

1 **Minh Nhat Phan**

2 A# [REDACTED]

3 Otay Mesa Detention Center

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6 Pro Se¹

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BY s/ danielmartinez DEPUTY

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

10 **MINH NHAT PHAN,**

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.: '25CV2422 RBM MSB

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

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26 ¹ Mr. Phan is filing this petition for a writ of habeas corpus with the assistance of
27 the Federal Defenders of San Diego, Inc., who drafted the instant petition. That
28 same counsel also assisted the petitioner in preparing and submitting this request
for the appointment of counsel. 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 Minh Nhat Phan (“Petitioner”) faces immediate irreparable harm: (1) revocation of his release on immigration supervision, even though he has been peaceably living on an order of supervision for 25 years and ICE failed 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 25 years living free in the community on an order of supervision. He has not knowingly 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 September 5, 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 international agreements have applied to Petitioner’s removal since at least 2020. 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.

In granting this motion, this Court would not break new ground. Several courts have granted TROs or preliminary injunctions mandating release for post-

1 final-removal-order immigrants like Petitioner. *See Phetsadakone v. Scott*, 2025
2 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No.
3 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025)
4 (Vietnam); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735,
5 at *7 (E.D. Cal. July 16, 2025) (Vietnam); *Nhat v. Scott*, No. 2:25-CV-01398,
6 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025) (Vietnam). Several more
7 have ordered release² for petitioners whose immigration cases are still pending.
8 *See, e.g., Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at *2
9 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL
10 2607924, at *12 (D. Mass. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-
11 01141-KES-SKO (HC), 2025 WL 2617255, at *6 (E.D. Cal. Sept. 9, 2025). These
12 courts have determined that, for these long-term releasees, liberty is the status
13 quo, and only a return to that status quo can avert irreparable harm.

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

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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. Phan lived a law-abiding life for about 25 years, while ICE proved unable to remove him to Vietnam.

Minh Phan came to the United States as an eleven year-old in October 1981, fleeing the communist regime in Vietnam. Exh. A to Habeas Petition (“Phan Dec.”) at ¶ 1. Eight years later, when he was 19, he was convicted of attempted second-degree murder. *Id.* ¶ 2. He was later ordered removed in September 1996. *Id.* He was detained pending his removal. *Id.* at ¶ 5.

Removing him to Vietnam, however, was no simple task: Vietnam has a longstanding policy of not accepting pre-1995 Vietnamese immigrants for deportation or repatriation. *See infra*.

Nevertheless, INS detained Mr. Phan for almost four years while seeking his deportation. Mr. Phan did not resist his deportation. He fully cooperated with INS, and even suggested the Immigration Judge order him deported in the alternative to Australia, where he had family. *Id.* at ¶¶ 3–4. The Immigration Judge did order him deported to either Vietnam or Australia. *Id.* But Australia denied the request to accept Mr. Phan, and Vietnam apparently did not even respond. *See* Exh. D to Habeas Petition at 4 (Judge Keep’s summary of the INS’s unsuccessful four-year effort to deport Mr. Phan to Australia or Vietnam).

In the meantime, he and his extensive family continued to put down roots in the United States. His mother, father, and sisters are now U.S. citizens. Exh. A at ¶ 7. And Mr. Phan got married and had six children. *Id.* at ¶ 2. He checked in with INS and then ICE every year until 2021, when—as he understood it based on his deportation officer’s explanation—his case was closed and he no longer needed to report annually. *Id.* at ¶ 6. ICE has not told him otherwise, *id.*, even though has lived at the same address for at least the last 10 years, Exh. E to Habeas Petition. Yet on September 5, 2025, ICE arrested Mr. Phan at home. *Id.* at ¶ 9.

1 Mr. Phan had a heart attack late last year and now takes 11 medications to
2 control his cardiovascular condition. *Id.* at ¶ 8. Since he has been in ICE custody,
3 he has not been receiving all of these medications, putting his health at risk. *Id.*
4 He is also scheduled for a September 25 surgery to remove tumors in his neck, but
5 he does not know if OMDC will take him. *Id.*

6 There is an obvious reason why ICE has proved unable to remove
7 Petitioner for the last 29 years: Vietnam has a longstanding policy of not
8 accepting pre-1995 Vietnamese immigrants for deportation. As explained more
9 fully in a simultaneously filed habeas petition, the operative 2008 repatriation
10 treaty between Vietnam and the United States explicitly exempts pre-1995
11 Vietnamese immigrants, providing, “Vietnamese citizens are not subject or return
12 to Vietnam under this Agreement if they arrived in the United States before July
13 12, 1995.” Agreement Between the United States of America and Vietnam, at 2
14 (Jan. 22, 2008).³

15 Even under pressure from the first Trump administration, Vietnam has
16 rarely issued travel documents for these immigrants. “In total, between 2017 and
17 2019, ICE requested travel documents for pre-1995 Vietnamese immigrants 251
18 times. Vietnam granted those requests only 18 times, in just over seven percent of
19 cases.” *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1084 (C.D. Cal. 2020). In 2020,
20 the U.S. Memorandum of Understanding (“MOU”) with Vietnam, which created
21 a process for removing pre-1995 Vietnamese immigrants.⁴ But the MOU limited
22 such removals to persons meeting certain criteria, many of which have been
23 shielded from public view. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
24 2419288, at *14 (W.D. Wash. Aug. 21, 2025). Between September 2021 and
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27 ³ available at <https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf>

28 ⁴<https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf>.

1 September 2023, only four immigrants who came to the U.S. before 1995 were
2 given travel documents and deported, while 14 travel document requests were not
3 fulfilled. Asian Law Caucus, *Resources on Deportation of Vietnamese*
4 *Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025) (providing links to
5 all quarterly reports).⁵ Until June 2025, then, ICE followed a “policy of generally
6 finding that ‘pre-1995 Vietnamese immigrants’ . . . are not likely to be removed in
7 the reasonably foreseeable future.” Order on Joint Motion for Entry of Stipulated
8 Dismissal, *Trinh*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021).⁶

9 On June 9, 2025, the Trump administration rescinded ICE’s policy of
10 generally finding that pre-1995 Vietnamese immigrants were not likely to be
11 removed in the reasonably foreseeable future. *See Nguyen v. Scott*, No. 2:25-CV-
12 01398, 2025 WL 2419288, at *7 (W.D. Wash. Aug. 21, 2025). But since then,
13 several courts have granted *Zadvydas* petitions or injunctive relief for pre-1995
14 Vietnamese immigrants, finding that facts on the ground have not changed
15 enough to assure these detainees’ timely removal. *See Nguyen v. Scott*, No. 2:25-
16 CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025); *Hoac v.*
17 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
18 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D.
19 Mass. June 20, 2025).

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

22 When removable immigrants cannot be removed to their home country—
23 including Vietnamese immigrants—ICE has begun deporting those individuals to
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26 ⁵ <https://www.asianlawcaucus.org/news-resources/guides-reports/trinh-reports>

27 ⁶ <https://static1.squarespace.com/static/5f0cc12a064e9716d52e6052/t/618e99e5613d7372c1bb197e/1636735461479/Trinh+-+Doc+161+Order+Granting+Stip+Dismissal.pdf>.

1 third countries without adequate notice or a hearing. As explained in greater detail
2 in Petitioner's habeas petition, the Administration has reportedly negotiated with
3 countries to have many of these deportees imprisoned in prisons, camps, or other
4 facilities. For example, the government paid El Salvador about \$5 million to
5 imprison more than 200 deported Venezuelans in a maximum-security prison
6 notorious for gross human rights abuses, known as CECOT. Edward Wong et al,
7 *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times,
8 June 25, 2025. In February, Panama and Costa Rica took in hundreds of deportees
9 from countries in Africa and Central Asia and imprisoned them in hotels, a jungle
10 camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court*
11 *orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4,
12 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to
13 South Sudan. *See Wong, supra*. On July 15, ICE deported five men to the tiny
14 African nation of Eswatini, including one man from Vietnam, where they are
15 reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US*
16 *held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2,
17 2025). Many of these countries are known for human rights abuses or instability.
18 For instance, conditions in South Sudan are so extreme that the U.S. State
19 Department website warns Americans not to travel there, and if they do, to
20 prepare their will, make funeral arrangements, and appoint a hostage-taker
21 negotiator first. *See Wong, supra*.

22 On June 23 and July 3, 2025, in light of procedural arguments regarding the
23 viability of national class-wide relief rather than individual relief, the Supreme
24 Court issued a stay of a class-wide preliminary injunction issued in *D.V.D. v. U.S.*
25 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968,
26 at *1, 3 (D. Mass. Apr. 18, 2025). That national injunction had required ICE to
27 follow the statutory and constitutional requirements before removing an
28 individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct.

1 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).
2 On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a
3 “‘meaningful opportunity’ to assert claims for protection under the Convention
4 Against Torture (CAT) before initiating removal to a third country” like the ones
5 just described. Exh. B to Habeas Petition.

6 Under the new guidance, ICE may remove any immigrant to a third country
7 “without the need for further procedures,” as long as—in the view of the State
8 Department—the United States has received “credible” “assurances” from that
9 country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails
10 to credibly promise not to persecute or torture releasees, ICE may still remove
11 immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
12 notice. But “[i]n exigent circumstances,” a removal may take place in as little as
13 six hours, “as long as the alien is provided reasonably means and opportunity to
14 speak with an attorney prior to the removal.” *Id.* Upon serving notice, ICE “will
15 not affirmatively ask whether the alien is afraid of being removed to the country
16 of removal.” *Id.* (emphasis original). Depending on whether immigrants assert a
17 credible fear, they will either be removed or screened by USCIS for withholding
18 or removal or Convention Against Torture (“CAT”) relief within 24 hours. *Id.* If
19 USCIS determines that an individual does not qualify, they will be removed there
20 despite asserting fear. *Id.*

21 Argument

22 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
23 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
24 relief, that the balance of equities tips in his favor, and that an injunction is in the
25 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
26 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
27 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
28 “substantially identical” analysis). A “variant[] of the same standard” is the

1 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
2 going to the merits—a lesser showing than likelihood of success on the merits—
3 then a preliminary injunction may still issue if the balance of hardships tips
4 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
5 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
6 (internal quotation marks omitted). Under this approach, the four *Winter* elements
7 are “balanced, so that a stronger showing of one element may offset a weaker
8 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
9 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
10 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
11 long as the other *Winter* factors are met. *Id.* at 1132.

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

19
20 **I. Petitioner is likely to succeed on the merits, or at a minimum, raises serious merits questions.**

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

22 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
23 a problem affecting people like Mr. Phan: Federal law requires ICE to detain an
24 immigrant during the “removal period,” which typically spans the first 90 days
25 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that
26 90-day removal period expires, ICE may detain the migrant while continuing to
27 try to remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow
28 for “indefinite, perhaps permanent, detention,” it would pose “a serious

1 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court
2 avoided the constitutional concern by interpreting the federal detention statute to
3 incorporate implicit limits. *Id.* at 689.

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

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

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

16 Here, Petitioner was ordered removed more than 6 months ago, as his
17 removal order became final in 1996. He has also been detained for almost four
18 years. Thus, it is clear that the *Zadvydas* grace period has ended.

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

21 *First*, as explained above, Vietnam generally does not accept pre-1995
22 Vietnamese immigrants for deportation. Even after Vietnam signed the 2020 MOU,
23 ICE had to admit that there was no reasonable likelihood of removing such
24 immigrants in the reasonably foreseeable future—an admission that statistics amply
25 backed up. Though the Trump administration rescinded this admission, there is no
26 evidence that facts on the ground have changed. Thus, several courts have found
27 that these barriers likely continue to obstruct removal for people like Petitioner. *See*
28

1 *Nguyen*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771; *Nguyen*, 2025 WL
2 1725791.

3 *Second*, Petitioner's own experience bears this out. ICE has now had 29 years
4 to deport him, including 5 years under the MOU. He has fully cooperated with
5 ICE's removal efforts throughout that time. Yet ICE has proved unable to remove
6 him. There is no evidence that anything has changed in Petitioner's particular case.

7 Finally, Petitioner's criminal history cannot change this equation. Not only
8 has Petitioner proved that he poses no danger or flight risk, as he has spent about
9 25 years in the community without issue. Exh. A at ¶ 6. *Zadvydas* also squarely
10 prohibits ICE from indefinitely detaining immigrants because they pose risks of
11 danger or flight. 533 U.S. at 684–91.

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

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

15 In addition to *Zadvydas*'s protections, a series of regulations provide extra
16 process for someone who, like Petitioner, is re-detained following a period of
17 release. Under 8 C.F.R. § 241.4(*I*), ICE may re-detain an immigrant on
18 supervision only with an interview and a chance to contest a re-detention. Judge
19 Keep released Mr. Phan pursuant to § 241.4, thereby incorporating its procedural
20 protections. *See* Exhibit B to Habeas Petition at 2.

21 When an immigrant is specifically released after giving good reason why
22 they cannot be removed, additional regulations apply: ICE may revoke a
23 noncitizen's release and return them to ICE custody due to failure to comply with
24 conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed
25 circumstances," a noncitizen likely can now be removed in the reasonably
26 foreseeable future. *Id.* § 241.13(i)(2).

27 The regulations further provide noncitizens with a chance to contest a re-
28 detention decision. ICE must "notif[y] [the person] of the reasons for revocation

1 of his or her release.” *Id.* § 241.13(i)(3). ICE must then “conduct an initial
2 informal interview promptly” after re-detention “to afford the alien an opportunity
3 to respond to the reasons for revocation stated in the notification.” *Id.* During the
4 interview, the person “may submit any evidence or information” showing that the
5 prerequisites to re-detention have not been met, and the interviewer must evaluate
6 “any contested facts.” *Id.*

7 ICE is required to follow its own regulations. *United States ex rel. Accardi*
8 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
9 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
10 abide by certain internal policies is well-established.”). A court may review a re-
11 detention decision for compliance with the regulations. *See Phan v. Beccerra*, No.
12 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nhat v.*
13 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
14 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

15 None of the prerequisites to detention apply here. Petitioner did not
16 knowingly violate the conditions of his release. And there are no changed
17 circumstances that justify re-detaining him. The same treaty and same MOU still
18 apply, as they have for the last 5 years. ICE has given Petitioner no indication that
19 agents have a travel document in hand for him. Of course, ICE may be planning to
20 renew their request for a travel document from Vietnam. But absent any evidence
21 for “why obtaining a travel document is more likely this time around[,]”
22 Respondents’ intent to eventually complete a travel document request for Petitioner
23 does not constitute a changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-
24 01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v.*
25 *Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)).
26 Finally, Mr. Phan has not received the interview required by regulation. Phan Dec.
27 at ¶ 10. No one from ICE has ever invited him to submit evidence to contest his
28 detention. *Id.*

1 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
2 the applicable regulations,” this Court will likely find that “petitioner is entitled to
3 his release” on an order of supervision. *Liu*, 2025 WL 1696526, at *3; *see also*
4 *Edmund Girgorian v. Pamela Bondi*, No. 25-cv-22914-RAR, 2025 WL 2604573
5 (S.D. Fl. Sept. 9, 2025) (granting a habeas petition for a re-detained immigrant in
6 light these regulatory violations, and collecting nine cases from “[c]ourts around
7 the country” that “have concluded likewise”).

8
9 **C. Petitioner is likely to succeed on the merits of his claim that he is**
10 **entitled to adequate notice and an opportunity to be heard prior**
11 **to any third country removal.**

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

15 U.S. law enshrines protections against dangerous and life-threatening
16 removal decisions. By statute, the government is prohibited from removing an
17 immigrant to any third country where a person may be persecuted or tortured, a
18 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
19 The government “may not remove [a noncitizen] to a country if the Attorney
20 General decides that the [noncitizen’s] life or freedom would be threatened in that
21 country because of the [noncitizen’s] race, religion, nationality, membership in a
22 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
23 1208.16. Withholding of removal is a mandatory protection.

24 Similarly, Congress codified protections enshrined in the CAT prohibiting
25 the government from removing a person to a country where they would be tortured.
26 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of
27 the United States not to expel, extradite, or otherwise effect the involuntary return
28 of any person to a country in which there are substantial grounds for believing the
person would be in danger of being subjected to torture, regardless of whether the

1 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
2 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

10 Due process also demands that the government “ask the noncitizen whether
11 he or she fears persecution or harm upon removal to the designated country and
12 memorialize in writing the noncitizen’s response. This requirement ensures DHS
13 will obtain the necessary information from the noncitizen to comply with section
14 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said].” *Aden*,
15 409 F. Supp. 3d at 1019. “Failing to notify individuals who are subject to
16 deportation that they have the right to apply for asylum in the United States and for
17 withholding of deportation to the country to which they will be deported violates
18 both INS regulations and the constitutional right to due process.” *Andriasian*, 180
19 F.3d at 1041.

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

1 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
2 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
3 for good reason: To have a meaningful opportunity to apply for fear-based
4 protection from removal, immigrants must have time to prepare and present
5 relevant arguments and evidence. Merely telling a person where they may be sent,
6 without giving them a chance to look into country conditions, does not give them a
7 meaningful chance to determine whether and why they have a credible fear.

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

20 Faced with similar arguments, several courts have recently granted
21 individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210;
22 *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL
23 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

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

25 Petitioner also meets the second factor, irreparable harm. “It is well
26 established that the deprivation of constitutional rights ‘unquestionably constitutes
27 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
28

(quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).

Here, the potential irreparable harm to Petitioner is even more concrete. “Unlawful detention certainly constitutes ‘extreme or very serious damage, and that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). And Mr. Phan’s medical condition amplifies the problem, as he is not receiving all necessary medication and has been given no assurances that a scheduled tumor removal surgery will proceed as planned. Exh. A at ¶ 8.

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

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

The final two factors for a TRO—the balance of hardships and public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On the one hand, the government “cannot reasonably assert that it is harmed in any legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens “from being wrongfully

1 removed, particularly to countries where they are likely to face substantial harm”);
2 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019)
3 (when government’s treatment “is inconsistent with federal law, . . . the balance of
4 hardships and public interest factors weigh in favor of a preliminary injunction.”).
5 On the other hand, Petitioner faces weighty hardships: unlawful, indefinite
6 detention, interruption of medical treatment, and removal to a third country where
7 he is likely to suffer imprisonment or other serious harm. The balance of equities
8 thus favors preventing the violation of “requirements of federal law,” *Arizona*
9 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting
10 emergency relief to protect against unlawful detention and prevent unlawful third
11 country removal.

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

14 Before filing this motion, proposed counsel called the U.S. Attorney’s Office
15 and was put in touch with Janet Cabral. *See* Exhibit A, Declaration of Katie
16 Hurrelbrink, at ¶ 2. Ms. Cabral requested that proposed counsel email her a copy of
17 any TRO motions filed during immigration habeas litigation, which has been done.
18 *Id.* Federal Defenders will also cause the motion to be served by hand delivery per
19 the attached certificate of service. *Id.*

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

25 //
26 //
27 //
28 //

Conclusion

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

DATED: 9-14-2025

Respectfully submitted,



MINH NHAT PHAN

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
ATTN: Janet Cabral
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 9/16/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Minh Nhat Phan**

2 A#

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se

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

9 MINH NHAT PHAN,

10 Petitioner,

11 v.

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

21 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. Phan'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. Phan in drafting all necessary documents.
- 8 2. On September 12, 2025, before assisting re-detained *Zadvydas* releasees
9 with filing motions for a temporary restraining order ("TRO"), I spoke
10 with Janet Cabral at the U.S. Attorney's Office and notified her of our
11 intent to file TROs. She provided me with email addresses to which I
12 could direct copies of the TROs to provide her office with notice. I have
13 followed her instructions. I have also caused this motion and all
14 associated documents to be formally served on her office's Civil
15 Division by hand delivery, as set forth in the certificates of service.

16 I declare under penalty of perjury that the foregoing is true and correct,
17
18 executed on September 16, 2025, in San Diego, California.

19
20 /s/ Katie Hurrelbrink

21 **KATIE HURRELBRINK**

22 Declarant
23
24
25
26
27
28