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9

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

12 **Nam Ngoc Tran,**

13 **CIVIL CASE NO.: 3:25-cv-02366-**  
14 **AGS-KSC**

15 **Petitioner,**

16 **Notice of Motion**  
17 **and**  
18 **Memorandum of Law**  
19 **in Support of**  
20 **Temporary Restraining Order**

21 **v.**  
22 **CHRISTOPHER LAROSE**, Warden at  
23 Otay Mesa Detention Center, **PATRICK**  
24 **DIVVER**, San Diego Field Office  
25 Director ICE Enforcement Removal  
26 Operations **TODD M. LYONS**, Acting  
27 Director, Immigration and Customs  
28 Enforcement. **KRISTI NOEM**,  
Secretary of the Department of  
Homeland Security

29 **Respondents.**

30

31 **INTRODUCTION**

32 Petitioner, Nam Ngoc Tran, (“Mr. Tran”) faces immediate irreparable harm:  
33 (1) revocation of his release on immigration supervision after 15 years living  
34 peacefully in the community, despite ICE’s failure to follow its own revocation  
35 procedures; (2) indefinite immigration detention with no reasonable prospect of

1 removal in the reasonably foreseeable future to the country designated by the  
2 immigration judge (“IJ”); and (3) potential removal to a third country never  
3 considered by an IJ. This Court should grant temporary relief to preserve the status  
4 quo.

5 Mr. Tran has spent the last 15 years living free in the community on an order of  
6 supervision. Throughout that time, the government has proved unable to remove  
7 him to Vietnam. Yet on August 12, 2025, the government re-detained him when he  
8 was dropping his 4-year-old daughter at school. ICE gave him no opportunity to  
9 contest his re-detention, and there are no apparent changed circumstances justifying  
10 it. ICE does not appear to have a travel document in hand, and the same  
11 international agreements have applied to Mr. Tran’s removal since at least 2020.  
12 Worse yet, in the likely case that ICE still proves unable to remove Mr. Tran to  
13 Vietnam, ICE’s own policies allow ICE to remove him to a third country never  
14 before considered by an IJ, with either 6-to-24 hours’ notice or no notice at all.

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

21 In granting this motion, this Court would not break new ground. Several courts  
22 have granted TROs or preliminary injunctions mandating release for post-final-  
23 removal-order immigrants like Mr. Tran. *See Phetsadakone v. Scott*, 2025 WL  
24 2579569, at \*6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No. 2:25-CV-  
25 01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D. Cal. July 16, 2025) (Vietnam);  
26 *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*7 (E.D.  
27 Cal. July 16, 2025) (Vietnam); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL  
28 2419288, at \*29 (W.D. Wash. Aug. 21, 2025) (Vietnam). Several more have

ordered release<sup>1</sup> for petitioners whose immigration cases are still pending. See, e.g., *Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at \*2 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at \*12 (D. Mass. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-SKO (HC), 2025 WL 2617255, at \*6 (E.D. Cal. Sept. 9, 2025). These courts have determined that, for these long-term releasees, liberty is the status quo, and only a return to that status quo can avert irreparable harm.

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

## Statement of Facts

I. Under an order of supervision, Mr. Tran has lived peacefully in the community and cared for his 4 children for the last 15 years.

Mr. Tran is a Vietnamese national born on [REDACTED] 1977. He entered the United States as a refugee in 1981, when he was about four years old. Mr. Tran eventually became an LPR. He has lived continuously in California for over forty years.

<sup>1</sup> Because immigration detainees whose cases have not been adjudicated are entitled 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.

1                   Mr. Tran supports his U.S. citizen wife, and their two U.S. citizen daughters,  
2 A [REDACTED] (born [REDACTED] 2021) and A [REDACTED] born [REDACTED] 2022). Declaration of Nam  
3 Ngoc Tran (Tran Decl.). Mr. Tran also has two older U.S. citizen sons, Ethan (born  
4 March 30, 1999) and Derek (born July 23, 2002) from a previous marriage. *Id.* ¶ 5.  
5 In addition to his wife and children, Mr. Tran helps take care of his older LPR  
6 brother, Mua, who has schizophrenia and lives in an in-patient treatment facility.  
7 *Id.*

8                   Mr. Tran owns two businesses in San Diego, California and has several  
9 employees. *Id.* ¶ 4. Mr. Tran is also a homeowner, and he is able to support his  
10 family with his income. *Id.*

11                  On October 28, 2010, Mr. Tran was ordered removed to Vietnam by an  
12 immigration judge based on a federal criminal conviction. Vietnam was designated  
13 as the country of removal.

14                  At the time of the order, Mr. Tran was in ICE custody. ICE could not  
15 effectuate the removal order as the United States did not have diplomatic relations  
16 with Vietnam, and no repatriation agreement existed between the two countries. On  
17 April 20, 2011, Mr. Tran was released under an order of supervision (“OSUP”).  
18 Exh. A to Habeas Petition (“Order of Supervision”). Since 2011, Mr. Tran has  
19 complied with all conditions of his OSUP and has attended annual check-ins with  
20 ICE. Tran Decl. at ¶ 2.

21                  On May 03, 2018, Mr. Tran filed Form I-918, Petition for U Nonimmigrant  
22 Status with U.S. Citizenship and Immigration Services (“USCIS”). Exh. B to  
23 Habeas Petition (“U Visa Receipt Notice”). U Nonimmigrant Status provides legal  
24 status for victims of certain qualifying crimes who have suffered mental or physical  
25 abuse and are helpful during the investigation or prosecution of such crime.

26                  On April 04, 2024, USCIS issued an informational notice in Mr. Tran’s U  
27 nonimmigrant status case. Exh. C to Habeas Petition (“USCIS Informational  
28 Notice”). In the notice, USCIS stated, “[a]t this time, the evidence submitted with

1 your petition appears to demonstrate that you have established the eligibility  
2 requirements for U nonimmigrant status. However, the statutory cap for U-1  
3 nonimmigrant status has been reached for this fiscal year. Therefore, [USCIS] may  
4 not grant U-1 nonimmigrant status to any petition until new visas become available.  
5 As the fiscal year limit is the sole reason you cannot be granted U-1 nonimmigrant  
6 status, your petition is placed on a waiting list. Once new visas become available,  
7 USCIS will issue approval notices for those cases on the waiting list". *Id.*

8 Moreover, USCIS informed Mr. Tran that he had "been placed in deferred  
9 action as permitted by regulation. Deferred action is an act of administrative  
10 convenience to the government which gives some cases lower priority for  
11 removal". *Id.*

12 On August 12, 2025, ICE apprehended Mr. Tran outside of his daughter's  
13 school and detained him. Tran Decl. at ¶ 1. Mr. Tran is detained at Otay Mesa  
14 Detention Center. It appeared that ICE revoked Mr. Tran's OSUP, but Mr. Tran  
15 was not given notice of revocation or a reason why the OSUP was revoked. *Id.* at  
16 ¶ 2. Further, ICE did not conduct an interview to give Mr. Tran an opportunity to  
17 be heard on why he should not be re-detained. *Id.*

18 **II. Mr. Tran's family face extraordinary hardship in Mr. Tran's  
19 absence**

20 As detailed in his petition, Mr. Tran has been in the United States since he  
21 was 4 years old. *See* Doc. 1. In the last 15 years, while he was under the OSUP, Mr.  
22 Tran continued to build a life for himself and his family in the United States. Tran  
23 Decl. Mr. Tran owns two businesses in San Diego County with multiple employees.  
24 *Id.* at ¶ 4. His untimely and unlawful detention has negatively impacted not only  
25 his businesses, but his two young U.S. citizen daughters and U.S. citizen wife. *Id.*  
26 at ¶ 8.

27 It is clear to Mr. Tran that if he continues to be detained, he will lose his  
28 businesses and his home. *Id.* at ¶ 9. Mr. Tran's oldest son, Ethan has had to put his

1 life on pause, coming down from San Jose, California to San Diego, to run Mr.  
2 Tran's businesses while he is detained. *Id.* This has been enormous stress for Ethan.  
3 *Id.* at ¶ 13. Even with Ethan's assistance, the businesses are struggling, and Mr.  
4 Tran anticipates that they may have to file for bankruptcy in the next 2 months if  
5 he is not released. *Id.* at ¶ 12. Mr. Tran did not receive any notification that his  
6 OSUP would be revoked and was not given any time to get his affairs in order  
7 before his detention, therefore Mr. Tran was not able to ensure that his family was  
8 prepared to take over his businesses and now those businesses are facing potential  
9 bankruptcy and closure. *Id.* at ¶ 12.

10 In just the last two months, the businesses have already seen a loss of  
11 \$70,000. *Id.* at ¶ 13. If this continues, which it will with Mr. Tran's detention, Mr.  
12 Tran's wife will not be able to make their mortgage payments and will lose their  
13 family home. *Id.* at ¶ 9. This would be devastating for Mr. Tran's U.S. citizen wife  
14 and two young U.S. citizen daughters, who are only 4 and 3 years old. Moreover,  
15 since Mr. Tran's detention, the family has suffered emotionally in the absence of  
16 Mr. Tran who was a very present father, husband, and brother. *Id.* at ¶ 14. In  
17 addition to running his 2 businesses, caring for his small daughters, Mr. Tran is also  
18 the primary caretaker for his older brother, Mua, who lives in a bordering care  
19 facility. *Id.* at ¶ 5. Before his detention, Mr. Tran used to visit Mua at least once a  
20 month and was in charge of his care. *Id.*

21 For 15 years, including in 2024, Mr. Tran attended annual check-ins with  
22 ICE as was repeatedly told he would not be removed, and no steps were ever taken  
23 by ICE to remove him to Vietnam. *Id.* at ¶ 2. Additionally, in April 2024, Mr. Tran  
24 had also been issued deferred action by USCIS stating that he was not a priority for  
25 removal, giving him even more assurance that his removal was not foreseeable.  
26 USCIS Informational Notice. Mr. Tran relied on these assertions and continued to  
27 build strong family and community ties in the United States.  
28

////

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

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

25           On June 23 and July 3, 2025, in light of procedural arguments regarding the  
26       viability of national class-wide relief rather than individual relief, the Supreme  
27       Court issued a stay of a class-wide preliminary injunction issued in *D.V.D. v. U.S.*  
28       *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at

\*1, 3 (D. Mass. Apr. 18, 2025). That national injunction had required ICE to follow the statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025). On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a ““meaningful opportunity’ to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country” like the ones just described. Exh. B to Habeas Petition.

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

### Argument

To obtain a TRO, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);

1 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th  
2 Cir. 2001) (noting that a TRO and preliminary injunction involve “substantially  
3 identical” analysis). A “variant[] of the same standard” is the “sliding scale”: “if a  
4 plaintiff can only show that there are ‘serious questions going to the merits—a  
5 lesser showing than likelihood of success on the merits—then a preliminary  
6 injunction may still issue if the balance of hardships tips *sharply* in the plaintiff’s  
7 favor, and the other two *Winter* factors are satisfied.” *Immigrant Defenders Law  
8 Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks  
9 omitted). Under this approach, the four *Winter* elements are “balanced, so that a  
10 stronger showing of one element may offset a weaker showing of another.” *All. for  
11 the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be  
12 granted where there are “‘serious questions going to the merits’ and a hardship  
13 balance... tips sharply toward the plaintiff,” and so long as the other *Winter* factors  
14 are met. *Id.* at 1132.

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

22 **I. Mr. Tran is likely to succeed on the merits, or at a minimum, raises  
23 serious merits questions.**

24 **A. Mr. Tran is likely to succeed on the merits of his claim that his  
25 detention is unlawful**

26 Mr. Tran was detained without any notice or warning on August 12, 2025.  
27 At the time of his detention, Mr. Tran was in full and complete compliance with the  
28 OSUP that was granted to him by Respondents. In order to be granted the OSUP,

1 Respondents had to determine that Mr. Tran was neither a flight risk nor a danger  
2 to the community. The detention of Mr. Tran on August 12, 2025, without any  
3 notice or warning was unlawful.

4 The Due Process Clause of the Fifth Amendment provides that “[n]o person  
5 shall be ... deprived of life, liberty, or property, without due process of law.” U.S.  
6 CONT. amend. V. Freedom from bodily restraint is at the core of the liberty  
7 protected by the Due Process Clause. This vital liberty interest is at stake when an  
8 individual is subject to detention by the federal government. Due process requires  
9 that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d  
10 752, 757 (9th Cir. 2007).

11 Under the civil-detention framework set out in *Zadvydas v. Davis*, 533 U.S.  
12 678 (2001), and its progeny, the Government may deprive a non-citizen of physical  
13 liberty only when the confinement serves a legitimate purpose—such as ensuring  
14 appearance or protecting the community—and is reasonably related to, and not  
15 excessive in relation to, that purpose.

16 Once ICE found Mr. Tran was not a dangerous or a flight risk, and issued an  
17 OSUP and released Mr. Tran from custody, the Government’s lawful objectives  
18 were satisfied. Mr. Tran’s re-confinement, especially without any violations of his  
19 OSUP conditions or change in circumstances, therefore, bears no reasonable, non-  
20 punitive relationship to any legitimate aim and is unconstitutionally arbitrary.

21 The revocation of Mr. Tran’s release would not satisfy the minimum  
22 requirements of due process, because that revocation is not the product of any  
23 individualized review and alleges no relevant change in circumstances altering the  
24 original assessment of her risk of flight. *See See Ceesay*, --- F.Supp.3d ----, 2025  
25 WL 1284720 at \*1 (“Noncitizens, even those subject to a final removal order, have  
26 constitutional rights just like everyone else in the United States. *See Zadvydas v.*  
27 *Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). And while the  
28 United States Department of Homeland Security (“DHS”) might want to enforce

1 this country's immigration laws efficiently, it cannot do that at the expense of  
2 fairness and due process.”)(internal citations omitted); (*Rombot*, 296 F. Supp. 3d  
3 383 at 388 (finding that “[t]he Supreme Court has recognized that an ‘alien may no  
4 doubt be returned to custody upon a violation of [supervision] conditions, but it has  
5 never given ICE a carte blanche to re-incarcerate someone without basic due  
6 process protection.”) (citing *Zadvydas*, 533 U.S. at 700). *See also, Torres-Jurado*  
7 *v. Biden*, 2023 U.S. Dist. LEXIS 193725 at \*12 (S.D.N.Y. Oct. 29, 2023) (stating  
8 that “due process, at a minimum” requires the government to afford meaningful  
9 notice and an opportunity to be heard and that the opportunity must be meaningful)  
10 (citing to *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004)).

11 The continued detention of Mr. Tran pursuant to the arbitrary revocation of  
12 his OSUP violates his due process rights.

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

15 In addition to Fifth Amendment protections, 8 C.F.R. §§ 241.4(l), 241.13(i)  
16 provide extra process for re-detentions. These regulations permit an official to  
17 “return[s] [the person] to custody” because they “violate[d] any of the conditions  
18 of release.” 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(l)(1). Otherwise, they  
19 permit revocation of release only if the appropriate official (1) “determines that  
20 there is a significant likelihood that the alien may be removed in the reasonably  
21 foreseeable future,” *id.* § 241.13(i)(2), and (2) makes that finding “on account of  
22 changed circumstances.” *Id.*

23 No matter the reason for re-detention, the re-detained person is entitled to  
24 “an initial informal interview promptly,” during which they “will be notified of the  
25 reasons for revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must  
26 “afford[] the [person] an opportunity to respond to the reasons for revocation,”  
27 allowing them to “submit any evidence or information” relevant to re-detention and  
28 evaluating “any contested facts.” *Id.*

1 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
2 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162  
3 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by  
4 certain internal policies is well-established.”). A court may review a re-detention  
5 decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-  
6 01757, 2025 WL 1993735, at \*3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.  
7 25-cv-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025) (citing *Kong*  
8 *v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

9 None of the prerequisites to detention apply here. ICE did not detain Mr.  
10 Tran due to a violation. And there are no changed circumstances that justify re-  
11 detaining him. The same international agreements have applied to Mr. Tran’s  
12 removal since at least 2020, and ICE has given Mr. Tran no indication that agents  
13 have a travel document in hand for him. Of course, ICE may be planning to renew  
14 their request for a travel document from Vietnam. But absent any evidence for “why  
15 obtaining a travel document is more likely this time around[,] Respondents’ intent  
16 to eventually complete a travel document request for Petitioner does not constitute  
17 a changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025  
18 WL 1993771, at \*4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-  
19 JWJ, 2025 WL 1696526, at \*2 (D. Kan. June 17, 2025)). Nor has Mr. Tran received  
20 the interview required by regulation. Tran Dec. at ¶ 2. No one from ICE has ever  
21 invited him to submit evidence to contest his detention. *Id.*

22 There is also strong evidence that there is no “significant likelihood of  
23 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Vietnam  
24 generally does not accept pre-1995 Vietnamese immigrants for deportation. Even  
25 after Vietnam signed the 2020 MOU, ICE had to admit that there was no reasonable  
26 likelihood of removing such immigrants in the reasonably foreseeable future, Order  
27 on Joint Motion for Entry of Stipulated Dismissal, *Trihn*, 18-CV-316-CJC-GJS,  
28 Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—an admission amply backed up by two

1 years' experience under the MOU, Asian Law Caucus, *Resources on Deportation*  
2 of Vietnamese Immigrants Who Entered the U.S. Before 1995 (Jul. 15, 2025)  
3 (providing links to all quarterly reports). Though the Trump administration  
4 rescinded this admission, *Nguyen*, 2025 WL 2419288, at \*7, there is no evidence  
5 that facts on the ground have changed. Thus, several courts have found that these  
6 barriers continue to obstruct removal for people like Mr. Tran. *See Nguyen*, 2025  
7 WL 2419288; *Hoac*, 2025 WL 1993771; *Nguyen*, 2025 WL 1725791.

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

11

12 **C. Mr. Tran is likely to succeed on the merits of his claim that he is  
13 entitled to adequate notice and an opportunity to be heard prior  
14 to any third country removal.**

15 Finally, Mr. Tran is likely to succeed on the merits of his claim that he may  
16 not be removed to a third country absent adequate notice and an opportunity to be  
17 heard.

18 U.S. law enshrines protections against dangerous and life-threatening  
19 removal decisions. By statute, the government is prohibited from removing an  
20 immigrant to any third country where a person may be persecuted or tortured, a  
21 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).  
22 The government “may not remove [a noncitizen] to a country if the Attorney  
23 General decides that the [noncitizen’s] life or freedom would be threatened in that  
24 country because of the [noncitizen’s] race, religion, nationality, membership in a  
25 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,  
26 1208.16. Withholding of removal is a mandatory protection.

27 Similarly, Congress codified protections enshrined in the CAT prohibiting  
28 the government from removing a person to a country where they would be tortured.  
*See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of

1 the United States not to expel, extradite, or otherwise effect the involuntary return  
2 of any person to a country in which there are substantial grounds for believing the  
3 person would be in danger of being subjected to torture, regardless of whether the  
4 person is physically present in the United States."); 28 C.F.R. § 200.1; *id.*  
5 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

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

22 If the noncitizen claims fear, measures must be taken to ensure that the  
23 noncitizen can seek asylum, withholding, and relief under CAT before an  
24 immigration judge in reopened removal proceedings. The amount and type of  
25 notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and  
26 circumstances, he would have a reasonable opportunity to raise and pursue his  
27 claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009  
28 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132

1 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring a  
2 minimum of 15 days' notice).

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

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

22 Faced with similar arguments, several courts have recently granted  
23 individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210;  
24 *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL  
25 1993771, at \*7; *Phan*, 2025 WL 1993735, at \*7.

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1       **II. Mr. Tran will suffer irreparable harm absent injunctive relief.**

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

10           Here, the potential irreparable harm to Mr. Tran is even more concrete. In  
11 Mr. Tran’s absence, his U.S. citizen wife and four U.S. citizen children suffer  
12 extraordinary hardship. Tran Decl. Additionally, as detailed above, Mr. Tran is at  
13 risk of losing his two businesses and his home if his detention continues. *Id.*  
14 Furthermore, “[u]nlawful detention” itself “constitutes ‘extreme or very serious  
15 damage, and that damage is not compensable in damages.’” *Hernandez v. Sessions*,  
16 872 F.3d 976, 999 (9th Cir. 2017).

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

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

26           The final two factors for a TRO—the balance of hardships and public  
27 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
28 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On the

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

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

18 Undersigned counsel, Nerea Woods, contacted the U.S. Attorney’s Office  
19 from the Southern District of California by email on October 14, 2025, notifying  
20 them that this motion would be filed. Undersigned counsel affirms she intends to  
21 send, via email, a copy of this motion and a proposed order for granting the TRO  
22 to the U.S. Attorney’s Office for the Southern District of California upon the filing  
23 of this motion.

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

## CONCLUSION

Mr. Tran respectfully requests that the Court grant his motion for a temporary restraining order and maintain the status quo until this Court has an opportunity to assess his underlying Petition.

Respectfully submitted this 14 day of October, 2025.

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9

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

12 **Nam Ngoc Tran,**

13 **CIVIL CASE NO.:3:25-cv-02366-**  
14 **AGS-KSC**

15 **Petitioner,**

16 **v.**  
17 **CHRISTOPHER LAROSE, Warden at**  
18 **Otay Mesa Detention Center, PATRICK**  
19 **DIVVER, San Diego Field Office**  
20 **Director ICE Enforcement Removal**  
21 **Operations TODD M. LYONS, Acting**  
22 **Director, Immigration and Customs**  
23 **Enforcement. KRISTI NOEM,**  
24 **Secretary of the Department of**  
25 **Homeland Security**

26 **[PROPOSED] ORDER**  
27 **GRANTING PETITIONER'S**  
28 **MOTION FOR A TEMPORARY**  
29 **RESTRANING ORDER**

30 **Respondents.**

31 Upon consideration of Petitioner, Nam Ngoc Tran's Motion for a Temporary  
32 Restraining Order ("TRO") and all material submitted in support thereof and in  
33 opposition thereto (if applicable), and the applicable law, it is hereby ORDERED  
34 that the motion is GRANTED.

35 Until further order of this Court, Respondents are hereby ordered to:

36 (1) Immediately release Petitioner from custody;  
37 (2) Restore Petitioner to the status quo prior to his re-detention by

reinstating his prior order of supervision;

(3) Provide the following process prior to removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025):

- a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
- b. a meaningful opportunity, **and a minimum of ten days**, to raise a fear-based claim for CAT protection prior to removal;
- c. if he is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
- d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, **and a minimum of fifteen days**, for the Petitioner to seek reopening of his immigration proceedings.

Because the same considerations justifying this TRO will continue to affect Mr. Tran throughout the time he litigates his habeas petition, and because the petition will be resolved promptly, this Court finds good cause under Fed. R. Civ. Pro. 65(b)(2) to extend this TRO beyond 14 days. This Court therefore ORDERS that this TRO is effective until this Court issues a final decision on Mr. Tran's habeas petition or until further order of the Court.

## IT IS SO ORDERED

## United States District Judge