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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KHA NGUYEN TRAN,

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.: 25-cv-2963-TWR

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

[1] "A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings." 18 U.S.C. § 3006A. Because this petition is ancillary to *Tran v. Noem*, 25-CV-2391-BTM, in which Federal Defenders was previously appointed, Federal Defenders understands its appointment to extend to this petition.

Introduction

Kha Nguyen Tran faces immediate irreparable harm from his re-detention in violation of 8 C.F.R. § 241.13(i) and the Fifth Amendment's Due Process Clause. This Court should order his immediate release and preserve jurisdiction by staying removal pending a decision on the merits.

Statement of Facts

On September 15, 2025, Mr. Tran filed a habeas petition alleging (among other things) that the government failed to comply with 8 C.F.R. § 241.13(i) before re-detaining him. *Tran v. Noem*, 25-CV-2391-BTM, Dkt. No. 1 (S.D. Cal. Sept. 15, 2025). On October 27, 2025, a court ordered Mr. Tran's release on that basis, citing three aspects of 8 C.F.R. § 241.13(i) with which ICE failed to comply. First, the government produced no evidence that a changed-circumstances determination was or could have been made before Mr. Tran's arrest. Dkt. 16 at 4. Second, Mr. Tran received no written notice prior to the revocation of release. *Id.* at 5. Third, Mr. Tran did not receive a prompt informal interview. *Id.* at 6. The court therefore ordered Respondents to release Mr. Tran from custody. *Id.* at 7.

Following his release, ICE ordered Mr. Tran to check in on October 31, 2025. Exh. A to Habeas Petition ("O'Sullivan Dec.") at ¶ 2. Mr. Tran checked in as ordered. *Id.* at ¶ 2. Counsel and a Federal Defenders investigator accompanied him to the check in. *Id.* at ¶ 3. When Mr. Tran's name was called, he was escorted back to a small office in the Enforcement and Removal Operations space. *Id.* A man who identified himself as Officer Mejia led the meeting. *Id.* at ¶ 5. Mr. Mejia began by asking if Mr. Tran was aware that he has had a final removal order since 2007. *Id.* at ¶ 6. He then stated that ICE was revoking Mr. Tran's order of supervision and taking him into custody because ICE had travel documents for him and a flight to Vietnam was scheduled for November 4, 2025. *Id.* at ¶ 7. Officer Mejia then asked Mr. Tran several biographical questions as well as questions about his health. *Id.*

¶ 8. When Mr. Tran finished answering those questions, Officer Mejia again said that his order of supervision was being revoked. *Id.* at ¶ 9.

At that point, Officer Mejia asked Mr. Tran if there was anything Mr. Tran wanted to relate. *Id.* at ¶ 10. Mr. Tran provided several reasons not to revoke his release. He noted that he was not a flight risk or a risk to the community, due to his perfect record on release. *Id.* at ¶ 11. He explained that his elderly father serves as caretaker for his disabled brother, and while he does not live with them, he visits and assists them regularly. *Id.* at ¶ 12. He promised his father that if anything happened to him, he would assume the role of the caretaker for his disabled brother. *Id.*

Mr. Tran also explained that he is in the middle of attempting to fix his immigration status. *Id.* at ¶ 11. He said that he was working with an attorney to try to get his conviction vacated and his green card reinstated. *Id.*

Undersigned counsel then asked whether she could add a few points, and Officer Mejia agreed. *Id.* at ¶ 13. Counsel reiterated that Mr. Tran was actively seeking post-conviction relief in state court, and if granted relief, he would be able to move to reopen his immigration case and potentially get his green card back. *Id.* Counsel noted that if Mr. Tran were released even for a few weeks and rescheduled for a later flight to Vietnam, Mr. Tran may be able to complete that process. *Id.* at ¶ 15.

Officer Mejia responded that he was not the decisionmaker, and the decision had already been made. *Id.* at ¶ 17. Counsel asked to confirm that the decision had been made prior to the meeting. *Id.* at ¶ 18. Officer Mejia confirmed again. He said, "It is already done." *Id.* He then ended the meeting and arrested Mr. Tran. *Id.* at ¶¶ 19-20.

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 because "immediate and irreparable injury . . . or damage" is occurring and will continue in the absence of an order. Fed. R. Civ. P. 65(b).

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

First, Petitioner at least raises a serious merits question about whether ICE re-detained him in compliance with 8 C.F.R. § 241.13(i). As noted, the release order in *Tran v. Noem* was premised on three regulatory violations. Though the court left open the possibility that ICE could cure the regulatory violations through re-detention, the present re-detention fell short in at least one, crucial respect: Mr. Tran's informal interview did not end in "a determination whether the facts as determined warrant revocation and further denial of release." 8 C.F.R.

§ 241.13(i)(3). To the contrary, Officer Mejia made clear that the revocation decision was made before ICE ever heard from Mr. Tran.

Section 241.13(i)(3) lays out a simple procedure for giving re-detained immigrants basic notice and an opportunity to be heard. "Upon revocation, the [re-detained person] will be notified of the reasons for revocation of his or her release." 8 C.F.R. § 241.13(i)(3). ICE must then "conduct an initial informal interview promptly after his or her return to . . . custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

Finally, and most importantly for purposes of this motion, "[t]he revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* In other words, at the end of the interview process, ICE must find relevant facts—including information adduced during the interview—and make a final revocation decision based on all the facts. *Id.*

That did not happen here. Instead, ICE made a final decision about whether to revoke release before letting Mr. Tran have his say. O'Sullivan Dec. at ¶¶ 17-18. In Officer Mejia's words, "it [was] already done" by the time the interview took place. *Id.* at ¶ 18. The supposed informal interview therefore was not a real custody evaluation under 8 C.F.R. § 241.13(i), where a decisionmaker evaluated contested facts and determined whether the facts warranted revocation. It was an empty formality, carried out only after the decision had already been made.

This is no technical failing. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (cleaned up). Due process therefore "is not present where the state has gone through the mechanics of providing a hearing, but the hearing is totally devoid of a meaningful opportunity to be heard." *Matthews v. Harney Cnty., Or., Sch. Dist. No. 4*, 819 F.2d 889, 893–94 (9th Cir. 1987) (cleaned up) (quoting *Washington v. Kirksey*, 811 F.2d 561, 564 (11th

Cir.1987)). An opportunity to be heard is not meaningful when the hearing is a "mere formality," because the decisionmaker "ha[s] made up her mind . . . before the meeting and would have disregarded any evidence . . . presented in mitigation or rebuttal." *Brady v. Gebbie*, 859 F.2d 1543, 1554–55 (9th Cir. 1988); *accord Bakalis v. Golemeski*, 35 F.3d 318, 326 (7th Cir. 1994) ("Certainly, a body that has prejudged the outcome cannot render a decision that comports with due process."). That's exactly what happened here.

Though the government often argues otherwise, Mr. Nguyen need not show prejudice in order to win release. "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up).

Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. 2025). Indeed, "[w]hen the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

If Mr. Tran did need to show prejudice, however, he could. Even though changed circumstances likely justify re-detention, that gives ICE only the *discretion* to detain Mr. Tran. 8 C.F.R. § 241.13(i)(2) (stating that ICE "may" revoke release due to changed circumstances bearing on the likelihood of removal). The whole point of the informal interview process was to give Mr. Tran a chance to persuade ICE not to re-detain him.[2]

He had a legitimate argument against re-detention. Not only was he a model releasee, with strong family ties. He is also in the middle of trying to fix his immigration status by pursuing post-conviction relief and a motion to reopen. Release even for a few weeks would give him a few more weeks in the United States, and that brief delay could help his attorneys complete that process and avoid removal. If he does not succeed in fixing his status, ICE could still remove him expeditiously, as flights to Vietnam are scheduled monthly. Doc. 9-1 at ¶ 13 (noting ICE's monthly flights to Vietnam). There is therefore a "plausible scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up): A reasonable interviewer might well have decided not to detain a model releasee, for whom a few more weeks in the country could make a world of difference.

[2] The government has sometimes claimed that a re-detained individual can contest only whether there is a significant likelihood of removal in the reasonably foreseeable future. But that limitation appears nowhere in the regulation. To the contrary, the regulation provides an "opportunity to respond to the reasons for revocation stated in the notification" and charges the interviewer with making "a determination whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.13(i)(3). A valid "respon[se] to the reasons for revocation" is to ask for a discretionary reprieve from re-detention to pursue immigration relief. *Id.* And an interviewer could validly "determine[e] [that] the facts" do not "warrant revocation and further denial of release" on that basis. *Id.*

Finally, there is precedent for staying removal pending a decision on the merits. In at least two cases, other judges in this district have preserved their jurisdiction by prohibiting ICE from removing petitioners pending decision, even though those petitioners had travel documents. *Sphabmixay v. Noem*, 25-cv-02648-LL-VET, Dkt. 14 at 1-2 (S.D. Cal. Oct. 24, 2025) ("In light of Respondents' Amended Notice of Supplemental Information Regarding Travel Document [ECF No. 12] and Petitioner's Response [ECF No. 13] filed on October 23, 2025, the Court finds it necessary to order a limited stay pursuant to the All Writs Act, 28 U.S.C. § 1651, to preserve the status quo until the Court can provide a reasoned decision on the pending Motion for Temporary Restraining Order, in order to avoid any potential jurisdictional problems if Petitioner is removed from this district."); *McSweeney v. Warden*, 25-CV-2488-RBM-DEB (S.D. Cal. Oct. 3, 2025) (same, for client with travel document). This Court should do the same. This stay will not unduly obstruct removal if this court denies the motion, because according to Respondents, ICE has scheduled monthly flights to Vietnam. Doc. 9-1 at ¶ 13.

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). Furthermore, Mr. Tran's re-detention imposes hardships on his elderly father and disabled brother, while interfering with Mr. Tran's efforts to pursue post-conviction relief and a motion to reopen. O'Sullivan Dec. at ¶¶ 10-15. These serious hardships weigh heavy in favor of injunctive relief.

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, as explained in the previous section. 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.

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

The U.S. Attorney's Office has informed Federal Defenders that its attorneys prefer to receive notice of TROs via email, and the office prefers court-stamped copies. Here, that will happen automatically via CM/ECF.

Additionally, Petitioner requests that this TRO 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).

Conclusion

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

Respectfully submitted,

Dated: November 3, 2025

s/ Katie Hurrelbrink

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