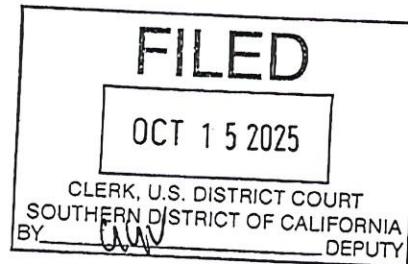


ORIGINAL

1 **Thanh Quoc Ngo**
2 A#027-327-203
3 Otay Mesa Detention Center
4 P.O. Box 439049
5 San Diego, CA 92143-9049

6
7
8 Pro Se¹



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

10 **THANH QUOC NGO,**

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.

10 CIVIL CASE NO.: '25CV2739 TWR MMP

11 Notice of motion and memorandum
12 of law in support of temporary
13 restraining order

24

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

1 **I. Introduction**

2 Petitioner Thanh Quoc Ngo 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
6 individualized, significantly likely prospect of removal to Vietnam in the
7 reasonably foreseeable future; and (3) potential removal to a prison in an
8 unidentified, potentially dangerous third country never considered by an IJ. This
9 Court should grant temporary relief of his release on his pre-existing order of
10 supervision to preserve the status quo.

11 Mr. Ngo has spent the last two decades living free in the community on an
12 order of supervision. Throughout that time, the government has proved unable to
13 remove him to Vietnam. Yet on July 24, 2025, the government re-detained him
14 when he appeared as scheduled at his check-in. ICE gave him no opportunity to
15 contest his re-detention, and did not identify changed circumstances justifying it.
16 ICE does not appear to have a travel document in hand. Worse yet, in the case that
17 ICE still proves unable to remove Mr. Ngo to Vietnam, ICE's own policies allow
18 ICE to remove him to a third country never before considered by an IJ, with either
19 6-to-24 hours' notice or no notice at all.

20 Mr. Ngo is therefore facing both unlawful detention and a threat of removal
21 to a dangerous third country without due process. The requested temporary
22 restraining order ("TRO") would preserve the status quo while Petitioner litigates
23 these claims by (1) reinstating Mr. Ngo's release on supervision, and
24 (2) prohibiting the government from removing him to a third country without an
25 opportunity to file a motion to reopen with an IJ.

26 In granting this motion, this Court would not break new ground. Courts in
27 this district and around the Ninth Circuit have granted TROs or preliminary
28 injunctions mandating release for post-final-removal-order immigrants like

1 Petitioner. *See, e.g., Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.
2 Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES,
3 *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No.
4 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-
5 SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g., Phetsadakone v. Scott*,
6 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*, No. 2:25-
7 CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v.*
8 *Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July
9 16, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D.
10 Wash. Aug. 21, 2025). These courts have determined that, for these long-term
11 releasees, liberty is the status quo, and only a return to that status quo can avert
12 irreparable harm.

13 Courts have likewise granted temporary restraining orders preventing third-
14 country removals without due process. *See, e.g., Van Tran v. Noem*, 2025 WL
15 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D.
16 Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-
17 JES, *4 (S.D. Cal. Oct. 9, 2025); *see also, e.g., J.R. v. Bostock*, 25-cv-01161-
18 JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v. Janecka*, 25-
19 cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v.*
20 *Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Hoac v.*
21 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July
22 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at
23 *7 (E.D. Cal. July 16, 2025).

24 Mr. Ngo therefore respectfully requests that this Court grant this TRO.

25 **II. Statement of Facts: Mr. Ngo is ordered removed, held in ICE custody,
26 and released as ICE proves unable to deport him for the next 21 years,
27 until he is arrested at his annual ICE check-in.**

28 In 1984, Thanh Quoc Ngo fled Vietnam with his parents and siblings.

Declaration of Thanh Quoc Ngo, Exhibit A to Habeas Petition (“Ngo Dec.”) ¶ 1.

1 They soon obtained green cards. *Id.* In the early 2000s, Mr. Ngo was convicted of
2 a drug crime. *Id.* ¶ 2. The conviction led to a November 16, 2004, order of
3 removal. *Id.*² ICE detained Mr. Ngo for about three months after that. *Id.* ¶ 3.

4 Mr. Ngo sustained no more criminal convictions, and he remained on an
5 order of supervision for the next 21 years. *Id.* ¶ 4. He checked in with ICE every
6 year. *Id.*

7 On July 24, 2025, Mr. Ngo appeared at one of these check-ins as scheduled.
8 *Id.* ¶ 5. He was re-detained. *Id.* Since then, as Mr. Ngo explains, “I have never
9 talked to an ICE officer about my case. No one has ever told me why I was re-
10 detained. No one has ever given me a chance to contest my re-detention. No one
11 has told me what changed to make it more likely that I can be removed.” *Id.* ¶ 7.

12 **III. Argument: Mr. Ngo meets all *Winter* factors.**

13 To obtain a TRO, a petitioner “must establish that he is likely to succeed on
14 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
15 relief, that the balance of equities tips in his favor, and that an injunction is in the
16 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
17 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
18 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
19 “substantially identical” analysis). A “variant[] of the same standard” is the
20 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
21 going to the merits—a lesser showing than likelihood of success on the merits—
22 then a preliminary injunction may still issue if the balance of hardships tips
23 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
24 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
25 (internal quotation marks omitted). Under this approach, the four *Winter* elements
26

28 ² EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

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 Mr. Ngo 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.

A. Mr. Ngo is likely to succeed on the merits, or at a minimum, raises serious merits questions.

As described in detail in Mr. Ngo's habeas petition, he is likely to succeed on each of his three claims.

First, ICE failed to follow its own regulations requiring changed circumstances before Mr. Ngo’s re-detention, as well as its procedural regulations requiring it to notify him of those circumstances and allow him an opportunity to contest them. This was a violation of both the regulations and due process and requires his release. *See, e.g., See Phan v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3-*5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory framework and granting a habeas petition for ICE’s failure to follow these regulations for a refugee of Vietnam who entered the United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same as to an Iranian national).

Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Ngo, for whom there is “no

1 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
2 678, 701 (2001); *see, e.g., Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
3 2419288 *17 (W.D. Wash. Aug. 21, 2025) (granting habeas petition on *Zadvydas*
4 grounds and ordering pre-1995 Vietnamese immigrant released); *Hoac v. Becerra*,
5 No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *5, *7 (E.D. Cal. July 16,
6 2025) (granting preliminary injunction and temporary restraining order on these
7 same grounds).

8 Third, Respondents cannot remove Mr. Ngo to a third country without first
9 providing notice and a sufficient opportunity to be heard before an immigration
10 judge. Their current policy allowing third-country removal “contravenes Ninth
11 Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D.
12 Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes
13 Ninth Circuit law on the process due to noncitizens in detail); *see also Van Tran*
14 *v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025)
15 (granting temporary restraining order preventing a noncitizen’s deportation to a
16 third country pending litigation in light of due process problems); *Nguyen Tran v.*
17 *Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).
18

19 **B. Mr. Ngo will suffer irreparable harm absent injunctive relief.**

20 Mr. Ngo also meets the second factor, irreparable harm. “It is well
21 established that the deprivation of constitutional rights ‘unquestionably constitutes
22 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
23 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged
24 deprivation of a constitutional right is involved, most courts hold that no further
25 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
26 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
27 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

28 Third-country deportations pose that risk and more. Recent third-country

1 deportees have been held, indefinitely and without charge, in hazardous foreign
2 prisons. *See* Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
3 *Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to
4 solitary confinement. Gerald Imray, *3 Deported by US held in African Prison*
5 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They have
6 been removed to countries so unstable that the U.S. government recommends
7 making a will and appointing a hostage negotiator before traveling to them. *See*
8 Wong, *supra*. These and other threats to Mr. Ngo's health and life independently
9 constitute irreparable harm.

10 **IV. The balance of hardships and the public interest weigh heavily in Mr.
11 Ngo's favor.**

12 The final two factors for a TRO—the balance of hardships and public
13 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
14 556 U.S. 418, 435 (2009). That balance tips decidedly in Mr. Ngo's favor.

15 On the one hand, the government “cannot reasonably assert that it is
16 harmed in any legally cognizable sense” by being compelled to follow the law.
17 *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the
18 public interest to prevent violations of the U.S. Constitution and ensure the rule of
19 law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing
20 noncitizens “from being wrongfully removed, particularly to countries where they
21 are likely to face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp.
22 3d 1208, 1218 (W.D. Wash. 2019) (when government’s treatment “is inconsistent
23 with federal law, . . . the balance of hardships and public interest factors weigh in
24 favor of a preliminary injunction.”).

25 On the other hand, Mr. Ngo faces weighty hardships: unlawful, indefinite
26 detention, and possible removal to a third country where he is likely to suffer
27 imprisonment or other serious harm. The balance of equities thus favors
28 preventing the violation of “requirements of federal law,” *Arizona Dream Act*

1 *Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency
2 relief to protect against unlawful detention and prevent unlawful third country
3 removal.

4 **V. Mr. Ngo will give the government notice of this TRO motion
5 immediately, and the TRO should remain in place throughout habeas
6 litigation.**

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

13 Additionally, Mr. Ngo requests that this TRO remain in place until the
14 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because
15 the same considerations will continue to warrant injunctive relief throughout this
16 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas
17 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: 9-28-2025 Respectfully submitted,

THANH QUOC NGO

TIANNU QUOC NGO

THÀNH QUỐC NGŨ

Petitioner

1 **Thanh Quoc Ngo**
2 A# 
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 THANH QUOC NGO,
10 Petitioner,

CIVIL CASE NO.:

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,
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**Second Declaration
of
Jessie Agatstein**

27 Respondents.
28

¹ Mr. Ngo 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.

- 1
- 2 1. My name is Jessie Agatstein. I am an appellate attorney at Federal
- 3 Defenders of San Diego, Inc. In that capacity, alongside my colleague
- 4 Katie Hurrelbrink, I was assigned to investigate Mr. Ngo's immigration
- 5 habeas case to determine whether—in keeping with longstanding district
- 6 practice—Federal Defenders should seek to be appointed as counsel. We
- 7 determined that we should. Ms. Hurrelbrink and I assisted Mr. Ngo in
- 8 drafting all necessary documents.
- 9 2. When my office first began assisting petitioners with filing TROs this
- 10 year, Ms. Hurrelbrink spoke with Janet Cabral at the U.S. Attorney's
- 11 Office about how her office wished to receive notice. Ms. Cabral
- 12 requested that we email a copy of the motion to her office after filing it
- 13 with the court. I will do so in this case.

14 I declare under penalty of perjury that the foregoing is true and correct,

15 executed on October 8, 2025, in San Diego, California.

16

17 /s/ Jessie Agatstein
18 **JESSIE AGATSTEIN**
19 Declarant

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PROOF OF SERVICE

I, the undersigned, caused to be served the within Notice of Motion and Memorandum of Law in Support of Temporary Restraining Order by email, at the request of Janet Cabral, Chief of the Civil Division, to:

U.S. Attorney's Office, Southern District of California
Civil Division
Janet.Cabral@usdoj.gov

Date: October 15, 2025

/s/ Jessie Agatstein
Jessie Agatstein