or six years old.

5 Mr. Vo then entered the United States in 1980 at the age of approximately six years old as
6 a refugee. He later became a U.S. lawful permanent resident.

7 Mr. Vo was in removal proceedings in 2000. At that time, Vietnamese individuals like Mr.
8 Vo who entered the United States before July 1995 would have been aware of the repatriation
9 agreement between the United States and Vietnam that applied to them which prevented
10 repatriation to Vietnam.⁵ He was ordered removed on or about March 20, 2000. He had a removal
11 hearing at the Immigration Court in Imperial, California. Though he did indeed fear removal to
12 Vietnam, as he initially tried to file an application for asylum, convention against torture and
13 withholding of removal, he accepted the removal order, because he knew he would not actually be
14 deported based on the explicit terms of the repatriation agreement between the U.S. and
15 Vietnamese, and his primary goal was to be released from detention as quickly as possible so that
16 he could begin to rebuild his life. He also had reason to believe that he was no longer a citizen of
17 Vietnam because he had visited while still a lawful permanent resident and was given a tourist visa
18 to enter Vietnam, something that would not have happened to a citizen of that country.

19 Due to the existing repatriation agreement, Mr. Vo could not be removed to Vietnam, and
20 therefore his continued detention by ICE would be indefinite and unconstitutionally prolonged if
21 he were to remain in ICE detention. Therefore, consistent with Supreme Court law, he was
22 thereafter released from ICE custody after approximately 180 days and placed on an OSUP in 2000,
23 attend regular check in appointments in person at the ICE San Francisco Offices. For the past
24 nearly twenty-five years, Mr. Vo has complied with the terms of his OSUP by regularly attending
25 all his check ins at the ICE San Francisco Office. He was previously informed that ICE had
26 requested travel documents from Vietnam and that none were ever produced. He also applied for
27 and received a work authorization document.

28 _____
⁵ See *supra* n.2.

1 On September 5, 2025, ICE arrested Mr. Vo during a routine check-in in San Francisco,
2 California. Without notice or the opportunity for a due process hearing, ICE took Mr. Vo into
3 custody. They did not let Mr. Vo talk and only took his fingerprints.

4 The only explanation given to Mr. Vo for his re-detention was that he had a “removal,”
5 which presumably is the removal order that existed since he was first ordered removed by the
6 Immigration Court and before his release from ICE detention. This is because Mr. Vo could not
7 be physically removed to any country due to the repatriation agreement in place that specifies that
8 individuals from Vietnam in his situation who entered the U.S. before 1995 would not be removed
9 by the United States and would not be accepted by Vietnam.

10 On November 10, 2025, Mr. Vo filed a petition for writ of habeas corpus before the Eastern
11 District of California federal court. *Vo v. Albarran*, No. 1:25-CV-01530 JLT SKO, 2026 WL
12 177796 (E.D. Cal. Jan. 22, 2026). In his petition, Mr. Vo filed a declaration from expert Dr. Thao
13 Ha, who reported that Vietnam likely does not consider Mr. Vo a Vietnamese citizen because of a
14 visa exemption the consulate recently issued him (specifying he could visit Vietnam temporarily
15 without a visa, something that would not even be necessary to provide to a citizen of that country).
16 Dr. Ha stressed that this is material because Vietnam only provides actual travel permits for
17 Vietnamese citizens, and there are strict procedures Vietnam employs to confirm citizenship. On
18 December 23, 2025, Magistrate Judge Oberto recommended a grant for his petition. *Id.* at Dkt. 11.
19 Specifically, Judge Oberto found that Respondents unlawfully detained Mr. Vo and did not
20 establish changed circumstances, such as ability to remove Mr. Vo, prior to detention. *Id.* In
21 support of this finding, Judge Oberto agreed with Mr. Vo in that ICE’s Notice of Revocation of
22 Release (“NRR”) was likely a boilerplate template that did not establish changed circumstances
23 nor that ICE properly followed their own regulations when revoking Mr. Vo’s OSUP. *Id.* Federal
24 Judge Jennifer Thurston agreed and ordered Mr. Vo’s immediate release on January 22, 2026. *Id.*
25 at Dkt. 14.

26 Following his release, Mr. Vo attended an ICE check-in, where ICE scheduled Mr. Vo for
27 a new check-in on February 26, 2026.

1 On January 30, 2026, Mr. Vo filed a Motion to Reopen and Rescind his removal order
2 before the BIA because all his convictions have been vacated as legally invalid, rendering him no
3 longer removable. Castillo Decl. at Exh. F (BIA Motion to Reopen Receipt). In support of his
4 motion, Mr. Vo filed proof of all his criminal conviction vacatur, [REDACTED]
5 [REDACTED] (and thus documenting the equitable tolling
6 relevant to his motion to reopen), recurring volunteer work with at-risk youth, a heroic deed that
7 helped prevent a massive summer fire in Vacaville, and documents confirming Mr. Vo is his
8 family's breadwinner and main source of support. Castillo Decl. at Exh. J (Positive Equities).

9 Due to concerns of another unlawful detention, undersigned counsel contacted United
10 States Attorneys from the Northern District of California on February 5, 2026, to notify them of
11 Mr. Vo's intention to file a petition for writ of habeas corpus to require that he receive
12 constitutionally protected procedures before Respondent could lawfully re-detain him.

13 On February 17, 2026, an Assistant United States Attorney informed undersigned counsel
14 that ICE alleged to have a travel document for Mr. Vo. Based on Dr. Ha's report confirming that
15 Mr. Vo is likely not a Vietnamese citizen and recent cases of the issuance of travel permits under
16 false pretenses, undersigned counsel requested a copy of the travel document. On February 18,
17 2026, the same United States Attorney reported that she did not have a copy and later suggested
18 that undersigned counsel contact Respondents directly for a copy. Based on credible information
19 and belief, it is undersigned counsel's understanding that ICE does not produce copies of travel
20 documents to the deportees directly. Nevertheless, undersigned counsel emailed ICE on February
21 19, 2026, requesting a copy of the travel document. As of February 19, 2026, there has been no
22 response.

23 Currently, Vietnam has strict regulations and vetting process to determine which deportee
24 is a citizen of that country prior to providing travel permits. Castillo Decl. at Exh. B (Dr. Thao Ha
25 Declaration). According to expert information from Dr. Ha, obtaining a travel permit requires "(1)
26 a Vietnamese birth certificate that existed at the time of birth or a reissued copy of the same birth
27 certificate that existed at the time of birth, (2) a completed passport application and biography form
28 (in Vietnamese), and (3) two passport photos meeting consular standards." *Id.* On the other hand,

1 Vietnam issues visa *exemptions* only to non-citizens, and issuance of a Vietnamese visa exemption
 2 makes issuance of a Vietnamese travel permit to the same individual very unlikely. *Id.* Mr. Vo in
 3 this case already has been issued a visa exemption, which calls into question the validity of any
 4 alleged travel permit since it is very unlikely that the Vietnamese government would issue that to
 5 him.⁶ This concern is not unfounded. Recent cases involving OSUP deportee show credible proof
 6 of alteration of travel permits or biographic information for deportees that, similar to Mr. Vo,
 7 should not be receiving travel permits in the first place. *Viengkhone S. v. Albarran*, No. 25-cv-
 8 01505, 2025 WL 3521302 at Dkt. 17, 2025 U.S. Dist. LEXIS 253472, at Dkt. 17 (E.D. Cal. Dec.
 9 8, 2025)

10 Multiple credible reports demonstrate that numerous noncitizens in the San Francisco Bay
 11 Area, Sacramento Area, Los Angeles, and across the country who have appeared as instructed at
 12 ICE check-ins have been incarcerated or re-incarcerated by ICE.⁷ This is not speculative because
 13

14 ⁶ In reviewing Mr. Vo's Vietnamese visa exemption, Dr. Ha states the following: "What
 15 immediately stood out to me were the "passport/international document number of
 16 country/territory" sections of the document. Here, the visa exemption indicates the country is
 17 "United States" and the number is [REDACTED]," which to my knowledge is Mr. Vo's alien
 18 registration number. This is interesting because, as I mentioned earlier, Vietnam uses an alien
 19 registration number in visa exemptions when they believe an individual is a lawful permanent
 20 resident of the United States. Ms. Castillo confirmed with me that Mr. Tien Vo is no longer a
 21 lawful permanent resident.... It therefore [is] in my professional opinion that Vietnam does not
 22 consider Mr. Tien Vo to be a Vietnamese citizen but rather a United States national given the
 23 contents of his visa exemption. Based on this, it is very unlikely that Vietnam will issue Mr. Tin
 24 Vo a passport." Castillo Decl. at Exh. B (Dr. Thao Ha Declaration) (emphasis added).

25 ⁷ "ICE arrests at Sacramento immigration courts raises fear among immigrant community,"
 26 KCRA (June 3, 2025), <https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405>; "ICE confirms arrests made in South San Jose," NBC Bay
 27 Area (June 4, 2025), <https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> ("The Rapid Response Network, an immigrant watchdog group, said
 28 immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the
 immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said.");
 "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San
 Francisco Chronicle (June 5, 2025), <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>; "Cincinnati high school graduate faces deportation after
 routine ICE check-in," ABC News (June 9, 2025), <https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.

1 it has already happened to Mr. Vo himself. Moreover, on information and belief, on January 25,
 2 2025, officials in the new Trump administration directed senior ICE officials to increase arrests
 3 to meet daily quotas. Specifically, per public reporting, each field office was instructed to make
 4 75 arrests per day.⁸ Furthermore, recent changes in the leadership of ICE were attributed to
 5 perception that ICE officers were not sufficiently aggressive in meeting the expected number of
 6 immigration arrests, which left the impression that ICE would be engaging in additional actions
 7 to arrest any non-citizen that it is able to encounter who is amenable to arrest (lawfully or
 8 otherwise).⁹

9 In recent months, ICE has engaged in highly publicized arrests of individuals who
 10 presented no flight risk or danger, often with no prior notice that anything regarding their status
 11 was amiss or problematic, whisking them away to faraway detention centers without warning.¹⁰

12 In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins¹¹—
 13 including Mr. Vo’s prior experience and also undersigned counsel’s own experience with two

14 _____
 15 ⁸ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January
 16 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

17 ⁹ See Politico, “Shake-up at ICE will boost immigration numbers — just not the ones that matter
 18 most to Trump” (Oct. 29, 2025), available at: <https://www.politico.com/news/2025/10/29/ice-shake-up-will-increase-arrest-numbers-that-doesnt-mean-there-will-be-more-deportations-00628718>.

19 ¹⁰ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y.
 20 Times (Mar. 15, 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
 21 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the
 22 Tufts University PhD student detained by federal agents,” CNN (Mar. 28, 2025),
 23 <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html>
 24 (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein,
 25 *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico
 26 (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington,
 27 Virginia and transferred to Texas).

28 ¹¹ See, e.g., “Immigrants at ICE check-ins detained, held in basement of federal building in Los
 Angeles, some overnight,” CBS News (June 7, 2025),
<https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; “They followed the government’s rules. ICE held them
 anyway,” LAist (June 11, 2025), <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>.

1 similarly situated clients who were re-arrested and re-detained during routine check-in
2 appointments at ICE’s San Francisco Field Office and one in the Fresno Field Office—, it is
3 highly likely Mr. Vo will be arrested and incarcerated at this appointment. *See Hoac v. Becerra,*
4 *et al.*, 2:25-cv-01740-DC-JDP (E.D.C.A. July 16, 2025) (ordering the immediate release of
5 petitioner—a Vietnamese individual who arrived to the United States as a refugee prior to 1995,
6 who also has a final removal order and was released from ICE detention and had been complying
7 with an OSUP for years—after he was unlawfully re-detained at a routine check in at the ICE
8 office in San Francisco); *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP (E.D.C.A. July 16,
9 2025) (same, after petitioner was transferred from California to Louisiana).

10 Mr. Vo is also at risk of being unlawfully removed to a third country without
11 constitutionally adequate notice and a meaningful opportunity to apply for protection under the
12 Convention Against Torture, in violation of the INA, binding international treaty, and due process.
13 Currently, DHS has a policy of removing or seeking to remove individuals to third countries
14 *without* first providing adequate notice of third country removal, or any meaningful opportunity to
15 contest that removal if the individual has a fear of persecution or torture in that country. *See*
16 Castillo Decl. at Exh. A (DHS Policy Regarding Third Country Removal). The U.S. government
17 is actively following this policy and deporting individuals to numerous, and seemingly random,
18 third countries including El Salvador, Panama, South Sudan, and Eswatini.¹² Recent reports
19

20 ¹² CNN, “Eswatini receives 10 third-country deportees from USNPR,” (Oct. 6, 2025), available
21 at: <https://www.cnn.com/2025/10/06/africa/eswatini-deportees-united-states-intl-latam>. “U.S.
22 deports hundreds of Venezuelans to El Salvador, despite court order” (Mar. 16, 2025), available
23 at: <https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-trump>; AP, “Panama
24 releases dozens of detained deportees from US into limbo following human rights criticism”
25 (Mar. 9, 2025), available at: [https://apnews.com/article/trump-deportations-migrants-panama-
26 costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5](https://apnews.com/article/trump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5); The New York
27 Times, “Trump Administration Poised to Ramp Up Deportations to Distant Countries” (July 13,
28 2025), available at: [https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-
deportations.html](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html); The Guardian, “Venezuelans deported by Trump are victims of ‘torture’,
lawyers allege” (May 16, 2025), available at: [https://www.theguardian.com/us-
news/2025/may/16/venezuelans-deported-trump-lawyers-torture](https://www.theguardian.com/us-
news/2025/may/16/venezuelans-deported-trump-lawyers-torture) (“Lawyers hired by Venezuela
have been unable to confirm ‘proof of life’ for 252 migrants imprisoned in El Salvador.”); NPR,
“Abrego Garcia says he was severely beaten in Salvadoran prison” (July 3, 2025), available at:
<https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture>.

1 indicate that ICE has removed individuals to Cameroon who were not citizens of that country, with
2 no notice at all such removal ahead of time.¹³ Since ICE never produced copy of the alleged travel
3 permit, there is serious concern that this alleged travel permit could be for another country,
4 *especially* because Vietnam likely does not consider Mr. Vo to be a Vietnamese citizen in the first
5 place.

6 Intervention from this Court is therefore required to ensure that Mr. Vo is not unlawfully
7 re-arrested, re-detained, and subjected to irreparable harm and further violation of his rights in
8 the form of summary removal to a third country.

9 **LEGAL STANDARD**

10 Petitioner is entitled to a temporary restraining order if he establishes that he is “likely to
11 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
12 that the balance of equities tips in [his] favor, and that an injunction is in the public interest.”
13 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D.*
14 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
15 temporary restraining order standards are “substantially identical”). Even if Petitioner does not
16 show a likelihood of success on the merits, the Court may still grant a temporary restraining order
17 if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply”
18 in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v.*
19 *Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner
20 overwhelmingly satisfies both standards.

21 **III. ARGUMENT**

22 **A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER**

23 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
24 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b).
25 The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary
26

27 ¹³ The New York Times, “U.S. Deports Nine Migrants in Secret, Ignoring Legal Protection,”
28 (February 16, 2026), available at <https://www.nytimes.com/2026/02/14/world/africa/us-secret-deportation-cameroon.html>

1 injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck*
2 *Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974).

3 Without intervention by this Court, Petitioner Mr. Vo is likely to be re-arrested absent
4 notice or a hearing before this Court—even though his removal is not reasonably foreseeable and
5 there is no change in circumstances—in violation of his due process rights. Given that he cannot
6 be deported to Vietnam, he is also likely to be deported to a third country without notice or an
7 opportunity to apply for fear-based relief. Mr. Vo will continue to suffer irreparable injury if he
8 is arrested and detained without due process, and if he is summarily removed to a third country—
9 far away from his family and his community.

10 **1. Petitioner is Likely to Succeed on the Merits of His Claim That in**
11 **This Case the Constitution Requires a Hearing Before a Neutral**
12 **Adjudicator Prior to Any Re-Incarceration by ICE.**

13 Mr. Vo is likely to succeed on his claim that, in his particular circumstances, the Due
14 Process Clause of the Constitution prevents Respondents from re-arresting him without first
15 providing a pre-deprivation hearing before a neutral adjudicator where the government must
16 demonstrate that his removal is reasonably foreseeable and otherwise that there has been a change
17 in circumstances such that he is now a danger or a flight risk.

18 Following a final order of removal, ICE is directed by statute to detain an individual for
19 ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period,
20 also known as “the removal period,” generally commences as soon as a removal order becomes
21 administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

22 Post-final order detention is only authorized for a “period reasonably necessary to secure
23 removal,” a period that the Court determined to be presumptively six months. *Id.* at 699–701.¹⁴

24 ¹⁴ Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention
25 violates the Due Process Clause unless it is “reasonably related” to the government’s purpose,
26 which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal is
27 reasonably foreseeable, the habeas court should consider the risk of the alien’s committing
28 further crimes as a factor potentially justifying confinement within that reasonable removal
period”) (emphasis added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at
the moment of removal”); *Id.* at 690-91 (discussing twin justifications of detention as preventing
flight and protecting the community).

1 After this six-month period, if a detainee provides “good reason” to believe that his or her removal
2 is not significantly likely in the reasonably foreseeable future, “the Government must respond with
3 evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the
4 individual must be released.

5 By regulation, noncitizens with final removal orders who are released from detention after
6 a post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8
7 C.F.R. § 241.4(j). After an individual has been released on an OSUP, the regulations further
8 specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R.
9 § 241.13(i)(2)–(3).

10 Under the regulations, ICE has the authority to re-detain a noncitizen previously ordered
11 removed *only* in specific circumstances, such as where an individual violates any condition of
12 release or there are changed circumstances regarding the reasonable foreseeability of removal. 8
13 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)–(2); 8 C.F.R. § 241.13(i).

14 However, ICE’s power to re-arrest a noncitizen who is at liberty following release is also
15 constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
16 Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
17 requirements of due process”). In this case, the regulations which specify that ICE may only re-
18 detain a noncitizen on an OSUP in limited circumstances are insufficient to protect Mr. Vo’s
19 weighty interest in his freedom from detention.

20 Federal district courts in California have repeatedly recognized that the demands of due
21 process and the limitations on DHS’s authority to re-detain noncitizens require notice and a pre-
22 deprivation hearing *before* re-detention by ICE. *See M.R. v. Kaiser*, et al., 25-cv-05436-RFL (N.D.
23 Cal. July 17, 2025) (TRO prohibiting government from re-detaining the petitioner without notice
24 and a hearing before a neutral adjudicator); *Rodriguez Diaz v. Kaiser*, et al., 3:25-cv-05071 (N.D.
25 Cal. June 14, 2025) (same); *T.P.S. v. Kaiser*, et al., 3:25-cv-05428 (N.D. Cal. June 30, 2025)
26 (same); *Soto Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR (E.D.C.A. July 14, 2025) (same);
27 *Singh v. Andrews, et al.*, 1:25-cv-00801-KES-SKO (HC) (E.D.C.A. July 11, 2025) (same); *Ortega*
28 *v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025) (same); *see also Doe v. Becerra*, No. 2:25-

1 cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution
2 requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4,
3 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-
4 5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-
5 CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-
6 02508-TSH, 2022 WL 1443250, at *3–4 (N.D. Cal. May 6, 2022) (Petitioner would suffer
7 irreparable harm if re-detained, and required notice and a hearing before any re-detention);
8 *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025)
9 (temporary injunction warranted preventing re-arrest at plaintiff’s ICE interview when he had been
10 on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3
11 (June 14, 2025).

12 Thus, it is well-established that individuals released from incarceration have a liberty
13 interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.
14 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully
15 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
16 incarcerated”). In turn, to protect that interest, on the particular facts of Mr. Vo’s case, due process
17 requires notice and a hearing, *prior to any re-arrest*. He has already suffered deprivation of his
18 rights and has already been granted a writ of habeas corpus. Therefore, Respondents must do
19 more than just claim to have a travel document in order to re-detain him.

20 Courts analyze these procedural due process claims in two steps: (1) whether there exists
21 a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that
22 protected liberty interest accords with the Constitution. *See Kentucky Dep’t of Corrections v.*
23 *Thompson*, 490 U.S. 454, 460 (1989).

24 **a. Petitioner Has a Protected Liberty Interest in His
25 Release**

26 Mr. Vo’s liberty from immigration custody, a form of civil detention, is protected by the
27 Due Process Clause: “Freedom from imprisonment—from government custody, detention, or
28

1 other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
2 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 Since 2000 and 2026, Mr. Vo exercised that freedom under his OSUP. Although he was
4 released under supervision (and thus under government custody, as further demonstrated by his
5 requirement to attend ICE check-ins), he retains a weighty liberty interest under the Due Process
6 Clause of the Fifth Amendment in avoiding re-detention. *See Young v. Harper*, 520 U.S. 143, 146–
7 47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
8 482–483 (1972).

9 Moreover, the Supreme Court has recognized that post-removal order detention is
10 potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at
11 701. In this case, in the absence of a repatriation agreement that actually permits Mr. Vo’s removal
12 to Vietnam, his removal is not foreseeable at all, let alone reasonably. And he has already been
13 detained for several months following his removal order, which means any additional detention is
14 by definition prolonged to the point of being indefinite. *See Cordon-Salguero v. Noem*, No. 1:25-
15 cv-01626-GLR (D. Md. June 18, 2025) (the six-month clock begins to run after the issuance of the
16 final removal order, and does not stop upon release or restart upon re-detention). Therefore, his re-
17 detention would be unconstitutional. Any alleged Vietnamese travel document without proof of
18 existence *and* communication with the Vietnamese embassy to determine if ICE shared the
19 appropriate biographic information hinder any foreseeability that only a pre-deprivation hearing
20 can help solve.¹⁵ *See Salad v. Dep’t of Corr.*, 769 F. Supp. 3d 913, 922 (D. Alaska 2025) (“Rather,
21 the “INS’s plans,” as the Federal Respondents describe Salad’s deportation, depend on the
22 occurrence of multiple unguaranteed future events—principally, the denial of Salad’s TPS
23 application and the issuance of a new travel document—and the Federal Respondents have failed
24 to submit sufficient evidence that any of these events are significantly likely to happen.”); *See also*

25
26 ¹⁵ This concern is not unfounded. Recent cases involving OSUP deportee show credible proof of
27 alteration of travel permits or biographic information for deportees that, similar to Mr. Vo,
28 should not be receiving travel permits in the first place. *Viengkhone S. v. Albarran*, No. 25-cv-
01505, 2025 WL 3521302 at Dkt. 17, 2025 U.S. Dist. LEXIS 253472, at Dkt. 17 (E.D. Cal. Dec.
8, 2025).

1 *Lema v. I.N.S.*, 341 F.3d 853, 856–57 (9th Cir. 2003) (the court found that Ethiopia’s decision not
2 to grant travel documents based solely on the non-citizen’s misrepresentation of his nationality to
3 the Ethiopian officials justified prolonged removal and denial of habeas because there was no way
4 for the court to make a full determination whether removal is a “remote possibility,” thus
5 suggesting that legitimacy for a country’s decision to issue or deny travel documents matters
6 significantly for foreseeability analysis).

7 Individuals—including noncitizens—released from incarceration, have a liberty interest in
8 their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on
9 OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that “[i]t is well-established that
10 the due process clause applies to protect immigrants”). This is further reinforced by *Morrissey*, in
11 which the Supreme Court recognized the protected liberty rights under the Due Process Clause of
12 a criminal detainee who was released on parole from incarceration. 408 U.S. at 481–82. The Court
13 noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed and is
14 free to be with family and friends and to form the other enduring attachments of normal life”—
15 thus, those released on parole have a protected liberty interest, even where that liberty is subject
16 to conditions. *Id.* at 482. *See also Young v. Harper*, 520 U.S. at 152 (holding that individuals placed
17 in a pre-parole program created to reduce prison overcrowding have a protected liberty interest
18 requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781–82 (holding that
19 individuals released on felony probation have a protected liberty interest requiring pre-deprivation
20 process).

21 Some district courts have held that a noncitizen released on an OSUP acquires a liberty
22 interest in their continued release. *Momtazian v. Noem*, No. 5:25-cv-03432-AH-KES, 2025 U.S.
23 Dist. LEXIS 266022, at *6–8 (C.D. Cal. Dec. 25, 2025) (granting unopposed TRO); *Viengkhone*
24 *S. v. Albarran*, No. 25-cv-01505, 2025 WL 3521302 at *7, 2025 U.S. Dist. LEXIS 253472, at *17–
25 18 (E.D. Cal. Dec. 8, 2025) (“For nearly twenty years, [the government] allowed [the petitioner]
26 to live at liberty in the United States, even though under an order of supervision. Among other
27 things, petitioner raised his two U.S. citizen children and worked. ... The Court finds that petitioner
28 has a protected liberty interest in his release.”); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021,

1 1029 (N.D. Cal. 2025) (“[I]ndividuals conditionally released from detention have a protected
2 interest in their ‘continued liberty.’”).

3 In fact, so fundamental to due process is the concept of liberty that it is even well-
4 established that an individual maintains a protectable liberty interest where the individual obtains
5 liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887
6 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
7 considerations support the notion that an inmate released on parole by mistake, because he was
8 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
9 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
10 be inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal
11 quotation marks and citation omitted).

12 Here, when this Court “‘compar[es] the specific conditional release in [Petitioner’s case],
13 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly
14 similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Vo’s release “enables
15 him to do a wide range of things open to persons” who have never been in custody or convicted
16 of any crime, including to live at home, work with his community, and “be with family and friends
17 and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. **Moreover,**
18 **Mr. Vo is not a criminal detainee, but a civil detainee, and thus the due process**
19 **considerations of his liberty should be even weightier than the courts have already found**
20 **applying in the criminal context.**

21 Mr. Vo has complied with all conditions of his supervised release for the past twenty-five
22 years since his release from ICE detention in 2000 and 2026. During period he has spent at liberty,
23 Mr. Vo has been focused on rebuilding his life, including by reconnecting with family, doing
24 important volunteer work with at-risk youth, focusing on rehabilitation, and filing a strong motion
25 to reopen before the BIA. Precedents from the Supreme Court and the Ninth Circuit make clear
26 that he has a strong liberty interest in his continued release from detention.

27 **b. Petitioner’s Liberty Interest Mandated a Due Process**
28 **Hearing Before any Re-Detention, and Once Released,**
Mandates Such a Hearing Prior to Any Re-Detention

1 Mr. Vo asserts that, here, (1) where his detention would be civil, (2) where he has been at
2 liberty for nine years, during which time he has diligently complied with ICE's reporting
3 requirements on a regular basis, (3) where his removal is not reasonably foreseeable, (4) where no
4 change in circumstances exist that would justify his detention, and (5) where the only circumstance
5 that has changed is ICE's move to arrest as many people as possible because of the new
6 administration, due process mandates that he receive notice and a hearing before a neutral
7 adjudicator *prior* to any re-arrest.

8 "Adequate, or due, process depends upon the nature of the interest affected. The more
9 important the interest and the greater the effect of its impairment, the greater the procedural
10 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d
11 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
12 "balance [Petitioner's] liberty interest against the [government's] interest in the efficient
13 administration of" its immigration laws in order to determine what process he is owed to ensure
14 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
15 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
16 "first, the private interest that will be affected by the official action; second, the risk of an erroneous
17 deprivation of such interest through the procedures used, and the probative value, if any, of
18 additional or substitute procedural safeguards; and finally the government's interest, including the
19 function involved and the fiscal and administrative burdens that the additional or substitute
20 procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,
21 424 U.S. 319, 335 (1976)).

22 The Supreme Court "usually has held that the Constitution requires some kind of a hearing
23 *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127
24 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the
25 only remedies the State could be expected to provide" can post-deprivation process satisfy the
26 requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the
27 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
28 preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally

1 to do the impossible by providing predeprivation process,” can the government avoid providing
2 pre-deprivation process. *Id.*

3 Because, in this case, the provision of a pre-deprivation hearing is both possible and
4 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Vo with
5 notice and a hearing *prior* to any re-detention and revocation of his release. *See Morrissey*, 408
6 U.S. at 481–82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004);
7 *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321–24 (1982); *Lynch v.*
8 *Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
9 commitment proceedings may not constitutionally be held in jail pending the determination as to
10 whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in
11 favor of [Petitioner’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

12 **i. Petitioner’s Interest in His Liberty is Profound**

13 Under *Morrissey* and its progeny, individuals conditionally released from serving a
14 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
15 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
16 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
17 constitutional due process before he is re-incarcerated—apply with even greater force to
18 individuals like Mr. Vo, who have also been released from prior ICE custody and are facing civil
19 (not criminal) detention. Parolees and probationers have a diminished liberty interest given their
20 underlying convictions. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*
21 *Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts
22 have held that the parolee cannot be re-arrested without a due process hearing in which they can
23 raise any claims they may have regarding why their re-incarceration would be unlawful. *See*
24 *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Vo retains a truly weighty
25 liberty interest even though he is under supervised release.

26 What is at stake in this case for Mr. Vo is one of the most profound individual interests
27 recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and
28 be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding

1 physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation
2 omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by
3 the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533
4 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms
5 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”);
6 *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

7 Thus, it is clear that there is a profound private interest at stake in this case, which must be
8 weighed heavily when determining what process he is owed under the Constitution. *See Mathews*,
9 424 U.S. at 334–35

10 **ii. The Government’s Interest in Re-Detaining Petitioner**
11 **Without a Hearing is Low and the Burden on the**
12 **Government to Refrain from Re-Arresting Him Unless**
13 **and Until He is Provided a Hearing is Minimal**

14 The government’s interest in detaining Mr. Vo without a due process hearing is low, and
15 when weighed against his significant private interest in his liberty, the scale tips sharply in favor
16 of enjoining Respondents from re-arresting him unless and until he is provided a pre-deprivation
17 hearing. It becomes abundantly clear that the *Mathews* test favors Mr. Vo when the Court considers
18 that the process Petitioner seeks—notice and a hearing regarding whether his he should be re-
19 detained—is a standard course of action for the government. Providing Mr. Vo with a future
20 hearing before this Court to determine whether his removal is reasonably foreseeable and if there
21 is otherwise evidence that he is a flight risk or danger to the community would impose only a *de*
22 *minimis* burden on the government, because the government routinely conducts these reviews for
23 individuals in his same circumstances, 8 C.F.R. § 241.4(e)–(f), and routinely conducts bond
24 hearings.

25 As immigration detention is civil, it can have no punitive purpose. The government’s only
26 interests in holding an individual in immigration detention can be to prevent danger to the
27 community or to effectuate removal *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court
28 has made clear that indefinite detention of noncitizens who cannot be removed to the country of
the removal order is unconstitutional. In this case, the government cannot plausibly assert that it
had a sudden interest in detaining Mr. Vo due to alleged dangerousness, or due to a change in the

1 foreseeability of his removal to Vietnam, as his circumstances have not changed since his most
2 recent release from ICE custody in 2026—an alleged travel permit does not change this.

3 Moreover, Mr. Vo has always had a removal order since before his release and yet he is
4 not a flight risk because he has continued to appear before ICE on a regular basis for each and
5 every appointment that has been scheduled. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic
6 to attach greater importance to a person’s justifiable reliance in maintaining his conditional
7 freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope
8 of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079,
9 1086 (2d Cir. 1971).

10 Thus, as to the factor of flight risk, Mr. Vo’s post-release conduct in the form of full
11 compliance with his check-in requirements further confirms that he is not a flight risk and that he
12 remains likely to present himself at any future ICE appearances, as he always has done. What has
13 changed, however, is that ICE has a new policy to make a minimum number of arrests each day
14 under the new administration – but that does not constitute a change in circumstances or increase
15 the government’s interest in detaining him.¹⁶ Moreover, as discussed previously, nothing has
16 changed regarding the lack of foreseeability of his removal to Vietnam.

17 Moreover, the “fiscal and administrative burdens” that a pre-deprivation bond hearing
18 would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334–35. Mr. Vo does not seek
19 a unique or expensive form of process, but rather a routine hearing regarding whether his release
20 should be revoked—especially if his alleged travel permit is likely under false pretenses—and
21 whether he should be re-detained. Providing Mr. Vo with a hearing before this Court regarding
22 his detention is a routine procedure that the government provides to those in immigration
23 detention on a daily basis. At that hearing, this Court would have the opportunity to determine
24 whether his removal is reasonably foreseeable and whether circumstances have changed
25 sufficiently to warrant re-detention, including an independent verification of the validity of any
26 alleged travel permit. But there is no justifiable reason to re-detain Mr. Vo prior to such a hearing

27 ¹⁶ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post*
28 (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 taking place. As the Supreme Court noted in *Morrissey*, even where the State has an
 2 “overwhelming interest in being able to return [a parolee] to imprisonment without the burden of
 3 a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . .
 4 the State has no interest in revoking parole without some informal procedural guarantees.” 408
 5 U.S. at 483.

6 Enjoining Mr. Vo’s re-arrest until ICE demonstrates at a hearing before a neutral
 7 adjudicator that his removal is reasonably foreseeable and that he is a flight risk or danger to the
 8 community is far *less* costly and burdensome for the government than detaining and keeping him
 9 detained. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public
 10 of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
 11 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

12 **iii. Without a Due Process Hearing Prior to Any Re-Arrest,**
 13 **the Risk of Erroneous Deprivation of Liberty is High,**
 14 **and Process in the Form of a Constitutionally-**
 15 **Compliant Hearing Where ICE Carries the Burden**
 16 **Would Decrease That Risk**

17 Providing Mr. Vo with a pre-deprivation hearing would decrease the risk of him being
 18 erroneously deprived of his liberty. He has already suffered deprivation of his rights and has
 19 already been granted a writ of habeas corpus. Therefore, Respondents must do more than just
 20 claim to have a travel document in order to re-detain him.

21 Under the process that ICE maintains is lawful—which affords Mr. Vo no process
 22 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk
 23 that Mr. Vo will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate
 24 him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 241.4(l), revocation
 25 of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the
 26 regulations are actually insufficient to protect his due process rights, as they permit ICE to
 27 unilaterally re-detain individuals, even for an accidental error in complying with the conditions of
 28 supervision, for example. After re-arrest, ICE makes its own, one-sided custody determination and
 can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)–(f).

By contrast, the procedure Mr. Vo seeks—a pre-deprivation hearing to assess whether his

1 removal is reasonably foreseeable and otherwise whether he is a danger or a flight risk—is much
2 more likely to produce accurate determinations regarding these factual disputes (especially when,
3 like here, an alleged travel permit is under suspicion). See *Chalkboard, Inc. v. Brandt*, 902 F.2d
4 1375, 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of witnesses and
5 assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable
6 when just determinations are made after hearing only one side”). “A neutral judge is one of the
7 most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir.
8 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The
9 Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be
10 decreased where a neutral adjudicator, rather than ICE alone, makes custody determinations. *Diouf*
11 *v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

12 Due process also requires consideration of alternatives to detention at any custody
13 redetermination hearing that may occur. The primary purpose of immigration detention is to
14 ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably
15 related to this purpose if there are alternatives to detention that could mitigate risk of flight. See
16 *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be
17 considered in determining whether Mr. Vo’s re-incarceration is warranted.

18 As the above-cited authorities show, Mr. Vo is likely to succeed on his claim that the Due
19 Process Clause requires notice and a hearing before a neutral decisionmaker *prior to any* re-arrest
20 and re-detention by ICE. And, at the very minimum, he clearly raises serious questions regarding
21 this issue, thus also meriting a TRO. See *Alliance for the Wild Rockies*, 632 F.3d at 1135.

22 **c. Petitioner has a Protected Interest in a Neutral**
23 **Adjudicator, and the Proper Neutral Adjudicator is this**
24 **Court**

25 Due process requires a neutral adjudicator. In this case, that must be this Court or at least
26 a federal district court. “A neutral judge is one of the most basic due process protections.” *Castro-*
27 *Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-*
28 *Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous
deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than

1 DHS alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091–
2 92 (9th Cir. 2011).

3 This is not to say that the Immigration Court would not make the effort to be neutral but
4 rather that, due to the nature of the fact that the Immigration Court is ultimately is bound by the
5 supervision of the executive branch, (1) Mr. Vo recognizes the undue pressure this Court is likely
6 under and (2) to protect Mr. Vo’s due process rights, the proper neutral adjudicator is the federal
7 district court, all for reasons stated below.

8 Due process requires that a pre-deprivation hearing occur before this Court, because the
9 Immigration Court will not likely be able to provide neutral adjudication. *See L.G.M. v. Larocco*,
10 No. 25-CV-2631-PKC, 2025 WL 2173577 (E.D.N.Y. July 31, 2025) (conducting bond hearing);
11 *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) (collecting cases where district court
12 conducted bond hearing). *See also Roman*, 977 F.3d at 941 (“Once a [constitutional] right and a
13 violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs
14 is broad, for breadth and flexibility are inherent in equitable remedies.”).

15 The policies in place today build on the inherent lack of fairness in the Immigration Court
16 system. For a while now, there has been significant evidence that bond hearings in immigration
17 court were regarded as “law-free zones” and “implicit bias minefields.” Mary Holper,
18 *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025). To begin, IJs are by
19 definition not independent adjudicators. They are career attorneys who are employed by the DOJ
20 and thus report to the Attorney General, an appointee of the executive branch, making them “very
21 susceptible to pressure from above to decide cases in a certain way.” *Accord* Karen Musalo et. al.,
22 *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L.
23 Rev. 2743, 2755 (2024); Holper, 74 Duke L.J. at 1010 (describing an IJ as “a prosecutor
24 masquerading as a judge.”).

25 Since the current presidential administration took office in early 2025, it has fired IJs *en*
26 *masse*, “many seemingly because their judicial philosophies did not align with the
27
28

1 administration's priorities.¹⁷

2 At the same time, the administration is actively recruiting for attorneys to become new
3 immigration judges, whose employment would be even more clearly based on the pleasure of the
4 Attorney General. Among these new hires are military lawyers who are being recruited to sit as
5 IJs after minimal training.¹⁸ The move alarms legal experts for myriad reasons, including because
6 of the president's outsized influence over the military. *Id.* The administration has even widely
7 issued policy guidance admitting the DHS (its enforcement arm) is actively coordinating with the
8 DOJ (under which the BIA and IJs sit) to expand mandatory detention.¹⁹ The DOJ has also
9 launched a campaign to hire new IJs that advertises the position as "deportation judges" and
10 describes it as an opportunity to "[b]ring the hammer down on criminal illegal aliens . . . Defend
11 your communities, your very way of life."²⁰ See *National TPS Alliance, et al. v. Noem, et al.*, 25-
12 5724, (9th Cir. 2026) ("I find it necessary to address the ample evidence of racial and national
13 origin animus in the record, which reinforces the district court's conclusion that the Secretary's
14 actions were preordained and her reasoning pretextual. This case presents one of the rare situations
15 where the strong showing of bad faith needed to look beyond the administrative record is easily
16 met.") This is evidence that the Immigration Court cannot be a neutral adjudicator when one of
17 the parties before the Court is the same branch of the government that also supervises the Court
18 itself, and has made its displeasure known regarding judges whose decisions it did not like by
19 terminating their employment.

20 _____
21 ¹⁷ As discussed in more detail in Mr. Vo's concurrently filed petition for writ of habeas corpus,
22 recently fired Immigration Judges report receiving unprecedented guidance on how to adjudicate
23 their cases in line with this administration's goals, and those that did not align were fired.

24 Castillo Decl. Exh. G-H (Previously Filed Declarations of former Immigration Judges)
25 ¹⁸ Villarreal, Alexandra, "Hiring of military lawyers as immigration judges alarms law experts"
26 THE GUARDIAN (Sept. 22, 2025), [https://www.theguardian.com/us-news/2025/sep/22/trump-](https://www.theguardian.com/us-news/2025/sep/22/trump-administration-military-lawyers-immigration-judges)
27 [administration-military-lawyers-immigration-judges](https://www.theguardian.com/us-news/2025/sep/22/trump-administration-military-lawyers-immigration-judges).

28 ¹⁹ Interim Guidance from U.S. Department of Homeland Security to All ICE Employees Re:
"Detention Authority for Applications for Admission" (July 8, 2025), [https://www.aila.org/ice-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
[memo-interim-guidance-regarding-detention-authority-for-applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission).

²⁰ See Gutierrez, Hilda and Michael Bott, "'An all-out attack on immigration court:' SF
immigration judges speak out after firings" NBC BAY AREA (Nov. 25, 2025),
[https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
[firings/3986850/](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/).

1 Nor does appellate review by the BIA “play a corrective role[,] because it is subject to
 2 essentially the same institutional constraints as IJs.” Musalo, 65 B.C. L. Rev. at 2756. After taking
 3 office, the current administration purged BIA members from twenty-six to nine.²¹ This allowed
 4 for a smaller majority to publish decisions and thus highlighted the agency’s lack of
 5 independence.²² Indeed, since January 20, 2025, the BIA has issued at least sixty-three precedent
 6 decisions.²³ All but one of these decisions found against the noncitizen²⁴; all involving bond
 7 proceedings ruled against the noncitizen; some reversed prior grants and called for re-detention.²⁵
 8 By contrast, in all of 2024 the BIA issued just fourteen precedent decisions, some of which were
 9 in favor of the DHS while others favored the noncitizen.²⁶

10 Moreover, the administration’s copious precedential decisions are largely published *post*
 11 *hoc* to defend the administration’s policies, rather than proceeding from neutral adjudication of
 12 controversies. As one example in the bond context, the BIA has issued a series of bond decisions
 13 that now subjects vast swaths of noncitizens mandatory detention. *See, e.g., Matter of Q. Li*, 29
 14 I&N Dec. 66; *Matter of Yajure Hurtado*, 29 I&N Dec. 216. These decisions upend decades-long
 15 understanding of federal law, as federal judges have repeatedly found.²⁷ Notably, they come as the
 16 DHS has received exorbitantly more money to detain immigrants in for-profit immigration
 17

18 ²¹ *See* Catholic Legal Immigration Network, Inc., “Precedent or Policy? A Quiet Transformation
 19 of the Board of Immigration Appeals” (Aug. 22, 2025),
 20 [https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-](https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals)
[immigration-appeals](https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals).

21 ²² *Id.*

22 ²³ *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 29*,
 online at <https://www.justice.gov/eoir/volume-29> (last accessed Dec. 15, 2025).

23 ²⁴ The one decision purportedly in favor of the noncitizen described the methods in which an IJ
 24 can preterm an application for relief prior to any evidentiary hearing, and remanded the case back
 25 to the IJ to follow that method. *See* Catholic Legal Immigration Network, Inc., “Precedent or
 Policy? A Quiet Transformation of the Board of Immigration Appeals” (citing *Matter of C-A-R-*
R-, 29 I&N Dec. 13 (BIA 2025)).

26 ²⁵ *Id.*

27 ²⁶ *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 28*,
 online at <https://www.justice.gov/eoir/volume-28>.

28 ²⁷ Gerstein, Josh and Kyle Cheney, “Immigration appeals court expands mandatory detention for
 millions” POLITICO (Sept. 5, 2025), [https://www.politico.com/news/2025/09/05/immigration-](https://www.politico.com/news/2025/09/05/immigration-mandatory-detention-00548660)
[mandatory-detention-00548660](https://www.politico.com/news/2025/09/05/immigration-mandatory-detention-00548660).

1 detention centers.²⁸ For example, CoreCivic received \$13.5 million to open CCDF earlier this
2 year.²⁹

3 On February 6, 2026, the DOJ issued a new rule that effectively guts any remaining due
4 process protections in the form of appellate review of the Immigration Judge adjudications.³⁰ The
5 new rules once they go into effect allows the BIA, the agency that reviews IJ decisions, to simply
6 dismiss all such appeals unless in the rare event that the full panel of Board members (who are
7 also employees of the DOJ) vote to review the appeal on its merits.³¹ This means that the vast
8 majority of all appeals from the Immigration Court to the BIA will be simply dismissed without
9 consideration of the merits of the appeal. Further, the process itself is being changed to create
10 barriers to such appeals even being properly filed. Under the newly announced procedures, appeals
11 must be filed within 10 days of the Immigration Judge decision (many of which are issued on paper
12 and delivered across the country by U.S. mail), or else the non-citizen foregoes any option for
13 administrative or federal circuit court review.³² Furthermore, the new rule allows the Board to
14 dismiss appeals within fifteen days of timely filing unless majority Board members agree to hear
15 the case.³³

16 Overall, the message here and in other federal cases is clear: the government can no longer
17 receive the presumption of regularity in that their public officers would properly discharge their
18 duties. *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14–15, 47 S.Ct. 1, 71 L.Ed. 131
19 (1926); see *Latif v. Obama*, 677 F.3d 1175, 1178-181 (D.C. Cir. 2011) (same); *Paracha v. Trump*,
20 Civil Action No. 04-2022 (PLF), 2019 WL 5296839, at *2 (D.D.C. Oct. 18, 2019). Meaning IJs

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23 ²⁸ Dickerson, Caitlin, “ICE’s Mind-Bogglingly Massive Blank Check” THE ATLANTIC (July 31,
2025), <https://www.theatlantic.com/politics/archive/2025/07/ice-budget-immigration-enforcement/683678/>.

24 ²⁹ Levin, Sam, “‘Hell on earth’: immigrants held in new California detention facility beg for help,”
25 THE GUARDIAN.

26 ³⁰ Appellate Procedures for the Board of Immigration Appeals, 91 FR 5267 (Feb. 6, 2026)
(effective Mar. 9, 2026). Available at <https://public-inspection.federalregister.gov/2026-02326.pdf>

27 ³¹ *Id.*

28 ³² *Id.*

³³ *Id.*

1 and the BIA, employees of the DOJ cannot be trusted as neutral adjudicators. ³⁴

2 The above, exacerbated by the new Board rule, severely undermines the idea that the IJ or
3 any employee of the executive branch, can be a neutral adjudicator. Mr. Vo no longer has the due
4 process rights of a neutral adjudicator. Therefore, this Court is the proper neutral adjudicator for
5 any subsequent pre-deprivation hearing for Mr. Vo.

6 **2. Petitioner is Likely to Succeed on the Merits of His Claim That he**
7 **is Entitled to Constitutionally Adequate Procedures Prior to Any**
8 **Third Country Removal.**

9 Mr. Vo is also likely to succeed on the merits of his claim that he must be provided with
10 constitutionally adequate procedures—including notice and an opportunity to respond and apply
11 for fear-based relief—prior to being removed to any third country.

12 Under the INA, Respondents have a clear and non-discretionary duty to execute final
13 orders of removal only to the designated country of removal. The statute explicitly states that a
14 noncitizen “shall remove the [noncitizen] to the country the [noncitizen] . . . designates.” 8 U.S.C.

15 ³⁴ *United States v. Oregon*, 6:25-cv-01666-MTK, Dkt. 73 (D. Or Feb. 6, 2026) (“The presumption
16 of regularity that has been previously extended to Plaintiff that it could be taken at its word—with
17 little doubt about its intentions and stated purposes—no longer holds”); *In re Search of One Device*
18 *and Two Individuals under Rule 41*, Search Warrant No. 25-0082 (ZMF), 784 F.Supp.3d 234, 244
19 n.10 (D.D.C. May 29, 2025) (“Blind deference to the government? That is no longer a thing. Trust
20 that had been earned over generations has been lost in weeks. Numerous career prosecutors have
21 had to resign instead of taking actions that they believe violated their oath of office, or worse, were
22 fired for upholding that oath.”); *Washington v. Trump*, Civil Action No. 25-0127 (JCC), Verbatim
23 Report of Proceedings (W.D. Wash. Jan. 24, 2025) [Dkt. No. 53] at 13:13-15 (“I’ve been on the
24 bench for over four decades. I can’t remember another case where the question presented was as
25 clear as this one is. This is a blatantly unconstitutional order.”); *New Hampshire Indonesian Cmty.*
26 *Support v. Trump*, 765 F. Supp. 3d 102, 109 (D.N.H. 2025) (“[T]he Executive Order contradicts
27 the text of the Fourteenth Amendment and the century-old untouched precedent that interprets
28 it.”); *Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President*, 774 F.
Supp. 3d 86, 89 (D.D.C. 2025) (“The retaliatory nature of the Executive Order at issue here is clear
from its face”); *Perkins Coie LLP v. U.S. Dep’t. of Justice*, Civil Action No. 25-716 (BAH),
783 F.Supp.3d 105, 120 (D.D.C. May 2, 2025) (“In a cringe-worthy twist on the theatrical phrase
‘Let’s kill all the lawyers,’ EO 14230 takes the approach of ‘Let’s kill the lawyers I don’t like,’
sending the clear message: lawyers must stick to the party line, or else.”) (emphasis in original);
United States v. Adams, 77 F. Supp. 3d 185, 192 (S.D.N.Y. 2025) (The implication “that public
officials may receive special dispensation if they are compliant with the incumbent
administration’s policy priorities is fundamentally incompatible with the basic promise of equal
justice under law”).

1 § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country
2 of removal, the statute further mandates that DHS “shall remove the alien to a country of which
3 the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*,
4 543 U.S. 335, 341 (2005).

5 As the Supreme Court has explained, such language “generally indicates a command that
6 admits of no discretion on the part of the person instructed to carry out the directive,” *Nat’l Ass’n*
7 *of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass’n of Civilian*
8 *Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black’s*
9 *Law Dictionary* (11th ed. 2019). Accordingly, any imminent third country removal fails to comport
10 with the statutory obligations set forth by Congress in the INA and is unlawful.

11 Moreover, prior to any third country removal, ICE must provide Mr. Vo with sufficient
12 notice and an opportunity to respond and apply for fear-based relief as to that country, in
13 compliance with the INA, due process, and the binding international treaty: The Convention
14 Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁵ Currently,
15 DHS has a policy of removing or seeking to remove individuals to third countries without first
16 providing constitutionally-adequate notice of third country removal, or any meaningful
17 opportunity to contest that removal if the individual has a fear of persecution or torture in that
18 country. Castillo Decl. at Exh. B (Copy of DHS Policy).

19 Instead, the policy squarely violates the INA because it does not take into account, *or even*
20 *mention*, an individual’s designated country of removal—thereby fully contravening the statutory
21 instruction that DHS must only remove an individual to the designated country of removal. U.S.C.
22 § 1231(b)(2)(A)(ii).

23 Further, the policy plainly violates the United States’ obligations under the Convention
24 Against Torture and principles of due process because it allows DHS to provide individuals with
25 *no notice whatsoever* prior to removal to a third country, so long as that country has provided
26 “assurances” that deportees from the United States “will not be persecuted or tortured.” Castillo

27 ³⁵ United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading
28 Treatment or Punishment (Dec. 10, 1984), available at: [https://www.ohchr.org/en/instruments-
mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading).

1 Decl. at Exh. B (Copy of DHS Policy). If, in turn, the country has not provided such an assurance,
2 then DHS officers must simply inform an individual of removal to that third country but are not
3 required to inform them of their rights to apply for protection from removal to that country under
4 the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their
5 rights under this binding international treaty and must affirmatively state a fear of removal to that
6 country in order to receive a fear-based interview to screen for their eligibility for protection under
7 the Convention Against Torture. *Id.* Even so, the screening interview is hardly a meaningful
8 opportunity for individuals to apply for fear-based relief, because the interview happens within 24
9 hours after an individual states a fear of removal to a recently designated third country, which
10 hardly provides any time to consult with an attorney or prepare any evidence for the interview. *Id.*
11 And, in actuality, the screening interview is not a screening interview at all, because USCIS
12 officers under the policy are instructed to determine at this interview “whether the alien would
13 more likely than not be persecuted on a statutorily protected ground or tortured in the country of
14 removal”—which is the standard for protection under the Convention Against Torture that
15 Immigration Judges apply after a full hearing in Immigration Court. *Id.* Then, if the USCIS officer
16 determines that the noncitizen has not met this standard, they will then be removed to the third
17 country to which they claimed, and tried to demonstrate within 24 hours, a fear of persecution or
18 torture. *Id.* Finally, there is no indication that any of this process will occur in an individual’s
19 native language, or a language that they understand. *Id.* This is nothing more than a fig leaf of due
20 process meant to deprive individuals of the protection that the law and treaty are supposed to
21 provide them.

22 Clearly, this policy violates the Convention Against Torture, which instructs that the
23 United States cannot remove individuals to countries where they will face torture, because the
24 policy allows DHS to swiftly remove noncitizens to countries where they very well may face
25 torture if those countries simply provide the United States with “assurances” that deportees will
26 not be tortured. *Id.* Moreover, the policy puts the onus of individuals to be aware of their rights
27 under the Convention Against Torture—which is a treaty that binds the United States
28 *government*—instead of ensuring that DHS officials make individuals aware of their rights, which

1 would more squarely comport with *DHS's obligations* under the treaty not to remove individuals
2 to countries where they face torture. *Id.* For similar reasons, the policy also violates principles of
3 due process, because it does not provide individuals with notice or any meaningful opportunity to
4 apply for fear-based relief. *Id.* Again, the policy allows individuals to be removed to third countries
5 *without any notice or an opportunity to be heard* if that country merely promises that deportees
6 will not face torture there, and if individuals are otherwise unaware of their right to seek fear-based
7 relief. *Id.*; *see also Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025) (TRO prohibiting
8 the government from “arresting, detaining, or removing” the petitioner to a third country “without
9 notice and a hearing.”); *J.R. v. Bostock, et al.*, 2:25- cv-01161-JNW (W.D. Wash. June 30, 2025)
10 (TRO prohibiting the government from removing petitioner to “any third country in the world
11 absent prior approval from this Court”); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGR (C.D.
12 Cal. Jul. 14, 2025) (TRO prohibiting government barring [the petitioner’s] removal to a third
13 country.”); *Vaskanyan v. Janecka*, No. 25-cv-1475 (C.D. Cal. Jun. 25, 2025) (TRO prohibiting
14 government from “removing the petitioner “to a third country, i.e., a country other than the
15 countries designated as he countries of removal in Petitioner’s final order of removal...without
16 written notice to both Petitioner and Petitioner’s counsel in a language the Petitioner can
17 understand. Following notice, Petitioner must be given a meaningful opportunity, and a minimum
18 of ten (10) days, to raise a fear-based claim for protection under the Convention Against Torture
19 prior to removal. If Petitioner demonstrates ‘reasonable fear’ of removal to the third country,
20 Respondents must move to reopen Petitioner’s removal proceedings. If Petitioner is not found to
21 have demonstrated a ‘reasonable fear’ of removal to the third country, Respondents must provide
22 a meaningful opportunity, and a minimum of fifteen (15) days, for the non-citizen to seek
23 reopening of his immigration proceedings.”).

24 The U.S. District Court for the District of Massachusetts previously issued a nationwide
25 preliminary injunction blocking such third country removals without notice and a meaningful
26 opportunity to apply for relief under the Convention Against Torture. *D.V.D., et al. v. U.S.*
27 *Department of Homeland Security, et al.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S.
28 Supreme Court has since granted the government’s motion to stay the injunction on June 23, 2025,

1 just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide
 2 injunctions. Thus, the Supreme Court’s order, which is not accompanied by an opinion, signals
 3 only disagreement with the nature, and not the substance, of the nationwide preliminary
 4 injunction.³⁶ This is made clear by the Court’s decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025),
 5 where the Court explained that the putative class plaintiffs there had to seek relief in individual
 6 habeas actions (as opposed to injunctive relief in a class action) against the implementation of
 7 Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a
 8 third country. Regardless, ICE appears to be emboldened and intent to implement its campaign to
 9 send noncitizens to far corners of the planet—places they have absolutely no connection to
 10 whatsoever—in violation of individuals’ due process rights.³⁷

11 Mr. Vo’s removal to a third country would violate his due process rights unless he is *first*
 12 provided with sufficient notice and a meaningful opportunity to apply for protection under the
 13 Convention Against Torture. Intervention by this Court is necessary to protect those rights.

14 3. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief

15 Mr. Vo will suffer irreparable harm were he to be deprived of his liberty and subjected to
 16 unlawful detention by immigration authorities without being provided with the constitutionally
 17 adequate process that this motion for a temporary restraining order seeks. Detainees in civil ICE
 18 custody are held in “prison-like conditions” which have real consequences for their lives. *Preap*
 19

20 ³⁶ The Supreme Court’s July 3, 2025 order in *U.S. Department of Homeland Security, et al. v.*
 21 *D.V.D., et al.*, 606 U. S. ____ (2025) further reinforces that the Supreme Court only disagrees
 22 with the means of a nationwide injunction, and not the underlying substance of the nationwide
 23 injunction. There, the Court held that the stay of the preliminary injunction divests remedial
 24 orders stemming from that injunction of enforceability, and cited to *United States v. Mine*
 25 *Workers*, 330 U. S. 258, 303 (1947) for the proposition that: “The right to remedial relief falls
 26 with an injunction which events prove was erroneously issued and *a fortiori* when the injunction
 27 or restraining order was beyond the jurisdiction of the court.” *Id.* In any event, the remedial order
 28 at issue involved six individuals who had *already been removed* from the United States to a third
 country, and is therefore distinct from this case, where Mr. Vo remains in the United States and
 this Court therefore continues to have jurisdiction over his case.

³⁷ CBS News, “Politics Supreme Court lets Trump administration resume deportations to third
 countries without notice for now” (June 24, 2025), available at:
<https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/>.

1 v. *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he
2 time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of
3 a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532–33
4 (1972); *accord Nat’l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984).
5 Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on
6 anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE
7 detention facilities, the economic burdens imposed on detainees and their families as a result of
8 detention, and the collateral harms to children of detainees whose parents are detained.”
9 *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor
10 conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary
11 of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024)
12 (reporting violations of environmental health and safety standards; staffing shortages affecting
13 the level of care detainees received for suicide watch, and detainees being held in administrative
14 segregation in unauthorized restraints, without being allowed time outside their cell, and with no
15 documentation that they were provided health care or three meals a day).³⁸

16 Mr. Vo has been out of ICE custody for over twenty-five years, despite his most recent
17 unlawful detention. During that time, he has been reconnecting with his family and community
18 He has been admirably involved in high schools for at-risk youth by sharing his wisdom gained
19 through his difficult upbringing. He has a pending motion to reopen before the BIA based on lack
20 of removability now that all his convictions are vacated. If he were detained, he would not be able
21 to work and provide for his family, as he could not work from detention. Detention would
22 irreparably harm not only him, but also his family and community members who rely on him.

23 Further, Mr. Vo will suffer irreparable harm were he to be removed to a third country
24 without first being provided with constitutionally-compliant procedures to ensure that his right to
25 apply for fear-based relief is protected. Individuals removed to third countries under DHS’s policy
26 have reported that they are now stuck in countries where they do not have government support, do
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28 ³⁸ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
(last accessed June 27, 2025).

1 not speak the language, and have no network.³⁹ Others removed in violation of their prior grant of
2 protection under the Convention Against Torture have reported that they have faced severe torture
3 at the hands of government agents.⁴⁰ It is clear that “the deprivation of constitutional rights
4 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
5 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is
6 necessary to prevent Mr. Vo from suffering irreparable harm by being subject to unlawful and
7 unjust detention, and by being summarily removed to any third country where he may face
8 persecution or torture.

9 **4. The Balance of Equities and the Public Interest Favor Granting** 10 **the Temporary Restraining Order**

11 The balance of equities and the public interest undoubtedly favor granting this
12 temporary restraining order.

13 First, the balance of hardships strongly favors Mr. Vo. The government cannot suffer harm
14 from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*,
15 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in any
16 legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the
17 government cannot allege harm arising from a temporary restraining order or preliminary
18 injunction ordering it to comply with the Constitution.

19 Further, any burden imposed by requiring DHS to refrain from re-arresting Mr. Vo unless
20 and until he is provided a hearing before this Court is both *de minimis* and clearly outweighed by
21 the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437
22 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons,
23 even though the expenditure of governmental funds is required.”). Similarly, any burden of
24 requiring Respondents *not* to remove Mr. Vo to any third country is outweighed by the substantial

25 _____
26 ³⁹ NPR, “Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May
27 5, 2025), available at: [https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-](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)
28 [by-the-u-s-are-stuck-in-panama-unable-to-return-home](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).

⁴⁰ NPR, “Abrego Garcia says he was severely beaten in Salvadoran prison” (July 3, 2025),
available at: [https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvadoran-prison-](https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvadoran-prison-beaten-torture)
[beaten-torture](https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvadoran-prison-beaten-torture).

1 harm he may suffer if removed to a country where he will face persecution or torture. *See id.*

2 Finally, a temporary restraining order is in the public interest. First and most importantly,
3 “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
4 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
5 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
6 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
7 effectively be granted permission to detain Mr. Vo, and/or to summarily remove him to any third
8 country, in violation of the requirements of Due Process. “The public interest and the balance of
9 the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act*
10 *Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at
11 996 (“The public interest benefits from an injunction that ensures that individuals are not deprived
12 of their liberty and held in immigration detention because of bonds established by a likely
13 unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
14 (“Generally, public interest concerns are implicated when a constitutional right has been violated,
15 because all citizens have a stake in upholding the Constitution.”).

16 Therefore, the public interest overwhelmingly favors entering a temporary restraining
17 order and preliminary injunction.

18 **IV. CONCLUSION**

19 For all the above reasons, this Court should find that Mr. Vo warrants a temporary
20 restraining order and preliminary injunction ordering that Respondents refrain from re-arresting
21 him unless and until he is afforded a hearing before this Court or at least a federal district court
22 (and not an employee of the executive branch of the government) on whether his removal is
23 reasonably foreseeable and further whether it is justified by evidence that he is a danger to the
24 community or a flight risk, and refrain from removing him to any third country without first
25 providing him with constitutionally-compliant procedures.

26
27 Dated: February 19, 2026

Respectfully submitted,

/s/ Lorena C. Castillo
Zachary Nightingale
Lorena C. Castillo
Attorneys for Petitioner

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