

## Tung Thanh Nguyen

Otay Mesa Detention Center  
P.O. Box 439049  
San Diego, CA 92143-9049

Pro Se<sup>1</sup>

**FILED**

Oct 16 2025

**CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TUNG THANH NGUYEN.

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.

WIL CASE NO.: '25CV2760 TWR KSC

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

<sup>1</sup> Mr. Nguyen is filing a 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 Tung Thanh Nguyen (“Petitioner”) faces immediate irreparable harm: (1) revocation of his release on immigration supervision after over 25 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. This Court should grant temporary relief to preserve the status quo.

Petitioner has spent over 25 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 May 12, 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.

In granting this motion, this Court would not break new ground. Several courts have granted TROs or preliminary injunctions mandating release for post-final-removal-order immigrants like Petitioner. *See Phetsadakone v. Scott*, 2025

1 WL 2579569, at \*6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No.  
2 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D. Cal. July 16, 2025)  
3 (Vietnam); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735,  
4 at \*7 (E.D. Cal. July 16, 2025) (Vietnam); *Nguyen v. Scott*, No. 2:25-CV-01398,  
5 2025 WL 2419288, at \*29 (W.D. Wash. Aug. 21, 2025) (Vietnam). These courts  
6 have determined that, for these long-term releasees, liberty is the status quo, and  
7 only a return to that status quo can avert irreparable harm.

8 Several courts have likewise granted temporary restraining orders  
9 preventing third-country removals without due process. *See, e.g., J.R. v. Bostock*,  
10 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v.*  
11 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025);  
12 *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26,  
13 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*7  
14 (E.D. Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025  
15 WL 1993735, at \*7 (E.D. Cal. July 16, 2025). Petitioner therefore respectfully  
16 requests that this Court grant this TRO.

### 17 Argument

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

1 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)  
2 (internal quotation marks omitted). Under this approach, the four *Winter* elements  
3 are “balanced, so that a stronger showing of one element may offset a weaker  
4 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
5 (9th Cir. 2011). A TRO may be granted where there are “serious questions going  
6 to the merits” and a hardship balance. . . tips sharply toward the plaintiff,” and so  
7 long as the other *Winter* factors are met. *Id.* at 1132.

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

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

17 Concurrent with this TRO motion, Mr. Nguyen files a habeas petition setting  
18 forth in detail why he is likely to succeed on the merits. He does not re-raise these  
19 arguments here but provides a list of recent cases in which courts in this district  
20 have granted TROs or habeas petitions after reviewing regulatory, *Zadvydas*, and  
21 third-country-removal claims:

22 (1) *Regulatory and due process violations*: *Constantinovici v. Bondi*, \_\_ F.  
23 Supp. 3d \_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025);  
24 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.  
25 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, \*3-\*5  
26 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB  
27 (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-  
28 2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES,

1 ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-  
2 02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

3 (2) *Zadvydas violations*: See *Conchas-Valdez*, 2025 WL 2884822, No. 25-  
4 cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Alic v. Dep't of Homeland Sec./Immigr.*  
5 *Customs Enf't*, No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept.  
6 30, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept.  
7 25, 2025).

8 (3) *Third-country removal statutory and due process violations*: This Court  
9 should enjoin ICE from removing Mr. Ngo to a third country without providing an  
10 opportunity to assert fear of persecution or torture before an immigration judge.  
11 See, e.g., *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v.*  
12 *Noem*, 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF  
13 No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No.  
14 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9, 2025).

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

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

24 Here, the potential irreparable harm to Petitioner is even more concrete. the  
25 Ninth Circuit has specifically recognized the “irreparable harms imposed on anyone  
26 subject to immigration detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th  
27 Cir. 2017). That is because “[u]nlawful detention constitutes ‘extreme or very

1 serious damage, and that damage is not compensable in damages.” *Hernandez v.*  
2 *Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). And “[i]t is beyond dispute that  
3 Petitioner would face irreparable harm from removal to a third country.” *Nguyen*,  
4 2025 WL 2419288, at \*26. Recent third-country deportees have been held,  
5 indefinitely and without charge, in hazardous foreign prisons. *See* Wong et al.,  
6 *supra*. They have been subjected to solitary confinement. *See* Imray, *supra*. They  
7 have been removed to countries so unstable that the U.S. government recommends  
8 making a will and appointing a hostage negotiator before traveling to them. *See*  
9 Wong, *supra*. These and other threats to Petitioner’s health and life independently  
10 constitute irreparable harm.

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

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

1 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful  
2 detention and prevent unlawful third country removal.

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

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

11 Additionally, Petitioner requests that this TRO remain in place until the  
12 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because  
13 the same considerations will continue to warrant injunctive relief throughout this  
14 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*  
15 *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: 10-5-25

Respectfully submitted,

## TUNG THANH NGUYEN

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](mailto:janet.cabral@usdoj.gov), when I receive the court-stamped copy.

Date: 10/15/2025

/s/ Katie Hurrelbrink  
Katie Hurrelbrink

# Exhibit A

1 Tung Thanh Nguyen  
2 A#   
3 Otay Mesa Detention Center  
4 P.O. Box 439049  
5 San Diego, CA 92143-9049

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7 Pro Se<sup>1</sup>  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TUNG THANH NGUYEN,  
Petitioner,

CIVIL CASE NO.:

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,

Second Declaration  
of  
Katie Hurrelbrink

Respondents.

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<sup>1</sup> Mr. Nguyen 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.

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- 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. Nguyen'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 assisted Mr. Nguyen in drafting all necessary documents.
- 8 2. When I first began assisting petitioners with filing TROs, I spoke with
- 9 Janet Cabral at the U.S. Attorney's Office about how her office wished
- 10 to receive notice. She requested that I email a copy of the motion to her
- 11 office after filing it with the court. I will do so in this case.

12 I declare under penalty of perjury that the foregoing is true and correct,  
13 executed on October 15, 2025, in San Diego, California.  
14

15  
16 /s/ Katie Hurrelbrink  
17 **KATIE HURRELBRINK**  
18 Declarant  
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