Saengphet
(a.k.a., Saengphet No Last Name, Saengphet NLN)
A[redacted]
Otay Mesa Detention Center
P.O. Box 439049
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Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAENGPHET
(a.k.a., Saengphet No Last Name, Saengphet NLN),

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.: '25CV2909 JES BLM

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

[1] Mr. Saengphet 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. That same counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Kara Hartzler in Support of Appointment Motion attaches case examples.

Introduction

Petitioner Saengphet ("Petitioner") faces immediate irreparable harm: (1) revocation of his release on immigration supervision, 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.

Since he was ordered removed, Petitioner has spent about 23 years in the United States without the government being able to remove him to Laos. Yet on October 15, 2025, the government re-detained him. 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 Laos has overwhelmingly declined to issue travel documents for deportees. Worse yet, in the likely case that ICE still proves unable to remove Petitioner to Laos, ICE's own policies allow ICE to remove him to a third country never before considered by the IJ in Petitioner's case, 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") and injunction 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 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025)

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

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

Statement of Facts

I. In 2002, ICE tried and failed to remove Mr. Saengphet because the Laotian consulate refused to issue travel documents.

Mr. Saengphet and his family came to the United States in 1989 as refugees from Laos. Exhibit A to habeas petition, "Saengphet Declaration," at ¶ 1. Mr. Saengphet became a lawful permanent resident and remained so until 2002, when he was ordered removed due to a conviction for assault. *Id.* at ¶ 2, 3. After he was ordered removed, he was detained pending his removal for about two-and-a-half months. *Id.* at ¶ 4. Since that time, Mr. Saengphet has not violated his supervision. *Id.* But on October 15, 2025, ICE arrested Mr. Saengphet at his annual check in. *Id.* at ¶ 6.

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

When removable immigrants cannot be removed to their home country—including Laotian immigrants—ICE has begun deporting those individuals to third countries without adequate notice or a hearing. As explained in greater detail in Petitioner's habeas petition, the Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. For example, the government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See Wong, supra.*

On June 23 and July 3, 2025, in light of procedural arguments regarding the viability of national class-wide relief rather than individual relief, the Supreme Court issued a stay of a class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968,

at *1, 3 (D. Mass. Apr. 18, 2025). That national injunction had required ICE to follow the statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025). On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exh. B to Habeas Petition.

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

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 and an injunction 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.

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

A. Petitioner is likely to succeed on the merits of his claim that ICE violated its own regulations.

In addition to *Zadvydas*'s protections, a series of regulations provide extra process for someone who, like Petitioner, is re-detained following a period of release. Under 8 C.F.R. § 241.4(l), ICE may re-detain an immigrant on

supervision only with an interview and a chance to contest a re-detention. When an immigrant is specifically released after giving good reason why they cannot be removed, additional regulations apply: ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances," a noncitizen likely can be removed in the reasonably foreseeable future. *Id.* § 241.13(i)(2).

The regulations further provide noncitizens with a chance to contest a re-detention decision. ICE must "notif[y] [the person] of the reasons for revocation of his or her release." *Id.* § 241.13(i)(3). ICE must then "conduct an initial informal interview promptly" after re-detention "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* During the interview, the person "may submit any evidence or information" showing that the prerequisites to re-detention have not been met, and the interviewer must evaluate "any contested facts." *Id.*

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

None of the prerequisites to detention apply here. Since ICE last tried to deport him in 2002, Petitioner has not violated the conditions of his release. And there are no changed circumstances that justify re-detaining him. ICE already tried—and failed—to remove Petitioner twice and has given Petitioner no indication that agents have a travel document in hand for him. Of course, ICE may be planning to renew their request for a travel document from Laos. But

absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Petitioner received the interview required by regulation. No one from ICE has ever invited him to submit evidence to contest his detention. *Id.*

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

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

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

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" for at least six months after the removal order becomes final. *Id.* at 701. This acts as a kind of grace period for effectuating removals. Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must prove that there is "good reason to believe that there is no significant likelihood of removal in the

reasonably foreseeable future." *Id.*

If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of proof rests with the government: The government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

Here, Petitioner was ordered removed more than six months ago, as his removal order became final in 2002. Saengphet Dec. at ¶ 3. Thus, it is clear that the *Zadvydas* grace period has ended.

There is also strong evidence that there is no "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Laos refused to accept Mr. Saengphet when authorities tried to deport him in 2002. Saengphet Dec. at ¶ 4, 5. Nothing has changed since the last time ICE attempted to deport him. And to date, there is no indication that ICE has obtained a travel document.

Finally, Petitioner's criminal history cannot change this equation. Not only has Petitioner proved that he poses no danger or flight risk, *Zadvydas* also squarely prohibits ICE from indefinitely detaining immigrants because they pose risks of danger or flight. 533 U.S. at 684–91.

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

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

Finally, Petitioner is likely to succeed on the merits of his claim that he may not be removed to a third country absent adequate notice and an opportunity to be heard. U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where a person may be persecuted or tortured, a

form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

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

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

Due process also requires "ask[ing] the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the

country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring a minimum of 15 days' notice). "[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason: To have a meaningful opportunity to apply for fear-based protection, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear.

Respondents' third country removal program skips over these statutory and constitutional procedural protections. According to ICE's July 7 guidance, individuals can be removed to third countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic assurances." Exh. B to Habeas Petition at 1. Petitioner is likely to succeed on the merits of his claim on this fact alone, because the policy instructs officers to provide no notice or opportunity to be heard. The same is true of the minimal procedures ICE offers when no diplomatic assurances are present. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone

reopen removal proceedings.

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

II. Petitioner will suffer irreparable harm absent injunctive relief.

Petitioner also meets the second factor, irreparable harm. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged deprivation of a constitutional right is involved, most 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 Wright et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).

Here, the potential irreparable harm to Petitioner is even more concrete. "Unlawful detention certainly constitutes 'extreme or very serious damage, and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). Third-country deportations pose that risk and more. Recent third-country deportees have been held, indefinitely and without charge, in hazardous foreign prisons. *See* Wong et al., *supra*. They have been subjected to solitary confinement. *See* Imray, *supra*. They have been removed to countries so unstable that the U.S. government recommends making a will and appointing a hostage negotiator before traveling to them. *See* Wong, *supra*. These and other threats to Petitioner's health and life independently constitute irreparable harm.

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

The final two factors for a TRO—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*,

556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor. On the one hand, the government "cannot reasonably assert that it is harmed in any legally cognizable sense" by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government's treatment "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction."). On the other hand, Petitioner faces weighty hardships: unlawful, indefinite detention and removal to a third country where he is likely to suffer imprisonment or serious harm. The balance of equities thus favors 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 relief to protect against unlawful detention and unlawful third country removal.

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

Upon filing this motion, proposed counsel emailed Janet Cabral, from the United States Attorney's Office, notice of this request for a temporary restraining and all the filings associated with it. Additionally, Petitioner requests that this TRO and injunction remain in place until the habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because the same considerations will continue to warrant injunctive relief throughout this litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003). A proposed order is attached.

Conclusion

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

DATED: 10/25/2025

Respectfully submitted,

SAENGPHET NO

Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served the within Motion for a Temporary Restraining Order by email to:

U.S. Attorney's Office, Southern District of California
Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101

Date: 10-28-25

Kara Hartzler