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

Thoth SUN;

Petitioners,

v.

Kristi NOEM, Secretary, Department
of Homeland Security; Pam BONDI,
Attorney General; Todd LYONS,
Executive Associate Director of ICE
Enforcement and Removal
Operations (ERO); Gregory J.
ARCHAMBEAULT, Director, San
Diego Filed Office, Immigration and
Customs Enforcement; Christopher J.
LAROSE, Warden, Otay Mesa
Detention Center.

Respondents.

No. 3:25-cv-02433-CAB-MMP

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

1 For the reasons explained in the accompanying Memorandum of
2 Points and Authorities, Petitioner hereby makes this Ex Parte Application for
3 a Temporary Restraining Order and Order to Show Cause Re: Preliminary
4 Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. §
5 705. Petitioner is a citizen of Cambodia who was detained by immigration
6 authorities for five days, and was released on September 17, 2025 because
7 his detention was in violation of the permanent injunction issued in *Chhoeun*
8 *v. Marin*, 8:17-cv-01898-CJC (GJSx) (C.D. Cal. Apr. 27, 2020). Upon his
9 release, he was informed that he would be re-detained on October 1, 2025.
10 Petitioner is subject to a final order of removal and was already in
11 immigration custody twice and released twice because he could not be
12 removed from the United States. Respondents have not indicated that there
13 are any changed circumstances that provide that Petitioner's removal is now
14 reasonably foreseeable. His October 1, 2025 detention will violate the statute
15 at 8 U.S.C. § 1231(a)(6), the Supreme Court's decision in *Zadvydas v.*
16 *Davis*, 533 U.S. 678 (2001), Due Process, and governing regulations that
17 require the government to establish that removal is reasonably foreseeable
18 once a noncitizen has already been held for more than 180 days and cannot
19 be removed.

20 Petitioner requests that the Court issue a temporary restraining order and
21 order to show case re: preliminary injunction in the form of the proposed
22 order submitted concurrently with this Application. This Application is
23 based on the Petition for Writ of Habeas Corpus, Memorandum of Points
24 and Authorities, and the declaration and exhibits in support thereof.

25 Respondents are aware of the filing of this application and the Court has
26 approved a joint proposed schedule regarding the filing of this application
27 and any opposition. Dkt # 5. See Local Rule 83.3(g).

28 Counsel for Respondents is as follows:

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Dated: September 23, 2025

/s/ Stacy Tolchin

Stacy Tolchin

I. INTRODUCTION

Petitioner Thoth Sun seeks a Temporary Restraining Order preventing his re-detention by immigration authorities on October 1, 2025, absent evidence that immigration authorities are reasonably likely to remove him from the United States.

II. STATEMENT OF FACTS

Petitioner is a native of citizen of Cambodia who came to the United States as a refugee on May 29, 1979 at the age of two. Tolchin Dec. Exh. F. He adjusted status to a permanent resident and his residency was backdated to his 1979 refugee admission. *Id.* On November 19, 1996, when Petitioner was around 20 years old, he was convicted of voluntary manslaughter under California Penal Code § 192(a), and was sentenced to six years in prison with a three year enhancement for a firearm. *Id.* As a result of the conviction, he detained and was placed into removal proceedings on April 5, 2004 and was charged with removal for an aggravated felony under the crime of violence ground. 8 U.S.C. § 1101(a)(43)(F). Tolchin Dec. Exhs. D, F.

On May 3, 2004, Petitioner was ordered removed by the immigration judge on the aggravated felony ground. Tolchin Dec. Exh. C. Petitioner was detained for over five months after that order and then released because he could not be removed from the United States. Tolchin Dec. Exh. F. He was then detained again in June 2007 and held for over two weeks in immigration custody. Tolchin Dec. Exhs. F, B. On June 22, 2007, Petitioner was released from immigration custody and has regularly been reporting under an order of supervision. Tolchin Dec. Exh. F, B. Petitioner has otherwise been in compliance with the conditions of his release and has not been in violation of criminal laws. Tolchin Dec. Exh. F.

On September 12, 2025, Petitioner was detained and placed into the custody of immigration officials in San Diego, California. Tolchin Dec. Exh. E.

1 Respondents were notified that Petitioner is a class member in *Chhoeun v. Marin*,
2 8:17-cv-01898-CJC (GJSx) (C.D. Ca. Apr. 27, 2020). Tolchin Dec. ¶ 3. On
3 September 17, 2025, Petitioner was released from immigration custody. Tolchin
4 Dec. ¶7. Respondents did not release Petitioner for five days, even though they
5 were aware that his detention was in violation of *Chhoeun v. Marin*. Tolchin Dec.
6 ¶ 3-7. Respondents only released Petitioner because he sought intervention in this
7 Court on September 17, 2025 through a petition for writ of habeas corpus. Tolchin
8 Dec. ¶ 7. Upon his release, Petitioner was further served with paperwork consistent
9 with *Chhoeun v. Marin*, notifying him that he would be taken into custody on
10 October 1, 2025 for purposes of removal. Tolchin Dec. Exh. A.

11 Respondents have not provided any indication that Cambodia, or any other
12 country, is likely to accept him for removal. Tolchin Dec. Exh. F.

13 **III. ARGUMENT**

14 The requirements for granting a Temporary Restraining Order are
15 “substantially identical” to those for granting a preliminary injunction. *Stuhlberg*
16 *Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

17 Petitioners must demonstrate that (1) they are likely to succeed on the merits
18 of their claims; (2) they are likely to suffer irreparable harm in the absence of
19 preliminary relief; (3) the balance of equities tips in their favor; and (4) an
20 injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22
21 (2008). A sliding scale test may be applied and an injunction should be issued
22 when there is a stronger showing on the balance of hardships, even if there are
23 “serious questions on the merits ... so long as the plaintiff also shows a likelihood
24 of irreparable harm and that the injunction is in the public interest.” *All. for the*
25 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-*
26 *Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.
27 2024).
28

1 There are two forms of preliminary injunctions. *Marlyn Nutraceuticals, Inc.*
2 *v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir. 2009). A
3 “prohibitory injunction prohibits a party from taking action and preserves the
4 status quo pending a determination of the action on the merits.” *Id.* (citation
5 modified). “The status quo ante litem ... means the last, uncontested status which
6 preceded the pending controversy.” *Marlyn Nutraceuticals, Inc.*, 571 F.3d at
7 879 (internal quotation omitted).

8 Petitioner satisfies the criteria for a prohibitory injunction and the TRO
9 should be granted.

10
11 A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF
12 HIS CLAIMS.

13 Petitioner is likely to succeed on his claims that his October 1,
14 2025 detention by Respondents will violate the statute at 8 U.S.C. §
15 1231(a)(6), *Zadvydas v. Davis*, 533 U.S. 678 (2001), Due Process, and
16 governing regulations that require the government to establish that removal
17 is reasonably foreseeable once a noncitizen has already been held for more
18 than 180 days and cannot be removed.

19
20 1. Petitioner is Likely to Succeed on His Claim that His Re-
21 Detention Would Violate the Statute, Regulations, and Due
22 Process if Respondents Cannot Demonstrate that His Removal
is Reasonably Foreseeable

23 Respondent was already detained from 2004 to 2007 and was released from
24 custody because he could not be removed from the United States. Tolchin Dec.
25 Exh. *. The Immigration and Nationality Act authorizes a post-removal-period
26 detention of six months to allow the United States to effectuate removal. 8 U.S.C. §
27 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001). Once removal is no longer
28 foreseeable, it is a violation of 8 U.S.C. § 1231(a)(6) and Due Process to hold a

1 noncitizen in immigration detention. The Administrative Procedure Act (APA)
2 provides that a court shall hold unlawful and set aside an agency action that is “in
3 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”
4 5 U.S.C. § 706(2)(C).

5 *Zadvydas* places the initial burden on the alien to show, after a detention
6 period of six months, that there is “good reason to believe that there is no
7 significant likelihood of removal in the reasonably foreseeable future. *Pelich v.*
8 *I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003). Petitioner was already detained for
9 more than six months in from 2004 to 2007 and was released from custody because
10 he could not be removed. He established in 2007 that there was not a significant
11 likelihood of removal.

12 The burden is now on the government to prove that Petitioner has a
13 significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §
14 241.13(i). *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4
15 (D. Minn. Aug. 25, 2025) (“the regulations at issue in this case place the burden on
16 ICE to first establish changed circumstances that make removal significantly likely
17 in the reasonably foreseeable future.” That period does not just automatically reset.
18 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash.
19 Aug. 21, 2025); *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6
20 (N.D. Cal. Apr. 19, 2018). The government has not met that burden. Petitioner’s
21 scheduled detention on October 1, 2025 is a violation of 8 U.S.C. § 1231(a)(6) and
22 Due Process. No evidence was provided that Petitioner’s removal was now
23 reasonably foreseeable. Tolchin Dec. Exh. F.

24
25 2. Petitioner is Likely to Succeed on His Re-Detention Would
26 Violate the “Changed Circumstances” Regulations
27
28

1 In addition, the regulations also address the requirement that immigration
2 authorities may only re-detain an individual who was released from custody if
3 there are changed circumstances which now provide that removal is reasonably
4 foreseeable. DHS regulations authorize the revocation of an order of release only
5 when “if, on account of changed circumstances, the Service determines that there is
6 a significant likelihood that the alien may be removed in the reasonably foreseeable
7 future.” 8 C.F.R. § 241.13(i)(2). The APA provides that a court shall hold unlawful
8 and set aside an agency action that is “without observance of procedure required by
9 law.” 5 U.S.C. § 706(2)(D). An agency’s failure to follow its regulations that are
10 meant to protect fundamental rights is a violation of due process. *Accardi v.*
11 *Shaughnessy*, 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc.*
12 *v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998). The regulation at 8 C.F.R.,
13 § 241.13(i)(2) is designed to protect the fundamental interest of liberty, and the
14 failure to follow the regulation is a violation of due process.

15 As discussed above, this regulation places the burden on the government to
16 demonstrate that there are new circumstances which now establish that removal is
17 reasonably foreseeable, consistent with the requirements of *Zadvydas*. *See also*
18 *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn.
19 Aug. 25, 2025) (the burden falls on the government to change the present state of
20 affairs and it therefore must demonstrate changed circumstances).

21 Hence, the re-detention of Petitioner is a violation of 8 C.F.R. § 241.13(i)(2)
22 and Petitioner’s due process rights without evidence of changed circumstances that
23 Petitioner’s removal is reasonably foreseeable.

24
25 3. Petitioner is Likely to Succeed on His Re-Detention Would
26 Violate 8 C.F.R. § 241.4(l) and Due Process

27 Last, the regulations also have additional restrictions as to when release may
28 be revoked. The regulation at 8 C.F.R. § 241.4(l) authorizes the revocation of

1 release only where there has been a violation of the conditions of release or there
2 has been a determination by the Executive Associate Commissioner that “i) The
3 purposes of release have been served; (ii) The alien violates any condition of
4 release; (iii) It is appropriate to enforce a removal order or to commence removal
5 proceedings against an alien; or (iv) The conduct of the alien, or any other
6 circumstance, indicates that release would no longer be appropriate.” The APA
7 provides that a court shall hold unlawful and set aside an agency action that is
8 “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D). An
9 agency’s failure to follow its regulations that are meant to protect fundamental
10 rights is a violation of due process. *Accardi v. Shaughnessy*, 347 U.S. 260, 267, 74
11 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148,
12 1153 (9th Cir. 1998). The regulation at 8 C.F.R. § 241.13(i)(2) is designed to
13 protect the fundamental interest of liberty, and the failure to follow the regulation
14 is a violation of due process.

15 None of the circumstances under 8 C.F.R. § 241.4(l) have been met, in
16 violation of the regulation at 8 C.F.R. § 241.13(i)(3) and in violation of Due
17 Process. Alternatively, if such determinations have been met, Petitioner has not
18 been notified of such determinations in violation of due process. Nothing about the
19 notice issued to Petitioner stating that he will be detained for removal on October
20 1, 2025 addresses the conditions set forth in 8 C.F.R. § 241.4(l). Tolchin Dec. Exh.
21 A. *Perez-Escobar v. Moniz*, No. 25-CV-11781-PBS, 2025 WL 2084102, at *2 (D.
22 Mass. July 24, 2025) (“ICE’s failure to give Petitioner meaningful notice of the
23 basis for its revocation of his release violated the regulation and due process.”
24

25 B. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE
26 ABSENCE OF A TRO.

27 In the absence of a TRO, Petitioner will be detained on October 1, 2025.
28 Tolchin Dec. Exh. A. He has already been detained for five days and was only

1 released because litigation was filed in this Court, alleging that his detention was
2 in violation of the permanent injunction issued in *Chhoeun v. Marin*, 8:17-cv-
3 01898-CJC (GJSx) (C.D. Ca. Apr. 27, 2020). His wife and daughter have already
4 suffered substantial hardship due to his detention. Petitioner was arrested in front
5 of his daughter, which severely traumatized her. Tolchin Dec. Exh. F. In addition,
6 Petitioner’s wife is not able to maintain the household financially without
7 Petitioner’s help. *Id.* Further, Petitioner is very concerned about his wife and
8 daughter’s emotional well-being if he is detained. *Id.*

9 “Freedom from imprisonment—from government custody, detention, or
10 other forms of physical restraint—lies at the heart of the liberty” that the Due
11 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
12 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
13 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
14 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
15 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
16 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
17 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418
18 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
19 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
20 government’s current policies [which fail to consider financial ability to pay
21 immigration bonds] are likely unconstitutional—and thus that members of the
22 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
23 the absence of the injunction—that Plaintiffs have also carried their burden as to
24 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-
25 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
26 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
27 Petitioners’ continued detention without an initial bond hearing would cause
28

1 immediate and irreparable injury, as this violates statutory rights afforded under §
2 1226(a).”). Petitioner clearly demonstrates irreparable harm.

3
4 C. THE BALANCE OF EQUITIES TIPS IN PETITIONER’S FAVOR
AND A TRO IS IN THE PUBLIC INTEREST.

5 Because the government is a party, the balance of equities and whether the
6 injunction is in the public interest are considered together. *Nken v. Holder*, 556
7 U.S. 418, 435 (2009). Petitioner has established that the public interest factor
8 weighs in his favor because his claims assert violations of federal laws. *See Valle*
9 *del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because re-detention
10 after Petitioner has been detained in excess of 6 months and cannot be removed “is
11 inconsistent with federal law, . . . the balance of hardships and public interest
12 factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*,
13 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno*
14 *Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction
15 issued in *Moreno II* and quoting approvingly district judge’s declaration that “it is
16 clear that neither equity nor the public’s interest are furthered by allowing
17 violations of federal law to continue”). This is because “it would not be equitable
18 or in the public’s interest to allow the [government] . . . to violate the requirements
19 of federal law, especially when there are no adequate remedies available.” *Valle*
20 *del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in
21 original) (citation omitted). Indeed, Respondent “cannot suffer harm from an
22 injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d
23 1127, 1145 (9th Cir. 2013).

24
25 D. NO BOND IS NECESSARY

26 The Court has discretion to set the amount of security required for a
27 temporary restraining order or preliminary injunction under Rule 65(c), if
28 any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) Indeed, “[t]he

1 district court may dispense with the filing of a bond when it concludes there is no
2 realistic likelihood of harm to the defendant from enjoining his or her
3 conduct.” *Id.* (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003)).
4 Here, it is unlikely any harm will come to Respondents as a result of a grant of
5 temporary relief and Respondents will incur negligible or zero financial costs.
6 Petitioner asks the Court to exercise its discretion to waive the bond requirement.
7

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court should grant Petitioner’s *Ex Parte*
10 Application for a Temporary Restraining Order and Order to Show Cause and
11 order that Respondents not re-detain Petitioner absent evidence that he is
12 reasonably likely to be removed. Petitioner also asks that the Court return his
13 employment authorization document and driver’s license so that he may continue
14 to work and support his family.
15

16 Dated: September 23, 2025

Respectfully Submitted,

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