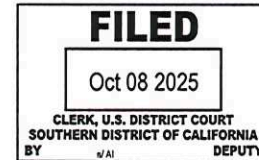


**ORIGINAL**

**Ali Ghafouri**  
A [REDACTED]  
Otay Mesa Detention Center  
P.O. Box 439049  
San Diego, CA 92143-9049

Pro Se<sup>1</sup>



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

**ALI GHAFOURI,**

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.: '25CV2675 RBM BLM**

**Notice of motion and memorandum  
of law in support of temporary  
restraining order**

<sup>1</sup> Mr. Ghafouri 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. 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 Ali Ghafouri (“Petitioner”) faces immediate irreparable harm: (1) revocation of his release on immigration supervision after two decades of 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 to Iran in the reasonably foreseeable future to the country designated by the immigration judge (“IJ”); and (3) potential removal to a prison in an unidentified, potentially dangerous third country never considered by an IJ. Beyond that, Mr. Ghafouri’s family faces extraordinary hardship during his illegal detention, because he is the sole provider for his two teenagers, one of whom has entered his senior year of high school while his dad has been unlawfully detained. This Court should grant temporary relief to preserve the status quo.

Petitioner has spent the last two decades living free in the community on an order of supervision. Throughout that time, the government has proved unable to remove him to Iran. Yet on May 15, 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. Worse yet, in the likely case that ICE still proves unable to remove Petitioner to Iran, 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 *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*7 (E.D.  
7 Cal. July 16, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at  
8 \*29 (W.D. Wash. Aug. 21, 2025). Several more have ordered release<sup>2</sup> for  
9 petitioners whose immigration cases are still pending. *See, e.g., Hinestroza v.*  
10 *Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at \*2 (N.D. Cal. Sept. 9, 2025);  
11 *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at \*12 (D. Mass.  
12 Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-SKO (HC), 2025  
13 WL 2617255, at \*6 (E.D. Cal. Sept. 9, 2025). These courts have determined that,  
14 for these long-term releasees, liberty is the status quo, and only a return to that  
15 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.

25  
26  
27 <sup>2</sup> 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. Mr. Ghafouri is ordered removed in 2003, is released when ICE is unable to deport him to Iran, regularly checks in with ICE, and is re-detained without process or information when he checks in in May 2025, causing severe hardship to his family.**

In 1984, when he was twelve years old, Ali Ghafouri and his family fled political persecution in Iran. Exhibit A to Habeas Petition (“Ghafouri Dec.”) ¶ 1. They soon obtained green cards. *Id.* ¶¶ 1, 10.

In his teens and twenties, Mr. Ghafouri sustained several convictions. *Id.* ¶ 2. He was ordered removed as a result in June 2003. *Id.*<sup>3</sup> In 2003 and 2004, ICE detained Mr. Ghafouri for a total of about seven months after he was ordered removed—first for about 89 days, and then after his transfer to and from state custody, another 120 days. *Id.* ¶ 3. Because the government could not remove him to Iran, it released him. *Id.*

Mr. Ghafouri remained on an order of supervision for the next two decades. *Id.* ¶¶ 3–4, 8. Since 2009, Mr. Ghafouri has sustained no convictions and has always checked in with ICE as scheduled. *Id.* He has four kids and one young grandson; two of his kids are still teenagers, and he is the sole provider for his family. *Id.* ¶ 9. He is also engaged. *Id.* All of his kids and his fiancée are U.S. citizens. *Id.* So are his parents, sister, aunts, uncles, and grandparents. *Id.* ¶ 10.

On May 15, 2025, Mr. Ghafouri appeared at one of his ICE check-ins as scheduled. *Id.* ¶ 5. He was re-detained, leaving his fiancée to care for his kids by herself; their mom is not in the picture. *Id.* ¶ 9. She has had to sell their cars to cover the bills. *Id.* ¶ 11.

At his check-in, the ICE agent who arrested him said “they had orders to pull in anyone with a felony and an order of supervision.” *Id.* ¶ 5. Since then,

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<sup>3</sup> See also EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/> (reporting that Mr. Ghafouri is Iranian and was ordered removed by an immigration judge on June 5, 2003, in San Diego).



1 Mr. Ghafouri has not had any meetings with a deportation officer. *Id.* ¶ 6. He has  
2 spoke to him “in passing when he’s in [his] pod” in the Otay Mesa Detention  
3 Center. *Id.* But Mr. Ghafouri explains, “no one has ever told me why I was re-  
4 detained, except for what the ICE agent said at my arrest; no one has offered me  
5 an informal interview; I have not had the chance to contest my re-detention; and  
6 no one has told me what changed to make my removal more likely.” *Id.*

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

10 When removable immigrants cannot be removed to their home country—  
11 including Iranian immigrants—ICE has begun deporting those individuals to third  
12 countries without adequate notice or a hearing. As explained in greater detail in  
13 Petitioner’s habeas petition, the Administration has reportedly negotiated with  
14 countries to have many of these deportees imprisoned in prisons, camps, or other  
15 facilities.

16 In February, Panama and Costa Rica took in hundreds of deportees from  
17 countries in Africa and Central Asia—as well as Iran—and imprisoned them in  
18 hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa*  
19 *Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025).  
20 On July 4, 2025, ICE deported eight men to South Sudan. *See Wong, supra*. On  
21 July 15, ICE deported five men to the tiny African nation of Eswatini, where they  
22 are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by*  
23 *US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS  
24 (Sept. 2, 2025). Many of these countries are known for human rights abuses or  
25 instability. For instance, conditions in South Sudan are so extreme that the U.S.  
26 State Department website warns Americans not to travel there, and if they do, to  
27 prepare their will, make funeral arrangements, and appoint a hostage-taker  
28 negotiator first. *See Wong, supra*.

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

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



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

Here, this Court should issue a temporary restraining order because “immediate and irreparable injury . . . or damage” is occurring and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents re-detained Petitioner in violation of his due process, statutory, and regulatory rights. ICE policy also allows them to remove him to a third country in violation of his due process, statutory, and regulatory rights. This Court should order Petitioner’s 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 ICE**  
4 **violated its own regulations.**

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

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

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

27 None of the prerequisites to detention apply here. ICE did not detain  
28 Petitioner due to a violation. There are no changed circumstances that justify re-



1 detaining him. Nor has Petitioner received the interview required by regulation.  
2 Ghafouri Dec. at ¶ 6. No one from ICE has ever invited him to submit evidence to  
3 contest his detention. *Id.*

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

7 **B. Petitioner is likely to succeed on the merits of his claim that his**  
8 **detention violates *Zadvydas*.**

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

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

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

26 If he does so, the burden shifts to “the Government [to] respond with  
27 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of  
28 proof rests with the government: The government must prove that there is a

1 “significant likelihood of removal in the reasonably foreseeable future,” or the  
2 immigrant must be released. *Id.*

3 Here, Petitioner was ordered removed much more than 6 months ago, as his  
4 removal order became final in June 2003.<sup>4</sup> He has also been detained for over a  
5 year cumulatively, including seven months total before his release in 2003 or  
6 2004, and just about five months since his redetention this May. Ghafouri Dec. at  
7 ¶¶ 3, 5. Thus, it is clear that the *Zadvydas* grace period has ended.

8 There is also strong evidence that there is no “significant likelihood of  
9 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. The  
10 United States lacks regularized relations with Iran. Thus, several courts have  
11 found that these barriers continue to obstruct removal for people like Mr.  
12 Ghafouri. *See, e.g., Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543 (D.  
13 Md. Sept. 8, 2025) (granting habeas petition and ordering Iranian citizen released  
14 due to *Zadvydas* violations).

15 Finally, Petitioner’s criminal history cannot change this equation. Not only  
16 has Petitioner proved that he poses no danger or flight risk, as he has spent over a  
17 decade and a half in the community without incident. *Zadvydas* also squarely  
18 prohibits ICE from indefinitely detaining immigrants because they pose risks of  
19 danger or flight. 533 U.S. at 684–91.

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

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

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

28 U.S. law enshrines protections against dangerous and life-threatening

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<sup>4</sup> EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.



1 removal decisions. By statute, the government is prohibited from removing an  
2 immigrant to any third country where a person may be persecuted or tortured, a  
3 form of protection known as withholding of removal. *See* 8 U.S.C. §  
4 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if  
5 the Attorney General decides that the [noncitizen’s] life or freedom would be  
6 threatened in that country because of the [noncitizen’s] race, religion, nationality,  
7 membership in a particular social group, or political opinion.” *Id.*; *see also* 8  
8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

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

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

26 Due process also requires “ask[ing] the noncitizen whether he or she fears  
27 persecution or harm upon removal to the designated country and memorialize in  
28 writing the noncitizen’s response. This requirement ensures DHS will obtain the

1 necessary information from the noncitizen to comply with section 1231(b)(3) and  
2 avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing  
3 to notify individuals who are subject to deportation that they have the right to  
4 apply for asylum in the United States and for withholding of deportation to the  
5 country to which they will be deported violates both INS regulations and the  
6 constitutional right to due process.” *Andriasian*, 180 F.3d at 1041.

7 If the noncitizen claims fear, measures must be taken to ensure that the  
8 noncitizen can seek asylum, withholding, and relief under CAT before an  
9 immigration judge in reopened removal proceedings. The amount and type of  
10 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and  
11 circumstances, he would have a reasonable opportunity to raise and pursue his  
12 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009  
13 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132  
14 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at \*1 (requiring a  
15 minimum of 15 days’ notice).

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

24 Respondents’ third country removal program skips over these statutory and  
25 constitutional procedural protections. According to ICE’s July 9 guidance,  
26 individuals can be removed to third countries “without the need for further  
27 procedures,” so long as “the [U.S.] has received diplomatic assurances.” Exh. B to  
28 Habeas Petition at 1. Petitioner is likely to succeed on the merits of his claim on



1 this fact alone, because the policy instructs officers to provide no notice or  
2 opportunity to be heard of any kind. The same is true of the minimal procedures  
3 ICE offers when no diplomatic assurances are present. The policy provides no  
4 meaningful notice (6-24 hours), instructs officers *not* to ask about fear, and  
5 provides no actual opportunity to see counsel and prepare a fear-based claim (6-  
6 24 hours), let alone reopen removal proceedings. In sum, it directs ICE officers to  
7 violate the rights of those whom they seek to subject to the third country removal  
8 program.

9 Faced with similar arguments, several courts have recently granted  
10 individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210;  
11 *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL  
12 1993771, at \*7; *Phan*, 2025 WL 1993735, at \*7.

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

14 Petitioner also meets the second factor, irreparable harm. “It is well  
15 established that the deprivation of constitutional rights ‘unquestionably constitutes  
16 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
17 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged  
18 deprivation of a constitutional right is involved, most courts hold that no further  
19 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d  
20 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*  
21 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

22 Here, the potential irreparable harm to Petitioner is even more concrete. In  
23 Mr. Ghafouri’s absence, his fiancée and teenage children suffer extraordinary  
24 hardship. *See Ghafouri Dec.* Furthermore, “[u]nlawful detention” itself  
25 “constitutes ‘extreme or very serious damage, and that damage is not  
26 compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir.  
27 2017).  
28

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

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

10 The final two factors for a TRO—the balance of hardships and public  
11 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
12 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor. On  
13 the one hand, the government “cannot reasonably assert that it is harmed in any  
14 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,  
15 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to  
16 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,  
17 556 U.S. at 436 (describing public interest in preventing noncitizens “from being  
18 wrongfully removed, particularly to countries where they are likely to face  
19 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218  
20 (W.D. Wash. 2019) (when government's treatment “is inconsistent with federal  
21 law, . . . the balance of hardships and public interest factors weigh in favor of a  
22 preliminary injunction.”). On the other hand, Petitioner faces weighty hardships:  
23 unlawful, indefinite detention and removal to a third country where he is likely to  
24 suffer imprisonment or other serious harm. The balance of equities thus favors  
25 preventing the violation of “requirements of federal law,” *Arizona Dream Act*  
26 *Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency  
27 relief to protect against unlawful detention and prevent unlawful third country  
28 removal.



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

3 When Federal Defenders first started filing TROs in immigration habeas  
4 cases, a Federal Defenders attorney called the U.S. Attorney's Office and was put  
5 in touch with Janet Cabral. *See* Exhibit A, Declaration of Katie Hurrelbrink, at  
6 ¶ 2. Ms. Cabral requested that Federal Defenders provide notice of these motions  
7 via email after the motion has been filed with the court. *Id.* Federal Defenders will  
8 do so in this case. *Id.*

9 Additionally, Petitioner requests that this TRO remain in place until the  
10 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because  
11 the same considerations will continue to warrant injunctive relief throughout this  
12 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*  
13 *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,

A handwritten signature in black ink, appearing to read 'Ali Ghafouri', is written over a horizontal line.

**ALI GHAFOURI**

Petitioner



1 **Ali Ghafouri**

2 A 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se<sup>1</sup>

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

9 **ALI GHAFOURI,**

10 **Petitioner,**

11 **v.**

12 **KRISTI NOEM, Secretary of the**  
13 **Department of Homeland Security,**  
14 **PAMELA JO BONDI, Attorney General,**  
15 **TODD M. LYONS, Acting Director,**  
16 **Immigration and Customs Enforcement,**  
17 **JESUS ROCHA, Acting Field Office**  
18 **Director, San Diego Field Office,**  
19 **CHRISTOPHER LAROSE, Warden at**  
20 **Otay Mesa Detention Center,**

21 **Respondents.**

**CIVIL CASE NO.:**

**Second Declaration**  
**of**  
**Katie Hurrelbrink**

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27 <sup>1</sup> Mr. Ghafouri is filing this petition for a writ of habeas corpus and all associated  
28 documents with the assistance of the Federal Defenders of San Diego, Inc.  
Federal Defenders has consistently used this procedure in seeking appointment for  
immigration habeas cases.

1  
2 1. My name is Katie Hurrelbrink. I am an appellate attorney at Federal  
3 Defenders of San Diego, Inc. In that capacity, I was assigned to  
4 investigate Mr. Ghafouri's immigration habeas case to determine  
5 whether—in keeping with longstanding district practice—Federal  
6 Defenders should seek to be appointed as counsel. I determined that we  
7 should, and I assigned the case to my colleague Jessie Agatstein.  
8 Ms. Agatstein and I assisted Mr. Ghafouri in drafting all necessary  
9 documents.

10 2. When I first began assisting petitioners with filing TROs this year, I  
11 spoke with Janet Cabral at the U.S. Attorney's Office about how her  
12 office wished to receive notice. She requested that we email a copy of  
13 the motion to her office after filing it with the court. I and my colleague  
14 Jessie Agatstein will do so in this case.

15 I declare under penalty of perjury that the foregoing is true and correct,  
16  
17 executed on October 8, 2025, in San Diego, California.

18  
19 /s/ Katie Hurrelbrink

20 **KATIE HURRELBRINK**  
21 Declarant  
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