

**ORIGINAL**

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

6 Pro Se<sup>1</sup>



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

10 THO VAN TRAN,  
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.

23 CIVIL CASE NO.: 25CV2994 RSH KSC

24 **Notice of motion and memorandum  
25 of law in support of temporary  
26 restraining order**

27 <sup>1</sup> Mr. Tran is filing this motion, habeas petition, and all associated documents with  
28 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 **I. Introduction**

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Petitioner Tho Van Tran faces immediate irreparable harm: (1) revocation of his release on immigration supervision after nine years of living peacefully in the community, despite ICE's failure to follow its own revocation procedures; (2) indefinite immigration detention with no individualized, significantly likely prospect of removal to Vietnam in the reasonably foreseeable future; and (3) potential removal to a prison in an unidentified, potentially dangerous third country never considered by an IJ. This Court should grant temporary relief of his release on his pre-existing order of supervision to preserve the status quo.

Mr. Tran has spent the last nine 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 October 24, 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 did not identify changed circumstances justifying it. ICE does not appear to have a travel document in hand. Worse yet, in the case that ICE still proves unable to remove Mr. Tran 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.

While Mr. Tran remains unlawfully detained, he is unable to work to help support his aunt and uncle, with whom he lives, and whom he takes to medical appointments and the grocery store. He is unable to relieve his sister of her round-the-clock caretaking duties of their 97 year-old mother.

Mr. Tran is 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 Mr. Tran'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.

1       In granting this motion, this Court would not break new ground. Courts in  
2 this district and around the Ninth Circuit have granted TROs or preliminary  
3 injunctions mandating release for post-final-removal-order immigrants like  
4 Petitioner. *See, e.g., Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.  
5 Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES,  
6 \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No.  
7 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-  
8 SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g., Phetsadakone v. Scott*,  
9 2025 WL 2579569, at \*6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*, No. 2:25-  
10 CV-01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D. Cal. July 16, 2025); *Phan v.*  
11 *Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*7 (E.D. Cal. July  
12 16, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*29 (W.D.  
13 Wash. Aug. 21, 2025). These courts have determined that, for these long-term  
14 releasees, liberty is the status quo, and only a return to that status quo can avert  
15 irreparable harm.

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

27       Mr. Tran therefore respectfully requests that this Court grant this TRO.  
28

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

4       In 1982, Tho Van Tran fled Vietnam with his brother. Declaration of Tho  
5 Van Tran, Exhibit A to Habeas Petition (“Tran Dec.”) ¶ 1. They soon obtained  
6 green cards. *Id.* In the early 1990s, Mr. Tran was convicted of crimes stemming  
7 from a murder and robbery. The convictions led to a July 15, 2016, order of  
8 removal. *Id.*<sup>2</sup> ICE detained Mr. Tran for about three months after that. *Id.* ¶ 2.

9       Mr. Tran sustained no more criminal convictions, and he remained on an  
10 order of supervision for the next nine years. *Id.* ¶ 4. He checked in with ICE every  
11 year. *Id.*

12       He lived with his aunt and uncle in San Diego. *Id.* ¶ 7. He now takes them  
13 to medical appointments and to the grocery store. *Id.* His sister also cares for their  
14 97-year-old mother during the day, and he comes over in the evening to help his  
15 sister with heavy lifting tasks like carrying her to the shower. *Id.* ¶ 8. He works  
16 two jobs; one is at a nail salon, and the other is in construction. *Id.* ¶ 6.

17       On October 24, 2025, Mr. Tran went in for his scheduled check-in. *Id.* at  
18 ¶ 4. ICE agents told him that he was being detained, and without further  
19 explanation, they arrested him. *Id.* No one gave him notice of why he was being  
20 re-detained. *Id.* at ¶ 5. No one gave him a chance to fight his re-detention. *Id.* No  
21 one told him what changed to make it more likely that he could be removed to  
22 Vietnam. *Id.* In fact, as of October 29, he has not talked to an ICE officer at all  
23 since his arrest. *Id.*

24       In the meantime, Mr. Tran is “worried about how [his aunt and uncle] are  
25 going to make rent while [he’s] detained.” *Id.* ¶ 7. He works two jobs and uses all  
26 his money toward rent, food, and living expenses. *Id.* ¶ 6. Since he has been in  
27 custody, he has not been able to work those jobs. *Id.* His sister has not had

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

1 "anyone to help her carry [their] mom to the shower, to help her eat dinner, and to  
2 give [his sister] a few hours' break" from caretaking. *Id.* ¶ 8.

3 **III. Argument: Mr. Tran meets all *Winter* factors.**

4 To obtain a TRO, a petitioner "must establish that he is likely to succeed on  
5 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
6 relief, that the balance of equities tips in his favor, and that an injunction is in the  
7 public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
8 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7  
9 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve  
10 "substantially identical" analysis). A "variant[] of the same standard" is the  
11 "sliding scale": "if a plaintiff can only show that there are 'serious questions  
12 going to the merits—a lesser showing than likelihood of success on the merits—  
13 then a preliminary injunction may still issue if the balance of hardships tips  
14 sharply in the plaintiff's favor, and the other two *Winter* factors are satisfied."  
15 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)  
16 (internal quotation marks omitted). Under this approach, the four *Winter* elements  
17 are "balanced, so that a stronger showing of one element may offset a weaker  
18 showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
19 (9th Cir. 2011). A TRO may be granted where there are "'serious questions going  
20 to the merits' and a hardship balance... tips sharply toward the plaintiff," and so  
21 long as the other *Winter* factors are met. *Id.* at 1132.

22 Here, this Court should issue a temporary restraining order because  
23 "immediate and irreparable injury . . . or damage" is occurring and will continue  
24 in the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents re-  
25 detained Mr. Tran in violation of his due process, statutory, and regulatory rights.  
26 ICE policy also allows them to remove him to a third country in violation of his  
27 due process, statutory, and regulatory rights. This Court should order Petitioner's  
28 release and enjoin removal to a third country with no or inadequate notice.

1                   **A. Mr. Tran is likely to succeed on the merits, or at a minimum,**  
2                   **raises serious merits questions.**

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

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

15                  Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize  
16                  the government to detain immigrants like Mr. Tran, for whom there is "no  
17                  significant likelihood of removal in the reasonably foreseeable future." 533 U.S.  
18                  678, 701 (2001); *see, e.g., Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL  
19                  2419288 \*17 (W.D. Wash. Aug. 21, 2025) (granting habeas petition on *Zadvydas*  
20                  grounds and ordering pre-1995 Vietnamese immigrant released); *Hoac v. Becerra*,  
21                  No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, \*5, \*7 (E.D. Cal. July 16,  
22                  2025) (granting preliminary injunction and temporary restraining order on these  
23                  same grounds).

24                  Third, Respondents cannot remove Mr. Tran to a third country without first  
25                  providing notice and a sufficient opportunity to be heard before an immigration  
26                  judge. Their current policy allowing third-country removal "contravenes Ninth  
27                  Circuit law." *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL 2419288, \*19 (W.D.  
28                  Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes

1 Ninth Circuit law on the process due to noncitizens in detail); *see also Van Tran*  
2 *v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025)  
3 (granting temporary restraining order preventing a noncitizen's deportation to a  
4 third country pending litigation in light of due process problems); *Nguyen Tran v.*  
5 *Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

6 **B. Mr. Tran will suffer irreparable harm absent injunctive relief.**

7 Mr. Tran 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)). Where the "alleged  
11 deprivation of a constitutional right is involved, most courts hold that no further  
12 showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d  
13 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*  
14 *Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has  
15 specifically recognized the "irreparable harm" created by the likelihood of being  
16 "unconstitutionally detained for an indeterminate period of time" in immigration  
17 detention. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

18 Third-country deportations pose that risk and more. Recent third-country  
19 deportees have been held, indefinitely and without charge, in hazardous foreign  
20 prisons. See Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*  
21 *Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to  
22 solitary confinement. Gerald Imray, *3 Deported by US held in African Prison*  
23 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They have  
24 been removed to countries so unstable that the U.S. government recommends  
25 making a will and appointing a hostage negotiator before traveling to them. See  
26 Wong, *supra*. These and other threats to Mr. Tran's health and life independently  
27 constitute irreparable harm.

28 Further, Mr. Tran's continued detention creates significant economic

1 burdens on Mr. Tran and his family. These, too, put in “concrete terms the  
2 irreparable harms imposed on anyone subject to immigration detention.”  
3 *Hernandez*, 872 F.3d at 995. While Mr. Tran is detained, he cannot help pay for  
4 housing for his aunt and uncle, and he is “worried about how they’re going to  
5 make rent.” Exhibit A to Habeas Petition ¶ 7. He cannot help take them to  
6 medical appointments and to go grocery shopping; as a result, his aunt and uncle  
7 are “worried about how they’re going to get to the doctor and the grocery store  
8 while [he’s] detained.” *Id.* Mr. Tran also cannot help his sister take care of their  
9 97-year-old, bedridden mother, as he usually does each evening. *Id.* ¶ 8. “Because  
10 [he is] detained, [his] sister doesn’t have anyone to help her carry [their] mom to  
11 the shower, to help her eat dinner, and to give [his sister] a few hours’ break.” *Id.*

12 Mr. Tran thus is facing irreparable harm several times over.

13 **IV. The balance of hardships and the public interest weigh heavily in Mr.  
14 Tran’s favor.**

15 The final two factors for a TRO—the balance of hardships and public  
16 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
17 556 U.S. 418, 435 (2009). That balance tips decidedly in Mr. Tran’s favor.

18 On the one hand, the government “cannot reasonably assert that it is  
19 harmed in any legally cognizable sense” by being compelled to follow the law.  
20 *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the  
21 public interest to prevent violations of the U.S. Constitution and ensure the rule of  
22 law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing  
23 noncitizens “from being wrongfully removed, particularly to countries where they  
24 are likely to face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp.  
25 3d 1208, 1218 (W.D. Wash. 2019) (when government’s treatment “is inconsistent  
26 with federal law, . . . the balance of hardships and public interest factors weigh in  
27 favor of a preliminary injunction.”).

28 On the other hand, Mr. Tran faces weighty hardships: unlawful, indefinite

1 detention, and possible removal to a third country where he is likely to suffer  
2 imprisonment or other serious harm. The balance of equities thus favors  
3 preventing the violation of “requirements of federal law,” *Arizona Dream Act*  
4 *Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency  
5 relief to protect against unlawful detention and prevent unlawful third country  
6 removal.

7 **V. Mr. Tran will give the government notice of this TRO motion  
8 immediately, and the TRO should remain in place throughout habeas  
litigation.**

9 When Federal Defenders first started filing TROs in immigration habeas  
10 cases, a Federal Defenders attorney called the U.S. Attorney’s Office and was put  
11 in touch with Janet Cabral. Ms. Cabral requested that Federal Defenders provide  
12 notice of these motions via email after the motion has been filed with the court.  
13 Federal Defenders will do so in this case.

14 Additionally, Mr. Tran requests that this TRO remain in place until the  
15 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because  
16 the same considerations will continue to warrant injunctive relief throughout this  
17 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*  
18 *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: 10-29-2025

Respectfully submitted,

tho

**Petitioner**

**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: November 4, 2025

/s/ Jessie Agatstein  
Jessie Agatstein