

1 **Kha Nguyen Tran**

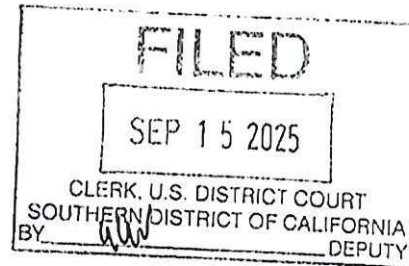
2 A# [REDACTED]

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **KHA NGUYEN TRAN,**

11 **Petitioner,**

12 **v.**

13 **KRISTI NOEM, Secretary of the**
14 **Department of Homeland Security,**
15 **PAMELA JO BONDI, Attorney General,**
16 **TODD M. LYONS, Acting Director,**
17 **Immigration and Customs Enforcement,**
18 **JESUS ROCHA, Acting Field Office**
19 **Director, San Diego Field Office,**
20 **CHRISTOPHER LAROSE, Warden at**
21 **Otay Mesa Detention Center,**

22 **Respondents.**

CIVIL CASE NO.: '25CV2391 BTM BLM

Notice of Motion
and
Memorandum of Law
in Support of
Temporary Restraining Order

23
24
25 ¹ Mr. Tran is filing this petition for a writ of habeas corpus and all associated
26 documents with the assistance of the Federal Defenders of San Diego, Inc. That
27 same counsel also assisted the petitioner in preparing and submitting his request
28 for the appointment of counsel, which has been filed concurrently with this
petition, and all other documents supporting the petition. Federal Defenders has
consistently used this procedure in seeking appointment for immigration habeas
cases. The Declaration of Katie Hurrelbrink in Support of Appointment Motion
attaches case examples.

Introduction

Petitioner Kha Nguyen Tran (“Petitioner”) faces immediate irreparable harm: (1) revocation of his release on immigration supervision, despite his full compliance on release for 17 years and ICE’s failure to follow its own revocation procedures; (2) indefinite immigration detention with no reasonable prospect of removal in the reasonably foreseeable future to the country designated by the immigration judge (“IJ”); and (3) potential removal to a third country never considered by an IJ. This Court should grant temporary relief to preserve the status quo.

Petitioner has spent about 17 years living free in the community on an order of supervision. He has not missed any check-ins with ICE or sustained any criminal convictions. Throughout that time, the government has proved unable to remove him to Vietnam. Yet on June 16, 2025, the government re-detained him. ICE gave him no opportunity to contest his re-detention, and there are no apparent changed circumstances justifying it. ICE does not appear to have a travel document in hand, and the same repatriation treaty has applied to Petitioner’s removal since 2008. ICE already re-detained Petitioner shortly after the treaty was signed with the express purpose of removing him under it, but ICE proved unable to do so. Worse yet, in the likely case that ICE still proves unable to remove Petitioner to Vietnam, ICE’s own policies allow ICE to remove him to a third country never before considered by the IJ in Petitioner’s case, with either 6-to-24 hours’ notice or no notice at all.

Petitioner is therefore facing both unlawful detention and a threat of removal to a dangerous third country without due process. The requested temporary restraining order (“TRO”) would preserve the status quo while Petitioner litigates these claims by (1) reinstating Petitioner’s release on supervision, and (2) prohibiting the government from removing him to a third country without an opportunity to file a motion to reopen with an IJ.

1 In granting this motion, this Court would not break new ground. Several
2 courts have granted TROs or preliminary injunctions mandating release for post-
3 final-removal-order immigrants like Petitioner. *See Phetsadakone v. Scott*, 2025
4 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No.
5 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025)
6 (Vietnam); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735,
7 at *7 (E.D. Cal. July 16, 2025) (Vietnam); *Nguyen v. Scott*, No. 2:25-CV-01398,
8 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025) (Vietnam). Several more
9 have ordered release² for petitioners whose immigration cases are still pending.
10 *See, e.g., Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at *2
11 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL
12 2607924, at *12 (D. Mass. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-
13 01141-KES-SKO (HC), 2025 WL 2617255, at *6 (E.D. Cal. Sept. 9, 2025). These
14 courts have determined that, for these long-term releasees, liberty is the status
15 quo, and only a return to that status quo can avert irreparable harm.

16 Several courts have likewise granted temporary restraining orders
17 preventing third-country removals without due process. *See, e.g., J.R. v. Bostock*,
18 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v.*
19 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025);
20 *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26,
21 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7
22 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025
23 WL 1993735, at *7 (E.D. Cal. July 16, 2025). Petitioner therefore respectfully
24 requests that this Court grant this TRO.

25
26
27 ² Because immigration detainees whose cases have not been adjudicated are entitled
28 only to a bond hearing—not to outright release—some of these TROs require
release unless ICE provides that hearing. But because *Zadvydas* requires outright
release on supervision, a TRO fitted to Petitioner's claims should order that relief.

Statement of Facts

I. Mr. Tran lived a law-abiding life in San Diego for about 17 years, and despite two, six-month stints in ICE detention, ICE was unable to remove him to Vietnam.

Kha Nguyen Tran was born in 1986 in South Vietnam, near Saigon. Exh. A to Habeas Petition (“Tran Dec.”) at ¶ 1. Around 2004, when he was about 16, his family fled to the United States. *Id.* A few years later, when he was about 19, he pled guilty to assault with a deadly weapon. *Id.* at ¶ 2. He served 364 days in county jail. *Id.* He then completed 5 years of probation with no violations. *Id.*

After serving his sentence, he was transferred to ICE custody. *Id.* at ¶ 3. He was then ordered removed on January 23, 2007. *Id.* He stayed in custody for approximately six months, during which time ICE attempted to remove him to Vietnam. *Id.* at ¶ 4. During that time, Mr. Tran complied with everything ICE asked of him. *Id.* He believes that ICE applied for a travel document for him during that time. *Id.* But when ICE failed to remove him, he was released. *Id.*

Up to that point, there was an obvious reason why ICE could not remove Mr. Tran: The United States had no repatriation agreement with Vietnam, meaning that Vietnamese immigrants could not be removed. *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020). That changed in 2008, when the United States and Vietnam reached a diplomatic agreement under which Vietnam agreed to start considering repatriation requests for Vietnamese immigrants who had arrived in the United States after July 12, 1995. *Id.*

Because Mr. Tran fell within the group that Vietnam would consider for removal, ICE detained him again in late 2008 or early 2009. Tran Dec. at ¶ 5. Once again, he stayed in ICE detention for about six months. *Id.* But ICE still was not able to remove Mr. Tran under the new treaty, even though Mr. Tran again complied with all of ICE’s requests. *Id.* He was therefore released a second time. *Id.*

1 Mr. Tran was release for nearly 17 years. *Id.* at ¶ 6. During that time, Mr.
2 Tran checked in with ICE each year. *Id.* He sustained no further convictions. *Id.*
3 He spent time with his 14-year-old U.S. citizen daughter. *Id.* at ¶¶ 8-9. He lived
4 near his brother and father in San Diego. *Id.* at ¶ 8. And though his mother had
5 passed away, her family lived a few states away in Seattle, Washington. *Id.*

6 On June 16, 2025, Mr. Tran appeared as scheduled for his ICE check in. *Id.*
7 at ¶ 7. ICE agents arrested him and took him to Otay Mesa Detention Center. *Id.*
8 He has been detained ever since. ICE has not told him what had changed to
9 warrant re-detaining him or given him a chance to contest his re-detention. *Id.* at
10 ¶ 7.

11 While Mr. Tran sits in custody, his finances suffer. He has had to enlist his
12 father's help in making mortgage payments so that he does not lose his home. *Id.*
13 at ¶ 9. And he is not making money that he can use to pay child support. *Id.*

14 **II. The government is carrying out deportations to third countries**
15 **without providing sufficient notice and opportunity to be heard.**

16 When removable immigrants cannot be removed to their home country—
17 including Vietnamese immigrants—ICE has begun deporting those individuals to
18 third countries without adequate notice or a hearing. As explained in greater detail
19 in Petitioner's habeas petition, the Administration has reportedly negotiated with
20 countries to have many of these deportees imprisoned in prisons, camps, or other
21 facilities. For example, the government paid El Salvador about \$5 million to
22 imprison more than 200 deported Venezuelans in a maximum-security prison
23 notorious for gross human rights abuses, known as CECOT. Edward Wong et al,
24 *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times,
25 June 25, 2025. In February, Panama and Costa Rica took in hundreds of deportees
26 from countries in Africa and Central Asia and imprisoned them in hotels, a jungle
27 camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court*
28 *orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4,

2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. *See Wong, supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See Wong, supra*.

On June 23 and July 3, 2025, in light of procedural arguments regarding the viability of national class-wide relief rather than individual relief, the Supreme Court issued a stay of a class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025). That national injunction had required ICE to follow the statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025). On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country” like the ones just described. Exh. B to Habeas Petition.

Under the new guidance, ICE may remove any immigrant to a third country “without the need for further procedures,” as long as—in the view of the State Department—the United States has received “credible” “assurances” from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’

1 notice. But “[i]n exigent circumstances,” a removal may take place in as little as
2 six hours, “as long as the alien is provided reasonably means and opportunity to
3 speak with an attorney prior to the removal.” *Id.* Upon serving notice, ICE “will
4 not affirmatively ask whether the alien is afraid of being removed to the country
5 of removal.” *Id.* (emphasis original). Depending on whether immigrants assert a
6 credible fear, they will either be removed or screened by USCIS for withholding
7 or removal or Convention Against Torture (“CAT”) relief within 24 hours. *Id.* If
8 USCIS determines that an individual does not qualify, they will be removed there
9 despite asserting fear. *Id.*

10 **Argument**

11 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
12 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
13 relief, that the balance of equities tips in his favor, and that an injunction is in the
14 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
15 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
16 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
17 “substantially identical” analysis). A “variant[] of the same standard” is the
18 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
19 going to the merits—a lesser showing than likelihood of success on the merits—
20 then a preliminary injunction may still issue if the balance of hardships tips
21 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
22 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
23 (internal quotation marks omitted). Under this approach, the four *Winter* elements
24 are “balanced, so that a stronger showing of one element may offset a weaker
25 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
26 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
27 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
28 long as the other *Winter* factors are met. *Id.* at 1132.

1 Here, this Court should issue a temporary restraining order because
2 “immediate and irreparable injury . . . or damage” is occurring and will continue
3 in the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents re-
4 detained Petitioner in violation of his due process, statutory, and regulatory rights.
5 ICE policy also allows them to remove him to a third country in violation of his
6 due process, statutory, and regulatory rights. This Court should order Petitioner’s
7 release and enjoin removal to a third country with no or inadequate notice.

8
9 **I. Petitioner is likely to succeed on the merits, or at a minimum, raises serious merits questions.**

10 **A. Petitioner is likely to succeed on the merits of his claim that his detention violates *Zadvydas*.**

11 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
12 a problem affecting people like Mr. Tran: Federal law requires ICE to detain an
13 immigrant during the “removal period,” which typically spans the first 90 days
14 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that
15 90-day removal period expires, ICE may detain the migrant while continuing to
16 try to remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow
17 for “indefinite, perhaps permanent, detention,” it would pose “a serious
18 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court
19 avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate
20 implicit limits. *Id.* at 689.

21 As an initial matter, *Zadvydas* held that detention is “presumptively
22 reasonable” for at least six months after the removal order becomes final. *Id.* at
23 701. This acts as a kind of grace period for effectuating removals.

24 Following the six-month grace period, courts must use a burden-shifting
25 framework to decide whether detention remains authorized. First, the petitioner
26 must prove that there is “good reason to believe that there is no significant
27 likelihood of removal in the reasonably foreseeable future.” *Id.*
28

1 If he does so, the burden shifts to “the Government [to] respond with
2 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
3 proof rests with the government: The government must prove that there is a
4 “significant likelihood of removal in the reasonably foreseeable future,” or the
5 immigrant must be released. *Id.*

6 Here, Petitioner was ordered removed more than 6 months ago, as his
7 removal order became final on January 23, 2007. Tran Dec. at ¶ 3. He has also
8 been detained for over a year cumulatively. *Id.* at ¶¶ 4–5. Thus, it is clear that the
9 *Zadvydas* grace period has ended.

10 There is also strong evidence that there is no “significant likelihood of
11 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

12 Mr. Tran readily satisfies this standard. Vietnam has twice refused to accept
13 Mr. Tran. Tran Dec. at ¶¶ 4–5. ICE tried and failed to remove Mr. Tran in the six
14 months following his removal order. *Id.* at ¶ 4. And ICE failed again after signing
15 the operative 2008 repatriation treaty, despite detaining Mr. Tran for six months
16 with the express purpose of trying to remove him under that treaty. *Id.* at ¶ 5.
17 Nothing changed in the 17 years that Mr. Tran was out on release, even though
18 Mr. Tran was checking in throughout that period and was therefore available to
19 help seek travel documents. *Id.* at ¶ 6. And though ICE has had nearly three
20 months’ worth of detention—an entire statutory removal period—to try yet again
21 in 2025, there is no indication that ICE has obtained a travel document. *Id.* at ¶ 7.

22 Finally, Petitioner’s criminal history cannot change this equation. Not only
23 has Petitioner proved that he poses no danger or flight risk, as he has spent about
24 17 years in the community without issue. *Zadvydas* also squarely prohibits ICE
25 from indefinitely detaining immigrants because they pose risks of danger or flight.
26 533 U.S. at 684–91.

27 Thus, this Court will likely find that Petitioner warrants *Zadvydas* relief.
28

1 **B. Petitioner is likely to succeed on the merits of his claim that ICE**
2 **violated its own regulations.**

3 In addition to *Zadvydas*'s protections, a series of regulations provide extra
4 process for someone who, like Petitioner, is re-detained following a period of
5 release. Under 8 C.F.R. § 241.4(*l*), ICE may re-detain an immigrant on
6 supervision only with an interview and a chance to contest a re-detention. When
7 an immigrant is specifically released after giving good reason why they cannot be
8 removed, additional regulations apply: ICE may revoke a noncitizen's release and
9 return them to ICE custody due to failure to comply with conditions of release, 8
10 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances," a noncitizen
11 likely can be removed in the reasonably foreseeable future. *Id.* § 241.13(i)(2).

12 The regulations further provide noncitizens with a chance to contest a re-
13 detention decision. ICE must "notif[y] [the person] of the reasons for revocation
14 of his or her release." *Id.* § 241.13(i)(3). ICE must then "conduct an initial
15 informal interview promptly" after re-detention "to afford the alien an opportunity
16 to respond to the reasons for revocation stated in the notification." *Id.* During the
17 interview, the person "may submit any evidence or information" showing that the
18 prerequisites to re-detention have not been met, and the interviewer must evaluate
19 "any contested facts." *Id.*

20 ICE is required to follow its own regulations. *United States ex rel. Accardi*
21 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
22 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
23 abide by certain internal policies is well-established."). A court may review a re-
24 detention decision for compliance with the regulations. *See Phan v. Beccerra*, No.
25 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v.*
26 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
27 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).
28

1 None of the prerequisites to detention apply here. Petitioner did not violate
2 the conditions of his release. And there are no changed circumstances that justify
3 re-detaining him. The same treaty has applied since 2008, and ICE already tried—
4 and failed—to remove Petitioner under that treaty. ICE has given Petitioner no
5 indication that agents have a travel document in hand for him. Of course, ICE may
6 be planning to renew their request for a travel document from Vietnam. But absent
7 any evidence for “why obtaining a travel document is more likely this time
8 around[,] Respondents’ intent to eventually complete a travel document request for
9 Petitioner does not constitute a changed circumstance.” *Hoac v. Becerra*, No. 2:25-
10 CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu*
11 *v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)).
12 Nor has Petitioner received the interview required by regulation. Tran Dec. at ¶ 7.
13 No one from ICE has ever invited him to submit evidence to contest his detention.
14 *Id.*

15 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
16 the applicable regulations,” this Court will likely find that “petitioner is entitled to
17 his release” on an order of supervision. *Liu*, 2025 WL 1696526, at *3.

18
19 **C. Petitioner is likely to succeed on the merits of his claim that he is**
20 **entitled to adequate notice and an opportunity to be heard prior**
to any third country removal.

21 Finally, Petitioner is likely to succeed on the merits of his claim that he may
22 not be removed to a third country absent adequate notice and an opportunity to be
23 heard.

24 U.S. law enshrines protections against dangerous and life-threatening
25 removal decisions. By statute, the government is prohibited from removing an
26 immigrant to any third country where a person may be persecuted or tortured, a
27 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
28 The government “may not remove [a noncitizen] to a country if the Attorney

1 General decides that the [noncitizen's] life or freedom would be threatened in that
2 country because of the [noncitizen's] race, religion, nationality, membership in a
3 particular social group, or political opinion.” *Id.*; see also 8 C.F.R. §§ 208.16,
4 1208.16. Withholding of removal is a mandatory protection.

5 Similarly, Congress codified protections enshrined in the CAT prohibiting
6 the government from removing a person to a country where they would be tortured.
7 See FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of
8 the United States not to expel, extradite, or otherwise effect the involuntary return
9 of any person to a country in which there are substantial grounds for believing the
10 person would be in danger of being subjected to torture, regardless of whether the
11 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
12 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

13 To comport with the requirements of due process, the government must
14 provide notice of the third country removal and an opportunity to respond. Due
15 process requires “written notice of the country being designated” and “the statutory
16 basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v.*
17 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); accord *D.V.D. v. U.S.*
18 *Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D.
19 Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

20 Due process also requires “ask[ing] the noncitizen whether he or she fears
21 persecution or harm upon removal to the designated country and memorialize in
22 writing the noncitizen’s response. This requirement ensures DHS will obtain the
23 necessary information from the noncitizen to comply with section 1231(b)(3) and
24 avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to
25 notify individuals who are subject to deportation that they have the right to apply
26 for asylum in the United States and for withholding of deportation to the country to
27 which they will be deported violates both INS regulations and the constitutional
28 right to due process.” *Andriasian*, 180 F.3d at 1041.

1 If the noncitizen claims fear, measures must be taken to ensure that the
2 noncitizen can seek asylum, withholding, and relief under CAT before an
3 immigration judge in reopened removal proceedings. The amount and type of
4 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
5 circumstances, he would have a reasonable opportunity to raise and pursue his
6 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
7 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
8 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring a
9 minimum of 15 days’ notice).

10 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
11 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
12 for good reason: To have a meaningful opportunity to apply for fear-based
13 protection from removal, immigrants must have time to prepare and present
14 relevant arguments and evidence. Merely telling a person where they may be sent,
15 without giving them a chance to look into country conditions, does not give them a
16 meaningful chance to determine whether and why they have a credible fear.

17 Respondents’ third country removal program skips over these statutory and
18 constitutional procedural protections. According to ICE’s July 7 guidance,
19 individuals can be removed to third countries “without the need for further
20 procedures,” so long as “the [U.S.] has received diplomatic assurances.” Exh. B to
21 Habeas Petition at 1. Petitioner is likely to succeed on the merits of his claim on
22 this fact alone, because the policy instructs officers to provide no notice or
23 opportunity to be heard of any kind. The same is true of the minimal procedures
24 ICE offers when no diplomatic assurances are present. The policy provides no
25 meaningful notice (6-24 hours), instructs officers *not* to ask about fear, and provides
26 no actual opportunity to see counsel and prepare a fear-based claim (6-24 hours),
27 let alone reopen removal proceedings. In sum, it directs ICE officers to violate the
28 rights of those whom they seek to subject to the third country removal program.

1 Faced with similar arguments, several courts have recently granted
2 individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210;
3 *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL
4 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

5 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

6 Petitioner also meets the second factor, irreparable harm. “It is well
7 established that the deprivation of constitutional rights ‘unquestionably constitutes
8 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
9 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation
10 of a constitutional right is involved, most courts hold that no further showing of
11 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02
12 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*
13 *Procedure*, § 2948.1 (2d ed. 2004)).

14 Here, the potential irreparable harm to Petitioner is even more concrete.
15 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and that
16 damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d 976, 999
17 (9th Cir. 2017).

18 Third-country deportations pose that risk and more. Recent third-country
19 deportees have been held, indefinitely and without charge, in hazardous foreign
20 prisons. *See Wong et al., supra*. They have been subjected to solitary confinement.
21 *See Imray, supra*. They have been removed to countries so unstable that the U.S.
22 government recommends making a will and appointing a hostage negotiator before
23 traveling to them. *See Wong, supra*. These and other threats to Petitioner’s health
24 and life independently constitute irreparable harm.

25
26 **III. The balance of hardships and the public interest weigh heavily in petitioner’s favor.**

27 The final two factors for a TRO—the balance of hardships and public
28 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,

1 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On the
2 one hand, the government “cannot reasonably assert that it is harmed in any legally
3 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d
4 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent
5 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S.
6 at 436 (describing public interest in preventing noncitizens “from being wrongfully
7 removed, particularly to countries where they are likely to face substantial harm”);
8 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019)
9 (when government’s treatment “is inconsistent with federal law, . . . the balance of
10 hardships and public interest factors weigh in favor of a preliminary injunction.”).
11 On the other hand, Petitioner faces weighty hardships: unlawful, indefinite
12 detention and removal to a third country where he is likely to suffer imprisonment
13 or other serious harm. The balance of equities thus favors preventing the violation
14 of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d
15 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful
16 detention and prevent unlawful third country removal.

17 **IV. Petitioner gave the government notice of this TRO, and the TRO should**
18 **remain in place throughout habeas litigation.**

19 Before filing this motion, proposed counsel called the U.S. Attorney’s Office
20 and was put in touch with Janet Cabral. *See* Exhibit A, Declaration of Katie
21 Hurrelbrink, at ¶ 2. Ms. Cabral requested that proposed counsel email her a copy of
22 the motion, which has been done. *Id.* Federal Defenders will also cause the motion
23 to be served by hand delivery per the attached certificate of service. *Id.*

24 Additionally, Petitioner requests that this TRO remain in place until the
25 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because
26 the same considerations will continue to warrant injunctive relief throughout this
27 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*
28 *Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003). A proposed order is attached.

Conclusion

For those reasons, Petitioner requests that this Court issue a temporary restraining order.

DATED: 09/11/25

Respectfully submitted,



KHA NGUYEN TRAN

Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served the within Motion for a Temporary
Restraining Order by hand delivery to:

U.S. Attorney's Office, Southern District of California
Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 9/15/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

Kha Nguyen Tran

A# [REDACTED]

Otay Mesa Detention Center

P.O. Box 439049

San Diego, CA 92143-9049

Pro Se

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KHA NGUYEN TRAN,

Petitioner,

v.

KRISTI NOEM, Secretary of the
Department of Homeland Security,
PAMELA JO BONDI, Attorney General,
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
JESUS ROCHA, Acting Field Office
Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.:

**Declaration of Katie Hurrelbrink
in Support of Motion for a
Temporary Restraining Order**

- 1
2 1. My name is Katie Hurrelbrink. I am an appellate attorney at Federal
3 Defenders of San Diego, Inc. In that capacity, I was assigned to
4 investigate Mr. Tran's immigration habeas case to determine whether—
5 in keeping with longstanding district practice—Federal Defenders
6 should seek to be appointed as counsel. I determined that we should, and
7 I assisted Mr. Tran in drafting all necessary documents.
- 8 2. Before assisting Mr. Tran with filing this motion for a temporary
9 restraining order, I spoke with Janet Cabral at the U.S. Attorney's Office
10 and notified her of our intent to file. She requested that I email a copy of
11 the temporary restraining order motion to her directly, which I have
12 done. I have also caused the motion to be formally served on her office's
13 Civil Division by hand delivery, as set forth in the certificate of service.

14 I declare under penalty of perjury that the foregoing is true and correct,
15
16 executed on September 15, 2025, in San Diego, California.

17
18 /s/ Katie Hurrelbrink
19 **KATIE HURRELBRINK**
20 Declarant
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