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9 N.D.N.

10 UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 N.D.N.,

13 Petitioner-Plaintiff,

14 v.

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

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

22 Kristi NOEM, in her Official Capacity, Secretary,  
23 U.S. Department of Homeland Security;

24 Pam BONDI, in her Official Capacity, Attorney  
25 General of the United States; and

26 Tonya Andrews, Facility Administrator at Golden  
27 State Annex Detention Center, McFarland,  
28 California;

Respondents-Defendants.

Case No.

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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

Challenge to Unlawful Incarceration;  
Request for Declaratory and Injunctive  
Relief

Motion for TRO; Points and Authorities in Support of  
Petitioner's Motion for Ex Parte TRO/PI

Case No.

**NOTICE OF MOTION**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local rules of this Court, Petitioner hereby moves this Court for an order that Defendants Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), Pam Bondi, in her official capacity as the U.S. Attorney General, and Tonya Andrews, in her official capacity as Facility Administrator at Golden State Annex Detention Center, McFarland, California, be enjoined from continuing to detain Petitioner-Plaintiff N.D.N. ("Mr. N.D.N." or "Petitioner") in custody, and, following his release, be enjoined from re-detaining him without first providing him with a hearing before a neutral adjudicator prior to any future re-detention, as required by the Due Process clause of the Fifth Amendment. Petitioner additionally seeks to enjoin Respondents from removing Petitioner from the United States to any third country to which he does not have a removal order (i.e. any country other than Vietnam) without first providing him with constitutionally compliant procedures.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the concurrently filed Declaration of Avantika Shastri, as well as the concurrently filed Petition for Writ of Habeas Corpus. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful re-detention, where that detention appears indefinite and which was imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order requiring ICE to immediately release him from custody (to enjoin the unlawful ongoing detention), enjoining Respondents from re-detaining him before providing him a hearing before a neutral adjudicator prior to any re-detention, and enjoining Respondents from removing him to any third country without first providing him with constitutionally-compliant procedures. The only mechanism to ensure that he is not continuously unlawfully detained in violation of his due process rights is an ex-parte temporary restraining order from this Court.

Dated: November 18, 2025

Respectfully Submitted

/s/ Avantika Shastri

Avantika Shastri

Attorney for Petitioner-Plaintiff

**Table of Contents**

|    |                                                                                |    |
|----|--------------------------------------------------------------------------------|----|
| 1  | <b>NOTICE OF MOTION</b> .....                                                  | i  |
| 2  | <b>I. INTRODUCTION</b> .....                                                   | 5  |
| 3  | <b>II. STATEMENT OF FACTS AND CASE</b> .....                                   | 7  |
| 4  | <b>III. LEGAL STANDARD</b> .....                                               | 11 |
| 5  | <b>IV. ARGUMENT</b> .....                                                      | 11 |
| 6  | <b>A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER</b> .....              | 11 |
| 7  | 1. Petitioner is Likely to Succeed on the Merits of His Claim That, in         |    |
| 8  | Violation of Clear Supreme Court Precedent, his Re-Detention is                |    |
| 9  | Unconstitutional Because it is Indefinite. ....                                | 12 |
| 10 | 2. Petitioner is Likely to Succeed on the Merits of His Claim That his Re-     |    |
| 11 | Detention is Unlawful Because it is in Violation of the Regulations. ....      | 15 |
| 12 | 3. Petitioner is Likely to Succeed on the Merits of His Claim That Due Process |    |
| 13 | Requires That He Should Have Been Afforded a Hearing Before a Neutral          |    |
| 14 | Adjudicator Prior to Any Re-Detention by ICE, and he is Entitled to Such       |    |
| 15 | a Hearing Prior to Any Future Re-Detention. ....                               | 18 |
| 16 | a. Petitioner Has a Protected Liberty Interest in His Release .....            | 20 |
| 17 | b. Petitioner's Liberty Interest Mandated a Due Process Hearing Before         |    |
| 18 | any Re-Detention, and Once Released, Mandates Such a Hearing Prior             |    |
| 19 | to Any Re-Detention .....                                                      | 22 |
| 20 | i. Petitioner's Interest in His Liberty is Profound .....                      | 25 |
| 21 | ii. The Government's Interest in Keeping Petitioner in Detention is            |    |
| 22 | Low and the Burden on the Government to Release Him from                       |    |
| 23 | Custody is Minimal .....                                                       | 26 |
| 24 | iii. Without Release from Custody, the Risk of an Erroneous                    |    |
| 25 | Deprivation of Liberty is High .....                                           | 27 |
| 26 | 4. Petitioner is Likely to Succeed on the Merits of His Claim That the Fifth   |    |
| 27 | Amendment Entitles him to Constitutionally Adequate Procedures Prior           |    |
| 28 | to Any Third Country Removal. ....                                             | 29 |
|    | 5. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief.....       | 31 |
|    | 6. The Balance of Equities and the Public Interest Favor Granting the          |    |
|    | Temporary Restraining Order.....                                               | 33 |
|    | <b>V. CONCLUSION</b> .....                                                     | 34 |

TABLE OF AUTHORITIES

| Cases                                                                                                                                         | Page(s)    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Alliance for the Wild Rockies v. Cottrell</i> ,<br>632 F.3d 1127 (9th Cir. 2011) .....                                                     | 11         |
| <i>Ariz. Dream Act Coal. v. Brewer</i> ,<br>757 F.3d 1053 (9th Cir. 2014) .....                                                               | 32, 33     |
| <i>Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.</i> ,<br>22 F.3d 1150 (D.C. Cir. 1994) .....                                   | 29         |
| <i>Barker v. Wingo</i> ,<br>407 U.S. 514 (1972) .....                                                                                         | 31         |
| <i>Castro-Cortez v. INS</i> ,<br>239 F.3d 1037 (9th Cir. 2001) .....                                                                          | 28         |
| <i>Cesay v. Kurzdorfer</i> ,<br>No. 25-CV-267-LJV, 2025 WL 1284720 (W.D.N.Y. May 2, 2025) .....                                               | 18, 28     |
| <i>Chalkboard, Inc. v. Brandt</i> ,<br>902 F.2d 1375 (9th Cir.1989) .....                                                                     | 28         |
| <i>Chen v. Holder</i> ,<br>No. CV 6:14-2530, 2015 WL 13236635 (W.D. La. Nov. 20, 2015) .....                                                  | 13         |
| <i>Cooper v. Oklahoma</i> ,<br>517 U.S. 348 (1996) .....                                                                                      | 26         |
| <i>Diaz v. Kaiser</i> ,<br>No. 3:25-cv-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) .....                                                 | 19, 25     |
| <i>Diouf v. Napolitano</i> ,<br>("Diouf II"), 634 F.3d 1081 (9th Cir. 2011) .....                                                             | 28         |
| <i>Elrod v. Burns</i> ,<br>427 U.S. 347 (1976) .....                                                                                          | 33         |
| <i>Foucha v. Louisiana</i> ,<br>504 U.S. 71 (1992) .....                                                                                      | 25         |
| <i>Gagnon v. Scarpelli</i> ,<br>411 U.S. 778 (1973) .....                                                                                     | 20, 21     |
| <i>Garcia-Ayala v. Andrews</i> ,<br>No. 2:25-CV-02070-DJC-JDP, 2025 WL 2597508 (E.D. Cal. Aug. 8, 2025) .....                                 | 19         |
| <i>Getachew v. INS</i> ,<br>25 F.3d 841 (9th Cir. 1994) .....                                                                                 | 21         |
| <i>Granny Goose Foods, Inc. v. Bhd. Of Teamsters &amp; Auto<br/>Truck Drivers Local No. 70 of Alameda City</i> ,<br>415 U.S. 423 (1974) ..... | 12         |
| <i>Griffin v. Wisconsin</i> ,<br>483 U.S. 868 (1987) .....                                                                                    | 25         |
| <i>Haygood v. Younger</i> ,<br>769 F.2d 1350 (9th Cir. 1985) .....                                                                            | 23, 24     |
| <i>Hernandez v. Sessions</i> ,<br>872 F.3d 976 (9th Cir. 2017) .....                                                                          | 27, 32, 33 |
| <i>Hoac v. Becerra</i> ,                                                                                                                      |            |

|    |                                                                               |            |
|----|-------------------------------------------------------------------------------|------------|
| 1  | 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D.C.A. July 16, 2025) .....          | 14         |
| 2  | <i>Hurd v. District of Columbia</i> ,                                         |            |
|    | 864 F.3d 671 (D.C. Cir. 2017).....                                            | 19, 25     |
| 3  | <i>Jama v. ICE</i> ,                                                          |            |
|    | 543 U.S. 335 (2005) .....                                                     | 29         |
| 4  | <i>J.L.R.P. v. Wofford</i> , No. 1:25-cv-01464-KES-SKO (HC),                  |            |
|    | 2025 U.S. Dist. LEXIS 224967 (E.D. Cal. Nov. 14, 2025).....                   | 19         |
| 5  | <i>Johnson v. Williford</i> ,                                                 |            |
|    | 682 F.2d 868 (9th Cir. 1982).....                                             | 21, 25     |
| 6  | <i>Jones v. Blanas</i> ,                                                      |            |
|    | 393 F.3d 918 (9th Cir. 2004) .....                                            | 23         |
| 7  | <i>Kentucky Dep't of Corrections v. Thompson</i> ,                            |            |
| 8  | 490 U.S. 454 (1989) .....                                                     | 20         |
| 9  | <i>Lopez v. Heckler</i> ,                                                     |            |
|    | 713 F.2d 1432 (9th Cir. 1983) .....                                           | 33         |
| 10 | <i>Louisiana Pacific Corp. v. Beazer Materials &amp; Services, Inc.</i> ,     |            |
|    | 842 F.Supp. 1243 (E.D. Cal. 1994) .....                                       | 28         |
| 11 | <i>Lynch v. Baxley</i> ,                                                      |            |
|    | 744 F.2d 1452 (11th Cir. 1984).....                                           | 24         |
| 12 | <i>Mathews v. Eldridge</i> ,                                                  |            |
| 13 | 424 U.S. 319 (1976) .....                                                     | Passim     |
| 14 | <i>Melendres v. Arpaio</i> ,                                                  |            |
|    | 695 F.3d 990 (9th Cir. 2012) .....                                            | 33, 34     |
| 15 | <i>Morrissey v. Brewer</i> ,                                                  |            |
|    | 408 U.S. 471 (1972) .....                                                     | Passim     |
| 16 | <i>M.S.L. v. Bostock</i> ,                                                    |            |
|    | No. 6:25-cv-01204-AA, 2025 WL 2430267 (D. Or. Aug. 21, 2025).....             | 18         |
| 17 | <i>Nat'l Ass'n of Home Builders v. Defenders of Wildlife</i> ,                |            |
| 18 | 551 U.S. 644 (2007) .....                                                     | 29         |
| 19 | <i>Nat'l Ctr. for Immigrants Rights, Inc. v. INS</i> ,                        |            |
|    | 743 F.2d 1365 (9th Cir. 1984).....                                            | 31         |
| 20 | <i>Pinchi v. Noem</i> ,                                                       |            |
|    | 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025).....                              | 20, 23, 25 |
| 21 | <i>Phan v. Becerra</i> ,                                                      |            |
|    | 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D.C.A. July 16, 2025).....           | 15, 16     |
| 22 | <i>Preap v. Johnson</i> ,                                                     |            |
|    | 831 F.3d 1193 (9th Cir. 2016) .....                                           | 31         |
| 23 | <i>Preminger v. Principi</i> ,                                                |            |
| 24 | 422 F.3d 815 (9th Cir. 2005).....                                             | 34         |
| 25 | <i>Rosado v. Figueroa</i> , No. CV 25-02157 PHX DLR (CDB),                    |            |
|    | 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) .....                                | 25         |
| 26 | <i>Sied v. Nielsen</i> ,                                                      |            |
|    | No. 17-CV-06785-LB, 2018 WL 1876907 (N.D. Cal. Apr. 19, 2018) .....           | 13         |
| 27 | <i>Sikeo v. Cantu</i> ,                                                       |            |
|    | No. CV-25-03191-PHX-SHD (CDB), 2025 WL 2937064 (D. Ariz. Sept. 24, 2025)..... | 18, 28     |
| 28 | <i>Singh v. Holder</i> ,                                                      |            |

|    |                                                                        |        |
|----|------------------------------------------------------------------------|--------|
| 1  | 638 F.3d 1196 (9th Cir. 2011) .....                                    | 26     |
| 2  | <i>Stuhlbarg Int'l Sales Co. v. John D. Brush &amp; Co.</i> ,          |        |
| 3  | 240 F.3d 832 (9th Cir. 2001) .....                                     | 11     |
| 4  | <i>Tran v. Noem</i> ,                                                  |        |
| 5  | No. 25-cv-2391BTM-BLM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025) ..... | 15, 17 |
| 6  | U.S. Dep't of Homeland Security Office of Inspector General,           |        |
| 7  | OIG-24-23 .....                                                        | 32     |
| 8  | <i>United States ex rel. Bey v. Connecticut Board of Parole</i> ,      |        |
| 9  | 443 F.3d 1079 (2d Cir. 1971) .....                                     | 27     |
| 10 | <i>United States v. Knights</i> ,                                      |        |
| 11 | 534 U.S. 112 (2001) .....                                              | 25     |
| 12 | <i>Valle del Sol Inc. v. Whiting</i> ,                                 |        |
| 13 | 732 F.3d 1006 (9th Cir. 2013) .....                                    | 34     |
| 14 | <i>Villanueva v. Tate</i> ,                                            |        |
| 15 | No. H-25-3364, 2025 WL 2774610 (S.D. Tex. Sep. 26, 2025) .....         | 13     |
| 16 | <i>Vu v. Noem</i> , No. 1:25-cv-01366-KES-SKO (HC),                    |        |
| 17 | 2025 U.S. Dist. LEXIS 219394 (E.D. Cal. Nov. 6, 2025) .....            | 30     |
| 18 | <i>Winter v. Nat. Res. Def. Council, Inc.</i> ,                        |        |
| 19 | 555 U.S. 7 (2008) .....                                                | 11     |
| 20 | <i>Yan-Ling X. v. Lyons</i> , No. 1:25-cv-01412-KES-CDB (HC),          |        |
| 21 | 2025 U.S. Dist. LEXIS 220277 (E.D. Cal. Nov. 7, 2025) .....            | 15, 24 |
| 22 | <i>Young v. Harper</i> ,                                               |        |
| 23 | 520 U.S. 143 (1997) .....                                              | 20, 21 |
| 24 | <i>Youngberg v. Romeo</i> ,                                            |        |
| 25 | 457 U.S. 307 (1982) .....                                              | 24     |
| 26 | <i>Zadvydas v. Davis</i> ,                                             |        |
| 27 | 533 U.S. 678 (2001) .....                                              | Passim |
| 28 | <i>Zepeda v. INS</i> ,                                                 |        |
|    | 753 F.2d 719 (9th Cir. 1983) .....                                     | 33     |
|    | <i>Zinermom v. Burch</i> ,                                             |        |
|    | 494 U.S. 113 (1990) .....                                              | 23, 24 |
|    | Statutes                                                               |        |
|    | 8 U.S.C. § 1227(a)(2)(A)(iii) .....                                    | 7      |
|    | 8 U.S.C. § 1231 .....                                                  | 6, 10  |
|    | 8 U.S.C. § 1231(a)(1)(B) .....                                         | 12     |
|    | 8 U.S.C. § 1231(a)(2) .....                                            | 12     |
|    | 8 U.S.C. § 1231(a)(3) .....                                            | 12     |
|    | 8 U.S.C. § 1231(a)(6) .....                                            | 13     |
|    | 8 U.S.C. § 1231(b)(2)(A)(ii) .....                                     | 29     |
|    | U.S. Const. amend. V .....                                             | 28     |
|    | Rules                                                                  |        |
|    | Rule 65(b) of the Federal Rules of Civil Procedure .....               | i, 11  |

Regulations

|                                 |        |
|---------------------------------|--------|
| 8 C.F.R. § 241.13(b)(1).....    | 13, 14 |
| 8 C.F.R. § 241.13(i) .....      | 15     |
| 8 C.F.R. § 241.13(i)(2).....    | 15, 17 |
| 8 C.F.R. § 241.13(i)(3).....    | 17     |
| 8 C.F.R. § 241.4(1)(2).....     | 17     |
| 8 C.F.R. § 241.4(e)-(f).....    | 26, 28 |
| 8 C.F.R. § 241.4(j) .....       | 15     |
| 8 C.F.R. § 241.4(l) .....       | 28     |
| 8 C.F.R. § 241.4(l)(1)-(2)..... | 6, 10  |



1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. N.D.N., by and through undersigned counsel, hereby files this  
3 motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department  
4 of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") from his  
5 ongoing immigration detention in its custody and immediately release him. Mr. N.D.N. also seeks  
6 an order enjoining Respondents from re-detaining him unless and until he is afforded notice and a  
7 hearing before a neutral adjudicator prior to any future re-detention where DHS bears the burden  
8 of demonstrating that there is a significant likelihood that his removal is reasonably foreseeable  
9 and otherwise whether circumstances have changed such that his re-detention would be justified  
10 (i.e. whether he poses a danger or a flight risk), and where the Immigration Judge must further  
11 consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS  
12 may establish. Finally, Mr. N.D.N. seeks an order enjoining Respondents from removing him to  
13 any third country without first providing him with constitutionally-compliant procedures.

14 Mr. N.D.N. is a Vietnamese citizen who has lived in the United States since 1992, when  
15 he arrived as a U.S. lawful permanent resident at the age of sixteen. Although he was ordered  
16 removed in November 2000, he was released from detention in February 2001 due to ICE's  
17 inability to execute his removal. He has been reporting to ICE in person regularly since his release  
18 from detention nearly twenty-five years ago.

19 Mr. N.D.N. is not subject to removal to Vietnam under a binding repatriation agreement  
20 between the United States and Vietnam,<sup>1</sup> and thus his re-detention by ICE must be held unlawful  
21 as it is limitless in duration. He has also never been ordered removed to any third country or  
22 notified of such potential removal. Mr. N.D.N.'s detention is both unconstitutional because it is  
23 indefinite, and illegal because it does not comport with the regulations, and he was otherwise not  
24 provided any pre-deprivation hearing before his recent detention by ICE. Based on these  
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26 <sup>1</sup> See U.S. Department of State, "Repatriation Agreement Between the United States of America  
27 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)  
28 [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....").

1 circumstances, he raises three ways in which his ongoing detention is unlawful and must be  
2 enjoined, and as well requests an injunction against removal to a third country in the event that it  
3 is pursued.

4 First, once a noncitizen is released, their re-detention is limited by regulation, statute and  
5 the constitution. By statute and regulation, only in specific circumstances (that do not apply here)  
6 does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C. § 1231;  
7 8 C.F.R. §§ 241.13, 241.4(l)(1)–(2). The ability of ICE to simply re-arrest someone following their  
8 release from detention, however, is further limited by the Due Process Clause because it is well-  
9 established that individuals released from incarceration have a liberty interest in their freedom. In  
10 turn, due process requires that he be released from unlawful re-detention because he was not  
11 provided notice and a hearing before a neutral adjudicator.

12 Second, following Mr. N.D.N.'s release, the same principles must apply, such that in the  
13 future he be provided with notice and a hearing, *prior to any re-detention*, at which DHS bears the  
14 burden of justifying his re-detention (to a neutral adjudicator such as a neutral adjudicator who is  
15 not part of ICE or DHS) and at which Mr. N.D.N. will be afforded the opportunity to advance his  
16 arguments as to why he should not be re-detained.

17 Third, the Supreme Court has limited the potentially indefinite post-removal order  
18 detention to a *maximum* of six months where removal is not reasonably foreseeable. *Zadvydas v.*  
19 *Davis*, 533 U.S. 678, 701 (2001). Because the United States and Vietnam have an agreement not  
20 to remove Vietnamese individuals who entered the United States before July 12, 1995,<sup>2</sup> Mr.  
21 N.D.N.'s removal is not reasonably foreseeable in this case, and the government has not provided  
22 him with notice, evidence, or an opportunity to be heard on this issue before arbitrarily and  
23 unilaterally re-detaining him. His continued detention is indefinite and thus unconstitutionally  
24 prolonged, and the only remedy is his immediate release.

25 Mr. N.D.N. meets the standard for a temporary restraining order. He will continue to suffer  
26 immediate and irreparable harm stemming from his unlawful re-detention absent an order from  
27 this Court enjoining the government from further unlawful detention by ordering his release from  
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<sup>2</sup> See *supra* fn. 1.

detention, and enjoining future re-detention unless and until he receives a hearing before a neutral adjudicator. He would also suffer immediate and irreparable harm if removed to a third country where his life could be in danger. For that reason, he also seeks an order enjoining Defendants from removing him to any third country without first being provided with constitutionally-compliant procedures providing him adequate notice and an opportunity to demonstrate if his life is in danger or he stands a high risk of torture—all of which are demanded by the Constitution. Since holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Mr. N.D.N.'s favor.

## II. STATEMENT OF FACTS AND CASE

In 1976, Mr. N.D.N. was born in Vietnam. In 1991, he and his family fled Vietnam to escape persecution. His family held anti-communist political views, and his father was in combat alongside the United States military during the Vietnam war. After the war, Mr. N.D.N.'s father was imprisoned and tortured for several years by the communist regime in Vietnam.

In 1992, at the age of sixteen, Mr. N.D.N. entered the United States as a U.S. lawful permanent resident. In 1997, based on acts committed when he was twenty years old, Mr. N.D.N. was convicted of his sole conviction in the United States for violating California Penal Code (PC) § 213(a)(1)(A) (robbery) and was sentenced to prison for six years. Mr. N.D.N. ultimately served approximately three years for his conviction and was released from prison in 2000.

Upon Mr. N.D.N.'s release from prison, he was transferred into ICE custody. DHS initiated removal proceedings began against him, charging him as removable under 8 U.S.C. § 1227(a)(2)(A)(iii) for having been convicted of an aggravated felony conviction. Mr. N.D.N. applied for protection pursuant to the Convention Against Torture (CAT) based on a fear of future persecution to Vietnam and feared that he would be tortured for his relationship to his father.

On April 19, 2000, the Immigration Judge (IJ) denied Mr. N.D.N.'s application for relief pursuant to the CAT and ordered him removed. In his prior proceedings, the Immigration Judge found that it was more likely than not that Mr. N.D.N. would be persecuted if he were returned to Vietnam, but denied him relief from removal based on other grounds. On November 16, 2000, the Board of Immigration Appeals affirmed the IJ's decision.

1 At the time, the United States and Vietnam had an agreement that citizens of Vietnam, like  
2 Mr. N.D.N., who entered the United States before July 1995 could not be repatriated to Vietnam.<sup>3</sup>  
3 Due to the existing repatriation agreement, Mr. N.D.N. could not be removed to Vietnam.

4 In February 2001, ICE released Mr. N.D.N. from custody and placed him on a Form I-  
5 220B, Order of Supervision (“OSUP”) and scheduled to attend regular check in appointments in  
6 person at the San Francisco ICE Office. Through OSUP, Mr. N.D.N. was permitted to remain free  
7 from custody following his removal proceedings because his removal was not reasonably  
8 foreseeable and he is otherwise neither a flight risk nor a danger to the community. The OSUP  
9 also permitted him to apply for work authorization. 8 C.F.R. § 241.5.

10 For the past twenty-five years, Mr. N.D.N. has complied with the terms of his OSUP by  
11 attending all his check-ins at the ICE San Francisco Office. Through his OSUP, he remained free  
12 from custody following his removal proceedings because his removal was not reasonably  
13 foreseeable and he is otherwise neither a flight risk nor a danger to the community. He also applied  
14 for and received work authorization.

15 On January 25, 2025, officials in the new Trump administration directed senior ICE  
16 officials to increase arrests to meet daily quotas. Specifically, each field office was instructed to  
17 make 75 arrests per day.<sup>4</sup>

18 On October 15, 2025, Mr. N.D.N. attended his annual check-in at the San Francisco ICE  
19 Field Office. At the check-in, ICE officers provided Mr. N.D.N. with paper forms relating to  
20 obtaining travel documents. The ICE officers then scheduled Mr. N.D.N. to return on October 22,  
21 2025, with the completed forms and two passport-style photos.

22 On October 22, 2025, when Mr. N.D.N. voluntarily appeared at the ICE San Francisco  
23 office with an attorney, and provided the forms and photos requested, ICE officers arrested him.  
24 Mr. N.D.N. and his attorney asked for an explanation for the sudden and unexpected arrest. Mr.  
25 N.D.N. recalls that the only explanations for his re-detention was the officer was “just doing his  
26

27 <sup>3</sup> See *supra* fn. 1.

28 <sup>4</sup> See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (Jan. 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 job,” and that Mr. N.D.N. had been ordered deported. Mr. N.D.N. and his attorney requested that  
2 he be released because his family depended on him to no avail. ICE officers separated Mr. N.D.N.  
3 from his attorney, handcuffed Mr. N.D.N., and took him into custody.

4 Later that same day, on October 22, 2025, after separating him from his attorney, ICE  
5 officers issued Mr. N.D.N. a Notice of Revocation of Release, informing him that his OSUP had  
6 been revoked based on “changed circumstances” in his case. The notice referred to Mr. N.D.N.’s  
7 order of removal to Vietnam on April 19, 2000, and that his case was “currently under review by  
8 the Government of Vietnam for the issuance of a travel document and your removal is now  
9 imminent.” Mr. N.D.N. recalls that at some point, after his repeated pleas to release him, the  
10 officers asked him to explain why he wanted to be released. Mr. N.D.N. explained that he was the  
11 sole provider for his family, that he had a job to return to, and most importantly, that his young  
12 daughter was waiting for him to return home.

13 Approximately on October 23, 2025, 2025, ICE transferred Mr. N.D.N. to Golden State  
14 Annex Detention Facility, where he remains detained. He has not spoken further about his case  
15 with an officer or been asked to sign any additional documents.

16 For the past nearly twenty-five years, Mr. N.D.N. has worked arduously—sometimes two  
17 jobs and nightshifts—to support himself and his family and has committed himself to raising his  
18 children and to contribute to his community through religion and spirituality. His family—  
19 including his three U.S. citizen children, U.S. citizen wife, and elderly U.S. citizen mother—  
20 depend on him for financial, emotional, and physical support. *See* Shastri Decl. at Exhibit D  
21 (Letters of Support). Mr. N.D.N. is also highly respected by his religious community, where he  
22 serves as worship coordinator, leads bible study group, and performs missionary outreach. *Id.* He  
23 also assists marginalized communities and financially sponsors a child in Africa. *Id.*

24 By statute and regulation, ICE has the authority to re-detain a noncitizen on an OSUP  
25 previously ordered removed only in specific circumstances, including where an individual violates  
26 any condition of release or the individual’s conduct demonstrates that release is no longer  
27 appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)–(2). That authority, however, is proscribed  
28 by the Due Process Clause because it is well-established that individuals released from

1 incarceration have a liberty interest in their freedom. To protect that interest, due process requires  
2 notice and a hearing, *prior to any re-detention*, at which the individual is afforded the opportunity  
3 to advance his arguments as to why he should not be re-detained.

4 Here, by releasing Mr. N.D.N. on an OSUP—with which he has fully complied and lived  
5 at liberty for 25 years—Respondents created a reasonable expectation that Mr. N.D.N. would be  
6 permitted to live and work in the United States without being subject to arbitrary arrest and  
7 removal. That is exactly what Mr. N.D.N. has done since his release in 2001. Since his sole  
8 conviction in 1997, he has no further arrests or convictions. Mr. N.D.N. has attended his routine  
9 check-in appointments as required, worked arduously—sometimes two jobs and nightshifts—to  
10 support himself and his family, and has committed himself to raising his children and to contribute  
11 to his community through religion and spirituality. His family—including his three U.S. citizen  
12 children, U.S. citizen wife, and elderly U.S. citizen mother—depend on him for financial,  
13 emotional, and physical support. *See* Shastri Decl. at Exhibit D (Letters of Support). Mr. N.D.N.  
14 is also highly respected by his religious community, where he serves as worship coordinator, leads  
15 bible study group, and performs missionary outreach. *Id.* He also assists marginalized communities  
16 and financially sponsors a child in Africa. *Id.*

17 No evidence has been presented or made available to Mr. N.D.N. to support that ICE either  
18 attempted to procure or obtained a travel document from the government of Vietnam *prior to* his  
19 arrest, or that Vietnam has indicated to ICE that there is a significant likelihood that Vietnam will  
20 accept Mr. N.D.N. in the reasonably foreseeable future or that it will issue him a travel document  
21 that would contravene the repatriation treaty in existence.

22 Since October 22, 2025, Mr. N.D.N. has remained unlawfully detained without having  
23 been provided a due process hearing, and his prolonged and potentially indefinite detention is not  
24 constitutional, given that his removal to Vietnam, the only country to which he has been ordered  
25 removed, is not reasonably foreseeable.

26 Mr. N.D.N. is also at risk of being unlawfully removed to a third country without  
27 constitutionally adequate notice and a meaningful opportunity to apply for protection under the  
28 Convention Against Torture, in violation of the INA, binding international treaty, and due process.

Currently, DHS has a policy of removing or seeking to remove individuals to third countries *without* first providing adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* Shastri Decl. at Exhibit H (DHS Policy Regarding Third Country Removal). While this Court, as well as others in this circuit, have determined the policy is unconstitutional, the policy remains in place.

Intervention from this Court is therefore required to ensure that Mr. N.D.N. does not continue to suffer irreparable harm in the form of unjustified, prolonged, and indefinite detention, and further violation of his rights in the form of summary removal to a third country.

### **III. LEGAL STANDARD**

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

### **IV. ARGUMENT**

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

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974).

1 Here, Mr. N.D.N. has suffered an immediate and irreparable injury and loss through his  
2 unlawful, continuous, and indefinite detention, which violates his due process rights, and so too  
3 did his re-detention prior to receiving a hearing before a neutral adjudicator. Mr. N.D.N. has  
4 already suffered irreparable injury in the form of incarceration and will continue to suffer  
5 irreparable injury each day he remains detained without due process.

6 The Court should enjoin further detention because Mr. N.D.N. is likely to succeed on the  
7 merits of claims one, two, and three below, and should enjoin removal to a third country other than  
8 Vietnam without the constitutionally required procedures, because he is likely to succeed on the  
9 merits claim four below. Mr. N.D.N. asks the Court to grant all or part of the requested injunction.

10 **1. Petitioner is Likely to Succeed on the Merits of His Claim That,**  
11 **in Violation of Clear Supreme Court Precedent, his Re-Detention**  
12 **is Unconstitutional Because it is Indefinite.**

13 Mr. N.D.N. is likely to succeed on his claim that, in his particular circumstances, the Due  
14 Process Clause of the Constitution prevents Respondents from re-detaining Mr. N.D.N. because  
15 he cannot be deported to Vietnam and therefore his indefinite detention is unconstitutional because  
16 there is no end in sight.

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

21 It was pursuant to the regulations that ICE continued to detained Mr. N.D.N. in 2000  
22 following his order of removal, but then ultimately released him because ICE never procured a  
23 travel document for him from Vietnam. If ICE fails to remove an individual during the ninety (90)  
24 day removal period, the regulations require ICE to release the individual pursuant to OSUP. 8  
25 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending  
26 removal, shall be subject to supervision.”). Limited exceptions to this rule exist. Specifically, ICE  
27 “may” detain an individual beyond ninety days if the individual was ordered removed on criminal  
28 grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE’s  
authority to detain an individual beyond the removal period under such circumstances is not



1 boundless. Rather, it is constrained by the constitutional requirement that detention “bear a  
2 reasonable relationship to the purpose for which the individual [was] committed.” *Zadvydas v.*  
3 *Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention  
4 statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to  
5 its purpose if removal cannot be effectuated. *Id.* at 697.

6 The Supreme Court has addressed the fact that the statute is silent regarding the limits on  
7 post-final order detention, and as definitively held that such detention has the potential to be  
8 indefinite and such indefinite detention would be unconstitutional. Thus, there must be  
9 constitutional limits on post-final order detention. Specifically, the Supreme Court held that post-  
10 final order detention is only authorized for a “period reasonably necessary to secure removal,” a  
11 period that the Court determined to be presumptively six months. *Id.* at 699–701. After this six  
12 month period, if a detainee provides “good reason” to believe that his or her removal is not  
13 significantly likely in the reasonably foreseeable future, “the Government must respond with  
14 evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the  
15 individual must be released. Notably, the six-month period does not reset when the government  
16 re-detains a noncitizen. *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at \*6 (N.D.  
17 Cal. Apr. 19, 2018) (citing cases); *Chen v. Holder*, No. CV 6:14-2530, 2015 WL 13236635, at \*2  
18 (W.D. La. Nov. 20, 2015); *Villanueva v. Tate*, No. H-25-3364, 2025 WL 2774610, at \*9 (S.D.  
19 Tex. Sep. 26, 2025).

20 In light of the Supreme Court limitations imposed on the statutory scheme, the government  
21 updated the regulations to be consistent with those constitutionally required limitations on  
22 indefinite detention. Under those regulations, detainees are entitled to release even before six  
23 months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1)  
24 (authorizing release after ninety days where removal not reasonably foreseeable). Further, under  
25 the Supreme Court’s constitutional limitations on indefinite detention, as the period of post-final-  
26 order detention grows, what counts as “reasonably foreseeable” must conversely shrink. *Zadvydas*,  
27 533 U.S. at 701.

1 Here, Mr. N.D.N.'s detention is unconstitutional because it is indefinite. Per the authority  
2 of the binding international agreement, because Mr. N.D.N. is a Vietnamese citizen who entered  
3 the United States prior to July 12, 1995, he cannot be repatriated to Vietnam.<sup>5</sup> There is no evidence  
4 that Vietnam would violate the terms of that agreement in Mr. N.D.N.'s case. They did not agree  
5 to take him when requested after his 2000 removal order. There is no evidence that Vietnam will  
6 agree to take him now. Thus, Mr. N.D.N.'s removal is not reasonably foreseeable in this case, and  
7 the government has not provided him with notice, evidence, or an opportunity to be heard on this  
8 issue on or before arbitrarily re-detaining him. His continued detention without any reasonably  
9 foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court  
10 precedent. Further, Mr. N.D.N. was already held in ICE detention before he was released in 2001,  
11 and therefore he may—and under these circumstances, must—be released. 8 C.F.R.  
12 § 241.13(b)(1).

13 Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention  
14 violates the Due Process Clause unless it is “reasonably related” to the government’s purpose,  
15 which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal is reasonably  
16 foreseeable, the habeas court should consider the risk of the alien’s committing further crimes as  
17 a factor potentially justifying confinement within that reasonable removal period”) (emphasis  
18 added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at the moment of  
19 removal”); *Id.* at 690–91 (discussing twin justifications of detention as preventing flight and  
20 protecting the community). Thus, Mr. N.D.N. must be released from custody because he does not  
21 pose a danger or flight risk that warrants post-final-order detention, regardless of whether his  
22 removal can be effectuated within a reasonable period of time. *Hoac v. Becerra*, 2:25-cv-01740-  
23 DC-JDP, 2025 WL 1993771 (E.D.C.A. July 16, 2025) (ordering the immediate release of  
24 Vietnamese petitioner who arrived to the United States prior to 1995, had a final removal order,  
25 and was released from ICE detention and had been complying with an OSUP for years after he  
26 was unlawfully re-detained at a routine check-in despite no changed circumstances at the ICE  
27 office in San Francisco); *Phan v. Becerra*, 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D.C.A.

28 <sup>5</sup> *See supra* n.1.

July 16, 2025) (same, after petitioner was transferred from California to Louisiana). This is especially so because the ICE *already* released Mr. N.D.N. from detention after determining that he was neither a flight risk nor a danger to the community.

**2. Petitioner is Likely to Succeed on the Merits of His Claim That his Re-Detention is Unlawful Because it is in Violation of the Regulations.**

Mr. N.D.N.'s re-detention is separately unlawful because ICE had no authority to re-detain him under the controlling regulations. Pursuant to the regulations, non-citizens with final removal orders who are released from detention after a post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8 C.F.R. § 241.4(j). ICE may revoke an individual's supervised release and return them to custody if the individual violates their OSUP or for removal if, on account of changed circumstances, ICE determines that there is a significant likelihood that the individual may be removed in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(i), 241.4. The determination of changed circumstances, pursuant to 8 C.F.R. § 241.13(i)(2), must be made *on or before* the revocation. *Tran v. Noem*, No. 25-cv-2391BTM-BLM, 2025 WL 3005347, at \*2 (S.D. Cal. Oct. 27, 2025).

This Court has held that a "significant likelihood" requires something more than a mere possibility that removal will occur. *Yan-Ling X. v. Lyons*, No. 1:25-cv-01412-KES-CDB (HC), 2025 U.S. Dist. LEXIS 220277, at \*11 (E.D. Cal. Nov. 7, 2025). Evidence that "there is at least some possibility that" the designated country of removal "will accept the petitioner at some point . . . is not the same as a significant likelihood that the petitioner will be accepted in the reasonably foreseeable future." *Id.* at \*12 (cleaned up).

In this case, Mr. N.D.N. was released on an OSUP. It specified the conditions imposed on him, and it is uncontested that he complied with all those conditions. As ICE's notice of revocation reflects, the reason why it revoked his OSUP is based on "changed circumstances."

However, there is no evidence of changed circumstances to indicate that there is a significant likelihood that Vietnam will issue his travel document and that his removal is therefore reasonably foreseeable. The changed circumstances did not exist on or before Mr. N.D.N.'s re-

1 detention. The forms that ICE provided to Mr. N.D.N. on October 15 are presumably the travel  
2 document request forms, which ICE requested that Mr. N.D.N. sign and return to ICE on October  
3 22, 2025. When Mr. N.D.N. provided the completed forms and passport photos, ICE proceeded to  
4 re-arrest him. ICE then provided Mr. N.D.N. with his notice of revocation, informing him that  
5 there was a determination based on “changed circumstances” and that “your case is currently under  
6 review by the Government of Vietnam for the issuance of a travel document and your removal is  
7 now imminent.” However, there is no indication that ICE in fact filed Mr. N.D.N.’s travel  
8 document request prior to the revocation. Respondents’ intent to file or obtain a travel document  
9 request “does not make it significantly likely” that Mr. N.D.N. will be removed. *Phan*, 2025 WL  
10 1993735, at \*5. As in *Phan*, Mr. N.D.N. is still subject to the repatriation agreement, ICE has been  
11 unable to obtain a travel document for Mr. N.D.N. since 2000, which led to his release on OSUP,  
12 and he is not eligible for return to Vietnam under the terms of the agreement, therefore nothing has  
13 changed to indicate a significant likelihood of removal in the reasonably foreseeable future. *Id.*  
14 (“Respondents have not provided any details about why a travel document could not be obtained  
15 in the past, nor have they attempted to show why obtaining a travel document is more likely this  
16 time around. Respondents’ intent to eventually complete a travel document request for Petitioner  
17 does not constitute a changed circumstance.”)

18 Second, even if travel documents were requested or are now requested Vietnam still has  
19 total discretion whether to issue a travel document to any individual, and there is no indication that  
20 Vietnam has indicated to ICE that it will issue Mr. N.D.N. a travel document. *Phan*, 2025 WL  
21 1993735, at \*4. Even if there existed an occasion where Vietnam issued a travel document for  
22 another individual, this Court and others have held that single examples of documentation being  
23 received for another individual’s repatriation is “hardly persuasive” to demonstrate changed  
24 circumstances. *Id.* Thus, absent individualized and specific evidence that Vietnam *will accept* Mr.  
25 N.D.N. in the reasonably foreseeable future, Respondents cannot show that there is a significant  
26 likelihood that Mr. N.D.N. will be removed in the foreseeable future, and Respondents have  
27 violated their authority pursuant to the regulations.

1 Third, there is no evidence in the record that ICE made the changed circumstances  
2 determination *on or before* revoking Mr. N.D.N.'s OSUP. *Tran*, 2025 WL 3005347, at \*2. It was  
3 not until Mr. N.D.N. provided the completed travel document form and passport photos that ICE  
4 detained him. Thus, ICE could not have submitted their request to Vietnam—if it even has done  
5 so now—until after they revoked Mr. N.D.N.'s OSUP.

6 Even if ICE were to obtain a travel document now, after Petitioner's unlawful re-detention,  
7 it would not mitigate the situation. No travel document existed at the time that Petitioner was re-  
8 detained, and therefore his unlawful re-detention is based on the October 22 revocation of his  
9 OSUP and not on new circumstances. *Tran*, 2025 WL 3005347, at \*2 (ICE was unable to obtain  
10 travel documents for the petitioner during the petitioner's previous detention and in the 15 years  
11 that the petitioner was on OSUP, and did not submit the travel document until after the petitioner's  
12 re-arrest, and though ICE later obtained the travel document and alleged they "will have a plane  
13 reservation for [the petitioner] to depart in about two weeks," the court found that the petitioner  
14 was detained "on the June 18th revocation and not based on the new circumstances.").

15 Fourth, ICE violated their own regulations by failing to provide Mr. N.D.N. adequate legal  
16 process on revocation. 8 C.F.R. § 241.13(i)(2)–(3). *See* 8 C.F.R. § 241.13(i) (requiring notice of  
17 the reason for revocation of release, and an interview at which an individual has an opportunity to  
18 respond to the reasons given for revocation and submit evidence and information on his behalf,  
19 including to show that there is no significant likelihood of removal in the reasonably foreseeable  
20 future). Notably in this case, Mr. N.D.N. appeared for his check-in with an attorney, but ICE only  
21 issued his Notice of Revocation to him after separating him from his attorney and despite his stated  
22 intent to have his attorney present. He was thus deprived of his counsel, even though counsel was  
23 present. In addition, although ICE gave him a Notice of Revocation, it does not appear that he was  
24 given any evidence that a travel request was in fact pending for him or an adequate opportunity,  
25 with the assistance of his counsel, to respond to ICE's allegations or evidence that it was  
26 foreseeable that they could in fact obtain travel documents for him after 25 years.

27 Finally, the authority to revoke release is given to the officer with the title of Executive Associate  
28 Commissioner. 8 C.F.R. § 241.4(1)(2); *see Sikeo v. Cantu*, No. CV-25-03191-PHX-SHD (CDB),

2025 WL 2937064, at \*2 (D. Ariz. Sept. 24, 2025). If the field office director or a delegated official intends to revoke an OSUP, they must first make findings that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an OSUP, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161-62 (W.D.N.Y. May 2, 2025) (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision, and thus the revocation was unlawful). When an official without the authority to revoke release, courts have found that the release was not lawfully revoked and have ordered the individual is “entitled to release on that basis alone.” *Ceesay*, 781 F. Supp. 3d at 162; *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267, at \*10 (D. Or. Aug. 21, 2025).

In this case, there is no evidence in this case that Mr. N.D.N.’s release was revoked by the correct officer. Rather, the revocation is signed by Respondent Sergio Albarran, Acting Field Office Director for San Francisco ICE Field Office, and there is no indication or evidence to support that Respondent Albarran was properly delegated to have authority or that he made the requisite findings required by regulation. Thus, Respondent Albarran’s revocation of Mr. N.D.N.’s release was without legal authority and is thus unlawful, and he is entitled to release on that basis alone. Since the date of his arrest, Mr. N.D.N. has not been given a prompt interview to respond to the reasons for revocation, or any other evidence in support the Notice of Revocation.

Thus, Mr. N.D.N.’s detention is further unlawful because Respondents squarely violated the controlling regulations by re-detaining him.

**3. Petitioner is Likely to Succeed on the Merits of His Claim That Due Process Requires That He Should Have Been Afforded a Hearing Before a Neutral Adjudicator Prior to Any Re-Detention by ICE, and he is Entitled to Such a Hearing Prior to Any Future Re-Detention.**

Mr. N.D.N. is also likely to succeed on his claim that fundamental principles of due process require that he cannot be re-detained by ICE without first being provided a pre-deprivation hearing

1 before a neutral adjudicator where the government shows that his removal is reasonably  
2 foreseeable and that circumstances have changed since his release in 2001, including that Mr.  
3 N.D.N. is now a danger or a flight risk.

4 ICE failed to follow the controlling regulations by re-detaining Mr. N.D.N. but, even if  
5 they had complied with the procedures set forth in those regulations, ICE's regulatory authority  
6 to unilaterally re-detain Mr. N.D.N. is proscribed by the Due Process Clause because it is well-  
7 established that individuals released from incarceration have a liberty interest in their freedom.  
8 *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in  
9 fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty  
10 interest that entitles him to constitutional due process before he is re-incarcerated"). In turn, to  
11 protect that interest, on the particular facts of Mr. N.D.N.'s case, due process required notice and  
12 a hearing, *prior to any re-arrest*, at which he was afforded the opportunity to advance his  
13 arguments as to why he should not be re-detained. This never occurred. from re-detaining  
14 petitioner unless there are material changed circumstances and a neutral decisionmaker  
15 determines that there is a significant likelihood of petitioner's removal in the reasonably  
16 foreseeable future, or respondents demonstrate by clear and convincing evidence at a pre-  
17 deprivation bond hearing before a neutral decisionmaker that petitioner is a flight risk or danger  
18 to the community such that his physical custody is legally justified. *J.L.R.P. v. Wofford*, No. 1:25-  
19 cv-01464-KES-SKO (HC), 2025 U.S. Dist. LEXIS 224967, at \*28 (E.D. Cal. Nov. 14, 2025)  
20 (habeas granted enjoining and restraining the government from re-detaining the petitioner "unless  
21 there are material changed circumstances and a neutral decisionmaker determines that there is a  
22 significant likelihood of petitioner's removal in the reasonably foreseeable future...."); *Garcia-*  
23 *Ayala v. Andrews*, No. 2:25-CV-02070-DJC-JDP, 2025 WL 2597508, at \*5 (E.D. Cal. Aug. 8,  
24 2025) (TRO prohibiting the government from re-detaining the petitioner without notice and a pre-  
25 deprivation hearing before a neutral decisionmaker); *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025  
26 WL 1676854 (N.D. Cal. June 14, 2025) (TRO prohibiting the government from re-detaining the  
27 petitioner without notice and a hearing before a neutral adjudicator); *Pinchi v. Noem*, 792 F. Supp.  
28 3d 1025, 1036 (N.D. Cal. 2025) ("If the government wishes to detain [the petitioner], it need only

provide a hearing before a neutral decisionmaker.”); Shastri Decl. at Exhibit I, *T.P.S. v. Kaiser*, 5:25-cv-05428 (N.D. Cal. June 30, 2025) (same).

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

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

Mr. N.D.N.’s liberty from immigration custody, a form of civil detention, is protected by the Due Process Clause: “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

For nearly twenty-five years preceding his re-detention on October 22, 2025, Mr. N.D.N. exercised that freedom under his prior release from ICE custody in 2001. He thus retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. In this case, in the absence of a repatriation agreement that actually permits Mr. N.D.N.’s removal to Vietnam, his removal is not foreseeable at all, let alone reasonably. Therefore, his continued detention is unconstitutional.

Just as importantly, Mr. N.D.N. continued presenting himself before ICE for his regular in-person check-in appointments for the past twenty-five years, and ICE did not seek to re-arrest him during this time. ICE instead gave him a future date and time to appear again, which he did. In fact, Mr. N.D.N. continued to comply even despite ICE’s sudden and unwarranted re-scheduling him for an appointment one week after the date of his regular check-in on October 15, 2025. On October 22, 2025, Mr. N.D.N. attended the unwarranted appointment and fully complied in good faith that ICE would abide by its own regulations related to his OSUP.



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

14 In fact, so fundamental to due process is the concept of liberty that it is even well-  
15 established that an individual maintains a protectable liberty interest where the individual obtains  
16 liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887  
17 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process  
18 considerations support the notion that an inmate released on parole by mistake, because he was  
19 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because  
20 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would  
21 be inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal  
22 quotation marks and citation omitted).

23 Here, when this Court “compar[es] the specific conditional release in [Petitioner’s case],  
24 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly  
25 similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. N.D.N.’s release  
26 “enables him to do a wide range of things open to persons” who have never been in custody or  
27 convicted of any crime, including to live at home, work with his community, and “be with family  
28 and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at

1 482. Moreover, Mr. N.D.N. is not a criminal detainee, but a civil detainee, and thus the due process  
2 considerations of his liberty should be even weightier than the courts have already found to apply  
3 in the criminal context.

4 Since his release in 2001, Mr. N.D.N. has been focused on rebuilding his life, including by  
5 reconnecting with family and community, and developing strong ties to his religious community  
6 and advancing his faith. He has not obtained any new arrests or convictions, other than his sole  
7 conviction from 1997. At first, Mr. N.D.N. reconnected with, supported, and raised his eldest U.S.  
8 citizen child as a single father, working at night in order to support her. See Shastri Decl. at Exhibit  
9 D (Letters of Support). His daughter is now pursuing higher education and hopes to contribute to  
10 society as a nurse practitioner. *Id.* Mr. N.D.N. also has consistently supported his elderly U.S.  
11 citizen mother. *Id.* He currently is the sole breadwinner for his family, and supports his U.S. citizen  
12 wife, his United States citizen teenage step-son, and their youngest U.S. citizen child, a six-year-  
13 old girl whom he shares with his wife. *Id.* He has also worked arduously to secure and succeed in  
14 his employment. *Id.* Prior to his re-detention, he worked as a warehouse manager, overseeing over  
15 fifty employees. *Id.* Mr. N.D.N.'s employer highly values him and is holding Mr. N.D.N.'s  
16 position available for Mr. N.D.N. upon his release from custody. *Id.* Mr. N.D.N. is reasonably  
17 worried, however, that the longer he remains detained, his chances of returning to that role  
18 diminish. Mr. N.D.N. is also highly respected by his religious community, where he serves as  
19 worship coordinator, leads bible study group, and performs missionary outreach. *Id.* He also assists  
20 marginalized communities and financially sponsors a child in Africa. *Id.* Precedents from the  
21 Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his  
22 continued release from detention.

23 **b. Petitioner's Liberty Interest Mandated a Due Process**  
24 **Hearing Before any Re-Detention, and Once Released,**  
25 **Mandates Such a Hearing Prior to Any Re-Detention**

26 Mr. N.D.N. asserts that, here, (1) where his detention is civil, (2) where he has diligently  
27 complied with ICE's reporting requirements on a regular basis, and (3) where on information and  
28 belief ICE officers arrested Mr. N.D.N. merely to fulfill an arrest quota because his removal is not

1 reasonably foreseeable and potentially indefinite, due process mandates that he was required to  
2 receive notice and a hearing before a neutral adjudicator prior to any re-arrest.

3 “Adequate, or due, process depends upon the nature of the interest affected. The more  
4 important the interest and the greater the effect of its impairment, the greater the procedural  
5 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d  
6 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must  
7 “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient  
8 administration of” its immigration laws in order to determine what process he is owed to ensure  
9 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth  
10 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:  
11 “first, the private interest that will be affected by the official action; second, the risk of an erroneous  
12 deprivation of such interest through the procedures used, and the probative value, if any, of  
13 additional or substitute procedural safeguards; and finally the government’s interest, including the  
14 function involved and the fiscal and administrative burdens that the additional or substitute  
15 procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,  
16 424 U.S. 319, 335 (1976)).

17 The Supreme Court “usually has held that the Constitution requires some kind of a hearing  
18 before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127  
19 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the  
20 only remedies the State could be expected to provide” can post-deprivation process satisfy the  
21 requirements of due process. *Id.* at 129. Moreover, it is only where “one of the variables in  
22 the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the  
23 kind of deprivation at issue” that “the State cannot be required constitutionally to do the impossible  
24 by providing predeprivation process,” and thus avoid providing pre-deprivation process. *Id.*

25 Because, in this case, the provision of a pre-deprivation hearing was both possible and  
26 valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner  
27 with notice and a hearing prior to any re-incarceration and revocation of his OSUP. See *Morrissey*,  
28 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.

1 2004); *Zinerman*, 494 U.S. at 136-37; *see also Youngberg v. Romeo*, 457 U.S. 307, 321–24 (1982);  
2 *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary  
3 civil commitment proceedings may not constitutionally be held in jail pending the determination  
4 as to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily  
5 in favor of [Petitioner’s] liberty,” *Haygood*, 769 F.2d at 1357, and required a pre-deprivation  
6 hearing before a neutral adjudicator, such as this Court, which ICE failed to provide.

7 Furthermore, that basic principle—that individuals placed at liberty are entitled to process  
8 before the government imprisons them—has particular force here, where Mr. N.D.N. was already  
9 released from detention after findings that his removal was not reasonably foreseeable and that he  
10 need not be incarcerated to prevent flight or to protect the community, and no circumstances have  
11 changed that would justify his re-arrest, as there is no current and valid travel document for Mr.  
12 N.D.N. and he has not violated any of his conditions under OSUP. In fact, ICE has been unable to  
13 secure a travel document for Mr. N.D.N. since 2001. Nothing has changed—ICE has failed to  
14 obtain a travel document since Mr. N.D.N.’s detention in 2000-2001, again in the nearly twenty-  
15 five years that he was on OSUP, on or *before* unlawfully revoking his OSUP, and since the time  
16 that Mr. N.D.N. was re-arrested on October 22, 2025. As this Court has held, “significant  
17 likelihood” requires something more than a mere possibility that removal will occur. *Yan-Ling X.*,  
18 2025 U.S. Dist. LEXIS 220277, at \*11. Evidence that “there is at least some possibility that” the  
19 designated country of removal “will accept the petitioner at some point . . . is not the same as  
20 a significant likelihood that the petitioner will be accepted in the reasonably foreseeable future.”  
21 *Id.* at \*12 (cleaned up). Given that Vietnam has total discretion whether to issue a travel document  
22 to any individual, and there is no evidence that Vietnam *will accept* Mr. N.D.N. in the reasonably  
23 foreseeable future, Respondents cannot show that there is a significant likelihood that Mr. N.D.N.  
24 will be removed in the foreseeable future.

25 Obtaining a travel document after Petitioner’s unlawful detention would not mitigate the  
26 situation. No travel document existed at the time that Petitioner was re-detained, and therefore his  
27 unlawful re-detention is based on the October 22 revocation of his OSUP and not on new  
28 circumstances. *Tran*, 2025 WL 3005347, at \*2 (ICE was unable to obtain travel documents for the

petitioner during the petitioner’s previous detention and in the 15 years that the petitioner was on OSUP, and did not submit the travel document until after the petitioner’s re-arrest, and though ICE later obtained the travel document and alleged they “will have a plane reservation for [the petitioner] to depart in about two weeks,” the court found that the petitioner was detained “on the June 18th revocation and not based on the new circumstances.”).

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

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. N.D.N., who have also been released from prior ICE custody and are facing civil (not criminal) detention. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891–92; *Hurd*, 864 F.3d at 683. This extends to noncitizens released from immigration detention on pre-parole, parole, or probation. *See Pinchi*, 792 F. Supp. 3d at 1032; *Diaz*, 2025 WL 1676854, at \*2; *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at \*12-13 (D. Ariz. Aug. 11, 2025). Thus, Mr. N.D.N., as a civil detainee, retains a truly weighty liberty interest even though he was under conditional release prior to his re-arrest.

What is at stake in this case for Mr. N.D.N. is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by

the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

ii. **The Government’s Interest in Keeping  
Petitioner in Detention is Low and the Burden  
on the Government to Release Him from  
Custody is Minimal**

The government’s interest in keeping Mr. N.D.N. in detention without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of releasing him from custody. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process Petitioner seeks—release from custody after ICE *already* released Mr. N.D.N. from detention after being unable to remove him during the post-removal period, all of which occurred nearly *twenty-five years ago* and where nothing in the interim has changed to warrant re-detention after—is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before this Court to determine whether there is evidence that Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely conducts these reviews for individuals in Petitioner’s same circumstances. 8 C.F.R. § 241.4(e)–(f).

As immigration detention is civil, it can have no punitive purpose. The government’s only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court 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 Petitioner due to alleged dangerousness, or due to a change in the foreseeability of his removal to Vietnam, as his circumstances have not changed since his release from ICE custody in 2001.

Moreover, Mr. N.D.N. has had a removal order since before his release and yet has continued to appear before ICE on a yearly basis for each and every appointment that has been scheduled. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a

1 person's justifiable reliance in maintaining his conditional freedom so long as he abides by the  
2 conditions on his release, than to his mere anticipation or hope of freedom'" (quoting *United*  
3 *States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

4 Thus, as to the factor of flight risk, Mr. N.D.N.'s post-release conduct in the form of full  
5 compliance with his check-in requirements further confirms that he is not a flight risk and that he  
6 remains likely to present himself at any future ICE appearances, as he always has done. What has  
7 changed, however, is that ICE has a new policy to make a minimum number of arrests each day  
8 under the new administration – but that does not constitute a material change in circumstances or  
9 increase the government's interest in detaining him.<sup>6</sup> Moreover, as discussed previously, nothing  
10 has changed regarding the lack of foreseeability of his removal to Vietnam.

11 Release from custody until ICE assesses and demonstrates to a neutral adjudicator that Mr.  
12 N.D.N. is actually a flight risk or danger to the community, or that his detention is not going to be  
13 indefinite, is far *less* costly and burdensome for the government than keeping him detained. As the  
14 Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration  
15 detention are 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5  
16 million." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

17 **iii. Without Release from Custody, the Risk of an**  
18 **Erroneous Deprivation of Liberty is High**

19 Releasing Mr. N.D.N. from civil custody and ensuring he is provided with a pre-  
20 deprivation hearing in the future would decrease the risk of him being erroneously deprived of his  
21 liberty. Before he can be lawfully detained, he must be provided with a hearing before a neutral  
22 adjudicator at which the government is held to show that his detention will not be indefinite (that  
23 is, his removal is reasonably foreseeable), or that the circumstances have changed since his release  
24 in 2001 such that evidence exists to establish that he is a danger to the community or a flight risk.

25 Under the process that ICE maintains is lawful—which affords Mr. N.D.N. no process  
26 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so, as ICE did

27 <sup>6</sup> See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January  
28 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 on October 22, 2025. Mr. N.D.N. has already been erroneously deprived of his liberty when he  
2 was detained during his appointment, and the risk he will continue to be deprived is high if ICE is  
3 permitted to keep him detention after making a unilateral decision to re-detain him. Pursuant to 8  
4 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate  
5 Commissioner—which ICE failed to follow here, as the revocation is signed by Respondent Sergio  
6 Albarran, who is not the Executive Associate Commissioner and whose authority was not properly  
7 delegated to him. *Sikeo*, 2025 WL 2937064, at \*2; *Ceesay*, 2025 WL 1284720, at \*17 (W.D.N.Y.  
8 May 2, 2025). Thus, the regulations are insufficient to protect his due process rights, as they permit  
9 ICE to unilaterally re-detain individuals, even for an accidental error in complying with the  
10 conditions, for example. After re-arrest, ICE makes its own one-sided custody determination and  
11 can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)–(f).

12 By contrast, the procedure Mr. N.D.N. seeks—release from custody, and that he be  
13 provided a future hearing in front of a neutral adjudicator prior to any re-detention at which the  
14 government that his detention will not be indefinite, or otherwise that the circumstances have  
15 changed since his release in 2001 to justify his detention—is much more likely to produce accurate  
16 determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375,  
17 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of witnesses and  
18 assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable  
19 when just determinations are made after hearing only one side”). “A neutral judge is one of the  
20 most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir.  
21 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The  
22 Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be  
23 decreased where a neutral adjudicator, rather than ICE alone, makes custody determinations. *Diouf*  
24 *v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

25 Due process also requires consideration of alternatives to detention at any custody  
26 redetermination hearing that may occur. The primary purpose of immigration detention is to ensure  
27 removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related  
28 to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to



1 detention must be considered in determining whether Mr. N.D.N.'s re-detention is warranted.

2 **4. Petitioner is Likely to Succeed on the Merits of His Claim That**  
3 **the Fifth Amendment Entitles him to Constitutionally Adequate**  
4 **Procedures Prior to Any Third Country Removal.**

5 Finally, Mr. N.D.N. is likely to succeed on the merits of his claim that The Due Process  
6 Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to  
7 the deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v.*  
8 *Beazer Materials & Services, Inc.*, 842 F. Supp. 1243, 1252 (E.D. Cal. 1994) (“[D]ue process  
9 requires that government action falling within the clause’s mandate may only be taken where there  
10 is notice and an opportunity for hearing.”).

11 Mr. N.D.N. has a protected interest in his life. Thus, prior to any third country removal, he  
12 must be provided with constitutionally compliant notice and an opportunity to respond and contest  
13 that removal if he has a fear of persecution or torture in that country.

14 The INA, FARRA, and implementing regulations further mandate meaningful notice and  
15 opportunity to present a fear-based claim to an IJ before ICE deports a person to a third country.

16 Under the INA, Respondents have a clear and non-discretionary duty to execute final  
17 orders of removal only to the designated country of removal. The statute explicitly states that a  
18 noncitizen “shall remove the [noncitizen] to the country the [noncitizen] . . . designates.” 8 U.S.C.  
19 § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country  
20 of removal, the statute further mandates that DHS “shall remove the alien to a country of which  
21 the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*,  
22 543 U.S. 335, 341 (2005).

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

1 well-reasoned decisions.” *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 U.S. Dist.  
2 LEXIS 219394, at \*23 (E.D. Cal. Nov. 6, 2025) (citation omitted).

3 Moreover, prior to any third country removal, ICE must provide Mr. N.D.N. with sufficient  
4 notice and an opportunity to respond and apply for fear-based relief as to that country, in  
5 compliance with the INA, due process, and the binding international treaty: The Convention  
6 Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>7</sup> Currently,  
7 DHS has a policy of removing or seeking to remove individuals to third countries without first  
8 providing constitutionally adequate notice of third country removal, or any meaningful opportunity  
9 to contest that removal if the individual has a fear of persecution or torture in that country. Shastri  
10 Decl. at Exhibit H (Copy of DHS Policy).

11 Instead, the policy squarely violates the INA because it does not take into account, *or even*  
12 *mention*, an individual’s designated country of removal—thereby fully contravening the statutory  
13 instruction that DHS must only remove an individual to the designated country of removal. U.S.C.  
14 § 1231(b)(2)(A)(ii).

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

18 By failing to implement a process or procedure to afford Mr. N.D.N. meaningful notice  
19 and opportunity to present a fear-based claim to an IJ before DHS deports a person to a third  
20 country and by re-detaining previously released individuals pursuant to the July 9, 2025  
21 “Guidance,” Respondents would violate Mr. N.D.N.’s substantive and procedural due process  
22 rights and are not implementing procedures required by the INA, FARRA, and the implementing  
23 regulations.

24 Accordingly, the Court should declare that Respondents would violate Mr. N.D.N.’s  
25 constitutional right to due process and that the Due Process Clause affords him the right to a  
26 process and procedure ensuring that DHS provides meaningful notice and opportunity to present

27 <sup>7</sup> United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment  
28 or Punishment (Dec. 10, 1984), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

1 a fear-based claim to an IJ before DHS deports him to a third country.

2 The Court should enjoin Respondents from failing to provide Mr. N.D.N. with meaningful  
3 notice and opportunity to present a claim for protection to an IJ before DHS deports him to a third  
4 country.

5 For these reasons, Mr. N.D.N.'s removal to any third country without adequate notice and  
6 an opportunity to apply for relief under the CAT would violate his due process rights, as well as  
7 her rights under the INA, FARRA, and the implementing regulations. The only remedy for this  
8 violation is for this Court to order that he not be summarily removed to any third country unless  
9 and until he is provided with constitutionally adequate procedures.

#### 10 **5. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief**

11 Mr. N.D.N. will suffer irreparable harm were he to remain deprived of his liberty and  
12 subjected to continued and indefinite detention by immigration authorities without being  
13 immediately released and provided the constitutionally adequate process (a future pre-deprivation  
14 hearing before a neutral adjudicator) that this motion for a temporary restraining order seeks.  
15 Detainees in civil ICE custody are held in "prison-like conditions" which have real consequences  
16 for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has  
17 explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often  
18 means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S.  
19 514, 532-33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369  
20 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable  
21 harms imposed on anyone subject to immigration detention" including "subpar medical and  
22 psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their  
23 families as a result of detention, and the collateral harms to children of detainees whose parents  
24 are detained." *Hernandez*, 872 F.3d at 995. Finally, the government has documented alarmingly  
25 poor conditions in ICE detention centers.<sup>8</sup>

26  
27 <sup>8</sup> See, e.g., DHS, Office of Inspector General ("OIG"), Summary of Unannounced Inspections of  
28 ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (violations of health and safety  
standards; staffing shortages affecting suicide watch, and detainees held in unauthorized restraints,  
without being allowed time outside their cell.). U.S. Dep't of Homeland Security Office of

Mr. N.D.N. has been out of ICE custody for nearly twenty-five years. During that time, he has been reconnecting with his family and community. He has also been providing his family support in the form of financial, emotional, physical, educational, and spiritual support. Mr. N.D.N. is also highly valued in his community, where he has played an important role in religious and spiritual development for his family, fellow churchgoers, and marginalized individuals. Although his employer has informed him that his position will remain available to him until he is released from detention, this expectation reasonably decreases the longer he is in detention. If he remains detained, he will likely lose his job as he cannot work from detention. Importantly, he would also be ripped away from the opportunity to reconnect with his family, rebuild his relationships and his life after spending so many years incarcerated, and continue to raise and provide for his U.S. citizen children, wife, and mother.

Further, Mr. N.D.N. will suffer irreparable harm were he to be removed to a third country without first being provided with constitutionally compliant procedures to ensure that his right to apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.<sup>9</sup> Others removed in violation of their prior grant of protection under the Convention Against Torture have reported that they faced severe torture at the hands of government agents.<sup>10</sup> It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. N.D.N. from suffering irreparable harm by remaining in unlawful and

Inspector General, OIG-24-23, Results of an Unannounced Inspection of ICE's Golden State Annex in McFarland, California (Sept. 24, 2024), available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>.

<sup>9</sup> NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available at: <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>.

<sup>10</sup> 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 unjust detention, and by being summarily removed to any third country where he may face  
2 persecution or torture.

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

5 First, the balance of hardships strongly favors Mr. N.D.N.. His detention is potentially  
6 indefinite, and his summary removal to any third country where he may face persecution or torture  
7 would violate the INA, binding international treaty, and Mr. N.D.N.'s due process rights. The  
8 government cannot suffer harm from an injunction that prevents it from engaging in an unlawful  
9 practice. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

10 Further, any burden imposed by requiring the Respondents to release Mr. N.D.N. from  
11 custody (and provided notice and a hearing before a neutral adjudicator prior to any future re-  
12 detention) is both *de minimis* and clearly outweighed by the substantial harm he will suffer as long  
13 as he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)  
14 (“Society’s interest lies on the side of affording fair procedures to all persons, even though the  
15 expenditure of governmental funds is required.”); *Pinchi*, 792 F. Supp. 3d at 1036 (“If the  
16 government wishes to detain [the petitioner], it need only provide a hearing before a neutral  
17 decisionmaker.”). Similarly, any burden of requiring Respondents *not* to remove Mr. N.D.N. to  
18 any third country is outweighed by the substantial harm he may suffer if removed to a country  
19 where he will face persecution or torture. *See id.*

20 Finally, a temporary restraining order is in the public interest. First and most importantly,  
21 “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements  
22 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*  
23 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d  
24 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would  
25 effectively be granted permission to detain Mr. N.D.N., and/or to summarily remove him to any  
26 third country, in violation of the requirements of Due Process. “The public interest and the balance  
27 of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream*  
28 *Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d  
at 996 (“The public interest benefits from an injunction that ensures that individuals are not

1 deprived of their liberty and held in immigration detention because of bonds established by a likely  
2 unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)  
3 (“Generally, public interest concerns are implicated when a constitutional right has been violated,  
4 because all citizens have a stake in upholding the Constitution.”).

5 **V. CONCLUSION**

6 For all the above reasons, Mr. N.D.N. warrants a temporary restraining order that  
7 Respondents release him from custody, not re-detain him unless he is afforded notice and a hearing  
8 before a neutral adjudicator on whether his re-detention is not indefinite, and further whether it is  
9 justified by evidence that he is a danger to the community or a flight risk, and not remove him to  
10 any third country without first providing him with constitutionally-compliant procedures.

11  
12 Dated: November 18, 2025

Respectfully submitted,

13 /s/ Avantika Shastri

14 Avantika Shastri

15 Attorney for Petitioner  
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