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

12 PHUOC VAN NGO,
13
14 Petitioner,

15 v.

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

25 Respondents.

CASE NO.: 25-cv-3234-JLS-MMP

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

26 _____
27 ¹ Federal Defenders of San Diego, Inc., is filing the instant motion and associated
28 petition with provisional appointment under Chief Judge Order No. 134.
Mr. Ngo's financial eligibility for representation is included in a sworn statement
attached to his habeas petition.

1 **I. Introduction**

2 Petitioner Phuoc Van Ngo faces immediate irreparable harm: (1) revocation
3 of his release on immigration supervision despite ICE’s failure to follow its own
4 revocation procedures; (2) indefinite immigration detention with no
5 individualized, significantly likely prospect of removal to Vietnam in the
6 reasonably foreseeable future; and (3) potential movement from this jurisdiction
7 during the pendency of this petition.

8 The requested temporary restraining order (“TRO”) would preserve the
9 status quo while Petitioner litigates these claims by (1) reinstating Mr. Ngo’s
10 release on supervision, and (2) prohibiting the government from moving him out
11 of this district during the pendency of this litigation, potentially depriving this
12 Court of jurisdiction.

13 In granting this motion, this Court would not break new ground. Courts in
14 this district and around the Ninth Circuit have granted TROs or preliminary
15 injunctions mandating release for post-final-removal-order immigrants like
16 Petitioner. *See, e.g., Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.
17 Cal. Sept. 30, 2025); *Van Ngo v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES,
18 *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No.
19 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-
20 SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g., Phetsadakone v. Scott*,
21 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*, No. 2:25-
22 CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v.*
23 *Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July
24 16, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D.
25 Wash. Aug. 21, 2025). These courts have determined that, for these long-term
26 releasees, liberty is the status quo, and only a return to that status quo can avert
27 irreparable harm.

28 Mr. Ngo therefore respectfully requests that this Court grant this TRO.

1 **A. Mr. Ngo is ordered removed, held in ICE custody, and released**
2 **as ICE proves unable to deport him for the next three decades,**
3 **until he is arrested at his ICE check-in.**

4 In 1981, Phuoc Ngo fled Vietnam. Declaration of Phuoc Ngo, Exhibit A to
5 Habeas Petition ¶ 2. He obtained a green card. *Id.* Following a conviction in San
6 Diego County, Mr. Ngo was ordered removed to Vietnam on June 2, 1995. *Id.*
7 ¶ 3.² ICE held him “for about five to six months” after that, but it was unable to
8 deport him. *Id.* He was released on an order of supervision. *Id.*

9 On November 7, 2025, Mr. Ngo was arrested by ICE agents at the
10 restaurant where he works and brought to the Otay Mesa Detention Center, where
11 he remains. *Id.* at ¶ 4. He explains:

12 They gave me pieces of paper in English and told me to sign and I
13 signed. They didn’t let me talk. They did not translate anything into
14 Vietnamese. I do not know what the papers say.

15 I understand some English words, but not most. I speak and
16 understand Vietnamese.

17 As of today, no one has told me the reasons why I was arrested in a
18 language I can understand. No one has given me a chance to fight
19 my arrest. No one has told me what changed to make it more likely
20 that I can be deported to Vietnam. I haven’t been able to talk to an
21 ICE officer since the day I was arrested.

22 *Id.* ¶¶ 4–6 (Declaration of Mr. Ngo dated November 19, 2025).

23 The papers Mr. Ngo received are entitled “Notice of Revocation of
24 Release.” The notice explains, “This letter is to inform you that your order of
25 supervision has been revoked, and you will be detained in the custody of U.S.
26 Immigration and Customs Enforcement (ICE) at this time. This decision has been
27 made based on a review of your official alien file and a determination that there
28 are changed circumstances in your case.” Exhibit B to Habeas Petition. It provides
no further information as to what, exactly, changed in Mr. Ngo’s case.

29 _____
30 ² EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/> (searching
with Mr. Ngo’s A-number .

1 **II. Argument: Mr. Ngo meets all *Winter* factors.**

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

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

27
28

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

3 As described in detail in Mr. Ngo’s habeas petition, he is likely to succeed
4 on both of his claims.

5 First, ICE failed to follow its own regulations requiring changed
6 circumstances before Mr. Ngo’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. Ngo, 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 **B. Mr. Ngo will suffer irreparable harm absent injunctive relief.**

25 Mr. Ngo also meets the second factor, irreparable harm. “It is well
26 established that the deprivation of constitutional rights ‘unquestionably constitutes
27 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
28 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged

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

8 Further, Mr. Ngo’s continued detention creates significant economic
9 burdens on Mr. Ngo, who cannot work to support himself. These, too, put in
10 “concrete terms the irreparable harms imposed on anyone subject to immigration
11 detention.” *Hernandez*, 872 F.3d at 995.

12 **III. The balance of hardships and the public interest weigh heavily in**
13 **Mr. Ngo’s favor.**

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

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

27 On the other hand, Mr. Ngo faces weighty hardships: unlawful, indefinite
28 detention, and possible movement out of this district and out of the Court’s

1 jurisdiction. The balance of equities thus favors preventing the violation of
2 “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d
3 1053, 1069 (9th Cir. 2014), by granting temporary emergency relief to protect
4 against unlawful detention and loss of this Court’s jurisdiction.

5 **IV. Mr. Ngo will give the government notice of this TRO motion**
6 **immediately, and the TRO should remain in place throughout habeas**
7 **litigation.**

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

13 Additionally, Mr. Ngo requests that this TRO remain in place until the
14 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because
15 the same considerations will continue to warrant injunctive relief throughout this
16 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*
17 *Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003).

18 Respectfully submitted,

19
20 Dated: November 21, 2025

s/ Jessie Agatstein

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