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9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 Long TON,

13 Petitioner,

14 v.

15 Kristi NOEM, Secretary, Department of
16 Homeland Security; Todd LYONS, in his
17 official capacity as Acting Director of U.S.
18 Immigration and Customs Enforcement; Pam
19 BONDI, Attorney General of the United
20 States; Ernesto SANTACRUZ Jr., Acting
21 Director, Los Angeles ICE Field Office; and
22 Fereti SEMAIA, Warden, Adelanto ICE
23 Processing Center.

24 Respondents.

No. 5:25-cv-02894-SB-AGR

PETITIONER'S *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

Immigration Case

1 For the reasons explained in the accompanying Memorandum of Points and
2 Authorities, Petitioner hereby makes this Ex Parte Application for a Temporary
3 Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to
4 Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioner is a native of
5 Vietnam who was detained in 2007 for just less than 6 months after the entry of a
6 removal order by an immigration judge. He was released in December 2007
7 because the government could not remove him from the United States, but was
8 redetained on May 2, 2025, and has been held by immigration authorities now for
9 more than 180 days. He challenges his detention as a violation of the Immigration
10 and Nationality Act, the implementing regulations, and Due Process. Expedited
11 relief is necessary to prevent irreparable injury before a hearing on a preliminary
12 injunction may be held.

13 Petitioner requests that the Court issue a temporary restraining order and
14 order to show case re: preliminary injunction in the form of the proposed order
15 submitted concurrently with this Application. This Application is based on the
16 Complaint, Memorandum of Points and Authorities, and the declaration and
17 exhibits in support thereof.

18 Respondents were advised on October 30, 31, and November 3, 2025 that
19 Petitioner would be filing this ex parte application and of the contents of this
20 application. Tolchin Decl. ¶ 4. *See* Local Rule 17-19.1.

21
22 Counsel for Respondents is as follows:

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28

1 Dated : November 3, 2025

/s/ Stacy Tolchin

2 Stacy Tolchin

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1 I. INTRODUCTION

2 Petitioner is a citizen of Vietnam who was born in a refugee camp in Hong
3 Kong, and who came to the United States almost 45 years ago. He is married to a
4 United States citizen and has United States citizen children. He was ordered
5 removed in 2007 by an immigration judge, based on a conviction that was later
6 found to be invalid in the criminal court.

7 Petitioner spent just shy of six months in immigration detention after he was
8 ordered removed on July 19, 2007, but was released because he could not be
9 removed from the United States. He regularly reported to immigration officials on
10 an order of supervision, but was detained by immigration authorities on May 2,
11 2025, and has now been held for more than 180 days in custody. His removal is not
12 reasonably foreseeable and is a violation of 8 U.S.C. § 1231(a)(6) and Due Process.
13 Petitioner's family is suffering immensely without him, as his wife who is raising
14 their three children alone, in addition to his brother's two children who the couple
15 have been raising since the brother's death. He requires an ex parte order from this
16 Court ordering his immediate release.

17
18 II. STATEMENT OF FACTS

19 Petitioner was born in 1979 in a refugee camp in Hong Kong to parents who
20 were Vietnamese citizens. He is a citizen of Vietnam. Tolchin Dec. Exh. A, F, D.
21 He was admitted to the United States on December 17, 1980 as a refugee when he
22 was under the age of two. Id. at Exh. F. Petitioner has resided in the United States
23 for 45 years.

24 Petitioner was convicted on April 8, 2002 of voluntary manslaughter based
25 on the felony murder rule. Id. at Exhs. A, H.

26 Petitioner was sentenced to six years in custody for voluntary manslaughter
27 and eight months in custody for the gang offense. He served six years and then was
28 transferred to immigration detention. Id. at Exhs. A, H.

1 Petitioner was placed into removal proceedings and was ordered removed by
2 an immigration judge on July 19, 2007. Id. at Exh. D. Petitioner was released just
3 prior to six months later because he could not be removed. Id. at Exh. A. He was
4 regularly reporting to ICE since 2007 on an order of supervision. Id. at Exh. A.

5 Petitioner married his wife on December 4, 2013. Id. at Exh. G. His wife
6 became a U.S. citizen in 2006 and they have three U.S. citizen children, ages 4, 7
7 and 9. Id. at Exh. G. They are also guardians for Petitioner's brother's two children,
8 ages 8 and 12, because his brother died in 2015 and he has been raising the children
9 since then. Id. at Exh. G. Petitioner works steadily and has not had any other
10 convictions since the 2002 conviction. Id. at Exh. A. He has overwhelming support
11 from friends, family, and community. Id. at Exh. L.

12 Further, Petitioner was granted a certificate of rehabilitation on September
13 10, 2021 from the criminal court. Id. at Exh. I. On May 7, 2025, Petitioner's
14 conviction was vacated and he was resentenced to a conviction under California
15 Penal Code § 245 for assault, with a sentence of 364 days.¹ Id. at Exh. H.

16 On May 2, 2025, Petitioner went to report to immigration and was detained.
17 Tolchin Dec. Exh. A. He is currently in immigration detention in Adelanto, CA,
18 and has been detained for more than 180 days. Id. at A, B.

19 On August 5, 2025, Petitioner filed a petition for writ of habeas corpus and
20 application for temporary restraining order with this Court. *Ton v. Noem*, 5:25-cv-
21 02033-SB-AGR (C.D. Cal.). The application for a temporary restraining order was
22 converted into a preliminary injunction, and was denied on September 5, 2025. Dkt
23 # 17. Petitioner then voluntarily dismissed the petition for writ of habeas corpus on
24 September 25, 2025. Dkt # 19. Petitioner had not yet been in custody for 180 days
25 when this case was filed.

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¹ A motion to reopen was filed with the immigration judge which was denied
appealed. Tolchin Dec. Exhs. J, K.

1 Petitioner was given a 90 day review of his custody status on August 3, 2025.
2 Tolchin Dec. Exh. N. ICE denied Petitioner's release because he was convicted of
3 voluntary manslaughter and because his "removal is reasonably foreseeable in that
4 ICE can effectuate removals to Hiong Kong." *Id.*

5 As a part of the litigation, Respondents filed an August 6, 2025 declaration
6 from Petitioner's deportation officer, Officer Palacios, informing the Court of the
7 efforts that were made to remove Petitioner from the United States. Tolchin Dec.
8 Exh. M. That declaration states that on June 3, 2025, ICE requested travel
9 documents from China for Petitioner. *Id.*

10 On October 28, 2025, Petitioner, through counsel, contacted ICE to request
11 the status of Petitioner's release. Tolchin Dec. Exh. O. ICE stated that Petitioner
12 was to remain detained pending the issuance of a travel document for removal. *Id.*
13 ICE also stated that the application for a travel document "is currently pending with
14 the embassy in Washington DC." *Id.*

15 On October 29, 2025, Petitioner had been detained for 180 days since his
16 May 2, 2025 arrest. ICE refuses to release him from immigration detention and is
17 unable to remove Petitioner from the United States. Tolchin Dec. Exh. O.

18 19 III. STANDARD OF REVIEW

20 A Temporary Restraining Order ("TRO") may be issued upon a showing
21 "that immediate and irreparable injury, loss, or damage will result to the movant
22 before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). A
23 trial court may grant a TRO or a preliminary injunction to "preserve the status quo
24 and the rights of the parties" until a decision can be made in the case. *U.S. Philips*
25 *Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in
26 this context "refers not simply to any situation before the filing of a lawsuit, but
27 instead to 'the last uncontested status which preceded the pending controversy[.]' "
28 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting

1 *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963). The
2 analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc.,*
3 *Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109,
4 1110 (C.D. Cal. 2009).

5 To obtain a preliminary injunction, a Petitioner “must establish [1] that he is
6 likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
7 absence of preliminary relief, [3] that the balance of equities tips in their favor, and
8 [4] that an injunction is in the public interest.” *City & County of San Francisco v.*
9 *USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019)(quoting *Winter v. Nat. Res. Def.*
10 *Council, Inc.*, 555 U.S. 7, 20 (2008). “Likelihood of success on the merits is the
11 most important factor.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018)
12 (quotations omitted). If the first two factors are met, the third and fourth factors
13 merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418,
14 435 (2009).

15 Additionally, in the Ninth Circuit, courts also “employ an alternative ‘serious
16 questions’ standard, also known as the ‘sliding scale’ variant of the *Winter*
17 standard.” *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir.
18 2021) (quotations and citations omitted and alterations accepted). “Under that
19 formulation, ‘serious questions going to the merits’ and a balance of hardships that
20 tips sharply towards the Petitioner[s] can support issuance of a preliminary
21 injunction, so long as the Petitioner[s] also show[] that there is a likelihood of
22 irreparable injury and that the injunction is in the public interest.” *Id.* (quoting *All.*
23 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).

24 In addition, the APA provides that “to the extent necessary to prevent
25 irreparable injury,” the Court may issue “all necessary and appropriate process . . .
26 to preserve status or rights pending” these proceedings. 5 U.S.C. § 705. The
27 standard used by courts for a request to stay agency action “is the same legal
28 standard as that used in a motion for preliminary injunction.” *Hill Dermaceuticals,*

1 *Inc. v. U.S. Food & Drug Admin.*, 524 F. Supp. 2d 5, 8 (D.D.C. 2007); *Nken*, 556
2 U.S. at 428 (describing a stay as “halting or postponing” operation of an action or
3 “temporarily divesting an order of enforceability”).

4 Petitioner meets all the requirements for relief.

5
6 IV. ARGUMENT

7 A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

8
9 **1. Petitioner is Likely to Succeed on the Merits of his *Zadvydas*
10 *Statutory Claim***

11 Petitioner has been detained for more than 180 days and his removal is not
12 reasonably foreseeable. His ongoing detention violates 8 U.S.C. § 1231(a)(6) and
13 *Zadvydas v. Davis*, 533 U.S. 678 (2001).

14 In *Zadvydas v. Davis*, 533 U.S. at 682, 689, the Supreme Court held that the
15 post-removal-period detention scheme contains “an implicit ‘reasonable time’
16 limitation” and does not permit indefinite detention. The Court reasoned that “[a]
17 statute permitting indefinite detention of an [noncitizen] would raise a serious
18 constitutional problem,” because “[t]he Fifth Amendment’s Due Process Clause
19 forbids the Government to ‘depriv[e]’ any ‘person ... of ... liberty ... without due
20 process of law.’ ” *Id.* at 690. The Supreme Court deemed it “practically necessary
21 to recognize some presumptively reasonable period of detention” and deemed a six-
22 month period to be presumptively reasonable. *Id.* at 701. After this 6-month period,
23 once the alien provides good reason to believe that there is no significant likelihood
24 of removal in the reasonably foreseeable future, the Government must respond with
25 evidence sufficient to rebut that showing.” *Id.* Additionally, “as the period of prior
26 postremoval confinement grows, what counts as the ‘reasonably foreseeable future’
27 conversely would have to shrink” for detention to remain reasonable. *Id.*
28

1 Petitioner clearly cannot be removed from the United States. ICE has now
2 tried twice. *See Chun Yat Ma v. Asher*, No. 11-cv-01797-MJP, 2012 WL 1432229,
3 at *5 (W.D. Wash. Apr. 25, 2012) (“An undue delay in removal for an individual
4 alien beyond the typical removal period would naturally suggest that removal is
5 unlikely.”); *Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D.
6 Kan. June 17, 2025) (finding that the respondents had not shown that removal was
7 reasonably foreseeable where they did not provide evidence why seeking travel
8 documentation was more likely to be successful this time around or describe other
9 actions taken to make the petitioner's removal more likely). He is a Vietnamese
10 refugee that was born in Hong Kong. The travel request to China sent by ICE has
11 been pending since June 3 2005 for five months, with no indication that China will
12 accept him. Tolchin Dec. Exhs. M and O. The government cannot meet its burden
13 when no progress has been made in removal. *Misirbekov v. Venegas* No. 1:25-CV-
14 00168, 2025 WL 3033732, at *2 (S.D. Tex. Oct. 29, 2025) (ordering release where
15 no progress been made to remove the petitioner); *Douglas v. Baker*, No. 25-CV-
16 2243-ABA, 2025 WL 2997585, at *4 (D. Md. Oct. 24, 2025) (ordering release
17 where government failed to produce evidence of any efforts to removal the petition
18 beyond one request over three months prior).

19 Petitioner’s detention has exceeded the authorized 180 day period and he has
20 good reason to believe that his detention is not reasonably foreseeable. *Vaskanyan*
21 *v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *4 (C.D. Cal.
22 June 25, 2025). In fact, there have been no updates regarding ICE’s request for the
23 travel document from China since the June 3, 2025 request, five months ago. *See*
24 *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *5
25 (C.D. Cal. June 25, 2025) (“At this early stage, the government has not adequately
26 rebutted Petitioner's showing.”). The attached expert statement from Professor Jana
27 Lipman sets forth that birth in Hong Kong as a refugee does not establish a right of
28

1 return to Hong Kong, or now China. Tolchin Dec. Exh. P. This establishes that
2 Petitioner has reason to believe that China will not accept him.

3 Further, he also has reason to believe that Vietnam will not accept him for
4 removal. In *Tran v. Scott*, No. 2:25-CV-01886-TMC-BAT, 2025 WL 2898638, at
5 *4 (W.D. Wash. Oct. 12, 2025), the district court addressed a similar case involving
6 a former refugee from Vietnam. There, the court found that removal to Vietnam
7 was not reasonably foreseeable where there was a lack of data on the rates of
8 removal of former Vietnamese refugees. *Id. See also Nguyen v. Hyde*, No. 25-CV-
9 11470-MJJ, 2025 WL 1725791, at *4 (D. Mass. June 20, 2025) (lack of data on
10 recent removal rates of pre-1995 Vietnamese immigrants undermined argument that
11 removal was likely). In fact, Respondents have not even suggested that they have
12 sought a travel document from Vietnam at all. To date, the only request has been to
13 China. Tolchin Dec. Exh. M.

14 Petitioner has been detained for more that 180 days and has good reason to
15 believe that his removal is not reasonably foreseeable. As such, he is likely to
16 prevail on this claim.

17 **2. Petitioner is Likely to Succeed on the Merits of His Due** 18 **Process Claim**

19 Petitioner is also likely to prevail on his claim that his detention violates Due
20 Process. “Freedom from imprisonment—from government custody, detention, or
21 other forms of physical restraint—lies at the heart of the liberty that the [due
22 process clause] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491,
23 150 L.Ed.2d 653 (2001). Therefore, individuals conditionally released from
24 detention have a protected interest in their “continued liberty.” *See Young v.*
25 *Harper*, 520 U.S. 143, 147, 149, 152–53, 117 S.Ct. 1148, 137 L.Ed.2d 270
26 (1997) (holding that a pre-parolee released to “reduce prison overcrowding” enjoy a
27 protected liberty interest). It is well-established that the liberty interest that arises
28

1 upon release is “inherent in the Due Process Clause.” *Pruitt v. Heimgartner*, 620 F.
2 App'x 653, 657 (10th Cir. 2015) (quoting *Boutwell v. Keating*, 399 F.3d 1203, 1212
3 (10th Cir. 2005)) (emphasis in *Pruitt*).

4 “Petitioner has a liberty interest in his continued release on bond.” *Guillermo*
5 *M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July
6 17, 2025). Petitioner's detention has exceeded the presumptively reasonable six-
7 month period, and there is no significant likelihood of his removal in the reasonably
8 foreseeable future. As such, Petitioner is clearly likely to prevail on his claim that
9 his detention has become indefinite, violating his right to due process.

10
11 **B. PETITIONER WILL SUFFER IRREPARABLE HARM AND**
12 **THE EQUITIES TIP IN PETITIONER’S FAVOR**

13 The Ninth Circuit has recognized the “irreparable harms imposed on anyone
14 subject to immigration detention” including “subpar medical and psychiatric care in
15 ICE detention facilities” and “the economic burdens imposed on detainees and their
16 families as a result of detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th
17 Cir. 2017). Moreover, “[i]t is well established that the deprivation of constitutional
18 rights ‘unquestionably constitutes irreparable injury.’ ” *Melendres v. Arpaio*, 695
19 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
20 Where, as here, the “alleged deprivation of a constitutional right is involved, most
21 courts hold that no further showing of irreparable injury is necessary.” *Warsoldier*
22 *v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, &*
23 *Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit
24 has also noted that “unlawful detention certainly constitutes ‘extreme or very
25 serious’ damage, and that damage is not compensable in damages.” *Hernandez*, 872
26 F.3d at 999. Petitioner has been detained for more than six months, and has been
27 separated from his United States citizen family. Tolchin Dec. Exh. A. He clearly
28 establishes irreparable harm.

1 The balance of the equities and public interest analyses merge when the
 2 government is the opposing party, as is the case in this action. *See Drakes Bay*
 3 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,
 4 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that
 5 Petitioner seeks to protect constitutionally protected liberty. *See Meza v. Bonnar*,
 6 No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) (“Given
 7 the low risk of Petitioner’s causing harm to others or fleeing, such expenditure in
 8 her case would not benefit the public absent a material change in circumstances.”).
 9 “Just as the public has an interest in the orderly and efficient administration of this
 10 country's immigration laws, [] the public has a strong interest in upholding
 11 procedural protections against unlawful detention.” *Vargas v. Jennings*, No. 20-cv-
 12 5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020). On the other hand,
 13 “the burden on Respondents in releasing Petitioner from detention is minimal,
 14 especially considering Petitioner's compliance with the requirements of the Order
 15 of Supervision...” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
 16 1993771, at *6 (E.D. Cal. July 16, 2025). Further, the Ninth Circuit has recognized
 17 that “[t]he costs to the public of immigration detention are ‘staggering,’ ” and that
 18 “[s]upervised release programs cost much less by comparison...” *Hernandez*, 872
 19 F.3d at 996. Therefore, the *Winter* factors weigh in favor of a grant of a temporary
 20 restraining order and preliminary injunction.

21 **C. NO BOND IS NECESSARY**

22 The Court has discretion to set the amount of security required for a
 23 temporary restraining order or preliminary injunction under Rule 65(c), if
 24 any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) Indeed, “[t]he
 25 district court may dispense with the filing of a bond when it concludes there is no
 26 realistic likelihood of harm to the defendant from enjoining his or her
 27 conduct.” *Id.* (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)).
 28

1 Here, it is unlikely any harm will come to Respondents as a result of a grant of
2 temporary relief and Respondents will incur negligible or zero financial costs.
3 Petitioner asks the Court to exercise its discretion to waive the bond requirement.
4

5 **II. CONCLUSION**

6 Petitioner respectfully requests that this Court grant his request for a
7 temporary restraining order and order that he be immediately released from ICE
8 custody.
9

10 Dated: November 3, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 3, 2025, I served a copy of PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF STACY TOLCHIN; AND [PROPOSED] ORDER by email to the following individual:

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s/ Stacy Tolchin
Stacy Tolchin
Counsel for Petitioner

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Plaintiff certifies that this Memo contains 3008 words, which complies with the word limit of L.R. 11-6.1.

s/ Stacy Tolchin
Stacy Tolchin
Counsel for Petitioner