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13
14 UNITED STATES DISTRICT COURT

15 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

16 OUSIN SAEPHANH,

17 Petitioner,

18 vs.

19 TONYA ANDREWS, in her official capacity,
20 Facility Administrator, Golden State Annex;
21 SERGIO ALBARRAN, in his official capacity,
22 Field Office Director for the San Francisco Field
23 Office, U.S. Immigration and Customs
Enforcement;
24 TODD LYONS, in his official capacity, Acting
25 Director, U.S. Immigration and Customs
26 Enforcement;
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,

27 Respondents.
28

Case No.: 25-01668-DAD-SCR

**PETITIONER OUSIN SAEPHANH'S
REPLY TO RESPONDENTS'
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Case No. 25-01668-DAD-SCR

REPLY TO OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

70114427.v1

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I. INTRODUCTION

Petitioner Ousin Saephanh (“Mr. Saephanh”), through his pro bono counsel of record, hereby submits this Reply to Respondents’ Opposition (“Opposition or Opp.”) to Petitioner’s Motion for Preliminary Injunction (“Motion”).¹ The Reply is supported by the declaration of Dr. Thao Ha, Ph.D. submitted herewith.

Respondents² continue to take a cavalier attitude towards due process and their duty to comply with applicable regulations. Mr. Saephanh is simply asking, prior to detaining him, that Respondents comply with the demands of due process and their own procedural regulations. Respondents’ failure to do so has left Mr. Saephanh with no other recourse than to seek judicial intervention.

Nothing in the Opposition refutes this Court’s decision that the procedural requirements of 8 C.F.R. § 241.4(l)(1) apply equally to revocation of a noncitizen’s release pursuant to 8 C.F.R. § 241.4(l)(2) and that, even if ICE has discretion to revoke a noncitizen’s release under 8 C.F.R. § 241.4(l)(2), it must comply with the requirements of this regulation and the noncitizen’s liberty interests are implicated by his or her re-detention. Further, the Opposition fails to refute this Court’s decision that DHS’s failure to follow its own procedural regulations may constitute a due process violation. *See* Dkt. No. 11, p. 3:16-4:6. For the same reasons the Court granted Mr. Saephanh’s motion for a temporary restraining order, this Court should grant Petitioner’s motion for a preliminary injunction under the same terms as set forth in the temporary restraining order.

Further, Respondents incorrectly insist that they possess travel documents that enable

¹ Hereafter, all capitalized terms in this Reply, unless otherwise defined herein, shall have the same meaning as defined in the Motion.

² The four other Respondents should not be dismissed. First, procedurally, an opposition to a Motion for Preliminary Injunction is not the proper place to seek a dismissal of specific Respondents. Second, Although *Doe v. Garland* held that “[*Rumsfeld v. Padilla*, 542 U.S. 426 (2004)] set forth a clear rule requiring core habeas petitioners challenging their present physical confinement to name their immediate custodian, the warden of the facility where they are detained, as the respondent to their petition,” 109 F.4th 1188, 1199 (9th Cir. 2024), *Doe* did not necessarily preclude naming more than one respondent so long as the immediate custodian is named. Given that Mr. Saephanh is seeking to effectuate complex injunctive relief that goes beyond mere release such as a future pre-deprivation hearing and he has named his immediate custodian as a Respondent, the Court is respectfully requested not to dismiss all the remaining named Respondents, even if the Court were to overlook the procedural deficiency.

1 them to legally remove Mr. Saepanh to Laos, when in fact the travel document they have
2 exhibited in this litigation is expired, and they have failed to describe any efforts to obtain a
3 currently valid travel document.

4 The Opposition focuses on the fact that nearly four months after he was first detained,
5 Respondents finally obtained travel documents for Mr. Saepanh. Mr. Saepanh was detained
6 on August 6, 2025. Dkt. No. 21-4, Saepanh Decl., ¶ 14. According to the Guerra Declaration,
7 on November 28, 2025, Respondents obtained temporary travel documents for Mr. Saepanh.
8 Dkt. No. 21-2, Guerra Decl., ¶ 14. The documents state “This Laissez-Passer is used as a
9 Passport and issued for an Individual to enter to the Lao PDR for a single journey only and has a
10 validity of 90 days from the date of issue.” Dkt. No. 21-2, Guerra Decl., Exh. 2. The date of
11 issuance is November 26, 2025, the same day filed a petition for writ of habeas corpus pursuant
12 to 28 U.S.C. § 2241. *Id.*; Dkt. No. 1. Ninety days from November 26, 2025 is February 24,
13 2026. Accordingly, the travel documents Respondents took nearly four months to obtain, all
14 while simultaneously keeping Mr. Mr. Saepanh in detention, have already expired. See
15 Declaration of Dr. Thao Ha, PhD (“Dr. Ha Declaration”). The arguments in the Opposition seem
16 to suggest that if this Court’s orders are lifted, despite the government current inability to legally
17 remove him to Laos, Mr. Saepanh would once again be immediately detained, without any
18 attempt to comply with regulations that are designed to protect his liberty interests. *See Opp. p.*
19 *2:12-14.*

20 Even if Respondents still had valid travel documents for Mr. Saepanh, this would not
21 obviate the necessity for Respondents follow their own regulations. Respondents did not have
22 travel documents for Mr. Saepanh at the time he was detained and therefore, there was no
23 change in circumstances at that time. Now, Respondents again lack valid travel documents for
24 Mr. Saepanh, yet they continue to press forward in their attempts to detain him without regard
25 for their own regulations or due process.

26 This Court is respectfully requested to enter an order granting the Motion and preventing
27 Mr. Saepanh’s re-detention without first holding a pre-deprivation hearing before a neutral
28 adjudicator. For the reasons stated in the Motion, Mr. Saepanh respectfully requests that this

1 Court retain jurisdiction and act as the neutral adjudicator.

2 **II. ARGUMENT**

3 **A. 8 U.S.C. § 1252(g) Does Not Strip this Court of Jurisdiction over Challenges**
4 **to the Manner of Detention or Procedural Violations in Detention Decisions.**

5 While 8 U.S.C. § 1252(g) may limit jurisdiction over certain executive actions, this
6 provision is to be read narrowly and the statute only applies to three discrete actions: decisions to
7 commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab*
8 *Anti-Discrimination Committee*, 525 U.S. 471 (1999). It does not strip jurisdiction over
9 challenges to the manner of detention or procedural violations in detention decisions.
10 *Constantinovici v. Bondi*, 806 F.Supp. 3d 1155 (S.D. Cal. 2025). In that case, the court held that
11 a detained noncitizen's habeas claim challenging the lawfulness of detention and the
12 government's authority to re-detain without notice and opportunity to respond fell outside the
13 scope of § 1252(g)'s jurisdiction-stripping provision. The court distinguished between
14 challenges to ICE's discretion to execute a removal order and challenges *to the manner* in which
15 ICE executes the removal order, which are not barred. The court found that when a petitioner
16 does not challenge the legitimacy of the removal order or the government's discretionary
17 authority to decide when to execute removal, but instead challenges the detention itself, federal
18 courts retain jurisdiction under the habeas statute. *Id.*

19 Here, Mr. Saephanh challenges his detention, as well as the government's authority to re-
20 detain him absent a pre-deprivation bond hearing, and he has been granted temporary protection
21 by this Court order. The fact that Respondents obtained temporary travel documents almost four
22 months after they detained Mr. Saephanh does not obviate the need to provide Mr. Saephanh
23 with notice and opportunity to respond. Indeed, had he been given proper notice and opportunity
24 to be heard, he very likely would not have been detained at all. *See Khamba v. Albarran*, No.
25 1:25-cv-01227-JLT-SKO, 2025 WL 2959276, at *10 (E.D. Cal. Oct. 17, 2025); *Nguyen v.*
26 *Archambeault*, No. 25-cv-04107-SHD-ASB, 2025 WL 3250922, at *1 (D. Ariz. Nov. 21, 2025).

27 Finally, the Opposition provides no evidence for the statement: "To remove Saephanh,
28 DHS will need to detain him to put him on a flight to Laos." Opp. p. 8:10. The Opposition fails

1 to even consider that Mr. Saephanh, who has lived in the United States under an OSUP – with
2 which he strictly complied – for more than 28 years and has never been viewed as a danger or a
3 flight risk in all that time, may (after receiving constitutionally mandated notice and opportunity
4 to be heard), simply agree to comply with a government order to present himself, enter
5 government custody to effect removal, and board a plane without the need for him to be detained
6 for months on end.

7 **B. Mr. Saephanh is Likely to Succeed on the Merits of His Claims that**
8 **Respondents Unlawfully Detained Him in Violation 8 C.F.R. § 241.4(I).**

9 Respondents make no attempt to argue that they complied with the requirements of 8
10 C.F.R. § 241.4(i). Respondents do not argue that Mr. Saephanh and his attorney were provided
11 with notice revoking his OSUP. Respondents present no evidence that Mr. Saephanh's OSUP was
12 revoked by the ICE Executive Associate Director or that any other official made findings that
13 that revocation was in the public interest and that circumstances did not reasonably permit
14 referral to the Executive Associate Director, as required by 8 C.F.R. § 241.4(I)(2). Respondents
15 do not contest that they failed to provide Petitioner with an informal interview promptly after
16 issuing a revocation of his release, as required by 8 C.F.R. § 241.4(I)(1).

17 Instead, the Opposition focuses heavily on language in 8 C.F.R. § 241.4(I)(2) to claim the
18 Respondents can ignore 8 C.F.R. § 241.4(I)(1). This argument fails on two counts. First,
19 Respondents plainly failed to comply with 8 C.F.R. § 241.4(I)(2), as noted above. Second, 8 C.F.R.
20 § 241.4(I) must be interpreted as a coherent whole, not as isolated subsections. The detailed
21 procedural protections in 8 C.F.R. § 241.4 reflect the significant liberty interest at stake when
22 revoking supervised release.

23 Respondents' violations of the regulation, which the Opposition does not defend, *by*
24 *themselves* warrant Petitioner's continued release. *See Hoac v. Becerra*, 2025 WL 1993771 *4
25 (E.D. Cal. July 16, 2025) ("Because there is no indication that an informal interview was
26 provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-
27 detainment was unlawful."); *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL
28 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (citing *Hoac* and holding "that the failure to provide an

1 informal hearing is alone sufficient to entitle petitioner to the requested preliminary relief,” i.e.
2 release); *Duong v. Charles*, 2025 WL 3187313, at *5 (E.D. Cal. November 14, 2025) (ordering
3 the noncitizen’s immediate release because, among other violations, “the Government violated
4 Petitioner’s due process rights by not complying with its own rule under section 241.13(i)(3)” to
5 provide an informal interview).

6 Furthermore, the Opposition attempts to sidestep the cases cited in the Motion by
7 claiming they are inapplicable now that Respondents obtained travel documents. However, this
8 was the case when the TRO was granted (as Respondents had already obtained travel
9 documents), and obtaining travel documents does not and cannot excuse Respondents from the
10 demands of due process and their own regulations. Furthermore, as explained by Dr. Ha, the
11 travel documents they obtained have expired. Thus, the cases cited in the Motion retain their
12 applicability whereas, *Louangmilith v. Noem* 2025 WL 2881578 at *1 (S.D. Cal. Oct. 9, 2025)
13 cited in the Opposition (Opp. p. 11:5-13) is inapposite. In light of Respondents’ lack of
14 unexpired legal travel documents, and failure to so much as recognize the need to obtain updated
15 travel documents, Mr. Saepanh faces a real and acute danger of further re-detention for weeks
16 or months in violation of DHS’ own regulations and due process, if Respondents are not enjoined
17 from re-detaining him absent a pre-deprivation bond hearing.

18 **C. ICE Has Violated 8 C.F.R. § 241.13**

19 The Opposition attempts to dismiss Mr. Saepanh’s arguments that ICE violated 8 C.F.R. §
20 241.13 by claiming that the provision is not applicable “unless [DHS] makes a determination
21 under this section that there is no significant likelihood of removal in the reasonably foreseeable
22 future.” As explained in the Motion, 8 C.F.R. § 241.13 places the burden of providing
23 compliance on ICE. There is no evidence that ICE complied with the regulation. There is no
24 declaration stating that, at the time before his detention: 1) an individual determination, 2) was
25 made by ICE that, 3) based on changed circumstances, 4) removal has become significantly
26 likely in the foreseeable future. See *Kong v. United States*, 62 F.4th 608, 619-620 (1st Cir.
27 2003). Simply stating that it satisfied its burden by, after the fact, obtaining temporary travel
28 documents is insufficient to carry its burden. Indeed, it took Respondents nearly four months to

1 obtain travel documents after detaining Mr. Saephanh, which strongly implies that DHS had not
2 made any such determination. It is not sufficient for everyone to just infer, based on obtaining
3 travel documents which, as of now, have expired, that there has been an individual determination
4 based on change in circumstances. See Motion, p. 18:11-25.

5 Since Respondents have failed to satisfy its burden to show that 8 C.F.R. § 241.13
6 applies, all of the arguments asserted in the Motion are applicable here.

7 **1. ICE Has Violated 8 C.F.R. §§ 241.13(i)(2) and 241.13(i)(3).**

8 ICE has not even attempted to comply with any of the requirements in 8 C.F.R. §
9 241.13(i)(2). Mr. Saephanh has never received an individualized determination from ICE or
10 elsewhere. He still has not even been informed of any reason for the revocation of his release.
11 See Saephanh Decl. ¶¶ 5, 9-19. Regulations specify that notices or decisions related to custody
12 reviews must be forwarded to his attorney. 8 C.F.R. § 241.14(b)(2); 8 C.F.R. § 103.8. Mr.
13 Saephanh's attorney has not received any such notice. Chohan Decl. ¶ 9.

14 Pursuant to 8 CFR § 241.13(i)(3), ICE is required to (1) provide a noncitizen the reasons
15 for revocation of his release; (2) conduct an informal interview with the noncitizen to afford
16 them an opportunity to respond to the reasons for revocation stated in the notification; (3)
17 provide the noncitizen an opportunity to submit any evidence or information that he believes
18 shows there is no significant likelihood he be removed in the reasonably foreseeable future; and
19 (4) provide a revocation custody review an evaluation of any contested facts relevant to the
20 revocation and a determination whether the facts as determined warrant revocation and further
21 denial of release. ICE has not even attempted to comply with any of the requirements under 8
22 C.F.R. § 241.13(i)(3). It has not provided Mr. Saephanh with any sort of notice about the reasons
23 for revocation for his release; the reasons for that revocation in any format; an informal
24 interview; an opportunity to submit evidence to support his case; or a revocation custody review.
25 Saephanh Decl. at ¶¶ 5, 9-19. Indeed, if Mr. Saephanh was granted an opportunity to submit
26 evidence to support his case, he would likely submit the Ha Declaration and note that the travel
27 documents have expired.

D. Violations of 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 Are Not Harmless.

Procedural violations in this context cannot be dismissed as harmless error. The purpose of pre-deprivation notice and hearing is to prevent erroneous detention in the first place, not merely to provide post-deprivation explanations through litigation. The Supreme Court has consistently held that notice and an opportunity to be heard must ordinarily precede the deprivation of a significant liberty interest. See *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972) (“if the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented.”); see also *Mathews v. Eldridge*, 424 U.S. 319 (1976) and *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Post-deprivation litigation is not an adequate substitute for the procedural protections required by the regulations, especially when Mr. Saephanh already spent nearly four months in detention without Respondents complying with proper procedures.

The Opposition cites three cases from outside of the district, namely Northern District of Texas, and Eastern District of Texas, to support its arguments. However, the Opposition’s argument is unavailing here, as it is inconsistent with Ninth Circuit precedent. While not directly on point to the issues herein, *Montes-Lopez v. Holder*, 694 F.3d 1085 (9th Cir. 2012) holds that no harmless error analysis is required when ICE violates a noncitizen’s constitutional rights by denying them counsel. *Id.* at 1090-1094. The two crucial factors in not requiring prejudice were the fact that (1) ICE has regulations on the issue, so the denial violated both constitutional and regulatory rights and (2) the denial of counsel “fundamentally affects the whole of a proceeding.” *Id.* at 1092. *Montes-Lopez* also endorsed circuit court holdings in reaching its conclusions that apply these principles more broadly. *Id.* at 1090-1092. One of those cases is *Leslie v. Attorney General of U.S.*, 611 F.3d 171 (3d Cir. 2010), in which the Third Circuit held that “violations of regulations promulgated to protect fundamental statutory or constitutional rights need not be accompanied by a showing of prejudice to warrant judicial relief” and “[f]or the sake of emphasis we repeat: we hold that when an agency promulgates a regulation protecting fundamental statutory or constitutional rights of parties appearing before it, the agency must comply with that regulation. Failure to comply will merit invalidation of the challenged agency action without regard to whether the alleged violation has substantially prejudiced the complaining party.” *Id.* at 178, 180.

1 Similarly, *Montilla v. I.N.S.*, 926 F.2d 162 (2d Cir. 1991) expressly held that it would not adopt the
 2 prejudice standard for ICE regulations that provided more due process than the Fifth Amendment.
 3 *Id.* at 168. *Yiu Fong Cheung v. Immigration and Naturalization Service*, 418 F.2d 460
 4 (D.C.Cir.1969) (“*Cheung*”) provides the most detail here and answers the question posed in the
 5 Opposition, which is why does it matter that they violated Saephanh’s rights if they can still deport
 6 him. *See id.* at 484. It holds that: “While there is limited room in administrative law for the
 7 doctrine of harmless error this must be used gingerly, if at all, when basic procedural rights are at
 8 stake.” *Id.* (footnote omitted). It then noted that “... some rights, like the assistance of counsel, are
 9 so basic to a fair trial that their infraction can never be treated as harmless error.” *Id.* (footnote
 10 omitted); *see also Alabama Hosp. Ass’n v. Beasley*, 702 F.2d 955, 958 fn. 6 (11th Cir. 1983)
 11 (discussing that “where agency action implicates basic due process rights” is an exception to the
 12 harmless error rule); *Republic Nat. Bank of Dallas v. Crippen*, 224 F.2d 565, 566 (5th Cir. 1955)
 13 (“The right to be heard on [a party’s claims [is] a constitutional right and the denial of that right
 14 ...was the denial of due process[,] which is never harmless error”).

15 The “norm” when ICE fails to conduct an “informal interview promptly” is that “courts
 16 across the country have ordered the release of individuals stemming from ICE’s illegal detention.”
 17 *Soryadvongsa v. Noem*, 2025 WL 3126821 (S.D. Cal. Nov. 8, 2025) (citing to *K.E.O. v. Woosley*,
 18 No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *6–7 [W.D. Ky. Sept. 4, 2025] and noting that
 19 *K.E.O.* collects cases). In that case, ICE made the same arguments it makes here, but the Court
 20 rejected those argument, holding that: “Perhaps [Petitioner] would lose an Administrative
 21 Procedure Act lawsuit or a criminal case that depended on his successful collateral attack. But his
 22 habeas petition is not in those legal frameworks. Respondents have not explained why these legal
 23 principles should be generalized to habeas review of civil detentions.” *Id.* at *3. The court
 24 concluded that: “Especially in the context of civil detentions—when constitutional safeguards are
 25 at their zenith—this Court is unwilling to import such a prejudice analysis into regulations or
 26 binding caselaw that don’t mention it. The government’s authority to civilly detain anyone is
 27 strictly confined. Soryadvongsa has carried his burden of establishing that ICE exceeded those
 28 uncompromising bounds and that his custody is unlawful. Thus, he must be set free.” *Id.*

1 Indeed, as discussed below, DHS's failure to follow its own procedural regulations may
2 constitute a due process violation. *Diaz v. Wofford*, 2025 WL 2581575, at *7 (E.D. Cal. Sept. 5,
3 2025).

4 **E. The Opposition Fails to Refute that Mr. Saephanh is Likely to Succeed on**
5 **His Substantive and Procedural Due Process Claims for Relief**

6 As explained in *Diaz*

7 DHS's failure to follow its own procedural regulations may
8 constitute a due process violation. *Zhu*, 2025 WL 2452352, at *6–7
9 (noting that the government admitted in that case that the petitioner
10 has a due process right to the procedures set forth in Section 241.4,
11 though it contested which procedures applied to him). As *Zhu*
12 explained, “[t]he Government has significant discretion to enforce
13 the immigration laws and, indeed, to revoke [an] Order of
14 Supervision... But it must do so consistent with the requirements of
15 its own regulations and the Due Process Clause.” *Id.*; see also
16 *Ceesay*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. 2025) (“[T]he mere
17 fact that the government has the authority to detain someone does
18 not mean that it may do so in any manner it chooses, without
19 affording due process.”).

20 *Diaz v. Wofford*, 2025 WL 2581575, at *7 (E.D. Cal. Sept. 5, 2025).

21 In *Pinchi v. Noem*, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), the court held,

22 . . . even when ICE has the initial discretion to detain or release a
23 noncitizen pending removal proceedings, after that individual is
24 released from custody she has a protected liberty interest in
25 remaining out of custody. See *Romero v. Kaiser*, No. 22-cv-
26 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) (“[T]his
27 Court joins other courts of this district facing facts similar to the
28 present case and finds Petitioner raised serious questions going to
the merits of his claim that due process requires a hearing before
an IJ prior to re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-
01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz*
Vargas v. Jennings, No. 20-cv-5785, 2020 WL 5074312, at *3
(N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 (“Just
as people on preparole, parole, and probation status have a liberty
interest, so too does [a noncitizen released from immigration
detention] have a liberty interest in remaining out of custody on
bond.”).

Id. (emphasis added). Other courts, including this Court, have held similarly. *Doe v. Becerra*,
2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); see also *Padilla v. U.S. Immigr. & Customs*

Enft, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government’s legitimate goals.”).

Thus, the Court must evaluate the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), to determine whether the procedures (or lack thereof) that have been applied to Petitioner are sufficient to protect the liberty interest at issue. *Pinchi*, 2025 WL 2084921 at *3.

The Opposition disputes Petitioner’s claim that the *Eldridge* factors support the requested preliminary injunction. However, its claims avoid the actual issues and attempt to re-frame the *Eldridge* factors in a way that appears contrary to caselaw. The Court should reject these attempts and uphold the well-established law.

As to the first factor, the private interest, the Opposition claims that because detention during proceedings may be permissible Petitioner has no private interest in his freedom. Opp pp. 12-13. That is not how this factor is analyzed and none of the Opposition’s authority supports such a claim.³ Mr. Saephanh’s interest here, which is in remaining free from detention, “lies at the heart of the liberty [the Due Process Clause] protects”. *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. July 24, 2025) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). In a nearly identical situation, a court held that the protected liberty interest is “clear”. *Id.*, pp. 1032-1035. Mr. Saephanh has a substantial interest at stake here: his liberty interest.

As to the second factor, the risk of erroneous deprivation and probative value of additional safeguards, the Opposition essentially argues that Mr. Saephanh has a valid removal order, and, as such, prohibiting re-detention is too extreme. Opp p. 13. As can be seen from Mr. Saephanh’s past experience – as well as Respondents’ repeated and incorrect claims that they possess travel documents that enable them to effect removal to Laos in the very near future – the risk of an erroneous deprivation is high without a neutral adjudicator evaluating Petitioner’s case.

³ It is also noteworthy that the Opposition’s boldest claim here (Opp pp. 12-13) – “That is especially true for executing removal orders” is unsupported.

1 In fact, that is exactly what happened to Mr. Saephanh – he was denied his constitutional rights
 2 and detained in violation of ICE’s regulations and was unable to contest his detention because
 3 there was no pre-deprivation hearing. Further, “A neutral judge is one of the most basic due
 4 process protections”. *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*
 5 *other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).

6 As to the third factor, the government’s interest, the Opposition argues that the
 7 government has a significant interest in Mr. Saephanh’s detention and attempts to side step past
 8 the point that Mr. Saephanh does not represent a flight risk or a danger.⁴ Mr. Saephanh is not
 9 requesting to never be detained or deported from the country; rather, he is requesting that the
 10 government comply with its own regulation and constitutional duties, including a pre-deprivation
 11 hearing, before doing so. The actual government interest here is not in upholding the
 12 immigration system, but rather re-detaining Mr. Saephanh without providing him with a pre-
 13 deprivation hearing. Given that the Opposition seemingly admits that Mr. Saephanh is not a
 14 danger or a flight risk (which is also confirmed by the more than 28 years of Mr. Saephanh’s
 15 compliance with all laws), there is no reason to detain Mr. Saephanh without a pre-deprivation
 16 hearing. Mr. Saephanh has followed, and will continue to follow, all of his legal obligations.
 17 There simply is no government interest in re-detaining him without a pre-deprivation hearing.

18 Therefore, the *Eldridge* factors all weigh in Mr. Saephanh’s favor.

19 **F. Due Process Requires a Neutral Adjudicator, and Respondents do not Refute**
 20 **the Facts or Arguments Presented in the Motion.**

21 The Motion provides considerable detail as to why Mr. Saephanh is concerned that
 22 immigration judges may not be able to act as an independent adjudicator. Dkt. No. 21-1, p. 9-10.

23
 24
 25 ⁴ The Opposition (p.12) also quotes *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) to support that
 26 courts must defer to the executive and legislative branches and take account of the executive branch’s
 27 expertise. Neither usage is accurate. The first quote, about deferring, is actually from a different part of
 28 the opinion and is the court quoting and rejecting that claim from the government rather than adopting it
 itself. *Id.*, p. 695. The Court does adopt the second quote, but immediately limits it/rejects the
 government’s usage by saying “we believe that courts can take appropriate account of such matters
 without abdicating their legal responsibility to review the lawfulness of an alien’s continued detention”.
Id., p. 700.

1 The Opposition characterizes these facts and argument as “speculation” but makes no attempt to
2 refute the facts presented or arguments made. While the Opposition correctly notes that some
3 courts in the Eastern District have determined that an immigration judge bond hearing is the
4 appropriate remedy, at least one court in the Eastern District has retained jurisdiction over a pre-
5 deprivation hearing. *Zheng v. Albarran* 1:25-cv-01685-CJC-CKD (E.D. Cal. Dec 16, 2025)
6 (Calbretta, D.) Dkt. No. 13. Mr. Saephanh again renews his request for this Court to act as an
7 neutral adjudicator.

8 **G. Mr. Saephanh has Shown Irreparable Harm, Balance of Equities and Public**
9 **Interest**

10 The Opposition raises identical arguments in response to this Motion as it raised in the
11 Opposition to the motion for temporary restraining order. Dkt. No. 22, pp. 14-15 *cf.* Dkt. No. 10,
12 pp. 13-14. This Court already rejected those arguments when it granted the motion for temporary
13 restraining order. Dkt. No. 11, p. 4. For the reasons stated in the Motion, and those stated in
14 *N.D.N. v. Bondi*, 2025 WL 3251102, at *7 (E.D. Cal. Nov. 21, 2025) this Court should again find
15 that Mr. Saephanh has established that the irreparable harm, balance of equities, and public interest
16 factors favor granting his motion for preliminary injunction. The Court should again, reject
17 Respondents’ arguments to the contrary.

18 **H. The Proper Remedy is to Require Respondents to Provide Mr. Saephanh**
19 **with a Pre-Deprivation Hearing before a Neutral Adjudicator Prior to His**
20 **Re-Detention.**

21 As explained above, ICE violated Mr. Saephanh’s due process rights flagrantly and in
22 numerous ways. The only proper remedy is to ensure that Mr. Saephanh is not re-detained
23 without a pre-deprivation hearing before a neutral adjudicator.

24 **III. CONCLUSION**

25 For all the foregoing reasons, Mr. Saephanh respectfully requests that the Court grant the
26 Motion for a Preliminary Injunction and order that a pre-deprivation hearing occur before a
27 neutral adjudicator prior to Mr. Saephanh’s re-detention. Mr. Saephanh further requests that this
28

1 Court retain jurisdiction over the case and act as the neutral adjudicator.

2

3 Date: March 3, 2026

NOSSAMAN LLP

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By: Christopher D. Hughes

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Attorneys for Plaintiff, OUSIN SAEPHANH

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