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

12 REZA AGHAJAVADYHA,
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
26 Respondents.

Civil Case No.: '25CV3246 BTM B JW

**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. Aghajavadyha's financial eligibility for representation is included in a sworn
statement attached to his habeas petition.

1 **I. Introduction**

2 Petitioner Reza Aghajavadyha faces immediate irreparable harm:
3 (1) revocation of his release on immigration supervision despite ICE’s failure to
4 follow its own revocation procedures, resulting in him potentially missing an
5 important scheduled cardiology appointment on December 1; (2) indefinite
6 immigration detention with no individualized, significantly likely prospect of
7 removal to Iran in the reasonably foreseeable future; and (3) potential movement
8 from this jurisdiction during the pendency of this petition, including potential
9 movement to a third country.

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

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

1 determined that, for these long-term releasees, liberty is the status quo, and only a
2 return to that status quo can avert irreparable harm.

3 Courts have likewise granted temporary restraining orders preventing third-
4 country removals without due process. *See, e.g., Nguyen Tran v. Noem*, No. 25-
5 cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*,
6 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025); *see also*,
7 *e.g., J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30,
8 2025); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D.
9 Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D.
10 Cal. June 26, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
11 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan*, 2025 WL 1993735 at *7.

12 **II. Mr. Aghajavadyha lives under supervision for two decades, becomes**
13 **very ill, and then is re-detained without an individualized reason for**
14 **detention and without an opportunity to contest his re-detention.**

15 In about 1997 or 1998, Reza Aghajavadyha came to the United States from
16 Iran. Exhibit A to Habeas Petition, Declaration of Reza Aghajavadyha ¶ 2. He
17 was ordered removed on August 4, 2003. *Id.* ¶ 3.² ICE detained him for what he
18 remembers to be about two months after that. *Id.* Because the government could
19 not remove him to Iran, it released him. *Id.*

20 Mr. Aghajavadyha remained on an order of supervision for the next two
21 decades. *Id.* ¶¶ 4–6. He has always checked in with ICE as scheduled, and
22 cooperated with whatever ICE has asked him to do. *Id.* ¶ 4.

23 Between two and three years ago, Mr. Aghajavadyha became very ill and
24 had heart surgery. *Id.* ¶ 9. He lost much of his memory during his illness, and he
25 has been slowly recovering since. *Id.* He still has poor memory and often has a

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28 ² *See also* EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>
(reporting that Mr. Aghajavadyha is Iranian and was ordered removed by an
immigration judge on August 4, 2003, in San Diego).

1 hard time understanding things. *Id.* He takes about eleven medications a day for
2 his heart and related complications. *Id.*

3 On November 6, 2025, Mr. Aghajavadyha appeared at one of his ICE
4 check-ins as scheduled. *Id.* ¶ 6. He was re-detained. *Id.* ICE showed him “some
5 papers,” but he has a hard time remembering and understanding things, and he
6 does not remember what they said. *Id.* He remembers that the officers “said they
7 were arresting me because I was eligible for deportation and that they had to
8 arrange for a travel document.” *Id.*

9 Since then, Mr. Aghajavadyha has remained detained at the Otay Mesa
10 Detention Center, but has not been able to talk to an ICE officer. *Id.* ¶ 7. At no
11 point has ICE “given [him] a chance to fight [his] arrest.” *Id.* He explains, “No
12 one has told me what changed to make it possible to deport me to Iran. I don’t
13 know what’s changed between 2003 and 2025. It’s the same situation.” *Id.*

14 Mr. Aghajavadyha is scheduled for a cardiology appointment on December
15 1, 2025. *Id.* ¶ 9. He is extremely worried about missing the appointment during
16 his detention, and a corresponding potential deterioration in his health.

17 **III. Argument: Mr. Aghajavadyha meets all *Winter* factors.**

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

1 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
2 (internal quotation marks omitted). Under this approach, the four *Winter* elements
3 are “balanced, so that a stronger showing of one element may offset a weaker
4 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
5 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
6 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
7 long as the other *Winter* factors are met. *Id.* at 1132.

8 Here, this Court should issue a temporary restraining order because
9 “immediate and irreparable injury . . . or damage” is occurring and will continue
10 in the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents re-
11 detained Mr. Aghajavadyha in violation of his due process, statutory, and
12 regulatory rights. ICE policy also allows them to remove him to a third country in
13 violation of his due process, statutory, and regulatory rights. This Court should
14 order Petitioner’s release and enjoin removal from this Court’s jurisdiction during
15 the pendency of litigation.

16 **A. Mr. Aghajavadyha is likely to succeed on the merits, or at a**
17 **minimum, raises serious merits questions.**

18 As described in detail in Mr. Aghajavadyha’s habeas petition, he is likely to
19 succeed on both of his claims.

20 First, ICE failed to follow its own regulations requiring changed
21 circumstances before Mr. Aghajavadyha’s re-detention, as well as its procedural
22 regulations requiring it to notify him of those circumstances and allow him an
23 opportunity to contest them. This was a violation of both the regulations and due
24 process and requires his release. *See, e.g., See Phan v. Noem*, 2025 WL 2898977,
25 No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this
26 regulatory framework and granting a habeas petition for ICE’s failure to follow
27 these regulations for a refugee of Vietnam who entered the United States before
28

1 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same
2 as to an Iranian national).

3 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize
4 the government to detain immigrants like Mr. Aghajavadyha, for whom there is
5 “no significant likelihood of removal in the reasonably foreseeable future.” 533
6 U.S. 678, 701 (2001); *see, e.g., Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
7 2419288 *17 (W.D. Wash. Aug. 21, 2025) (granting habeas petition on *Zadvydas*
8 grounds and ordering pre-1995 Vietnamese immigrant released); *Hoac v. Becerra*,
9 No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *5, *7 (E.D. Cal. July 16,
10 2025) (granting preliminary injunction and temporary restraining order on these
11 same grounds).

12 Third, Respondents cannot remove Mr. Aghajavadyha to a third country
13 other than Iran without first providing notice and a sufficient opportunity to be
14 heard before an immigration judge. Their current policy allowing third-country
15 removal in the absence of that notice “contravenes Ninth Circuit law.” *Nguyen v.*
16 *Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025)
17 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the
18 process due to noncitizens in detail); *see also Delkash v. Noem*, No. 25-cv-1675-
19 HDV-AGR, 2025 WL 2683988, *1, *6 (C.D. Cal. Aug. 28, 2025) (explaining this
20 point as to an Iranian national); *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF
21 No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No.
22 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*,
23 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all either
24 granting temporary restraining orders or habeas petitions ordering the government
25 to not remove petitioners to third countries without notice and an opportunity to
26 be heard).

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28

1 **B. Mr. Aghajavadyha will suffer irreparable harm absent injunctive**
2 **relief.**

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

11 The Ninth Circuit has specifically recognized the “irreparable harm”
12 created by the likelihood of being “unconstitutionally detained for an
13 indeterminate period of time” in immigration detention. *Hernandez v. Sessions*,
14 872 F.3d 976, 995 (9th Cir. 2017).

15 Further, Mr. Aghajavadyha’s continued detention creates significant
16 medical burdens. As the Ninth Circuit has recognized, immigration detainees face
17 “subpar medical . . . care in ICE detention facilities.” *Hernandez*, 872 F.3d at 995.
18 Since he had heart surgery several years ago, Mr. Aghajavadyha has been very ill.
19 *Id.* ¶ 9. Yet he lacked access to his eleven daily heart medications for the first two
20 days of his detention at Otay Mesa Detention Center—despite him bringing all
21 such medications with him to his check-in the day of his detention, and despite
22 him writing down a list of all such medications for his ICE officer two weeks
23 prior. Exhibit A to Habeas Petition, ¶¶ 5–6, 8. He also is scheduled for a
24 cardiology appointment on December 1, 2025, which he will miss unless he is
25 released from detention. *Id.* ¶ 8.

26 Finally, “[i]t is beyond dispute that Petitioner would face irreparable harm
27 from removal to a third country.” *Nguyen*, 2025 WL 2419288, at *26. Recent
28 third-country deportees have been held, indefinitely and without charge, in

1 hazardous foreign prisons. *See* Edward Wong et al, *Inside the Global Deal-*
2 *Making Behind Trump’s Mass Deportations*, N.Y. Times, June 25, 2025. They
3 have been subjected to solitary confinement. Gerald Imray, *3 Deported by US*
4 *held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2,
5 2025). They have been removed to countries so unstable that the U.S. government
6 recommends making a will and appointing a hostage negotiator before traveling
7 to them. *See* Wong, *supra*. They have been “promptly deported . . . to the very
8 countries to which the United States had withheld removal due to the risk of
9 persecution, torture, or death.” *Santamaria Orellana v. Baker*, No. 25-1788-TDC,
10 2025 WL 2841886, *12 (D. Md. Oct.7, 2025).

11 **IV. The balance of hardships and the public interest weigh heavily in**
12 **Mr. Aghajavyha’s favor.**

13 The final two factors for a TRO—the balance of hardships and public
14 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
15 556 U.S. 418, 435 (2009). That balance tips decidedly in Mr. Aghajavyha’s
16 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). It is always in the public
20 interest to prevent violations of the U.S. Constitution and ensure the rule of law.
21 *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens
22 “from being wrongfully removed, particularly to countries where they are likely
23 to face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208,
24 1218 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with
25 federal law, . . . the balance of hardships and public interest factors weigh in favor
26 of a preliminary injunction.”).

27 On the other hand, Mr. Aghajavyha faces weighty hardships: unlawful,
28 indefinite detention, subpar medical care, and possible movement out of this

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

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

18
19 Respectfully submitted,

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21 Dated: November 21, 2025

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