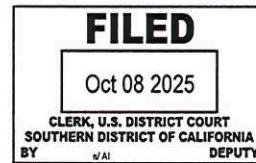


ORIGINAL

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

5 | Pro Se¹



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

10 | ALI GHAFOURI.

Petitioner,

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,
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**

26 ¹ Mr. Ghafouri 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

2 Petitioner Ali Ghafouri (“Petitioner”) faces immediate irreparable harm:
3 (1) revocation of his release on immigration supervision after two decades of
4 living peacefully in the community, despite ICE’s failure to follow its own
5 revocation procedures; (2) indefinite immigration detention with no reasonable
6 prospect of removal to Iran in the reasonably foreseeable future to the country
7 designated by the immigration judge (“IJ”); and (3) potential removal to a prison
8 in an unidentified, potentially dangerous third country never considered by an IJ.
9 Beyond that, Mr. Ghafouri’s family faces extraordinary hardship during his illegal
10 detention, because he is the sole provider for his two teenagers, one of whom has
11 entered his senior year of high school while his dad has been unlawfully detained.
12 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.

22 Petitioner is therefore facing both unlawful detention and a threat of
23 removal to a dangerous third country without due process. The requested
24 temporary restraining order (“TRO”) would preserve the status quo while
25 Petitioner litigates these claims by (1) reinstating Petitioner’s release on
26 supervision, and (2) prohibiting the government from removing him to a third
27 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 release² for
9 petitioners whose immigration cases are still pending. *See, e.g., Hinestrosa 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 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. 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.

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

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

20 On May 15, 2025, Mr. Ghafouri appeared at one of his ICE check-ins as
21 scheduled. *Id.* ¶ 5. He was re-detained, leaving his fiancée to care for his kids by
22 herself; their mom is not in the picture. *Id.* ¶ 9. She has had to sell their cars to
23 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,

²⁷ ²⁸ ³ 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
without providing sufficient notice and opportunity to be heard.**

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

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

20 Here, this Court should issue a temporary restraining order because
21 “immediate and irreparable injury . . . or damage” is occurring and will continue
22 in the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents re-
23 detained Petitioner in violation of his due process, statutory, and regulatory rights.
24 ICE policy also allows them to remove him to a third country in violation of his
25 due process, statutory, and regulatory rights. This Court should order Petitioner’s
26 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 2003.⁴ 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

⁴ 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); *Andriasiyan 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.” *Andriasan*, 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 *Andriasan*, 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
Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency
26 relief to protect against unlawful detention and prevent unlawful third country
27 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,

Dr. Stephan

ALI GHAFOURI

Petitioner

1 Ali Ghafouri
2 
3 Otay Mesa Detention Center
4 P.O. Box 439049
5 San Diego, CA 92143-9049

6 Pro Se¹

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
22 Respondents.

CIVIL CASE NO.:

**Second Declaration
of
Katie Hurrelbrink**

26
27 ¹ 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 executed on October 8, 2025, in San Diego, California.

17

18

19 /s/ Katie Hurrelbrink

20 **KATIE HURRELBRINK**

21 Declarant

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