

1 **Zandra Luz Lopez**
2 California Bar No. 216567
3 **Federal Defenders of San Diego, Inc.**
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Zandra_Lopez@fd.org
9 Attorneys for Mr. Acha

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 **DESMOND ACHALEFAC ACHA,**

14 **Petitioner,**

15 **v.**

16 **KRISTI NOEM, Secretary of the**
17 **Department of Homeland Security,**
18 **PAMELA JO BONDI, Attorney General,**
19 **TODD M. LYONS, Acting Director,**
20 **Immigration and Customs Enforcement,**
21 **JESUS ROCHA, Acting Field Office**
22 **Director, San Diego Field Office,**
23 **Warden at IMPERIAL REGIONAL**
24 **ADULT DET FAC**

25 **Respondents.**

26 **CASE NO.: '26CV1289 JO MSB**

27 **Notice of Motion**
28 **and**
Memorandum of Law
in Support of
Temporary Restraining Order

1 **I. Introduction**

2 Petitioner has simultaneously filed a petition for writ of habeas corpus
3 under 28 U.S.C. § 2241 (“Habeas Petition”). In the Habeas Petition, Petitioner
4 asserts that his continued detention violates the Fifth Amendment’s Due Process
5 Clause. He alleges because 6 months have passed since his final order of removal
6 and there is no significant likelihood of removal in the reasonably foreseeable
7 future, his continued detention is a violation his due process rights under
8 *Zadvydas v. Davis*, 533 U.S. 678 (2001). He also alleges that ICE may not remove
9 Petitioner to a third country without first following the procedures set out in 8
10 U.S.C. § 1231(b)(2) and without adequate notice and an opportunity to be heard.

11 Petitioner is therefore facing both unlawful detention and a threat of
12 removal to a dangerous third country without due process. The requested
13 temporary restraining order (“TRO”) would preserve the status quo while
14 Petitioner litigates these claims by (1) ordering his immediate release, (2)
15 prohibiting the government from removing him to a third country without first
16 following the required removal statutory procedures and (3) prohibiting the
17 government from removing him to a third country without an opportunity to file a
18 motion to reopen with an IJ.

19 Petitioner incorporates by reference the facts and arguments set forth in that
20 Habeas Petition.

21 **II. 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 The *Winter* factors weigh in favor of granting a TRO as to all claims set out
 13 in the Habeas Petition. *See Winter*, 555 U.S. at 20.

14 Here, this Court should issue a temporary restraining order because his
 15 unlawful immigration detention has caused, and will continue to cause,
 16 “immediate and irreparable injury . . . or damage.” Fed. R. Civ. P. 65(b). This
 17 Court should therefore order Petitioner’s release.

18 **A. Petitioner is likely to succeed on the merits.**

19 Petitioner is likely to succeed on the merits as to all claims. The Fifth
 20 Amendment’s Due Process Clause forbids the Government to “depriv[e]” any
 21 “person ... of ... liberty ... without due process of law.” *Zadvydas*, 533 U.S. at 690.
 22 Due process requires that “a person in jeopardy of a serious loss [be given] notice
 23 of the case against him and the opportunity to meet it.” *Mathews v. Eldridge*, 424
 24 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S.
 25 123, 171-72 (Frankfurter, J., concurring)). Petitioner’s detention in immigration
 26 custody and removal to a third country violates due process.
 27
 28

1 First, *Zadvydas v. Davis* holds that immigration statutes do not authorize
 2 the government to detain immigrants like Petitioner, for whom there is “no
 3 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
 4 678, 701 (2001); *see, e.g., Alic v. Dep’t of Homeland Sec./Immigr. Customs Enft.*,
 5 No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025);
 6 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 *17 (W.D. Wash. Aug.
 7 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
 8 *5, *7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary
 9 restraining order on these same grounds).

10 Second, Respondents also cannot remove Petitioner to a third country
 11 without providing notice and a sufficient opportunity to be heard before an
 12 immigration judge. Their current policy allowing third-country removal
 13 “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL
 14 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE
 15 memo contravenes Ninth Circuit law on the process due to noncitizens in detail);
 16 *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D.
 17 Cal. Sept. 29, 2025) (granting temporary restraining order preventing a
 18 noncitizen’s deportation to a third country pending litigation in light of due
 19 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
 20 6 (S.D. Cal. Sept. 18, 2025) (same).

21 **B. Petitioner will suffer irreparable harm absent injunctive relief.**

22 Petitioner also meets the second factor, irreparable harm. “It is well
 23 established that the deprivation of constitutional rights ‘unquestionably constitutes
 24 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
 25 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged
 26 deprivation of a constitutional right is involved, most courts hold that no further
 27 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
 28 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*

1 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

2 “Unlawful detention” itself “constitutes ‘extreme or very serious damage,
3 and that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872
4 F.3d 976, 999 (9th Cir. 2017).

5 Third-country deportations pose that risk and more. Recent third-country
6 deportees have been held, indefinitely and without charge, in hazardous foreign
7 prisons. *See* Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s*
8 *Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to
9 solitary confinement. Gerald Imray, *3 Deported by US held in African Prison*
10 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They have
11 been removed to countries so unstable that the U.S. government recommends
12 making a will and appointing a hostage negotiator before traveling to them. *See*
13 Wong, *supra*. These and other threats to Petitioner’s health and life independently
14 constitute irreparable harm.

15 **C. The balance of hardships and the public interest weigh heavily in**
16 **Petitioner’s favor.**

17 Third, and finally, when the government is a party, as it is here, “the
18 balance of equities and public interest factors merge.” *Pimental-Estrada v. Barr*,
19 464 F. Supp. 3d 1225, 1237 (W.D. Wash 2020) (citing *Drakes Bay Osyter v.*
20 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). The risk of harm to Petitioner far
21 outweighs the government’s interest in illegally detaining him, fir it is “always in
22 the public interest to prevent the violation of a party’s constitutional rights.”
23 *Melendres*, 695 F.3d at 1002.

24

25

26

27

28

1 **III. Conclusion**

2 For all these reasons, this Court should grant this motion for a temporary
3 restraining order and order immediate release.

4
5 Respectfully submitted,

6
7 Dated: March 1, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

Attorneys for Petitioner

Email: Zandra_Lopez @fd.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, the undersigned, will cause the attached TRO to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: March 1, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

Email: Zandra_Lopez@fd.org