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N.D.N.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

N.D.N.,

Petitioner-Plaintiff,

v.

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

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

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

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

Respondents-Defendants.

Case No. 1:25-CV-01587-DAD-CKD (HC)

**MOTION FOR PRELIMINARY
INJUNCTION;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

Before: Hon. Dale A. Drozd

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-Plaintiff N.D.N. ("N.D.N." or "Petitioner") hereby moves this Court for a preliminary injunction (PI) order that Respondents U.S. Department of Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE"), and Pam Bondi, in her official capacity as the U.S. Attorney General, 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. He additionally seeks to enjoin Respondents from removing him 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 providing him with constitutionally-compliant procedures.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities, and the Authenticating Declaration of Avantika Shastri in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order ("Shastri Decl.") (Dkt. 1-1). As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a PI due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing unlawful re-detention, where that detention appears indefinite and is imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant his request for a PI 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 re-detained in violation of his due process rights is a PI from this Court.

Dated: December 9, 2025

Respectfully Submitted

/s/ Avantika Shastri

Avantika Shastri

Attorney for Petitioner-Plaintiff

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1 **I. INTRODUCTION**

2 N.D.N., by and through undersigned counsel, hereby requests that the Court convert his
3 temporary restraining order (“TRO”) into a preliminary injunction (“PI”) to enjoin the U.S.
4 Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement
5 (“ICE”) from re-detaining him unless and until he is afforded notice and a hearing before a neutral
6 adjudicator prior to any future re-detention where DHS bears the burden of demonstrating that
7 there is a significant likelihood that his removal is reasonably foreseeable and otherwise whether
8 circumstances have changed such that his re-detention would be justified (i.e. whether he poses a
9 danger or a flight risk), and where the neutral adjudicator must further consider whether, in lieu of
10 detention, alternatives to detention exist to mitigate any risk that DHS may establish. Further,
11 N.D.N. seeks an order enjoining Respondents from removing him to any third country without
12 first providing him with constitutionally-compliant procedures.

13 N.D.N. has a removal order to Vietnam (and Vietnam only) from 2000 which Respondents
14 have not been able to execute, and there is no credible evidence that they will ever be able to
15 execute it. N.D.N.’s removal is not reasonably foreseeable as he is not subject to repatriation under
16 the binding repatriation agreement between the United States and Vietnam¹, given that he entered
17 the country prior to 1995. This Court found as much in granting a TRO in this case, finding that
18 the record showed that Respondents have failed to remove N.D.N. for the past 25 years, and that
19 the Respondents’ conclusory declaration that Vietnam was considering the issuance of a travel
20 document for N.D.N., without showing “why a travel document could not previously be obtained
21 nor why Vietnam is likely to reach a different conclusion this time” was insufficient to show that
22 his removal was reasonably foreseeable in the future. This Court therefore found that N.D.N.
23 established that he was likely to prevail on his claim that the revocation of his release and re-
24 detention were unlawful. Dkt. 10. Accordingly, N.D.N. is likely to succeed on his claims, below,

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26
27 ¹ See U.S. Department of State, “Repatriation Agreement Between the United States of America
28 and Vietnam” (Jan. 22, 2008), available at: <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 and this Court should grant his PI and enjoin Respondents from re-detaining him without prior
2 notice and a hearing before this Court to determine the reasonable foreseeability of his removal.

3 N.D.N. has also never been ordered removed to any third country or notified of such
4 potential removal, but his fear of being removed to a third country is reasonable given the
5 government's policy of deporting individuals to a third country, so long as that country has
6 provided "assurances" that deportees from the United States "will not be persecuted or tortured."
7 See Dkt. 1-1, Declaration of Avantika Shastri ("Shastri Decl."). While this Court, as well as others
8 in this circuit, have determined the policy is unconstitutional, the policy remains in place. Thus,
9 he is likely to succeed on his claim that any removal to a third country without constitutionally-
10 compliant procedures is unlawful and should be enjoined.

11 N.D.N. meets the standard for a PI, which is substantially identical to the standard for
12 issuing a TRO. As this Court found, N.D.N. will continue to suffer immediate and irreparable harm
13 if he is unlawfully re-detained without a pre-detention hearing. He will also suffer immediate and
14 irreparable harm if removed to a third country where his life could be in danger. Since holding
15 federal agencies accountable to constitutional demands is in the public interest, the balance of
16 equities and public interest are also strongly in N.D.N.'s favor.

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

18 N.D.N.'s factual and procedural history were discussed in detail in his petition for writ of
19 habeas corpus ("Petition") and TRO. Dkt. 1, 2. He hereby reiterates the most relevant procedural
20 facts.

21 In 1992, at the age of sixteen, N.D.N. entered the United States as a U.S. lawful permanent
22 resident. In 1997, based on acts committed when he was twenty years old, he was convicted of
23 California Penal Code § 213(a)(1)(A) (robbery). N.D.N. ultimately served approximately three
24 years for his conviction and was released from prison in 2000. Upon his release from prison, he
25 was transferred into ICE custody. In 2000, N.D.N. was ordered removed.

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

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

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

15 On October 15, 2025, N.D.N. attended his annual check-in at the San Francisco ICE Field
16 Office. ICE officers provided N.D.N. with paper forms relating to obtaining travel documents, and
17 scheduled him to return on October 22, 2025, with the completed forms and passport-style photos.

18 On October 22, 2025, N.D.N. voluntarily appeared at the ICE San Francisco office with an
19 attorney, provided the forms and photos requested, and ICE officers arrested him. After separating
20 him from his attorney, ICE officers issued him a notice of revocation, informing him that his OSUP
21 had been revoked based on “changed circumstances”—that his case was “under review by the
22 Government of Vietnam for the issuance of a travel document and your removal is now imminent.”

23 Approximately on October 23, 2025, 2025, ICE transferred N.D.N. to Golden State Annex
24 Detention Facility. There, he did speak further about his case with an officer.

25 On November 18, 2025, N.D.N. submitted his underlying Petition and TRO. Dkt. 1, 2.
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² See *supra* fn. 1.

On November 21, 2025, this Court granted N.D.N.'s TRO and ordered Respondents to immediately release him under the same conditions he was subject to immediately prior to re-detention on October 11, 2025. Dkt. 10.

For the past nearly twenty-five years, N.D.N. has worked arduously—sometimes two jobs and nightshifts—to support himself and his family and has committed himself to raising his children and to contribute to his community through religion and spirituality. His family—including his three U.S. citizen children, U.S. citizen wife, and elderly U.S. citizen mother—depend on him for financial, emotional, and physical support. *See* Dkt. 1-1, Shastri Decl. N.D.N. is also highly respected by his religious community, where he serves as worship coordinator, leads bible study group, and performs missionary outreach. *Id.* He also assists marginalized communities and financially sponsors a child in Africa. *Id.*

III. LEGAL STANDARD

N.D.N. is entitled to a PI 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); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). The Court may grant a PI 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). The standard for issuing a TRO is “substantially identical” to the standard for issuing a PI. *See Stuhlbarg*, 240 F. 3d at 839 n.7.

Here, in granting the TRO, the Court has already found that N.D.N. is likely to succeed on the merits of his claim that any removal is not reasonably foreseeable. Dkt. 10. The likelihood of success on the merits is “the most important *Winter* factor.” *Id.* For the same reasons as the Court already found in granting N.D.N.'s TRO, the Court should find that N.D.N. overwhelmingly meets the standard for a PI.

IV. ARGUMENT

A. PETITIONER WARRANTS A PI

1 Here, N.D.N. will suffer an immediate and irreparable injury and loss through any future
2 re-detention prior to receiving a hearing before a neutral adjudicator. N.D.N. has already suffered
3 irreparable injury in his unlawful re-arrest in October 2025, and will continue to suffer irreparable
4 injury each day he is detained in the future without due process. Intervention from this Court is
5 therefore required to ensure that N.D.N. does not continue to suffer irreparable harm in the form
6 of further unlawful and unjustified re-detention, and further violation of his rights in the form of
7 summary removal to a third country. Because he is likely to succeed on his claims, below, N.D.N.
8 asks the Court to grant the requested injunction.

9 **1. Petitioner is Likely to Succeed on the Merits of His Claim That**
10 **Due Process Requires That He Be Afforded a Hearing Before a**
11 **Neutral Adjudicator Prior to Any Re-Detention by ICE.**

12 N.D.N. is likely to succeed on his claim that fundamental principles of due process require
13 that he cannot be re-detained by ICE without first being provided a pre-deprivation hearing before
14 a neutral adjudicator where the government shows that his removal is reasonably foreseeable and
15 that circumstances have changed such that he is now a danger or a flight risk.

16 ICE's regulatory authority to unilaterally re-detain N.D.N. is proscribed by the Due
17 Process Clause because it is well-established that individuals released from incarceration have a
18 liberty interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C.
19 Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully
20 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
21 incarcerated"). To protect that interest, numerous federal courts have held that due process
22 requires notice and a hearing, *prior to any re-arrest*, at which the noncitizen is afforded the
23 opportunity to advance his arguments before a neutral adjudicator as to why he should not be re-
24 detained, and a neutral decisionmaker determines that there is a significant likelihood of
25 petitioner's removal in the reasonably foreseeable future, or Respondents demonstrate by clear
26 and convincing evidence that petitioner is a flight risk or danger to the community such that his
27 physical custody is legally justified. *J.L.R.P. v. Wofford*, No. 1:25-cv-01464-KES-SKO (HC),
28 2025 WL 3190589, at *9-10 (E.D. Cal. Nov. 14, 2025) (habeas granted enjoining and restraining
the government from re-detaining the petitioner "unless there are material changed circumstances

1 and a neutral decisionmaker determines that there is a significant likelihood of petitioner's
 2 removal in the reasonably foreseeable future...."); *Garcia-Ayala v. Andrews*, No. 2:25-CV-
 3 02070-DJC-JDP, 2025 WL 2597508, at *5 (E.D. Cal. Aug. 8, 2025) (TRO prohibiting the
 4 petitioner's re-detention without notice and a pre-deprivation hearing before a neutral
 5 decisionmaker); *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)
 6 (same); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025) ("If the government wishes
 7 to detain [the petitioner], it need only provide a hearing before a neutral decisionmaker.").

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

12 **a. Petitioner Has a Protected Liberty Interest in Avoiding**
 13 **Re-Incarceration**

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

18 For nearly twenty-five years preceding his re-detention on October 22, 2025, and
 19 subsequent to his release on November 21, 2025, N.D.N. exercised that freedom. He thus retained
 20 a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-
 21 incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S.
 22 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). In this case, in the
 23 absence of a repatriation agreement that actually permits N.D.N.'s removal to Vietnam, his
 24 removal is not foreseeable at all, let alone reasonably.

25 Just as importantly, N.D.N. continues presenting himself before ICE for his regular in-
 26 person check-in appointments, as he did for the past twenty-five years, during which ICE has not
 27 been able to obtain a travel document from Vietnam. ICE instead gave him a future date and time
 28 to appear again, which he did.

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 adjusted to society, so it “would be inconsistent
21 with fundamental principles of liberty and justice” to return him to prison) (cleaned up).

22 Here, when this Court “‘compar[es] the specific conditional release in [Petitioner’s case],
23 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly
24 similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, N.D.N.’s release “enables
25 him to do a wide range of things open to persons” who have never been in custody or convicted
26 of any crime, including to live at home, work with his community, and “be with family and friends
27 and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. *Moreover*,
28

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

3 Since his release in 2001 and then again 2025, N.D.N. has been focused on rebuilding his
 4 life, including by reconnecting with family and community, and developing strong ties to his
 5 religious community and advancing his faith. He has not obtained any new arrests or convictions,
 6 other than his sole conviction from 1997. At first, N.D.N. reconnected with, supported, and raised
 7 his eldest U.S. citizen child as a single father, working at night in order to support her. *See* Dkt. 1-
 8 1, Shastri Decl. His daughter is now pursuing higher education and hopes to contribute to society
 9 as a nurse practitioner. *Id.* N.D.N. also has consistently supported his elderly U.S. citizen mother.
 10 *Id.* He currently is the sole breadwinner for his family, and supports his U.S. citizen wife, his
 11 United States citizen teenage step-son, and their youngest U.S. citizen child, a six-year-old girl
 12 whom he shares with his wife. *Id.* He has also worked arduously to secure and succeed in his
 13 employment. *Id.* Prior to his re-detention, he worked as a warehouse manager, overseeing over
 14 fifty employees. *Id.* N.D.N.'s employer highly values him and held N.D.N.'s position available for
 15 N.D.N. upon his release from custody in November 2025. *Id.* N.D.N. is also highly respected by
 16 his religious community, where he serves as worship coordinator, leads bible study group, and
 17 performs missionary outreach. *Id.* He also assists marginalized communities and financially
 18 sponsors a child in Africa. *Id.* Precedents from the Supreme Court and the Ninth Circuit make
 19 clear that he has a strong liberty interest in his continued release from detention.

20 **b. Petitioner's Liberty Interest Mandates a Due Process**
 21 **Hearing Prior to Any Re-Detention**

22 N.D.N. asserts that, here, (1) where his detention will be civil, (2) where he has diligently
 23 complied with ICE's reporting requirements on a regular basis and continues to do so, and (3)
 24 where his removal is not reasonably foreseeable and potentially indefinite, due process mandates
 25 that he is required to receive notice and a hearing before a neutral adjudicator prior to any re-arrest.

26 "Adequate, or due, process depends upon the nature of the interest affected. The more
 27 important the interest and the greater the effect of its impairment, the greater the procedural
 28 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d

1 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
2 “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient
3 administration of” its immigration laws in order to determine what process he is owed to ensure
4 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
5 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
6 “first, the private interest that will be affected by the official action; second, the risk of an erroneous
7 deprivation of such interest through the procedures used, and the probative value, if any, of
8 additional or substitute procedural safeguards; and finally the government’s interest, including the
9 function involved and the fiscal and administrative burdens that the additional or substitute
10 procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,
11 424 U.S. 319, 335 (1976)).

12 The Supreme Court “usually has held that the Constitution requires some kind of a hearing
13 before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
14 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
15 only remedies the State could be expected to provide” can post-deprivation process satisfy the
16 requirements of due process. *Id.* at 129. Moreover, it is only where “one of the variables in
17 the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the
18 kind of deprivation at issue” that “the State cannot be required constitutionally to do the impossible
19 by providing predeprivation process,” and thus avoid providing pre-deprivation process. *Id.*

20 Because, in this case, the provision of a pre-deprivation hearing is both possible and
21 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Petitioner
22 with notice and a hearing *prior* to any future re-incarceration and revocation of his OSUP. *See*
23 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918,
24 932 (9th Cir. 2004); *Zinerman*, 494 U.S. at 136-37; *see also Youngberg v. Romeo*, 457 U.S. 307,
25 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting
26 involuntary civil commitment proceedings may not constitutionally be held in jail pending the
27 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the balance
28 weighs heavily in favor of [Petitioner’s] liberty,” *Haygood*, 769 F.2d at 1357, and requires a pre-

1 deprivation hearing before a neutral adjudicator, such as this Court.

2 Furthermore, that basic principle—that individuals placed at liberty are entitled to process
3 before the government imprisons them—has particular force here, where N.D.N. was already
4 released from detention in 2001 and 2025, which necessarily required a finding that his removal
5 is not reasonably foreseeable, Dkt. 10, that he need not be incarcerated to prevent flight or to
6 protect the community, and that no circumstances have changed that would justify his re-arrest, as
7 there is no current and valid travel document for N.D.N. and he has not violated any of his
8 conditions under OSUP. In fact, ICE has been unable to secure a travel document for N.D.N. since
9 2001. Nothing has changed—ICE has failed to obtain a travel document since N.D.N.’s detention
10 in 2000-2001, again in the nearly twenty-five years that he was on OSUP, on or *before* unlawfully
11 revoking his OSUP, and since the time that N.D.N. was re-arrested on October 22, 2025. As this
12 Court has held, “significant likelihood” requires something more than a mere possibility that
13 removal will occur. *Yan-Ling X. v. Lyons*, No. 1:25-cv-01412-KES-CDB (HC), 2025 WL
14 3123793, at *4 (E.D. Cal. Nov. 7, 2025). Evidence that “there is at least some possibility that” the
15 designated country of removal “will accept the petitioner at some point . . . is not the same as
16 a significant likelihood that the petitioner will be accepted in the reasonably foreseeable future.”
17 *Id.* (cleaned up). Given that Vietnam has total discretion whether to issue a travel document to any
18 individual, and there is no evidence that Vietnam *will accept* N.D.N. in the reasonably foreseeable
19 future, Respondents cannot show that there is a significant likelihood that N.D.N. will be removed
20 in the foreseeable future.

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

22 Under *Morrissey* and its progeny, individuals conditionally released from serving a
23 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
24 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
25 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
26 constitutional due process before he is re-incarcerated—apply with even greater force to
27 individuals like N.D.N., who have also been released from prior ICE custody and are facing civil
28 (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, N.D.N., as a civil detainee, retains a truly weighty liberty interest even though he is under conditional release.

What is at stake in this case for 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 Re-Detaining
Petitioner is Low**

The government’s interest in detaining N.D.N. 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—a hearing before a neutral adjudicator to determine whether circumstances have changed—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).

1 As immigration detention is civil, it can have no punitive purpose. The government's only
2 interests in holding an individual in immigration detention can be to prevent danger to the
3 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533
4 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens
5 who cannot be removed to the country of the removal order, is unconstitutional. In this case, the
6 government cannot plausibly assert that it has a sudden interest in detaining Petitioner due to
7 alleged dangerousness, or due to a change in the foreseeability of his removal to Vietnam, as his
8 circumstances have not changed since his release from ICE custody since 2001, and as further
9 established by the fact that ICE could not obtain a travel document for N.D.N. in the nearly one
10 month that it unlawfully detained him.

11 Moreover, N.D.N. has had a removal order since before his release and yet has continued
12 to appear before ICE on a yearly basis for each and every appointment that has been scheduled.
13 *See Morrissey*, 408 U.S. at 482 ("It is not sophistic to attach greater importance to a person's
14 justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions
15 on his release, than to his mere anticipation or hope of freedom") (quoting *United States ex rel.*
16 *Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

17 Thus, as to the factor of flight risk, N.D.N.'s post-release conduct in the form of full
18 compliance with his check-in requirements further confirms that he is not a flight risk and that he
19 remains likely to present himself at any future ICE appearances, as he always has done. What has
20 changed, however, is that ICE has a new policy to make a minimum number of arrests each day
21 under the new administration—but that does not constitute a material change in circumstances or
22 increase the government's interest in detaining him.³ Moreover, as discussed previously, nothing
23 has changed regarding the lack of foreseeability of his removal to Vietnam.

24 Thus, ICE being ordered to demonstrate to a neutral adjudicator that N.D.N. is actually a
25 flight risk or danger to the community, or that his detention is not going to be indefinite, is far *less*
26 costly and burdensome for the government than unlawfully re-detaining him and keeping him

27 ³ 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 detained. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public
 2 of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
 3 cost of \$6.5 million.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

4 **iii. Without a Due Process Hearing Prior to Any**
 5 **Re-Detention, the Risk of an Erroneous**
 6 **Deprivation of Liberty is High**

7 Ensuring that N.D.N. is provided with a pre-deprivation hearing in the future would
 8 decrease the risk of him being erroneously deprived of his liberty. Before he can be lawfully re-
 9 detained again, he must be provided with a hearing before a neutral adjudicator at which the
 10 government is held to show, with clear and convincing evidence, that his detention will not be
 11 indefinite (that is, his removal is reasonably foreseeable), or that the circumstances have changed
 12 since his release in 2001 such that evidence exists to establish that he is a danger to the community
 13 or a flight risk.

14 Under the process that ICE maintains is lawful—which affords N.D.N. no process
 15 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so, as ICE did
 16 on October 22, 2025. N.D.N. has already been erroneously deprived of his liberty when he was
 17 detained during his appointment, and the risk he will continue to be deprived is high if ICE is
 18 permitted to unlawfully re-detain him after making a unilateral decision to re-detain him. Thus,
 19 the regulations are insufficient to protect his due process rights, as they permit ICE to unilaterally
 20 re-detain individuals, even for an accidental error in complying with the conditions, for example.
 21 After re-arrest, ICE makes its own one-sided custody determination and can decide whether the
 22 agency wants to hold him. 8 C.F.R. § 241.4(e)–(f).

23 By contrast, the procedure N.D.N. seeks—that he be provided a future hearing in front of
 24 a neutral adjudicator prior to any re-detention at which the government establishes by clear and
 25 convincing evidence that his detention will not be indefinite, or otherwise that the circumstances
 26 have changed since his release in 2001 to justify his detention—is much more likely to produce
 27 accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d
 28 1375, 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of witnesses and
 assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable

1 when just determinations are made after hearing only one side”). “A neutral judge is one of the
 2 most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir.
 3 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The
 4 Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be
 5 decreased where a neutral adjudicator, rather than ICE alone, makes custody determinations. *Diouf*
 6 *v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

7 Due process also requires consideration of alternatives to detention at any custody
 8 redetermination hearing that may occur. The primary purpose of immigration detention is to ensure
 9 removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related
 10 to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to
 11 detention must be considered in determining whether N.D.N.’s re-detention is warranted.

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

15 Finally, N.D.N. is likely to succeed on the merits of his claim that The Due Process Clause
 16 of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the
 17 deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v.*
 18 *Beazer Materials & Services, Inc.*, 842 F. Supp. 1243, 1252 (E.D. Cal. 1994) (“[D]ue process
 19 requires that government action falling within the clause’s mandate may only be taken where there
 20 is notice and an opportunity for hearing.”). This is because N.D.N. has a protected interest in his
 21 life. Thus, prior to any third country removal, he must be provided with constitutionally compliant
 22 notice and an opportunity to respond and contest that removal if he has a fear of persecution or
 23 torture in that country.

24 The Immigration and Nationality Act (INA), Foreign Affairs Reform and Restructuring
 25 Act (FARRA) of 1998, and implementing regulations further mandate meaningful notice and
 26 opportunity to present a fear-based claim to an IJ before ICE deports a person to a third country.

27 As the Supreme Court has explained, such language “generally indicates a command that
 28 admits of no discretion on the part of the person instructed to carry out the directive,” *Nat’l Ass’n*
of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 661 (2007) (quoting *Ass’n of Civilian*

1 *Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's*
 2 *Law Dictionary* (11th ed. 2019). Accordingly, any imminent third country removal fails to comport
 3 with the statutory obligations set forth by Congress in the INA and is unlawful. "Other courts in
 4 this circuit have recognized that this policy is unconstitutional, and this Court agrees with those
 5 well-reasoned decisions." *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341,
 6 at *9 (E.D. Cal. Nov. 6, 2025) (citation omitted).

7 Moreover, prior to any third country removal, ICE must provide N.D.N. with sufficient
 8 notice and an opportunity to respond and apply for fear-based relief as to that country, in
 9 compliance with the INA, due process, and the binding international treaty: The Convention
 10 Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴ Currently,
 11 DHS has a policy of removing or seeking to remove individuals to third countries without first
 12 providing constitutionally adequate notice of third country removal, or any meaningful opportunity
 13 to contest that removal if the individual has a fear of persecution or torture in that country. Dkt. 1-
 14 1, Shastri Decl. at Exhibit H (DHS Policy).

15 Instead, the policy squarely violates the INA because it does not take into account, *or even*
 16 *mention*, an individual's designated country of removal—thereby fully contravening the statutory
 17 instruction that DHS must only remove an individual to the designated country of removal. U.S.C.
 18 § 1231(b)(2)(A)(ii).

19 Further, the policy plainly violates the United States' obligations under the Convention
 20 Against Torture and principles of due process because it allows DHS to provide individuals with
 21 *no notice whatsoever* prior to removal to a third country, so long as that country has provided
 22 "assurances" that deportees from the United States "will not be persecuted or tortured." Dkt. 1-1,
 23 Shastri Decl. at Exhibit H (DHS Policy). If, in turn, the country has not provided such an assurance,
 24 then DHS officers must simply inform an individual of removal to that third country, but are not
 25 required to inform them of their rights to apply for protection from removal to that country under
 26 the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their

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

17 Clearly, this policy violates the CAT, which instructs that the United States cannot remove
18 individuals to countries where they will face torture, because the policy allows DHS to swiftly
19 remove noncitizens to countries where they very well may face torture if those countries simply
20 provide the United States with “assurances” that deportees will not be tortured. *Id.* Moreover, the
21 policy puts the onus of individuals to be aware of their rights under the CAT—which is a treaty
22 that binds the United States *government*—instead of ensuring that DHS officials make individuals
23 aware of their rights, which would more squarely comport with *DHS’s obligations* under the treaty
24 not to remove individuals to countries where they face torture. *Id.* For similar reasons, the policy
25 also violates principles of due process, because it does not provide individuals with notice or any
26 meaningful opportunity to apply for fear-based relief. *Id.* Again, the policy allows individuals to
27 be removed to third countries *without any notice or an opportunity to be heard* if that country
28 merely promises that deportees will not face torture there, and if individuals are otherwise unaware

1 of their right to seek fear-based relief. *Id.*; see also *J.R. v. Bostock*, No. 2:25-cv-01161-JNW, 2025
2 WL 1810210 (W.D. Wash. June 30, 2025) (TRO prohibiting the government from removing
3 petitioner to “any third country in the world absent prior approval from this Court”); *Ortega v.*
4 *Kaiser*, No. 25-cv-5259, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025) (TRO prohibiting the
5 government from “arresting, detaining, or removing” the petitioner to a third country “without
6 notice and a hearing.”); *Vaskanyan v. Janecka*, No. 25-cv-1475, 2025 WL 2014208 (C.D. Cal. Jun.
7 25, 2025) (TRO prohibiting government from “removing the petitioner “to a third country, i.e., a
8 country other than the countries designated as he countries of removal in Petitioner’s final order
9 of removal...without written notice to both Petitioner and Petitioner’s counsel in a language the
10 Petitioner can understand. Following notice, Petitioner must be given a meaningful opportunity,
11 and a minimum of ten (10) days, to raise a fear-based claim for protection under the Convention
12 Against Torture prior to removal. If Petitioner demonstrates ‘reasonable fear’ of removal to the
13 third country, Respondents must move to reopen Petitioner’s removal proceedings. If Petitioner is
14 not found to have demonstrated a ‘reasonable fear’ of removal to the third country, Respondents
15 must provide a meaningful opportunity, and a minimum of fifteen (15) days, for the non-citizen to
16 seek reopening of his immigration proceedings.”). Regardless, ICE appears to be emboldened and
17 intent to implement its campaign to send noncitizens to far corners of the planet—places they have
18 absolutely no connection to whatsoever—in violation of individuals’ due process rights.

19 N.D.N.’s removal to a third country would violate his due process rights unless he is *first*
20 provided with sufficient notice and a meaningful opportunity to apply for protection under the
21 CAT. Intervention by this Court is necessary to protect those rights. By failing to implement a
22 process or procedure to afford N.D.N. meaningful notice and opportunity to present a fear-based
23 claim, Respondents would violate his substantive and procedural due process rights and are not
24 implementing procedures required by the INA, FARRA, and the implementing regulations.

25 Accordingly, the Court should declare that Respondents would violate N.D.N.’s
26 constitutional right to due process and that the Due Process Clause affords him the right to a
27 process and procedure ensuring that DHS provides meaningful notice and opportunity to present
28 a fear-based claim to an IJ before DHS deports him to a third country.

1 The Court should therefore enjoin Respondents from failing to provide N.D.N. with
 2 meaningful notice and opportunity to present a claim for protection to an IJ before DHS deports
 3 him to a third country. Absent this injunction, N.D.N.'s removal to any third country without
 4 adequate notice and an opportunity to apply for relief under the CAT would violate his due process
 5 rights, as well as her rights under the INA, FARRA, and the implementing regulations. The only
 6 remedy for this violation is for this Court to order that he not be summarily removed to any third
 7 country unless and until he is provided with constitutionally adequate procedures.

8 **3. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief**

9 N.D.N. will suffer irreparable harm were he to remain deprived of his liberty and subjected
 10 to continued and indefinite detention by immigration authorities without being immediately
 11 released and provided the constitutionally adequate process (a future pre-deprivation hearing
 12 before a neutral adjudicator) that this motion for a temporary restraining order seeks. Detainees in
 13 civil ICE custody are held in "prison-like conditions" which have real consequences for their lives.
 14 *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained,
 15 "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means
 16 loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-
 17 33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir.
 18 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms
 19 imposed on anyone subject to immigration detention" including "subpar medical and psychiatric
 20 care in ICE detention facilities, the economic burdens imposed on detainees and their families as
 21 a result of detention, and the collateral harms to children of detainees whose parents are detained."
 22 *Hernandez*, 872 F.3d at 995. Finally, the government has documented alarmingly poor conditions
 23 in ICE detention centers.⁵

24
 25 ⁵ See, e.g., DHS, Office of Inspector General ("OIG"), Summary of Unannounced Inspections of
 26 ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (violations of health and safety
 27 standards; staffing shortages affecting suicide watch, and detainees held in unauthorized restraints,
 28 without being allowed time outside their cell). U.S. Dep't of Homeland Security Office of
 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>.

1 N.D.N. was out of ICE custody for nearly twenty-five years prior to his re-detention and
 2 now has been out of custody for approximately three weeks. During this time, he has been
 3 reconnecting with his family and community. He has also been providing his family support in the
 4 form of financial, emotional, physical, educational, and spiritual support. N.D.N. is also highly
 5 valued in his community, where he has played an important role in religious and spiritual
 6 development for his family, fellow churchgoers, and marginalized individuals. During his
 7 unlawful re-detention, he was unable to work or provide for his family. If he is unlawfully re-
 8 remains detained, he will likely lose his job as he cannot work from detention. Importantly, he will
 9 also be ripped away from the opportunity to reconnect with his family, rebuild his relationships
 10 and his life after spending so many years incarcerated, and continue to raise and provide for his
 11 U.S. citizen children, wife, and mother.

12 Further, N.D.N. will suffer irreparable harm were he to be removed to a third country
 13 without first being provided with constitutionally compliant procedures to ensure that his right to
 14 apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy
 15 have reported that they are now stuck in countries where they do not have government support, do
 16 not speak the language, and have no network.⁶ Others removed in violation of their prior grant of
 17 protection under the Convention Against Torture have reported that they faced severe torture at
 18 the hands of government agents.⁷ It is clear that "the deprivation of constitutional rights
 19 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
 20 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a PI is necessary to prevent
 21 N.D.N. from suffering irreparable harm by being unlawfully and unjustly detained, and by being
 22 summarily removed to any third country where he may face persecution or torture.

23 **4. The Balance of Equities and the Public Interest Favor Granting** 24 **the PI**

25 First, the balance of hardships strongly favors N.D.N. His re-detention would be potentially

26 ⁶ NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5,
 27 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>.

28 ⁷ 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 indefinite, and his summary removal to any third country where he may face persecution or torture
2 would violate the INA, binding international treaty, and N.D.N.'s due process rights. The
3 government cannot suffer harm from an injunction that prevents it from engaging in an unlawful
4 practice. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

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

14 Finally, a PI is in the public interest. First and most importantly, "it would not be equitable
15 or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially
16 when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053,
17 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)).
18 If a PI is not entered, the government would effectively be granted permission to detain N.D.N.,
19 and/or to summarily remove him to any third country, in violation of the requirements of Due
20 Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a
21 party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695
22 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an
23 injunction that ensures that individuals are not deprived of their liberty and held in immigration
24 detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v.*
25 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated
26 when a constitutional right has been violated, because all citizens have a stake in upholding the
27 Constitution.").

28 **V. CONCLUSION**

1 For all the above reasons, N.D.N. warrants converting his TRO into a PI that Respondents
2 not re-detain him unless he is afforded notice and a hearing before a neutral adjudicator on whether
3 his re-detention is not indefinite, and further whether it is justified by evidence that he is a danger
4 to the community or a flight risk, and not remove him to any third country without first providing
5 him with constitutionally-compliant procedures.

6 Dated: December 9, 2025

Respectfully submitted,

7 /s/ Avantika Shastri

8 Avantika Shastri

9 Attorney for Petitioner
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