

1 **Hai Thai**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

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6 Pro Se¹

FILED

Sep 17 2025

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *s/ Gloria Vocal* DEPUTY

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

10 HAI THAI,

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.: '25CV2436 RBM MMP

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

28 ¹ Mr. Thai is filing this petition for a writ of habeas corpus 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 Hai Thai (“Petitioner”) faces immediate irreparable harm: (1) revocation of his release on immigration supervision, despite ICE’s failure 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 16 years living free in the community on an order of supervision. Throughout that time, the government has proved unable to remove him to Vietnam. Yet on August 25, 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 Vietnam has overwhelmingly declined to timely issue travel documents for pre-1995 immigrants. 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-final-removal-order immigrants like Petitioner. *See Phetsadakone v. Scott*, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No.

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

12 Several courts have likewise granted temporary restraining orders
13 preventing third-country removals without due process. *See, e.g., J.R. v. Bostock*,
14 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v.*
15 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025);
16 *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26,
17 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7
18 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025
19 WL 1993735, at *7 (E.D. Cal. July 16, 2025). Petitioner therefore respectfully
20 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. In 2009, ICE tried and failed to remove Mr. Thai because the Vietnamese consulate refused to issue travel documents.

Hai Thai and his family came to the United States in 1979, fleeing the communist regime in Vietnam. Exhibit A, “Thai Declaration,” at ¶ 1. Mr. Thai became a lawful permanent resident and remained so until 2009, when he was ordered removed due to a conviction for simple drug possession and the violation of a protection order. *Id.* at ¶ 3. After he was ordered removed, he was detained pending his removal for 90 days. *Id.* at ¶ 5. During this time, officials never asked him to fill out travel documents or meet with the consulate, though Mr. Thai would have complied if they had. *Id.* at ¶ 4.

Although Mr. Thai generally attended his annual check-in appointments, he missed one in 2011 or 2012. ICE then picked him up and held him for another 90 days before releasing him again. *Id.* at ¶ 6.

In the last several years, Mr. Thai has suffered medical issues, including surgeries for a stomach ulcer and to remove a lacrimal gland tumor from his left eye. *Id.* at ¶ 9. Mr. Thai’s common-law wife also suffers from serious medical issues. She has Type I and possibly Type II diabetes and recently had heart surgery. Because she cannot work or drive, she is very dependent on Mr. Thai to get all her medications and groceries. *Id.* at ¶ 8.

On August 25, 2025, ICE went to Mr. Thai’s workplace and arrested him. *Id.* at ¶ 10. They made him sign a revocation of his order of supervision, and when he asked why they were arresting him, they responded, “haven’t you been watching the news?” *Id.* at ¶ 10.

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

When removable immigrants cannot be removed to their home country—including Vietnamese immigrants—ICE has begun deporting those individuals to

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 tained 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. Thai: 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 § 1231(a)(6) to incorporate
3 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. Following the
7 six-month grace period, courts must use a burden-shifting framework to decide
8 whether detention remains authorized. First, the petitioner must prove that there is
9 “good reason to believe that there is no significant likelihood of removal in the
10 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 2009. Thai Dec. at ¶ 3. He has also been detained
18 for more than six months cumulatively. *Id.* at ¶¶ 5–6. Thus, it is clear that the
19 *Zadvydas* grace period has ended.

20 There is also strong evidence that there is no “significant likelihood of
21 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.
22 Vietnam has twice refused to accept Mr. Thai. Thai Dec. at ¶¶ 5–6. ICE tried and
23 failed to remove him following his removal order. *Id.* at ¶ 5. And ICE failed again
24 when he was re-detained several years later. *Id.* at ¶ 6. Nothing has changed in the
25 16 years that Mr. Thai was out on release, even though Mr. Thai was checking in
26 throughout that period and was therefore available to help seek travel documents.
27 And to date, there is no indication that ICE has obtained a travel document.

28 Finally, Petitioner’s criminal history cannot change this equation. Not only

1 has Petitioner proved that he poses no danger or flight risk, *Zadvydas* also
2 squarely prohibits ICE from indefinitely detaining immigrants because they pose
3 risks of danger or flight. 533 U.S. at 684–91.

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

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

7 In addition to *Zadvydas*'s protections, a series of regulations provide extra
8 process for someone who, like Petitioner, is re-detained following a period of
9 release. Under 8 C.F.R. § 241.4(l), ICE may re-detain an immigrant on
10 supervision only with an interview and a chance to contest a re-detention. When
11 an immigrant is specifically released after giving good reason why they cannot be
12 removed, additional regulations apply: ICE may revoke a noncitizen's release and
13 return them to ICE custody due to failure to comply with conditions of release, 8
14 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances," a noncitizen
15 likely can be removed in the reasonably foreseeable future. *Id.* § 241.13(i)(2).

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

24 ICE is required to follow its own regulations. *United States ex rel. Accardi*
25 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
26 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
27 abide by certain internal policies is well-established."). A court may review a re-
28 detention decision for compliance with the regulations. *See Phan v. Beccerra*, No.

1 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v.*
2 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
3 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

4 None of the prerequisites to detention apply here. Petitioner did not violate
5 the conditions of his release. And there are no changed circumstances that justify
6 re-detaining him. The same treaty has applied since 2008, and ICE already tried—
7 and failed—to remove Petitioner under that treaty. ICE has given Petitioner no
8 indication that agents have a travel document in hand for him. Of course, ICE
9 may be planning to renew their request for a travel document from Vietnam. But
10 absent any evidence for “why obtaining a travel document is more likely this time
11 around[,] Respondents’ intent to eventually complete a travel document request
12 for Petitioner does not constitute a changed circumstance.” *Hoac v. Becerra*, No.
13 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025)
14 (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June
15 17, 2025)). Nor has Petitioner received the interview required by regulation. No
16 one from ICE has ever invited him to submit evidence to contest his detention. *Id.*

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

20
21 **C. Petitioner is likely to succeed on the merits of his claim that he is**
22 **entitled to adequate notice and an opportunity to be heard prior**
to any third country removal.

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

1 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if
2 the Attorney General decides that the [noncitizen’s] life or freedom would be
3 threatened in that country because of the [noncitizen’s] race, religion, nationality,
4 membership in a particular social group, or political opinion.” *Id.*; *see also* 8
5 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

6 Similarly, Congress codified protections in the CAT prohibiting the
7 government from removing a person to a country where they would be tortured.
8 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy
9 of the United States not to expel, extradite, or otherwise effect the involuntary
10 return of any person to a country in which there are substantial grounds for
11 believing the person would be in danger of being subjected to torture, regardless
12 of whether the person is physically present in the United States.”); 28 C.F.R. §
13 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

14 To comport with due process, the government must provide notice of third
15 country removal and an opportunity to respond. Due process requires “written
16 notice of the country being designated” and “the statutory basis for the
17 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
18 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of*
19 *Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May
20 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

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

1 constitutional right to due process.” *Andriasian*, 180 F.3d at 1041.

2 If the noncitizen claims fear, measures must be taken to ensure that the
3 noncitizen can seek asylum, withholding, and relief under CAT before an
4 immigration judge in reopened removal proceedings. The amount and type of
5 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
6 circumstances, he would have a reasonable opportunity to raise and pursue his
7 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
8 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
9 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring a
10 minimum of 15 days’ notice). “[L]ast minute” notice of the country of removal
11 will not suffice, *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed.
12 App’x 724 (9th Cir. 2016), and for good reason: To have a meaningful
13 opportunity to apply for fear-based protection, immigrants must have time to
14 prepare and present relevant arguments and evidence. Merely telling a person
15 where they may be sent, without giving them a chance to look into country
16 conditions, does not give them a meaningful chance to determine whether and
17 why they have a credible fear.

18 Respondents’ third country removal program skips over these statutory and
19 constitutional procedural protections. According to ICE’s July 7 guidance,
20 individuals can be removed to third countries “without the need for further
21 procedures,” so long as “the [U.S.] has received diplomatic assurances.” Exh. B to
22 Habeas Petition at 1. Petitioner is likely to succeed on the merits of his claim on
23 this fact alone, because the policy instructs officers to provide no notice or
24 opportunity to be heard. The same is true of the minimal procedures ICE offers
25 when no diplomatic assurances are present. The policy provides no meaningful
26 notice (6-24 hours), instructs officers *not* to ask about fear, and provides no actual
27 opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone
28 reopen removal proceedings.

1 Faced with similar arguments, several courts have recently granted
2 individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210;
3 *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL
4 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

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

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

14 Here, the potential irreparable harm to Petitioner is even more concrete.
15 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and
16 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d
17 976, 999 (9th Cir. 2017). Third-country deportations pose that risk and more.
18 Recent third-country deportees have been held, indefinitely and without charge, in
19 hazardous foreign prisons. *See Wong et al., supra*. They have been subjected to
20 solitary confinement. *See Imray, supra*. They have been removed to countries so
21 unstable that the U.S. government recommends making a will and appointing a
22 hostage negotiator before traveling to them. *See Wong, supra*. These and other
23 threats to Petitioner’s health 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

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

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

18 Before filing this motion, proposed counsel emailed Janet Cabral, from the
19 United States Attorney’s Office, notice of this request for a temporary restraining
20 and all the filings associated with it. *See* Exhibit A, Declaration of Kara Hartzler,
21 at ¶ 2. In similar cases, Ms. Cabral has informed Federal Defenders that this is her
22 preferred method for receipt. *Id.* Federal Defenders will also cause the motion to
23 be served by hand delivery per the attached certificate of service. *Id.*

24 Additionally, Petitioner 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

For the foregoing reasons, Mr. Thai requests that this Court grant him the relief requested.

DATED: 9/11/2025

Respectfully submitted,



HAI THAI

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
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 9-17-25


Kara Hartzler

EXHIBIT A

Hai Thai

A# 

Otay Mesa Detention Center

P.O. Box 439049

San Diego, CA 92143-9049

Pro Se

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

HAI THAI,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.:

**Declaration of Kara Hartzler
in Support of Motion for a
Temporary Restraining Order**

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2 1. My name is Kara Hartzler. I am an appellate attorney at Federal
3 Defenders of San Diego, Inc. In that capacity, I was assigned to
4 investigate Mr. Thai'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. Thai in drafting all necessary documents.
- 8 2. In preparing requests for similar temporary restraining orders, Federal
9 Defenders has communicated with Janet Cabral at the U.S. Attorney's
10 Office to determine how we should notify the government of our intent
11 to file. Ms. Cabral requested that we email a copy of the temporary
12 restraining order motion to her directly, which I have done. I have also
13 caused the motion to be formally served on her office's Civil Division
14 by hand delivery, as set forth in the certificate of service.

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

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20 **KARA HARTZLER**

21 Declarant
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