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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 TAI TRUONG,

13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary of the  
16 Department of Homeland Security,  
17 PAMELA JO BONDI, Attorney General,  
18 TODD M. LYONS, Acting Director,  
19 Immigration and Customs Enforcement,  
20 JESUS ROCHA, Acting Field Office  
21 Director, San Diego Field Office,  
22 CHRISTOPHER LAROSE, Warden at  
23 Otay Mesa Detention Center,

24 Respondents.

CIVIL CASE NO.: '25CV3189 RBM MSB

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

25 <sup>1</sup> “A person for whom counsel is appointed shall be represented at every stage of  
26 the proceedings from his initial appearance before the United States magistrate  
27 judge or the court through appeal, including ancillary matters appropriate to the  
28 proceedings.” 18 U.S.C. § 3006A. Because this petition is ancillary to *Truong v. Noem*, 25-CV-2597-JES-MMP, in which Federal Defenders was previously appointed, Federal Defenders understands its appointment to extend to this petition.

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## Introduction

Petitioner Tai Truong (“Petitioner”) faces immediate irreparable harm: he is detained even though the government has missed three dates by which it claimed it would deport him. What’s more, the government will not be able to deport Mr. Truong in the near future because his travel document has likely expired. Petitioner therefore respectfully requests that this Court grant this TRO.

## Statement of Facts

### **I. Mr. Truong was a lawful permanent resident who was ordered removed on the basis of a state criminal conviction.**

Tai Truong and his family entered the United States from Laos as refugees in 1979. Exhibit A, Truong Declaration at ¶ 1. Mr. Truong became a lawful permanent resident and remained so until 2015, when he was ordered removed due to a sex offense. *Id.* at ¶ 2. After he was ordered removed, ICE detained him and attempted to obtain travel documents to deport him to Laos. *Id.* at ¶ 3. But when ICE was unable to deport him after five months, he was released on an order of supervision. *Id.* at ¶ 3.

For the next decade, Mr. Truong remained in the United States on this order of supervision. He has no other criminal convictions. *Id.* at ¶ 3.

### **II. Mr. Truong is detained and files a successful habeas petition.**

On July 12, 2025, as he was driving to his father’s funeral, Mr. Truong was pulled over by four unmarked vehicles. *Id.* at ¶ 5. ICE officers arrested him and brought him to the downtown ICE office for several days before taking him to Otay Mesa Detention Center. *Id.*

On approximately September 24, 2025, a deportation officer told Mr. Truong that they had obtained his travel documents. *Id.* at ¶ 6. The officer told him that he would be deported to Laos soon. *Id.*

On October 1, 2025, Mr. Truong filed a habeas petition alleging three claims: 1) the Court should stay his removal pending his motion to vacate his

1 criminal conviction; 2) the government failed to comply with its own regulations;  
2 and 3) ICE should not remove him to a third country without notice and an  
3 opportunity to be heard. *See Truong v. Noem*, 25-cv-2597-JES-MMP, Dkt. 1.  
4 Mr. Truong did *not* file a claim on the basis that he was being indefinitely  
5 detained under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

6 In its return to Mr. Truong’s habeas petition, the government included a  
7 declaration from Deportation Officer Jason Cole. *See Exhibit B*. This declaration  
8 stated that “ERO has obtained a travel document from Laos to effectuate  
9 [Mr. Truong’s] removal order,” and that Mr. Truong had been “nominated for an  
10 upcoming charter flight to Laos.” *Exh. B* at ¶ 12. It also stated that the  
11 government “anticipates Petitioner will be removed to Laos by November 1,  
12 2025.” *Id.*

13 On October 10, 2025, Judge Simmons granted Mr. Truong’s habeas  
14 petition as to the regulatory claim and ordered his release. Dkt. 10. Judge  
15 Simmons also ordered the government to file a Status Report in the event it  
16 intended to re-detain Mr. Truong. *See Exhibit C, Order Granting Petition* at 12.  
17 The Order also stated that, “[i]n the event Petitioner seeks further habeas relief  
18 arising from the Government’s conduct related to its future execution of the  
19 removal order, Petitioner must file a new Petition.” *Exh. C* at 12.

20 **III. The government re-detains Mr. Truong but misses all three of its**  
21 **stated deadlines to remove him.**

22 Six days after Mr. Truong was released, the government filed a status report  
23 stating its intent to re-detain Mr. Truong. *See Exhibit D, Notice Regarding Status*.  
24 This Notice stated that the government intended to execute his removal order “no  
25 later than October 22, 2025.” *Id.*

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1 But the government did not remove Mr. Truong on October 22, 2025.  
2 Nevertheless, it re-detained him two days later, on October 24, 2025.

3 When it re-detained Mr. Truong, the government provided him a Notice of  
4 Revocation of Release. *See* Exhibit E, Notice of Revocation of Release. This  
5 Notice stated, “ICE has obtained a valid travel document and a flight to LAOS is  
6 scheduled on or before November 6, 2025.” *Id.*

7 But the government did not remove Mr. Truong on November 6, 2025. To  
8 his knowledge, Mr. Truong is not scheduled for any upcoming flights.

9 Mr. Truong also believes his travel document may have expired. Most  
10 travel documents to Laos are valid for 90 days, and the government obtained  
11 Mr. Truong’s travel document months ago. *See* Exh. B, Cole Declaration.  
12 Furthermore, Mr. Truong’s aunt reached out to an ambassador at the Laotian  
13 consulate, who indicated that his travel document was issued sometime over the  
14 summer. Thus, the travel document the government previously obtained for  
15 Mr. Truong has likely expired.

### 16 **Argument**

17 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on  
18 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
19 relief, that the balance of equities tips in his favor, and that an injunction is in the  
20 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
21 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7  
22 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve  
23 “substantially identical” analysis). A “variant[] of the same standard” is the  
24 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions  
25 going to the merits—a lesser showing than likelihood of success on the merits—  
26 then a preliminary injunction may still issue if the balance of hardships tips  
27 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”  
28 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)

1 (internal quotation marks omitted). Under this approach, the four *Winter* elements  
2 are “balanced, so that a stronger showing of one element may offset a weaker  
3 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
4 (9th Cir. 2011). A TRO may be granted where there are “serious questions going  
5 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so  
6 long as the other *Winter* factors are met. *Id.* at 1132.

7 Here, this Court should issue a temporary restraining order and an  
8 injunction because “immediate and irreparable injury . . . or damage” is occurring  
9 and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Respondents  
10 have re-detained Petitioner even though they have missed three dates by which  
11 they claimed they would deport him. Furthermore, it appears that Respondents  
12 may not be able to obtain Petitioner because his travel document expired. Thus,  
13 this Court should order Petitioner’s release.

14 **I. Petitioner is likely to succeed on the merits of his claim that his detention**  
15 **violates *Zadvydas*, or at a minimum, raises serious merits questions.**

16 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered  
17 a problem affecting people like Mr. Truong: Federal law requires ICE to detain an  
18 immigrant during the “removal period,” which typically spans the first 90 days  
19 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that  
20 90-day removal period expires, ICE may detain the migrant while continuing to  
21 try to remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow  
22 for “indefinite, perhaps permanent, detention,” it would pose “a serious  
23 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court  
24 avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate  
25 implicit limits. *Id.* at 689.

26 As an initial matter, *Zadvydas* held that detention is “presumptively  
27 reasonable” for at least six months after the removal order becomes final. *Id.* at  
28 701. This acts as a kind of grace period for effectuating removals. Following the

1 six-month grace period, courts must use a burden-shifting framework to decide  
2 whether detention remains authorized. First, the petitioner must prove that there is  
3 “good reason to believe that there is no significant likelihood of removal in the  
4 reasonably foreseeable future.” *Id.*

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

10 Here, Petitioner was ordered removed more than six months ago, as his  
11 removal order became final in 2015. Cole Dec. at ¶ 6. Thus, it is clear that the  
12 *Zadvydas* grace period has ended.

13 There is also strong evidence that there is no “significant likelihood of  
14 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. In three  
15 separate documents, the government has claimed that it will remove Mr. Truong  
16 no later than October 22, November 1, and November 6. Each of those dates has  
17 now come and gone. Yet Mr. Truong remains detained in Otay Mesa. What’s  
18 more, it is unclear whether the government still has a valid travel document for  
19 Mr. Truong or whether that document has expired.

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

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

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

26 Petitioner also meets the second factor, irreparable harm. “It is well  
27 established that the deprivation of constitutional rights ‘unquestionably constitutes  
28 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)

1 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged  
2 deprivation of a constitutional right is involved, most courts hold that no further  
3 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d  
4 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*  
5 *Practice and Procedure*, § 2948.1 (2d ed. 2004)). Here, the potential irreparable  
6 harm to Petitioner is even more concrete. “Unlawful detention certainly  
7 constitutes ‘extreme or very serious damage, and that damage is not compensable  
8 in damages.’” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

9 **III. The balance of hardships and the public interest weigh heavily in**  
10 **petitioner’s favor.**

11 The final two factors for a TRO—the balance of hardships and public  
12 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
13 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On  
14 the one hand, the government “cannot reasonably assert that it is harmed in any  
15 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,  
16 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to  
17 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,  
18 556 U.S. at 436 (describing public interest in preventing noncitizens “from being  
19 wrongfully removed, particularly to countries where they are likely to face  
20 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218  
21 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with federal  
22 law, . . . the balance of hardships and public interest factors weigh in favor of a  
23 preliminary injunction.”). On the other hand, Petitioner faces weighty hardships:  
24 unlawful, indefinite detention. The balance of equities thus favors preventing the  
25 violation of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*,  
26 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect  
27 against unlawful detention.

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

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

11 **Conclusion**

12 For those reasons, Petitioner requests that this Court issue a temporary  
13 restraining order ordering the relief requested.

14  
15 Respectfully submitted,

16 Dated: November 17, 2025

17 *s/ Kara Hartzler*  
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