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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAP NEOU,

Petitioner-Plaintiff,

v.

SERGIO ALBARRAN, Field Office
Director, San Francisco Field Office, U.S.
Immigration and Customs Enforcement;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; and
PAM BONDI, Attorney General of the
United States,

Respondents-
Defendants.

Case No. 3:25-cv-08034

**MOTION FOR A TEMPORARY
RESTRAINING ORDER; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, as soon as he may be heard, Petitioner-Plaintiff will and hereby does move, pursuant to Civil L.R. 7-1 and 65-1, for a temporary restraining order prohibiting Respondents-Defendants from unlawfully re-detaining him. Respondents-Defendants have indicated that they intend to re-detain Petitioner-Plaintiff at his check-in appointment at the San Francisco Field Office of U.S. Immigration and Customs Enforcement (“ICE”) on **October 8, 2025**. This motion is supported by the following Memorandum of Points and Authorities and by the Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (“Petition”) and accompanying exhibits, Dkt. No. 1.

Petitioner-Plaintiff moves for a temporary restraining order on Count Two of the Petition, which asserts that his re-detention by Respondents-Defendants without a pre-deprivation hearing before a neutral arbiter would violate his right to procedural due process. Petitioner-Plaintiff seeks an order enjoining Respondents-Defendants from re-detaining him without first affording him a hearing before a neutral arbiter at which ICE bears the burden to prove that Petitioner-Plaintiff poses a danger or flight risk warranting detention.

Undersigned counsel certifies that immediately after filing this motion with the Court, she will email Civil Division Chief Pamela Johann at the U.S. Attorney’s Office for the Northern District of California to advise her of the filing and will provide a complete copy of the Petition, this motion for a temporary restraining order, and all docket filings to date.

INTRODUCTION

Petitioner-Plaintiff Lap Neou is a citizen of Cambodia who has resided in Oakland, California for almost his entire life. He is a single father to three children, ages eleven, eight, and six. U.S. Immigration and Customs Enforcement (“ICE”) has threatened to take Mr. Neou into custody on October 8, 2025. Mr. Neou seeks emergency relief to prevent ICE from unlawfully re-detaining him without a meaningful opportunity to be heard on whether his detention is warranted.

In 2011, an immigration judge ordered Mr. Neou removed based on a criminal conviction that a state court has since vacated as unconstitutional. ICE released Mr. Neou on an order of supervision in 2012 because it could not deport him to Cambodia and he did not pose a danger to the community or risk of flight. Since 2012, Mr. Neou has complied with his order of supervision, attended check-in appointments with ICE, stayed free of any arrests or convictions, and supported his family. Mr. Neou has asked the immigration court to reopen his removal proceedings and restore his lawful permanent resident status based on the vacatur of his criminal conviction.

At a check-in appointment on September 8, 2025, ICE attempted to re-detain Mr. Neou. ICE relented temporarily only after Mr. Neou’s attorney informed the ICE officer that Mr. Neou’s re-detention would violate a permanent injunction that prohibits ICE from re-detaining Cambodians without advance written notice. The officer directed Mr. Neou to complete an application for a Cambodian visa and return on October 8, 2025 to be re-detained.

Mr. Neou’s re-detention would violate due process. Mr. Neou has a protected liberty interest in his physical freedom. The Due Process Clause demands that the government afford Mr. Neou adequate process before stripping him of that freedom. The Court should enjoin ICE from re-detaining Mr. Neou without first providing him a hearing before a neutral adjudicator.

STATEMENT OF FACTS

Mr. Neou was born in Cambodia in 1977 at the height of the Khmer Rouge genocide. Declaration of Jingni Zhao (“Zhao Decl.”), Ex. G (Declaration of Lap Neou) ¶ 3. In 1981, he entered the United States as a refugee with his mother, stepfather, and three of his siblings. *Id.* He became a lawful permanent resident soon thereafter. *Id.* Mr. Neou’s three younger siblings were

1 born in the United States. *Id.* The Neou family settled in West Oakland, California, where poverty
2 and violence were part of daily life. *Id.* ¶ 6.

3 As a teen, Mr. Neou began succumbing to peer pressure and getting in trouble. *Id.* ¶¶ 7-8.
4 When he was 20 years old, Mr. Neou suffered a severe injury at work that led to an addiction to
5 painkillers and a downward spiral. *Id.* ¶¶ 9-10. In 1998, at the age of 21, Mr. Neou committed a
6 robbery during this dark period in his life. *Id.* ¶¶ 12-14. Looking back, Mr. Neou is grateful that
7 he did not injure anyone, and he blames only himself for this serious mistake. *Id.* ¶ 16.

8 While in jail awaiting trial, Mr. Neou accepted a plea deal of five years for the robbery
9 (California Penal Code § 211), with a ten-year firearm enhancement (California Penal Code
10 § 12022.53(b)), for a total sentence of fifteen years in prison. *Id.* ¶ 15; Zhao Decl., Ex. E (Notice
11 to Appear). At the time, Mr. Neou did not understand that his criminal conviction would result in
12 the loss of his green card. Zhao Decl., Ex. G ¶ 17. His public defender failed to advise him that
13 the plea would make him deportable. *Id.* ¶ 18. While in prison, Mr. Neou overcame his addiction,
14 earned his GED, completed a three-year welding program, and eventually became a mentor to
15 young men entering the prison system. *Id.* ¶¶ 23-27.

16 ICE detained Mr. Neou upon his release from prison in 2011 and placed him in removal
17 proceedings in Eloy, Arizona. *Id.* ¶ 28; Zhao Decl., Ex. E. Mr. Neou's family could not afford to
18 hire an immigration attorney for him. Zhao Decl., Ex. G ¶ 29. Mr. Neou understood that it would
19 be virtually impossible for him to prevail in removal proceedings, and accepted an order of
20 removal on November 1, 2011. *Id.* ¶¶ 29-30; Zhao Decl., Ex. F (Order of Removal). The
21 immigration judge designated Cambodia, and only Cambodia, as the country of removal. Zhao
22 Decl., Ex. F.

23 On November 4, 2011, ICE served Mr. Neou with a notice that it would review his
24 custody status in January 2012. Zhao Decl., Ex. U (Notice to Alien of File Custody Review); *see*
25 8 U.S.C. § 1231(a)(6) (providing that noncitizens with certain criminal convictions "may be
26 detained" beyond the 90-day period following a final order of removal and, "if released, shall be
27 subject to . . . supervision"); 8 C.F.R. § 241.4 (creating a system of periodic custody reviews for
28 noncitizens with final orders of removal). The notice informed Mr. Neou: "Release, however, is

1 dependent on you demonstrating . . . that you **will not** pose a danger to the community and **will**
2 **not** present a flight risk.” Zhao Decl., Ex. U (emphasis in original); *see* 8 C.F.R. § 241.4(e)
3 (stating that to recommend release, ICE *must* conclude that the noncitizen does not pose a threat
4 to the community or a significant flight risk, among other things); 8 C.F.R. §§ 241.4(d)(1), (h)(3).

5 ICE released Mr. Neou on an order of supervision on January 17, 2012. Zhao Decl., Ex.
6 W (Order of Supervision and Addendum). In recommending his release, an ICE officer wrote:
7 “NEOU has cooperated with the efforts of ICE to obtain a travel document, he has not received
8 any disciplinary reports since he has been in ICE custody, and he has also provided an address in
9 the United States where he would reside, if released from ICE custody. Due to the fact that the
10 government of Cambodia has not scheduled any interviews for the immediate future as indicated
11 by the Headquarters Travel Document Unit (TDU), it is recommended that NEOU be released on
12 an Order of Supervision.” Zhao Decl., Ex. V (Post Order Custody Review Worksheet).

13 Since his release from ICE custody in 2012, Mr. Neou has complied with his order of
14 supervision, including attending regular check-in appointments with ICE, and he has not been
15 arrested for or convicted of any crime. Zhao Decl., Ex. G ¶¶ 33-34, 42. Upon release, Mr. Neou
16 returned to Oakland and reunited with his family. *Id.* ¶ 33. He found work and helped his mother
17 financially. *Id.* ¶¶ 35-37. Mr. Neou and his ex-wife had their first child in 2014 and Mr. Neou
18 took pride in supporting his growing family. *Id.* ¶¶ 39-40.

19 Since Mr. Neou separated from his ex-wife around 2021, he has raised their three children
20 as a single father. *Id.* ¶¶ 40-41, 57. Mr. Neou’s ex-wife is not involved in the children’s lives. *Id.*
21 ¶ 41. One of Mr. Neou’s children has autism and requires specialized care and constant
22 supervision. *Id.* ¶¶ 57, 61; Zhao Decl., Ex. Q (Individualized Education Program). Mr. Neou’s
23 closest relative, his sister, would not be able to assume responsibility for the care of his children if
24 he were detained and deported. Zhao Decl., Ex. G ¶ 62; *see also* Zhao Decl., Ex. J (Declaration of
25 Leurm Neou) ¶¶ 8-9. Mr. Neou’s sister is a single mother and the primary caregiver for a disabled
26 sibling. Zhao Decl., Ex. J ¶¶ 8-9. If Mr. Neou were detained and deported, his children would
27 likely enter the foster care system. Zhao Decl., Ex. G ¶ 62; *see also* Zhao Decl., Ex. A (Motion to
28

1 Reopen) at 8-9, 23-24. Mr. Neou manages various health conditions and is on prescription
2 medication for hypothyroidism. Zhao Decl., Ex. G ¶ 63.

3 In 2025, after many efforts over the years to seek out legal help, Mr. Neou retained pro
4 bono counsel to file a motion to vacate his criminal conviction and a motion to reopen and
5 terminate his removal proceedings. *Id.* ¶¶ 54-55. On August 21, 2025, the Alameda County
6 Superior Court vacated Mr. Neou's conviction pursuant to California Penal Code § 1473.7(a)(1),
7 finding the conviction was "legally invalid" and had been secured in violation of "the Fifth and
8 Fourteenth Amendments of the U.S. Constitution." Zhao Decl., Ex. H (Superior Court Order); *see*
9 Cal. Penal Code § 1473.7(a)(1) (providing for vacatur of a conviction or sentence that is "legally
10 invalid due to prejudicial error damaging the moving party's ability to meaningfully understand,
11 defend against, or knowingly accept" its "adverse immigration consequences"). Having received
12 proper legal advice, Mr. Neou entered a new plea that carries no immigration consequences, *nunc*
13 *pro tunc* to the date of his former plea. Zhao Decl., Ex. I (Superior Court Hearing Minutes); *see*
14 *also* Zhao Decl., Ex. A at 12-13. On September 3, 2025, Mr. Neou filed a motion to reopen with
15 the Eloy Immigration Court, asking the immigration judge to reopen and terminate his removal
16 proceedings based on the vacatur. Zhao Decl. ¶ 4 & Ex. B (Conformed Copy of Caption Page).

17 On September 8, 2025, Mr. Neou attended his annual check-in appointment at ICE's San
18 Francisco Field Office. Zhao Decl. ¶ 5. An ICE officer led Mr. Neou and his attorney to a room
19 where the officer informed Mr. Neou that ICE would take him into custody. *Id.* ¶ 6. Mr. Neou's
20 counsel gave the ICE officer a copy of the permanent injunction issued by the district court in
21 *Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020), requiring ICE to provide written
22 notice prior to re-detaining Cambodian citizens subject to removal orders. *Id.*; *see* Zhao Decl., Ex.
23 R (Permanent Injunction). Mr. Neou is a *Chhoeun* class member and entitled to the protections of
24 the *Chhoeun* injunction.¹ The ICE officer directed Mr. Neou and his counsel to wait while he
25 sought guidance from ICE's legal department. Zhao Decl. ¶¶ 6-7. Mr. Neou's counsel informed
26

27 ¹ The *Chhoeun* injunction requires written notice at least 14 days before re-detention, but does not require the pre-
28 deprivation hearing Mr. Neou seeks through this action. *See* Zhao Decl., Ex. R. If it becomes necessary, Mr. Neou
will seek enforcement of the *Chhoeun* injunction before the *Chhoeun* court.

1 the ICE officer that Mr. Neou had a pending motion to reopen. *Id.* ¶ 7. The ICE officer responded
2 that the fact of the pending motion to reopen would not impact ICE's decision to re-detain Mr.
3 Neou. *Id.* Mr. Neou's counsel requested a copy of the administrative warrant that ICE had
4 prepared in connection with the intended arrest. *Id.* The ICE officer provided a copy of the
5 administrative warrant. *Id.*; *see also* Zhao Decl., Ex. S (Warrant for Arrest of Alien).

6 Mr. Neou, his counsel, and the ICE officer waited in the room for a response from ICE's
7 legal department. Zhao Decl. ¶ 7. The ICE officer then received a phone call and had a brief
8 phone conversation. *Id.* ¶ 8. After ending the call, the ICE officer informed Mr. Neou that ICE
9 would not re-detain him that day. *Id.* The officer instructed Mr. Neou to return on October 8,
10 2025, with a completed Cambodian visa application, to be re-detained. *Id.*; *see also* Zhao Decl.,
11 Ex. T (Order of Supervision, Personal Report Record). The officer stated that he was thereby
12 providing notice to Mr. Neou pursuant to the *Chhoeun* injunction that ICE intended to re-detain
13 him, and that ICE would not cease its efforts to re-detain and remove him. *Id.* ¶ 8.

14 On September 11, 2025, Mr. Neou filed a motion to stay removal with the Eloy
15 Immigration Court, requesting a stay of removal while the Immigration Court adjudicates his
16 motion to reopen and terminate removal proceedings. Zhao Decl. ¶ 9. Mr. Neou's motion to stay
17 removal and motion to reopen and terminate removal proceedings are currently pending. *Id.* ¶ 10.

18 LEGAL STANDARD

19 Mr. Neou is entitled to a temporary restraining order if he establishes that he is "likely to
20 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
21 relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."
22 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Stuhlberg Int'l Sales Co. v.*
23 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction
24 and temporary restraining order standards are "substantially identical"). Even if he does not show
25 a likelihood of success on the merits, the Court may still grant a temporary restraining order if
26 Mr. Neou raises "serious questions" as to the merits of his claims, the balance of hardships tips
27

1 “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild*
 2 *Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

3 ARGUMENT

4 This Court should enjoin Respondents-Defendants from re-detaining Mr. Neou without a
 5 hearing because he has a strong claim that such re-detention offends due process, he would suffer
 6 devastating consequences without this Court’s intervention, and the balance of equities and public
 7 interest support injunctive relief.

8 **I. Mr. Neou is Likely to Prevail on the Merits of His Claim That the Constitution** 9 **Forbids His Re-Detention Without Adequate Process.**

10 Mr. Neou is likely to succeed on the merits of his procedural due process claim. It is well-
 11 established that all persons, including noncitizens subject to a final order of removal, possess a
 12 liberty interest in their physical freedom. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
 13 (“Freedom from imprisonment—from government custody, detention, or other forms of physical
 14 restraint—lies at the heart of the liberty [the Due Process Clause] protects.”) (citing *Foucha v.*
 15 *Louisiana*, 504 U.S. 71, 80 (1992)). Whenever a protected liberty or property interest is
 16 implicated, “[p]rocedural due process imposes constraints on governmental decisions.” *Mathews*
 17 *v. Eldridge*, 424 U.S. 319, 332 (1976). The three factors courts examine when determining what
 18 process is due—the private interest, the risk of erroneous deprivation and value of additional
 19 safeguards, and the government’s interest—support the hearing Mr. Neou seeks. *Id.* at 335.

20 **A. Mr. Neou Has a Liberty Interest in His Freedom from Incarceration That the** 21 **Due Process Clause Indisputably Protects.**

22 Mr. Neou has a protected liberty interest in his physical freedom. Supreme Court
 23 precedent leaves no question that even where a person’s liberty is qualified in some way, that
 24 liberty “is valuable and must be seen as within the protection” of the Due Process Clause.
 25 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (explaining that a parolee is able to live a
 26 “relatively normal life” and the termination of parole “inflicts a grievous loss on the parolee and
 27 often on others”) (internal quotation marks omitted); *Young v. Harper*, 520 U.S. 143, 147 (1997)
 28 (holding that continued participation in a pre-parole release program was protected by the Due

1 Process Clause). In *Zadvydas*, the Court held that a noncitizen with a final order of removal may
 2 have lost the “legal right to live at large in this country,” but still retains a liberty interest that is
 3 “strong enough” to trigger due process analysis. *Zadvydas*, 533 U.S. at 696 (internal quotation
 4 marks and alteration omitted). This Court should join the numerous courts in this district that
 5 have held that a noncitizen released from immigration custody “has a protected liberty interest in
 6 remaining out of custody.” *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025
 7 WL 2084921, at *3 (N.D. Cal. July 24, 2025) (collecting cases).

8 **B. Procedural Due Process Demands a Hearing for Mr. Neou Prior to Any Re-**
 9 **Detention.**

10 The government must afford Mr. Neou “the opportunity to be heard at a meaningful time
 11 and in a meaningful manner” before depriving him of his liberty. *Mathews*, 424 U.S. at 333
 12 (internal quotation marks and citation omitted). Considering the three *Mathews* factors, Mr. Neou
 13 is entitled to a hearing before a neutral arbiter, prior to re-detention, at which ICE must prove that
 14 Mr. Neou poses a danger or flight risk. This result is no surprise: the Supreme Court “usually has
 15 held that the Constitution requires some kind of a hearing *before* the State deprives a person of
 16 liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original).
 17 Consistent with that general rule, the consensus in this district is that due process requires a pre-
 18 deprivation hearing when ICE seeks to re-detain a noncitizen it previously released. *See, e.g.*,
 19 *Zakzouk v. Becerra*, No. 25-CV-06254-RFL, 2025 WL 2097470, at *3 (N.D. Cal. July 26, 2025)
 20 (enjoining ICE from re-detaining a noncitizen with a final order of removal absent notice and a
 21 pre-deprivation hearing); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *8
 22 (N.D. Cal. Aug. 6, 2025) (same for noncitizen with a final order of removal and protection under
 23 the Convention Against Torture); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL
 24 1382859, at *3 (N.D. Cal. May 12, 2025) (temporarily enjoining re-detention of a noncitizen with
 25 a final order of removal and a grant of withholding of removal); *Pinchi*, 2025 WL 2084921, at *1
 26 (enjoining re-detention without a “pre-arrest hearing before a neutral decisionmaker” for
 27 noncitizen whom ICE released in its discretion during her removal proceedings); *Diaz v. Kaiser*,
 28 No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025) (same for noncitizen

released on bond); *see also, e.g., Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025). This Court should likewise grant a temporary restraining order to preserve the status quo and protect Mr. Neou's rights.

1. The Private Interest at Stake Is Profound.

The private interest at stake in this case is among the most important interests recognized by our legal system: Mr. Neou's physical freedom.² *See Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80 ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action."). The Ninth Circuit has found it "beyond dispute" that a noncitizen's private interest in freedom from immigration detention is "fundamental." *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017). Mr. Neou's strong private interest weighs heavily in the balance of *Mathews* factors. *See Zakzouk*, 2025 WL 2097470, at *3 (finding that the petitioner, who like Mr. Neou had been on an order of supervision for over a decade, had a "substantial private interest in remaining out of custody").

2. A Pre-Deprivation Hearing Would Mitigate the Risk that Mr. Neou Is Erroneously Detained Through ICE's Insufficient Procedures.

A pre-deprivation hearing before a neutral adjudicator would decrease the risk that Mr. Neou will be erroneously deprived of his liberty through existing procedures. The existing procedural protections associated with re-detention, found in ICE's regulations, are one-sided and untimely. The regulations purport to allow ICE to revoke release not only for a violation of the conditions of release, but whenever ICE believes "[t]he purposes of release have been served," it is "appropriate to enforce a removal order," or "any other circumstance" shows that "release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2). Only *after* ICE has made this unilateral determination does the noncitizen receive an "initial informal interview," at which they may respond to the stated reasons for revocation. 8 C.F.R. § 241.4(l)(1). Even if ICE provides the informal interview, *see Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162-63 (W.D.N.Y. 2025) (noting and rejecting the government's position that no informal interview was required), ICE

² Mr. Neou's liberty interest as a parent in the "care, custody, and control" of his children—"perhaps the oldest of the fundamental rights recognized" by the Supreme Court—is also implicated here. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (opinion of O'Connor, J.).

1 serves as both jailer and judge, and the criteria for revocation are too broad for the noncitizen to
 2 meaningfully contest the decision. *Cf. Foucha*, 504 U.S. at 81 (striking down civil detention
 3 scheme that did not provide for an “adversary hearing” before a neutral decisionmaker).
 4 Examining similar custody review procedures in *Zadvydas*, the Supreme Court observed that
 5 “[t]he Constitution demands greater procedural protection even for property.” 533 U.S. at 692
 6 (citing precedent suggesting that “the Constitution may well preclude granting an administrative
 7 body the unreviewable authority to make determinations implicating fundamental rights”)
 8 (internal quotation marks and citations omitted).

9 The hearing Mr. Neou seeks would have substantial value because it would permit him to
 10 present compelling evidence that he is neither a danger nor a flight risk. As the evidence he filed
 11 in support of his motion to reopen demonstrates, Mr. Neou has fully rehabilitated since his
 12 conviction over a quarter century ago. Mr. Neou acknowledges the seriousness of his actions as a
 13 young man in 1998. Zhao Decl., Ex. G ¶ 16. As his therapist writes, Mr. Neou displays “sincere
 14 accountability for his actions” and “reflects on the consequences of his past actions, not with self-
 15 pity, but with an earnest desire to repair and build a better future for his children.” Zhao Decl.,
 16 Ex. L (Letter of Support from Dr. Mona Afary). Indeed, Mr. Neou’s conduct since that day in
 17 1998 is proof of his transformation. He has earned his GED, complied with his order of
 18 supervision, and become a respected colleague. Zhao Decl., Ex. G ¶¶ 25, 39, 42. He has dedicated
 19 himself to raising his children as a single father, including providing the steady care and
 20 supervision that his disabled son needs. *Id.* ¶¶ 57-61. As to flight risk, Mr. Neou has lived at the
 21 same address in Oakland since his release from ICE custody in 2012 and reported to ICE as
 22 recently as September 8, 2025. Zhao Decl., Exs. C, T & W. There is no evidence even remotely
 23 suggesting that he would flee immigration authorities. A pre-deprivation hearing would prevent
 24 the unnecessary re-detention of a man who poses no threat to the community or risk of flight.

25 3. The Government’s Interest in Re-Detention Without Process, Thirteen 26 Years After It Released Mr. Neou, Is Low.

27 The government’s interest in re-detaining Mr. Neou without affording him a pre-
 28 deprivation hearing is minimal. After determining 13 years ago that Mr. Neou did not pose a

1 danger or flight risk, ICE released Mr. Neou on an order of supervision, with which he has fully
 2 complied. Zhao Decl., Exs. V & W; *see also* 8 C.F.R. §§ 241.4(d)(1), (e) (requiring noncitizen to
 3 prove they do not pose a danger or flight risk to be released through the post-order custody review
 4 process); *Ceesay*, 781 F. Supp. 3d at 169 (“Noncitizens . . . who are released on orders of
 5 supervision under section 241.4 necessarily have been found not to constitute either a danger to
 6 the community or a flight risk.”). The only changes in Mr. Neou’s circumstances since then have
 7 been positive changes, namely his demonstrated rehabilitation and contributions to his family and
 8 community. ICE cannot credibly contend that after allowing Mr. Neou to live in the community
 9 for 13 years, it has an urgent need to detain him without any pre-deprivation process. In other
 10 words, “the government’s interest in re-detaining Petitioner-Plaintiff without a hearing is low,
 11 particularly in light of the fact that Petitioner-Plaintiff has long complied with his reporting
 12 requirements and there has been no recent change in his circumstances.” *Zakzouk*, 2025 WL
 13 2097470, at *3; *Ortega*, 2025 WL 2243616, at *6 (finding that the government’s interest in
 14 detention without a hearing was low where the noncitizen had complied with supervision
 15 requirements). Any fiscal burdens from providing a pre-deprivation hearing are outweighed by
 16 the “staggering” expense, not to mention “human suffering,” associated with immigration
 17 detention. *Hernandez*, 872 F.3d at 996 (citations omitted). The *Mathews* factors strongly favor a
 18 temporary restraining order.

19 **II. Mr. Neou Will Suffer Irreparable Harm, Including Separation from his Young**
 20 **Children, Absent Injunctive Relief.**

21 Mr. Neou and his family will be irreparably harmed if ICE re-detains him without a
 22 hearing. “It is well established that the deprivation of constitutional rights unquestionably
 23 constitutes irreparable injury.” *Hernandez*, 872 F.3d at 995-96 (quoting *Melendres v. Arpaio*, 695
 24 F.3d 990, 1002 (9th Cir. 2012)) (internal quotation marks omitted); *see also Perera v. Jennings*,
 25 No. 21-CV-04136-BLF, 2021 WL 2400981, at *5 (N.D. Cal. June 11, 2021) (“[A]ny loss of
 26 liberty is fundamental and substantial.”). Thus, a finding that Mr. Neou is likely to succeed on the
 27 merits of his due process claim also means that he has “carried [his] burden as to irreparable
 28 harm.” *Hernandez*, 872 F.3d at 995. Moreover, the Ninth Circuit has recognized the “irreparable

1 harms imposed on *anyone* subject to immigration detention.” *Id.* (emphasis added).

2 The record in this case illustrates the grave harm that Mr. Neou and his children will
 3 experience if ICE re-detains him without adequate process. *See Hernandez*, 872 F.3d at 995
 4 (recognizing that the irreparable harms of immigration detention include the “collateral harms to
 5 children of detainees whose parents are detained”). Mr. Neou is the sole caregiver for his three
 6 U.S. citizen children, ages eleven, eight, and six. Zhao Decl., Ex. G ¶¶ 41, 57. As a single father,
 7 he “fulfills all the roles of a present and nurturing parent: preparing meals, managing school
 8 schedules, helping them with their homework, arranging transportation, supporting their
 9 emotional needs, and ensuring that their lives are structured, stable, and loving.” Zhao Decl., Ex.
 10 L. Mr. Neou’s middle son, who has autism, needs the “special and sustained care and attention
 11 that [Mr. Neou] lovingly and selflessly gives.” Zhao Decl., Ex. M (Letter of Support from Elijah
 12 Chhum). Mr. Neou’s closest relative, his sister, would not be able to assume responsibility for his
 13 children in his absence because she herself is a single mother, as well as the primary caregiver for
 14 a disabled sibling. Zhao Decl., Ex. J ¶¶ 8-9. Thus, Mr. Neou’s detention could result in his
 15 children being placed in foster care, and would be enormously disruptive to his middle son’s
 16 development and to all three children’s welfare. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762,
 17 777-78 (N.D. Cal. 2019) (recognizing harm to the mental health of detained noncitizen’s family
 18 as irreparable harm); *Zakzouk*, 2025 WL 2097470, at *3 (finding irreparable harm requirement
 19 satisfied where noncitizen was the primary caretaker for his family, including his daughter who
 20 was “uniquely dependent” on his support due to her depression and anxiety). There is no question
 21 that Mr. Neou and his family will face irreparable harm unless this Court intervenes.

22 **III. The Balance of Equities and Public Interest Strongly Favor Granting a Temporary** 23 **Restraining Order.**

24 The balance of equities and public interest tip sharply in Mr. Neou’s favor. Mr. Neou
 25 faces deprivation of the most fundamental liberty a person possesses and the loss of his ability to
 26 care for his children, who are the center of his life. The government, on the other hand, will not
 27 suffer harm from an injunction that simply requires it to comply with the Constitution. *See*
 28 *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is

1 harmed in any legally cognizable sense by being enjoined from constitutional violations.”). Even
2 if there are fiscal costs associated with providing a pre-deprivation hearing, when faced with “a
3 conflict between financial concerns and preventable human suffering,” the Ninth Circuit has
4 “little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’ favor.”
5 *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).
6 This Court should do the same.

7 The temporary restraining order Mr. Neou requests is in the public interest. The public has
8 an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th
9 Cir. 2005). The public is also served by ensuring that the government does not expend its
10 resources to detain individuals unnecessarily, and without adequate process. *See Hernandez*, 872
11 F.3d at 996 (noting “staggering” costs of immigration detention); *Lopez*, 713 F.2d at 1437
12 (“Society’s interest lies on the side of affording fair procedures to all persons, even though the
13 expenditure of governmental funds is required.”).

14 An injunction would also serve the public interest by preventing severe hardship to Mr.
15 Neou’s three young sons, who face separation from the only parent in their lives. *See Golden*
16 *Gate Rest. Ass’n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008)
17 (explaining that “indirect hardship” to parties’ friends and family can be considered in assessing
18 the public interest); *Hernandez*, 872 F.3d at 996 (observing that unnecessary detention “places
19 financial and psychological strain on the families of detainees”). Mr. Neou’s detention for any
20 period of time would be “devastating and traumatic” for his children, including for his son who
21 has autism and is particularly attached to and dependent on Mr. Neou. Zhao Decl., Ex. P (Letter
22 of Support from Paraeducator Tassa Westbrook) (describing the critical and irreplaceable role
23 Mr. Neou plays in the life of his son who has special needs); *see also* Zhao Decl., Ex. K (Letter of
24 Support from Tammy Nguyen) (explaining that Mr. Neou’s disabled son is “very clingy to his
25 father” and all three children would be “lost” without Mr. Neou); Zhao Decl., Ex. L (opining that
26 separation from Mr. Neou would be “an attachment rupture that could cause profound
27 psychological trauma, interrupting [the children’s] developmental trajectory and emotional well-
28 being”); Zhao Decl., Ex. N (Letter of Support from Moragaut Souet-Samounn) (“If Uncle Lap

1 were to be deported, it would devastate not only his family but ours as well.”); Zhao Decl., Ex. O
2 (Letter of Support from Mory Chhom) (observing that separation from Mr. Neou would “strip
3 [his children] of the love, care, and stability that they rely on from their father”). The balance of
4 equities and public interest decidedly favor Mr. Neou.

5 **CONCLUSION**

6 For the reasons above, this Court should enter a temporary restraining order enjoining
7 Respondents-Defendants from detaining Mr. Neou without first providing him a hearing before a
8 neutral arbiter at which Respondents-Defendants must prove that Mr. Neou poses a danger or
9 flight risk to justify re-detention.

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11 Dated: September 22, 2025

Respectfully submitted,

12 /s/ Jingni (Jenny) Zhao

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14 *Attorney for Petitioner-Plaintiff*
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