
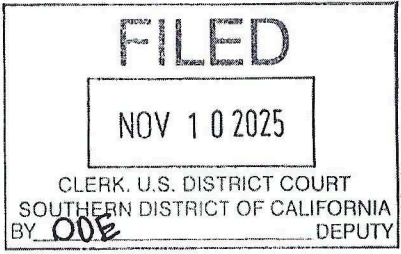


1 **Fidel Eduardo Arostegui-Campo**

2   
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4 P.O. Box 439049  
5 San Diego, CA 92143-9049

6 Pro Se<sup>1</sup>



7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **FIDEL EDUARDO AROSTEGUI-**  
11 **CAMPO,**

12 **Petitioner,**

13 **v.**

14 **KRISTI NOEM, Secretary of the**  
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 **Respondents.**

**CIVIL CASE NO. 25CV3064 JLS MMP**

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

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26 <sup>1</sup> Mr. Arostegui-Campo is filing this motion with the assistance of the Federal  
27 Defenders of San Diego, Inc., who drafted the instant motion and simultaneously  
28 filed motion for appointment of counsel and habeas petition. Federal Defenders  
has consistently used this procedure in seeking appointment for immigration  
habeas cases.

1 **Introduction**

2 Mr. Arostegui-Campo (“Petitioner”) has simultaneously filed a petition for  
3 writ of habeas corpus under 28 U.S.C. § 2241 (“Habeas Petition”). In the Habeas  
4 Petition, Petitioner asserts four claims that his continued detention and  
5 Respondent’s attempts to remove him to a third country violates the Fifth  
6 Amendment’s Due Process Clause. Specifically, Petitioner alleges that ICE re-  
7 detained him after decades of living in the community under an order of  
8 supervision without any notice or opportunity to be heard in violation of ICE’s  
9 own regulations. He also alleges because more than 6 months have passed since  
10 his final order of removal and there is no significant likelihood of removal in the  
11 reasonably foreseeable future, his continued detention is a violation his due  
12 process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Finally, Petitioner  
13 alleges that ICE may not remove Petitioner to a third country without first  
14 following the procedures set out in 8 U.S.C. § 1231(b)(2) and without adequate  
15 notice and an opportunity to be heard.

16 Petitioner is therefore facing both unlawful detention and a threat of  
17 removal to a dangerous third country without due process. The requested  
18 temporary restraining order (“TRO”) would preserve the status quo while  
19 Petitioner litigates these claims by (1) reinstating Petitioner’s release on  
20 supervision, (2) prohibiting the government from removing him to a third country  
21 without first following the required removal statutory procedures and (3)  
22 prohibiting the government from removing him to a third country without an  
23 opportunity to file a motion to reopen with an IJ.

24 Petitioner incorporates by reference the facts and arguments set forth in that  
25 Habeas Petition.  
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**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.

The *Winter* factors weigh in favor of granting a TRO as to all claims set out in the Habeas Petition. *See Winter*, 555 U.S. at 20.

**I. Petitioner is likely to succeed on the merits.**

Petitioner is likely to succeed on the merits as to all claims. The Fifth Amendment’s Due Process Clause forbids the Government to “depriv[e]” any “person ... of ... liberty ... without due process of law.” *Zadvydas*, 533 U.S. at 690. Due process requires that “a person in jeopardy of a serious loss [be given] notice of the case against him and the opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S.

1 123, 171-72 (Frankfurter, J., concurring). Petitioner’s detention in immigration  
2 custody and removal to a third country violates due process.

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

13 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize  
14 the government to detain immigrants like Petitioner, for whom there is “no  
15 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.  
16 678, 701 (2001); *see, e.g., Alic v. Dep’t of Homeland Sec./Immigr. Customs Enft.*,  
17 No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025);  
18 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 \*17 (W.D. Wash. Aug.  
19 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,  
20 \*5, \*7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary  
21 restraining order on these same grounds).

22 Third, Respondents also cannot remove Petitioner to a third country  
23 without providing notice and a sufficient opportunity to be heard before an  
24 immigration judge. Their current policy allowing third-country removal  
25 “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL  
26 2419288, \*19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE  
27 memo contravenes Ninth Circuit law on the process due to noncitizens in detail);  
28 *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D.

1 Cal. Sept. 29, 2025) (granting temporary restraining order preventing a  
2 noncitizen’s deportation to a third country pending litigation in light of due  
3 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.  
4 6 (S.D. Cal. Sept. 18, 2025) (same).

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

6 Petitioner also meets the second factor, irreparable harm. “It is well  
7 established that the deprivation of constitutional rights ‘unquestionably constitutes  
8 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
9 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation  
10 of a constitutional right is involved, most courts hold that no further showing of  
11 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02  
12 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*  
13 *Procedure*, § 2948.1 (2d ed. 2004)).

14 Here, the potential irreparable harm to Petitioner is even more concrete.  
15 Petitioner is 60 years old and has made a life for himself during the four decades  
16 since his deportation and 21 years of his immigration supervision. *See* Rios  
17 Declaration, Exhibit A to Habeas Petition at ¶¶ 1, 2, 6. He is married and has an 11  
18 year old son. *Id.* at ¶ 6. He has numerous medical issues and has yet to obtain his  
19 medication. *Id.* at ¶ 7. Furthermore, “[u]nlawful detention” itself “constitutes  
20 ‘extreme or very serious damage, and that damage is not compensable in damages.’”  
21 *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

22 Third-country deportations pose that risk and more. Recent third-country  
23 deportees have been held, indefinitely and without charge, in hazardous foreign  
24 prisons. *See* Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s*  
25 *Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to  
26 solitary confinement. Gerald Inray, *3 Deported by US held in African Prison*  
27 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They have been  
28

1 removed to countries so unstable that the U.S. government recommends making a  
2 will and appointing a hostage negotiator before traveling to them. *See Wong, supra.*  
3 These and other threats to Petitioner’s health and life independently constitute  
4 irreparable harm.

5 **III. The balance of hardships and the public interest weigh heavily in**  
6 **Petitioner’s favor.**

7 Third, and finally, when the government is a party, as it is here, “the balance  
8 of equities and public interest factors merge.” *Pimental-Estrada v. Barr*, 464 F.  
9 Supp. 3d 1225, 1237 (W.D. Wash 2020) (citing *Drakes Bay Osyter v. Jewell*, 747  
10 F.3d 1073, 1092 (9th Cir. 2014). The risk of harm to Petitioner far outweighs the  
11 government’s interest in illegally detaining him, fir it is “always in the public  
12 interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695  
13 F.3d at 1002.

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

16 When Federal Defenders first started filing TROs in immigration habeas  
17 cases, a Federal Defenders attorney contacted the United States Attorney’s Office  
18 regarding service. The USAO requested that Federal Defenders provide notice of  
19 these motions via email after the motion has been filed with the court. *See Exhibit*  
20 *A, Lopez Declaration in support of Motion for Appointment.* Federal Defenders  
21 will do so in this case. *Id.*

22 Additionally, Petitioner requests that this TRO remain in place until the  
23 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because  
24 the same considerations will continue to warrant injunctive relief throughout this  
25 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*  
26 *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: 11-7-2025

Respectfully submitted,



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 10, 2025

/s/ Zandra L. Lopez  
Zandra L. Lopez