

1 **Hien Vu**

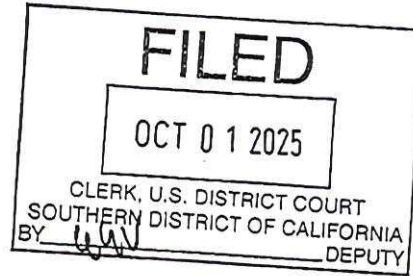
2 A# [REDACTED]

3 Otay Mesa Detention Center

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

10 **HIEN VU,**

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.: '25CV2586 BJC KSC

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

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26 ¹ Mr. Vu is filing this petition for a writ of habeas corpus and all associated
27 documents with the assistance of the Federal Defenders of San Diego, Inc.
28 Federal Defenders has consistently used this procedure in seeking appointment for
immigration habeas cases. The Declaration of Katie Hurrelbrink in Support of
Appointment Motion attaches case examples.

Introduction

Petitioner Hien Vu ("Petitioner") faces immediate irreparable harm: (1) revocation of his release on immigration supervision after 24 years living peacefully in the community, 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. Beyond that, **Mr. Vu's family faces extraordinary hardship during his illegal detention, because he is a single dad to five kids, including two teenagers with severe autism.** This Court should grant temporary relief to preserve the status quo.

Petitioner has spent the last 24 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 14, 2025, the government re-detained him when he appeared as scheduled at his check-in. ICE gave him no opportunity to contest his re-detention, and there are no apparent changed circumstances justifying it. ICE does not appear to have a travel document in hand, and the same international agreements have applied to Petitioner's removal since at least 2020. Worse yet, in the likely case that ICE still proves unable to remove Petitioner to Vietnam, ICE's own policies allow ICE to remove him to a third country never before considered by an IJ, 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.

1 In granting this motion, this Court would not break new ground. Several
2 courts have granted TROs or preliminary injunctions mandating release for post-
3 final-removal-order immigrants like Petitioner. *See Phetsadakone v. Scott*, 2025
4 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No.
5 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025)
6 (Vietnam); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735,
7 at *7 (E.D. Cal. July 16, 2025) (Vietnam); *Nguyen v. Scott*, No. 2:25-CV-01398,
8 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025) (Vietnam). Several more
9 have ordered release² for petitioners whose immigration cases are still pending.
10 *See, e.g., Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at *2
11 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL
12 2607924, at *12 (D. Mass. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-
13 01141-KES-SKO (HC), 2025 WL 2617255, at *6 (E.D. Cal. Sept. 9, 2025). These
14 courts have determined that, for these long-term releasees, liberty is the status
15 quo, and only a return to that status quo can avert irreparable harm.

16 Several courts have likewise granted temporary restraining orders
17 preventing third-country removals without due process. *See, e.g., J.R. v. Bostock*,
18 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v.*
19 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025);
20 *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26,
21 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7
22 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025
23 WL 1993735, at *7 (E.D. Cal. July 16, 2025). Petitioner therefore respectfully
24 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.

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Statement of Facts

I. After winning one of this district's first *Zadvydas* habeas petitions, Mr. Vu lived peacefully in the community and cared for his five children—including two kids with autism—for 24 years.

In 1984, Hien Vu fled Vietnam with his mom and dad. Exh. A to Habeas Petition ("Vu Dec.") at ¶ 2. His San Jose-based aunt sponsored the family. *Id.* They soon obtained green cards. *Id.* In 1997, however, Mr. Vu was arrested for second degree robbery. *Id.* at ¶ 3. The conviction led to a May 1, 2000 order of removal. *Id.* Mr. Vu then appealed to the BIA, which finished processing the appeal on September 29, 2000.³ ICE detained Mr. Vu for over 10 months after that. *Id.* at ¶ 4; Exh. C to Habeas Petition ("Release Order").

While Mr. Vu was detained, the Supreme Court handed down the opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Shortly after, on August 6, 2001, Judge Whalen released Mr. Vu and 27 other detainees under *Zadvydas*. *See* Release Order.

Mr. Vu remained on an order of supervision for the next 24 years. Vu Dec. at ¶¶ 4, 7. During that time, Mr. Vu lived a law-abiding life dedicated to his family. Mr. Vu has five kids, two of whom have autism. Exh. A at ¶ 12. Mr. Vu is a single father—the kids' mother is not in the picture—and Mr. Vu's parents are deceased, so they cannot help either. *Id.*

Mr. Vu has only one conviction since his release. In 2018,⁴ Mr. Vu was taking one of his kids to an Individualized Education Plan (IEP) meeting at school. *Id.* at ¶ 7. He had to bring his daughter along. *Id.* She said that she was tired, and Mr. Vu let her take a nap in the car. *Id.* When school employees found her there, they feared that she would overheat and called the police. *Id.* Mr. Vu's

³ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

⁴ Mr. Vu remembered that the conviction was from 2013, but the state court docket reflects that the conviction was from 2018.

1 daughter was taken to the hospital as a precaution, but she was unharmed and was
2 released the same day. *Id.* Mr. Vu spent one day in county jail. *Id.*

3 Otherwise, Mr. Vu has had no other convictions. And he has consistently
4 checked in with ICE. He has not missed a check-in since 2006. *Id.* at ¶ 5.

5 On August 14, 2025, Mr. Vu appeared at one of these check-ins as
6 scheduled. *Id.* at ¶ 7. He was re-detained, leaving his girlfriend to care for his five
7 kids by herself. *Id.* at ¶ 11.

8 Since then, Mr. Vu has not had any formal meetings with a deportation
9 officer. *Id.* at ¶ 8. (He once informally asked a DO about his case when she visited
10 his pod, but she did not really know anything. *Id.*) Nor has ICE given Mr. Vu any
11 formal paperwork explaining why he was re-detained or identifying changed
12 circumstances that make his removal more likely. *Id.* at ¶ 9. He has never gotten
13 an opportunity to tell ICE why he should not be re-detained. *Id.*

14
15 **II. Mr. Vu's children—including two children with severe autism—
16 face extraordinary hardship in Mr. Vu's absence.**

17 While Mr. Vu is in custody, his family faces severe hardship. Mr. Vu's
18 girlfriend Kendra La Rue is taking care of the children in Mr. Vu's absence. Exh.
19 A at ¶¶ 1-2. She must run the errands, make sure that the kids get to school, and do
20 any other parenting tasks that they require. *Id.* She confirms that the children's mom
21 does not help with childcare or support the children financially. *Id.* at ¶ 3. Ms. La
22 Rue already works two jobs, making it hard to keep up with childcare. *Id.* at ¶ 3.
23 She is also diabetic, and it is much easier to control her blood sugar when she is on
24 a schedule. *Id.* at ¶ 4. That is much harder with her many responsibilities. *Id.*

25 Mr. Vu's two children with autism (ages 13 and 15) have especially intensive
26 caretaking needs. Both need help to eat: One must be hand fed, while the other
27 needs help cutting up food. *Id.* at ¶ 5. They also need hygiene assistance. One is
28 still in diapers. *Id.* And both need help bathing and brushing their teeth. *Id.* The

1 children often ask Ms. La Rue when their dad is coming home and tell her how
2 much they miss him. *Id.*

3 Beyond the challenges of childcare, the family faces financial hardship.
4 Ms. La Rue is trying to cut their expenses as much as possible, but Mr. Vu's aunt
5 still has to help pay rent and bills to meet ends meet. *Id.* at ¶ 7.

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

8 When removable immigrants cannot be removed to their home country—
9 including Vietnamese immigrants—ICE has begun deporting those individuals to
10 third countries without adequate notice or a hearing. As explained in greater detail
11 in Petitioner's habeas petition, the Administration has reportedly negotiated with
12 countries to have many of these deportees imprisoned in prisons, camps, or other
13 facilities. For example, the government paid El Salvador about \$5 million to
14 imprison more than 200 deported Venezuelans in a maximum-security prison
15 notorious for gross human rights abuses, known as CECOT. Edward Wong et al,
16 *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times,
17 June 25, 2025. In February, Panama and Costa Rica took in hundreds of deportees
18 from countries in Africa and Central Asia and imprisoned them in hotels, a jungle
19 camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court*
20 *orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4,
21 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to
22 South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny
23 African nation of Eswatini, including one man from Vietnam, where they are
24 reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US*
25 *held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2,
26 2025). Many of these countries are known for human rights abuses or instability.
27 For instance, conditions in South Sudan are so extreme that the U.S. State
28 Department website warns Americans not to travel there, and if they do, to

1 prepare their will, make funeral arrangements, and appoint a hostage-taker
2 negotiator first. *See Wong, supra*.

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

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

1 USCIS determines that an individual does not qualify, they will be removed there
2 despite asserting fear. *Id.*

3 **Argument**

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

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

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

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

5 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
6 a problem affecting people like Mr. Vu: Federal law requires ICE to detain an
7 immigrant during the “removal period,” which typically spans the first 90 days
8 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that
9 90-day removal period expires, ICE may detain the migrant while continuing to
10 try to remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow
11 for “indefinite, perhaps permanent, detention,” it would pose “a serious
12 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court
13 avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate
14 implicit limits. *Id.* at 689.

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

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

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

1 Here, Petitioner was ordered removed much more than 6 months ago, as his
2 removal order became final in September 2000.⁵ He has also been detained for
3 over a year cumulatively. Vu Dec. at ¶¶ 4–5. Thus, it is clear that the *Zadvydas*
4 grace period has ended.

5 There is also strong evidence that there is no “significant likelihood of
6 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.
7 Vietnam generally does not accept pre-1995 Vietnamese immigrants for
8 deportation. Even after Vietnam signed the 2020 MOU, ICE had to admit that
9 there was no reasonable likelihood of removing such immigrants in the
10 reasonably foreseeable future, Order on Joint Motion for Entry of Stipulated
11 Dismissal, *Trihn*, 18-CV-316-CJC-GJS, Dkt. 161 at 3 (C.D. Cal. Oct. 7, 2021)—
12 an admission amply backed up by two years’ experience under the MOU, Asian
13 Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered*
14 *the U.S. Before 1995* (Jul. 15, 2025) (providing links to all quarterly reports).
15 Though the Trump administration rescinded this admission, *Nguyen*, 2025 WL
16 2419288, at *7, there is no evidence that facts on the ground have changed. Thus,
17 several courts have found that these barriers continue to obstruct removal for
18 people like Mr. Vu. *See Nguyen*, 2025 WL 2419288; *Hoac*, 2025 WL 1993771;
19 *Nguyen*, 2025 WL 1725791.

20 Finally, Petitioner’s criminal history cannot change this equation. Not only
21 has Petitioner proved that he poses no danger or flight risk, as he has spent 24 years
22 in the community. *Zadvydas* also squarely prohibits ICE from indefinitely detaining
23 immigrants because they pose risks of danger or flight. 533 U.S. at 684–91.

24 Thus, this Court will likely find that Petitioner warrants *Zadvydas* relief.
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28 ⁵ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

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

3 In addition to *Zadvydas*'s protections, 8 C.F.R. §§ 241.4(l), 241.13(i) provide
4 extra process for re-detentions. These regulations permit an official to "return[s]
5 [the person] to custody" because they "violate[d] any of the conditions of release."
6 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(l)(1). Otherwise, they permit
7 revocation of release only if the appropriate official (1) "determines that there is a
8 significant likelihood that the alien may be removed in the reasonably foreseeable
9 future," *id.* § 241.13(i)(2), and (2) makes that finding "on account of changed
10 circumstances." *Id.*

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

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

25 None of the prerequisites to detention apply here. ICE did not detain
26 Petitioner due to a violation. And there are no changed circumstances that justify
27 re-detaining him. The same international agreements have applied to Mr. Vu's
28 removal since at least 2020, and ICE has given Petitioner no indication that agents

1 have a travel document in hand for him. Of course, ICE may be planning to renew
2 their request for a travel document from Vietnam. But absent any evidence for “why
3 obtaining a travel document is more likely this time around[,] Respondents’ intent
4 to eventually complete a travel document request for Petitioner does not constitute
5 a changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025
6 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-
7 JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Petitioner
8 received the interview required by regulation. *Vu Dec.* at ¶¶ 8–9. No one from ICE
9 has ever invited him to submit evidence to contest his detention. *Id.*

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

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

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

20 U.S. law enshrines protections against dangerous and life-threatening
21 removal decisions. By statute, the government is prohibited from removing an
22 immigrant to any third country where a person may be persecuted or tortured, a
23 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
24 The government “may not remove [a noncitizen] to a country if the Attorney
25 General decides that the [noncitizen’s] life or freedom would be threatened in that
26 country because of the [noncitizen’s] race, religion, nationality, membership in a
27 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
28 1208.16. Withholding of removal is a mandatory protection.

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

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

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

25 If the noncitizen claims fear, measures must be taken to ensure that the
26 noncitizen can seek asylum, withholding, and relief under CAT before an
27 immigration judge in reopened removal proceedings. The amount and type of
28 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and

1 circumstances, he would have a reasonable opportunity to raise and pursue his
2 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
3 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
4 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring a
5 minimum of 15 days’ notice).

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

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

25 Faced with similar arguments, several courts have recently granted
26 individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210;
27 *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL
28 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

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

2 Petitioner 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 Petitioner is even more concrete. In
11 Mr. Vu’s absence, his five children—especially his two kids with severe autism—
12 suffer extraordinary hardship. See Exh. A. Furthermore, “[u]nlawful detention”
13 itself “constitutes ‘extreme or very serious damage, and that damage is not
14 compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir.
15 2017).

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

23
24 **III. The balance of hardships and the public interest weigh heavily in petitioner’s favor.**

25 The final two factors for a TRO—the balance of hardships and public
26 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
27 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On the
28 one hand, the government “cannot reasonably assert that it is harmed in any legally

1 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d
2 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent
3 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S.
4 at 436 (describing public interest in preventing noncitizens “from being wrongfully
5 removed, particularly to countries where they are likely to face substantial harm”);
6 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019)
7 (when government’s treatment “is inconsistent with federal law, . . . the balance of
8 hardships and public interest factors weigh in favor of a preliminary injunction.”).
9 On the other hand, Petitioner faces weighty hardships: unlawful, indefinite
10 detention and removal to a third country where he is likely to suffer imprisonment
11 or other serious harm. The balance of equities thus favors preventing the violation
12 of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d
13 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful
14 detention and prevent unlawful third country removal.

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

17 When Federal Defenders first started filing TROs in immigration habeas
18 cases, a Federal Defenders attorney called the U.S. Attorney’s Office and was
19 put in touch with Janet Cabral. *See Exhibit B, Declaration of Katie Hurrelbrink*, at
20 ¶ 2. Ms. Cabral requested that Federal Defenders provide notice of these
21 motions via email after the motion has been filed with the court. *Id.* Federal
22 Defenders will do so in this case. *Id.*

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

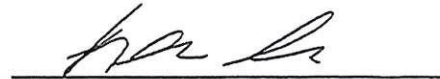
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Conclusion

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

DATED: 9-28-25

Respectfully submitted,



HIEN VU

Petitioner

PROOF OF SERVICE

I, the undersigned, will cause the attached Motion for a Temporary Restraining Order to be emailed to Janet Cabral, janet.cabral@usdoj.gov, when I receive the court-stamped copy.

Date: 9/30/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Hien Vu**

2 A# 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹

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

10 **HIEN VU,**

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.:

Declaration
of
Kendra La Rue

23 I, Kendra La Rue, declare:

- 24 1. My name is Kendra La Rue. I am Hien Vu's girlfriend. We have been
25 together for five years, but I have known him since I was 16.

26 ¹ Mr. Vu is filing this petition for a writ of habeas corpus and all associated
27 documents with the assistance of the Federal Defenders of San Diego, Inc.
28 Federal Defenders has consistently used this procedure in seeking appointment for
immigration habeas cases. The Declaration of Katie Hurrelbrink in Support of
Appointment Motion attaches case examples.

- 1 2. Since Hien's arrest, I've been doing essentially all of the childcare for his
2 five kids. I run errands, make sure that the kids go to school, and do
3 everything else that they need. I work two jobs, so it is very difficult to
4 keep up with childcare on top of that.
- 5 3. The kids' mom does not help with childcare. I've only seen her a few times,
6 and she does not send money to help take care of the kids.
- 7 4. I am diabetic, so being on a schedule helps me control my blood sugar. It
8 has been much harder to control with extra childcare duties.
- 9 5. Two of the kids, a 15-year-old and a 13-year-old, have autism. One of them
10 has to be handfed. Another needs assistance to cut up food. One is still in
11 diapers. They need help bathing and brushing their teeth. They often ask me
12 when dad's coming home and tell me how much they miss him.
- 13 6. The other kids are 16, 18, and 21 years old. All of them live with Hien and
14 me. The 16- and 18-year-olds are still in school. It is hard to maintain
15 discipline over the 16-year-old daughter, because I am not her mom.
- 16 7. Hien's aunt has to help pay the rent and the bills while Hien is detained. We
17 are cutting expenses as much as possible. For example, we're getting rid of
18 cable and taking Hien's car off of our insurance.

1 I declare under penalty of perjury that the foregoing is true and correct to the
2 best of my knowledge and understanding, executed on September 30, 2025, in San
3 Diego, California.
4

5 /s/ Kendra La Rue

6 **KENDRA LA RUE**

7 Declarant
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