

1 **Tai Truong**

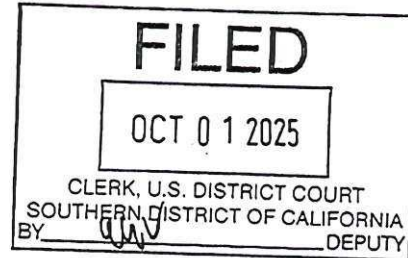
2 A# [REDACTED]

3 Otay Mesa Detention Center

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

10 TAI TRUONG,

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.: '25CV2597 JES MMP

23 **Notice of Motion**
24 **and**
25 **Memorandum of Law**
26 **in Support of**
27 **Temporary Restraining Order**

28 ¹ Mr. Truong is filing this motion and all associated documents with the assistance of the Federal Defenders of San Diego, Inc. That same counsel also assisted the petitioner in preparing and submitting his request 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 Kara Hartzler in Support of Appointment Motion attaches case examples.

Introduction

Petitioner Tai Truong ("Petitioner") faces immediate irreparable harm:

(1) removal to Laos on the basis of a conviction that may imminently be vacated; (2) detention that prevents him from effectively litigating his motion to reopen and resolving his affairs; and (3) potential removal to a third country never considered by an IJ. This Court should grant temporary relief.

Tai Truong is a citizen of Laos who is currently detained in Otay Mesa Detention Center. In 1979, Mr. Truong came to the United States and became a lawful permanent resident soon after. In 2015, he was ordered removed on the basis of a California sex offense. But on September 8, 2025, an attorney filed a motion to vacate this conviction in California Superior Court. A hearing on that motion is scheduled for October 2, 2025.

ICE has travel documents for Mr. Truong and has informed him that he is scheduled to be deported to Laos soon. Without immediate relief, it is almost certain that he will be removed before his motions to vacate his conviction and reopen his immigration case are adjudicated.

The requested temporary restraining order ("TRO") would preserve the status quo while Petitioner litigates these claims by (1) preventing ICE from removing Mr. Truong while his motions to vacate and reopen are pending, (2) releasing him from detention to allow him to litigate this motion and resolve his affairs; and (3) prohibiting the government from removing him to a third country during this process.

In granting this motion, this Court would not break new ground. Several years ago, a district court judge in Los Angeles granted a class of petitioners from Cambodia the same relief, prohibiting ICE from removing them without the opportunity to file a motion to reopen and have that motion adjudicated. *See Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1151 (C.D. Cal. 2018) (attached to habeas petition as Exhibit B). Two years later, the same judge enjoined ICE from

1 re-detaining class members without complying with the agency's own regulations.
2 *See Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020) (attached
3 to habeas petition as Exhibit C). Other courts have likewise granted temporary
4 restraining orders preventing third-country removals without due process. *See*,
5 *e.g., J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30,
6 2025); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D.
7 Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D.
8 Cal. June 26, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
9 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-
10 DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025). Petitioner therefore
11 respectfully requests that this Court grant this TRO.

12 Statement of Facts

13 I. Mr. Truong was a lawful permanent resident who was ordered 14 deported on the basis of a California sex offense.

15 Tai Truong and his family entered the United States from Laos in 1979 as
16 refugees. Truong Declaration at ¶ 1 (attached to habeas petition as Exhibit A).
17 Mr. Truong became a lawful permanent resident and remained so until 2015,
18 when he was ordered removed due to a California sex offense. *Id.* at ¶ 2. After he
19 was ordered removed, ICE detained him for approximately five months. *Id.* at ¶ 3.
20 But when ICE was unable to deport him to Laos after five months, he was
21 released on an order of supervision. *Id.* at ¶ 3.

22 For the next decade, Mr. Truong remained in the United States on this order
23 of supervision. During this time, he was not rearrested by immigration officials
24 and had no new criminal convictions. *Id.* at ¶ 4.

25 II. Mr. Truong is detained and files a motion to vacate his prior 26 conviction.

27 On July 12, 2025, as Mr. Truong was on the way to his father's funeral,
28 four unmarked vehicles pulled him over. *Id.* at ¶ 5. ICE officers arrested him and

1 held him at the downtown ICE office for several days before transferring him to
2 the Otay Mesa Detention Center. *Id.* at ¶ 5.

3 Within a week of his detention, Mr. Truong began trying to contact
4 criminal attorneys who could assist him to vacate his California conviction. *Id.* at
5 ¶ 7. He was finally able to retain a lawyer named Michael Hawkins, who filed a
6 motion to vacate his criminal conviction on September 8, 2025. *Id.* A hearing is
7 scheduled on this motion on October 2, 2025. *Id.*

8 In the meantime, ICE began trying to obtain travel documents that would
9 allow it to effectuate Mr. Truong's removal order. On September 24, 2025, a
10 deportation officer told Mr. Truong that they had obtained his travel documents
11 and he would be deported soon. *Id.* at ¶ 6.

12 **III. The government is carrying out deportations to third countries**
13 **without providing sufficient notice and opportunity to be heard.**

14 As explained in greater detail in Petitioner's habeas petition, the
15 Administration has reportedly negotiated with countries to have deportees sent to
16 third countries. For example, the government paid El Salvador about \$5 million to
17 imprison more than 200 deported Venezuelans in a maximum-security prison
18 notorious for gross human rights abuses, known as CECOT. Edward Wong et al,
19 *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times,
20 June 25, 2025. In February, Panama and Costa Rica took in hundreds of deportees
21 from countries in Africa and Central Asia and imprisoned them in hotels, a jungle
22 camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court*
23 *orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4,
24 2025, ICE deported eight men to South Sudan. *See Wong, supra*. On July 15, ICE
25 deported five men to the tiny African nation of Eswatini, where they are
26 reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US*
27 *held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2,
28 2025). Many of these countries are known for human rights abuses or instability.

1 For instance, conditions in South Sudan are so extreme that the U.S. State
2 Department website warns Americans not to travel there, and if they do, to
3 prepare their will, make funeral arrangements, and appoint a hostage-taker
4 negotiator first. *See Wong, supra*.

5 On June 23 and July 3, 2025, in light of procedural arguments regarding the
6 viability of national class-wide relief rather than individual relief, the Supreme
7 Court issued a stay of a class-wide preliminary injunction issued in *D.V.D. v. U.S.*
8 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968,
9 at *1, 3 (D. Mass. Apr. 18, 2025). That national injunction had required ICE to
10 follow the statutory and constitutional requirements before removing an
11 individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct.
12 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).
13 On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a
14 “‘meaningful opportunity’ to assert claims for protection under the Convention
15 Against Torture (CAT) before initiating removal to a third country” like the ones
16 just described. Exh. B to Habeas Petition.

17 Under the new guidance, ICE may remove any immigrant to a third country
18 “without the need for further procedures,” as long as—in the view of the State
19 Department—the United States has received “credible” “assurances” from that
20 country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails
21 to credibly promise not to persecute or torture releasees, ICE may still remove
22 immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
23 notice. But “[i]n exigent circumstances,” a removal may take place in as little as
24 six hours, “as long as the alien is provided reasonably means and opportunity to
25 speak with an attorney prior to the removal.” *Id.* Upon serving notice, ICE “will
26 not affirmatively ask whether the alien is afraid of being removed to the country
27 of removal.” *Id.* (emphasis original). Depending on whether immigrants assert a
28 credible fear, they will either be removed or screened by USCIS for withholding

1 or removal or Convention Against Torture (“CAT”) relief within 24 hours. *Id.* If
2 USCIS determines that an individual does not qualify, they will be removed there
3 despite asserting fear. *Id.*

4 **Argument**

5 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
6 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
7 relief, that the balance of equities tips in his favor, and that an injunction is in the
8 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
9 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
10 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
11 “substantially identical” analysis). A “variant[] of the same standard” is the
12 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
13 going to the merits—a lesser showing than likelihood of success on the merits—
14 then a preliminary injunction may still issue if the balance of hardships tips
15 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
16 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
17 (internal quotation marks omitted). Under this approach, the four *Winter* elements
18 are “balanced, so that a stronger showing of one element may offset a weaker
19 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
20 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
21 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
22 long as the other *Winter* factors are met. *Id.* at 1132.

23 Here, this Court should issue a temporary restraining order because
24 “immediate and irreparable injury . . . or damage” is occurring and will continue
25 in the absence of an order. Fed. R. Civ. P. 65(b). Mr. Truong was ordered
26 removed on the basis of a conviction that may be vacated in a matter of days. But
27 ICE has told him that they will soon be putting him on a flight to Laos. This does
28 not provide him sufficient opportunity to receive a decision on his motion to

1 vacate and reopen his immigration proceedings. What's more, Respondents re-
2 detained Petitioner in violation of his due process, statutory, and regulatory rights,
3 preventing him from effectively litigating his motion to reopen and resolving his
4 affairs. ICE policy also allows them to remove him to a third country in violation
5 of his due process, statutory, and regulatory rights. This Court should grant
6 Petitioner a stay of removal to adjudicate his motions, order Petitioner's release,
7 and enjoin removal to a third country with no or inadequate notice.

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

10 **A. Petitioner is likely to succeed on the merits of his claim that**
11 **procedural due process prevents his removal during the**
adjudication of his motions to vacate and reopen his case.

12 Mr. Truong was a lawful permanent resident who was removed solely on
13 the basis of a California sex offense. But a state court judge is currently
14 considering whether to vacate that conviction and will likely be issuing a decision
15 in the next few days. If this happens, Mr. Truong could be restored to the status of
16 a lawful permanent resident. Procedural due process prevents the government
17 from removing him while his motions to vacate and reopen his immigration
18 proceedings are adjudicated.

19 That is precisely what the district court in *Chhoeun v. Marin*, 306 F. Supp.
20 3d 1147 (C.D. Cal. 2018), concluded. In *Chhoeun*, a class of Cambodian nationals
21 subject to old removal orders who ICE abruptly detained and threatened with
22 imminent deportation challenged the government's conduct as a violation of Due
23 Process, seeking a stay of removal so that they could pursue their motions to
24 reopen. *Id.* at 1151. Applying the procedural due process test in *Mathews v.*
25 *Eldridge*, 424 U.S. 319, 332 (1976), the court granted the petitioners' motion for a
26 temporary restraining order, as well as a preliminary injunction. *Id.* at 1159–63.

27 In balancing the familiar three *Mathews v. Eldridge* factors—the private
28 interest affected, the risk of erroneous deprivation, and the government's

1 interest—the court concluded that the factors weighed in favor of the petitioners.
2 First, the court found they “clearly have a strong liberty interest in remaining in
3 this country” because they “grown up in our communities, obtained gainful and
4 productive employment, and raised families of their own.” *Id.* at 1159-60. Second,
5 the court found that “the manner in which Petitioners were detained and the
6 conditions of detention have made it prohibitively difficult for Petitioners with
7 meritorious challenges to file motions to reopen”; thus, the petitioners “are at risk
8 of an erroneous deprivation of liberty *now*, if they are not afforded additional time
9 to file and litigate motions to reopen.” *Id.* at 1161. Finally, the court found that
10 “the relief that Petitioners seek does not materially impinge on the Government’s
11 interests” because it required only a short delay. *Id.* Thus, the court granted relief,
12 holding that their removals be enjoined for 60 days to allow the petitioners to file
13 motions to reopen and extending that stay through the adjudication of the motions
14 for those who filed. *Id.* at 1151.

15 Here, the balancing of the factors is similar to *Chhoeun*. Mr. Truong has
16 been in the United States for 45 years and has a strong interest in not being
17 removed. Moreover, the risk of erroneous deprivation of this interest is high
18 because ICE has told Mr. Truong it has travel documents for him and he’ll be
19 deported to Laos soon—even though he may no longer be convicted of the
20 offense underlying his removal order. Finally, any inconvenience to the
21 government is minimal—Mr. Truong seeks only a short delay to have a chance to
22 adjudicate his motions to vacate and reopen. Because these factors weigh heavily
23 in Mr. Truong’s favor, he is likely to succeed on the merits of his claim.

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

26 ICE’s own regulations provide extra process for someone who, like
27 Petitioner, is re-detained following a period of release. Under 8 C.F.R. § 241.4(l),
28 ICE may re-detain an immigrant on supervision only with an interview and a

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

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

15 ICE is required to follow its own regulations. *United States ex rel. Accardi*
16 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*, 384 F.3d 1150,
17 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
18 abide by certain internal policies is well-established."). A court may review a re-
19 detention decision for compliance with the regulations. See *Phan v. Beccerra*, No.
20 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v.*
21 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
22 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

23 None of the prerequisites to detention apply here. ICE did not claim that
24 Petitioner violated the conditions of his release. Nor did ICE provide the required
25 interview or opportunity to contest his removal. This is precisely why the district
26 court in *Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020),
27 enjoined ICE from detaining a class of Cambodian petitioners. Applying the
28 three-factor *Mathews v. Eldridge* test, the court explained that notice of detention

1 “provides great value,” including giving the individual “an opportunity to contact
2 an attorney, gather any documents they have, make FOIA requests for other
3 documents, say goodbye to their families and loved ones, and wrap up their
4 affairs, including ensuring adequate childcare and notifying their employers.” *Id.*
5 at 1249. Echoing the concerns here, the court determined that “[t]he extraordinary
6 circumstances of this case—including the long-dormant removal orders, changes
7 in the law and in Petitioners’ lives, the sudden and unexpected threat of removal,
8 and the barriers to accessing attorneys and documents while in detention—have
9 undermined Petitioners’ ability to avail themselves of the administrative
10 procedures in place to protect them from erroneous removals.” *Id.* at 1251. Thus,
11 individuals must be released so they have “adequate time and opportunity to
12 contact attorneys and access the system that has been constructed to prevent
13 erroneous removals.” *Id.*

14 Other courts have released re-detained immigrants after finding that ICE
15 failed to comply with applicable regulations. *Ceesay v. Kurzdorfer*, 781 F. Supp.
16 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463
17 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017);
18 *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y.
19 Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267,
20 at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT,
21 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-
22 cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025
23 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1
24 (S.D.N.Y. Mar. 31, 2025). “[B]ecause officials did not properly revoke
25 petitioner’s release pursuant to the applicable regulations, that revocation has no
26 effect, and [Mr. Truong] is entitled to his release (subject to the same Order of
27 Supervision that governed his most recent release).” *Liu*, 2025 WL 1696526, at
28 *3. Thus, Mr. Truong is likely to succeed on the merits of his claim for release.

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

4 Finally, Petitioner is likely to succeed on the merits of his claim that he
5 may not be removed to a third country absent adequate notice and an opportunity
6 to be heard. U.S. law enshrines protections against dangerous and life-threatening
7 removal decisions. By statute, the government is prohibited from removing an
8 immigrant to any third country where a person may be persecuted or tortured, a
9 form of protection known as withholding of removal. *See* 8 U.S.C.

10 § 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if
11 the Attorney General decides that the [noncitizen’s] life or freedom would be
12 threatened in that country because of the [noncitizen’s] race, religion, nationality,
13 membership in a particular social group, or political opinion.” *Id.*; *see also* 8
14 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

15 Similarly, Congress codified protections in the CAT prohibiting the
16 government from removing a person to a country where they would be tortured.
17 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy
18 of the United States not to expel, extradite, or otherwise effect the involuntary
19 return of any person to a country in which there are substantial grounds for
20 believing the person would be in danger of being subjected to torture, regardless
21 of whether the person is physically present in the United States.”); 28 C.F.R.
22 § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is mandatory.

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

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

10 If the noncitizen claims fear, measures must be taken to ensure that the
11 noncitizen can seek asylum, withholding, and relief under CAT before an
12 immigration judge in reopened removal proceedings. The amount and type of
13 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
14 circumstances, he would have a reasonable opportunity to raise and pursue his
15 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
16 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
17 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring a
18 minimum of 15 days’ notice). “[L]ast minute” notice of the country of removal
19 will not suffice, *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed.
20 App’x 724 (9th Cir. 2016), and for good reason: To have a meaningful
21 opportunity to apply for fear-based protection, immigrants must have time to
22 prepare and present relevant arguments and evidence. Merely telling a person
23 where they may be sent does not give them a meaningful chance to determine
24 whether and why they have a credible fear.

25 Respondents’ third country removal program skips over these statutory and
26 constitutional procedural protections. According to ICE’s July 7 guidance,
27 individuals can be removed to third countries “without the need for further
28 procedures,” so long as “the [U.S.] has received diplomatic assurances.” Exh. B to

1 Habeas Petition at 1. Petitioner is likely to succeed on the merits of his claim on
2 this fact alone, because the policy instructs officers to provide no notice or
3 opportunity to be heard. The same is true of the minimal procedures ICE offers
4 when no diplomatic assurances are present. The policy provides no meaningful
5 notice (6-24 hours), instructs officers *not* to ask about fear, and provides no actual
6 opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone
7 reopen removal proceedings. Faced with similar arguments, several courts have
8 recently granted individual TROs against removal to third countries. *See J.R.*,
9 2025 WL 1810210; *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438;
10 *Hoac*, 2025 WL 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

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

12 Petitioner also meets the second factor, irreparable harm. “It is well
13 established that the deprivation of constitutional rights ‘unquestionably constitutes
14 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
15 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged
16 deprivation of a constitutional right is involved, most courts hold that no further
17 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
18 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
19 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

20 Here, the potential irreparable harm to Petitioner is even more concrete.
21 After living in the United States for 45 years, Mr. Truong is at imminent risk of
22 being removed on the basis of a conviction that has been vacated, without the
23 opportunity to have his motion to reopen be adjudicated. What’s more,
24 “[u]nlawful detention certainly constitutes ‘extreme or very serious damage, and
25 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d
26 976, 999 (9th Cir. 2017). And third-country deportations pose the risk of being
27 held indefinitely in hazardous foreign prisons. *See Wong et al., supra*. These and
28 other threats to Petitioner independently constitute irreparable harm.

1 **III. The balance of hardships and the public interest weigh heavily in**
2 **petitioner's favor.**

3 The final two factors for a TRO—the balance of hardships and public
4 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
5 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor. All
6 Mr. Truong seeks is the chance to have his motion to reopen adjudicated before he
7 is removed. The government “cannot reasonably assert that it is harmed in any
8 legally cognizable sense” by being compelled to make sure he is not deported on
9 the basis of a legal error. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).
10 Moreover, it is always in the public interest to prevent individuals from being
11 “wrongfully removed.” *Nken*, 556 U.S. at 436; *see also Moreno Galvez v.*
12 *Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government's
13 treatment “is inconsistent with federal law, . . . the balance of hardships and
14 public interest factors weigh in favor of a preliminary injunction.”). On the other
15 hand, Petitioner faces weighty hardships: wrongful removal, unlawful detention,
16 and removal to a third country where he is likely to suffer imprisonment or
17 serious harm. The balance of equities thus weighs in his favor.

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

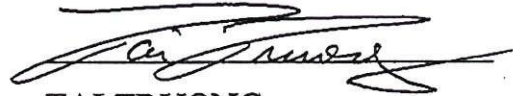
20 Upon filing this motion, proposed counsel emailed Janet Cabral, from the
21 United States Attorney's Office, notice of this request for a temporary restraining
22 and all the filings associated with it. Additionally, Petitioner requests that this
23 TRO remain in place until the habeas petition is decided. Fed. R. Civ. Pro.
24 65(b)(2). Good cause exists, because the same considerations will continue to
25 warrant injunctive relief throughout this litigation, and habeas petitions must be
26 adjudicated promptly. *See In re Habeas Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y.
27 2003). A proposed order is attached.
28

1 **Conclusion**

2 For those reasons, Petitioner requests that this Court order the respondents
3 to issue a temporary restraining order.
4

5 DATED: 9/17/2025

Respectfully submitted,

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9 TAI TRUONG

10 Petitioner
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PROOF OF SERVICE

I, the undersigned, caused to be served the within Motion for a Temporary

Restraining Order by email to:

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

Date: 10-1-25


Kara Hartzler