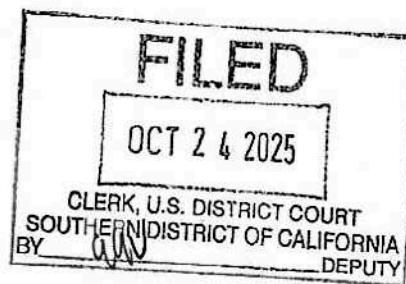


ORIGINAL

1 Sarineh Gharakhan
2 A# [REDACTED]
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 SARINEH GHARAKHAN,

CIVIL CASE NO.: '25CV2879 DMS AHG

11 Petitioner,

Notice of motion and memorandum
12 v.
13 of law in support of temporary
14 KRISTI NOEM, Secretary of the
15 restraining order
15 Department of Homeland Security,
16 PAMELA JO BONDI, Attorney General,
17 TODD M. LYONS, Acting Director,
18 Immigration and Customs Enforcement,
19 JESUS ROCHA, Acting Field Office
20 Director, San Diego Field Office,
21 CHRISTOPHER LAROSE, Warden at
22 Otay Mesa Detention Center,
23
24 Respondents.

25

26

27

28

29

30

31

32

33

34

¹ Ms. Gharakhan 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 **I. Introduction**

2 Petitioner Sarineh Gharakhan faces immediate irreparable harm:
3 (1) revocation of her release on immigration supervision resulting in her
4 overserving the maximum term allowed for a revocation of a supervision
5 violation by two months, despite ICE's failure to follow its own revocation
6 procedures; (2) indefinite immigration detention with no individualized,
7 significantly likely prospect of removal to an unidentified third country in the
8 reasonably foreseeable future; and (3) potential removal to an unidentified,
9 potentially dangerous third country never considered by an immigration judge.
10 This Court should grant temporary relief of her release on her pre-existing order
11 of supervision to preserve the status quo.

12 Ms. Gharakhan has been ordered removed to Iran, and granted withholding
13 of removal from Iran, since 2018. Ever since then, the government has proved
14 unable to remove her. Yet on February 23, 2025, the government re-detained her
15 when she was released from a county facility after an arrest. ICE gave her no
16 opportunity to contest her re-detention, and it did not identify what authority it
17 was re-detaining her under, and for what reason. Eight months later, ICE still does
18 not know where it intends to remove her. Worse yet, when it does decide where to
19 remove her, ICE's own policies allow ICE to remove her to a third country never
20 before considered by an IJ, with either 6-to-24 hours' notice or no notice at all.

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

27 In granting this motion, this Court would not break new ground. Courts in
28 this district and around the Ninth Circuit have granted TROs or preliminary

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

26

27

28

1 **II. Statement of Facts: Ms. Gharakhan is ordered removed, released as ICE**
2 **proves unable to deport her for the next 8 years, and then re-detained in**
3 **February 2025.**

4 Sarineh Gharakhan fled Iran with her family when she was one. Exhibit A
5 to Habeas Petition (“Gharakhan Dec.”) ¶ 1. They travelled through Germany and
6 came to the United States in the late 1980s, receiving green cards as Armenian
7 Christian refugees. *Id.*

8 In 2018, Ms. Gharakhan was convicted of robbery and ordered removed to
9 Iran in 2018. *Id.* ¶ 2. She was also granted withholding of removal to Iran because
10 of her status as an Armenian Christian and released. *Id.*

11 On February 21, 2025, Ms. Gharakhan was arrested in Orange County. *Id.*
12 ¶ 4. Two days later, she was released from the county jail directly into ICE
13 custody. *Id.* She has been there ever since, for eight months and counting. *Id.* ICE
14 has not given her a chance to contest her re-detention. *Id.* ¶ 8. After about six
15 months in custody, an ICE officer informed her for the first time that ICE was
16 “trying to see what country they could send [her] to.” *Id.* ¶ 9. Several days ago, an
17 ICE officer met with Ms. Gharakhan to give her notice of her first “90-day
18 custody review.” *Id.* ¶ 10. Even so, she reports, “The officer did not tell me why I
19 am still detained here, if or why my order of supervision was revoked, and what
20 country ICE is trying to remove me to.” *Id.*

21 **III. Argument: Ms. Gharakhan meets all *Winter* factors.**

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

1 going to the merits—a lesser showing than likelihood of success on the merits—
2 then a preliminary injunction may still issue if the balance of hardships tips
3 *sharply* in the plaintiff's favor, and the other two *Winter* factors are satisfied.”
4 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
5 (internal quotation marks omitted). Under this approach, the four *Winter* elements
6 are “balanced, so that a stronger showing of one element may offset a weaker
7 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
8 (9th Cir. 2011). A TRO may be granted where there are “serious questions going
9 to the merits” and a hardship balance... tips sharply toward the plaintiff,” and so
10 long as the other *Winter* factors are met. *Id.* at 1132.

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

19
20 **A. Ms. Gharakhan is likely to succeed on the merits, or at a
minimum, raises serious merits questions.**

21 As described in detail in Ms. Gharakhan’s habeas petition, she is likely to
22 succeed on each of her three claims.

23 First, ICE failed to follow its own regulations before and during
24 Ms. Gharakhan’s re-detention, including its substantive regulations imposing a
25 maximum of six months for violations of supervision, as well as its procedural
26 regulations requiring it to notify her of the reason for her re-detention and
27 allowing her an opportunity to contest them. This was a violation of both the
28 regulations and due process and requires her release. *See, e.g., See Phan v. Noem*,

1 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3-*5 (S.D. Cal. Oct. 10,
2 2025) (explaining this regulatory framework and granting a habeas petition for
3 ICE's failure to follow these regulations for a refugee of Vietnam who entered the
4 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
5 2646165 at *2 (same as to an Iranian national).

6 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize
7 the government to detain immigrants like Ms. Gharakhan, for whom there is "no
8 significant likelihood of removal in the reasonably foreseeable future." 533 U.S.
9 678, 701 (2001); *see, e.g., Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
10 2419288 *17 (W.D. Wash. Aug. 21, 2025) (granting habeas petition on *Zadvydas*
11 grounds); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *5,
12 *7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary
13 restraining order on these same grounds); *Zavvar v. Scott*, No. 25-2104-TDC,
14 2025 WL 2592543, *3-*8 (D. Md. Sept. 8, 2025) (granting habeas petition as to a
15 re-detained Iranian national in a similar position as Ms. Gharakhan under
16 *Zadvydas*).

17 Third, Respondents cannot remove Ms. Gharakhan to a third country
18 without first providing notice and a sufficient opportunity to be heard before an
19 immigration judge. Their current policy allowing third-country removal in the
20 absence of that notice "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-
21 CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how
22 the July 9, 2025 ICE memo contravenes Ninth Circuit law on the process due to
23 noncitizens in detail); *see also Delkash v. Noem*, No. 25-cv-1675-HDV-AGR,
24 2025 WL 2683988, *1, *6 (C.D. Cal. Aug. 28, 2025) (explaining this point as to
25 an Iranian national); *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van*
26 *Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-
27 BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL
28

1 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all either granting
2 temporary restraining orders or habeas petitions ordering the government to not
3 remove petitioners to third countries without notice and an opportunity to be
4 heard).

5 **B. Ms. Gharakhan will suffer irreparable harm absent injunctive
6 relief.**

7 Ms. Gharakhan also meets the second factor, irreparable harm. “It is well
8 established that the deprivation of constitutional rights ‘unquestionably constitutes
9 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
10 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The Ninth Circuit has
11 specifically recognized the “irreparable harms imposed on anyone subject to
12 immigration detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir.
13 2017).

14 Where the “alleged deprivation of a constitutional right is involved, most
15 courts hold that no further showing of irreparable injury is necessary.” *Warsoldier
v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan
16 Wright et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). But “[i]t
17 is beyond dispute that Petitioner would face irreparable harm from removal to a
18 third country.” *Nguyen*, 2025 WL 2419288, at *26.

20 Recent third-country deportees have been held, indefinitely and without
21 charge, in hazardous foreign prisons. See Edward Wong et al, *Inside the Global
22 Deal-Making Behind Trump’s Mass Deportations*, N.Y. Times, June 25, 2025.
23 They have been subjected to solitary confinement. Gerald Imray, *3 Deported by
24 US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS
25 (Sept. 2, 2025). They have been removed to countries so unstable that the U.S.
26 government recommends making a will and appointing a hostage negotiator
27 before traveling to them. See Wong, *supra*. They have been “promptly deported
28 . . . to the very countries to which the United States had withheld removal due to

1 the risk of persecution, torture, or death.” *Santamaria Orellana v. Baker*, No. 25-
2 1788-TDC, 2025 WL 2841886, *12 (D. Md. Oct. 7, 2025). These and other threats
3 to Ms. Gharakhan’s health and life independently constitute irreparable harm.

4 **IV. The balance of hardships and the public interest weigh heavily in Ms.
5 Gharakhan’s favor.**

6 The final two factors for a TRO—the balance of hardships and public
7 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
8 556 U.S. 418, 435 (2009). That balance tips decidedly in Ms. Gharakhan’s favor.

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

19 On the other hand, Ms. Gharakhan faces weighty hardships: unlawful,
20 indefinite detention, and possible removal to a third country where she is likely to
21 suffer imprisonment or other serious harm. The balance of equities thus favors
22 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
23 relief to protect against unlawful detention and prevent unlawful third country
24 removal.

25 **V. Ms. Gharakhan will give the government notice of this TRO motion
26 immediately, and the TRO should remain in place throughout habeas
27 litigation.**

28 When Federal Defenders first started filing TROs in immigration habeas

1 cases, a Federal Defenders attorney called the U.S. Attorney's Office and was put
2 in touch with Janet Cabral. *See Exhibit A, Declaration of Jessie Agatstein, ¶ 2.*
3 Ms. Cabral requested that Federal Defenders provide notice of these motions via
4 email after the motion has been filed with the court. *Id.* Federal Defenders will do
5 so in this case. *Id.*

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

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Conclusion

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

DATED: 10/22/2025

Respectfully submitted,

S. Jayachar
SABINE L. CHARAWIAN

SARINEH GHARAKHAN

Petitioner

Exhibit A

1 Sarineh Gharakhan
2 [REDACTED]
3 Otay Mesa Detention Center
4 P.O. Box 439049
5 San Diego, CA 92143-9049

6
7 Pro Se¹
8

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SARINEH GHARAKHAN,
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.:

Declaration
of
Jessie Agatstein

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

I declare under penalty of perjury that the foregoing is true and correct, executed on October 24, 2025, in San Diego, California.

/s/ Jessie Agatstein
JESSIE AGATSTEIN
Declarant

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 24, 2025

/s/ Jessie Agatstein
Jessie Agatstein