

1 **ELIZABETH M. BARROS**  
 California State Bar No. 227629  
 2 **FEDERAL DEFENDERS OF SAN DIEGO, INC.**  
 225 Broadway, Suite 900  
 3 San Diego, California 92101-5030  
 Telephone: (619) 234-8467  
 4 Facsimile: (619) 687-2666  
 Elizabeth\_Barros@fd.org  
 5 Attorneys for Petitioner  
 6 DUC VAN PHAM

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

10 **DUC VAN PHAM,**  
 11 **Petitioner,**

12 **v.**

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

19 **Respondents.**

**CIVIL CASE NO.: '25CV3373 BTM MMP**

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

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1 **Introduction**

2 Petitioner Duc Van Pham (“Petitioner”) faces immediate irreparable harm:  
3 (1) revocation of his release on immigration supervision after over 15 years living  
4 peacefully in the community, despite ICE’s failure to follow its own revocation  
5 procedures; (2) indefinite immigration detention with no reasonable prospect of  
6 removal in the reasonably foreseeable future to the country designated by the  
7 immigration judge (“IJ”); and (3) potential removal to a third country never  
8 considered by an IJ. This Court should grant temporary relief to preserve the status  
9 quo.

10 Petitioner has spent over 15 years living free in the community. Throughout  
11 that time, the government has proved unable to remove him. There is an obvious  
12 reason why: Vietnam’s years-long resistance to accepting pre- 1995 Vietnamese  
13 immigrants for deportation. Yet around October 10, 2025, the government re-  
14 detained him. ICE gave him no opportunity to contest his re-detention, and there  
15 are no apparent changed circumstances justifying it. ICE does not appear to have a  
16 travel document in hand, and the impediments to his removal have not changed.  
17 Worse yet, if ICE still proves unable to remove Petitioner to Vietnam, ICE’s own  
18 policies allow ICE to remove him to a third country never before considered by an  
19 IJ, with either 6-to-24 hours’ notice or no notice at all.

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

26 In granting this motion, this Court would not break new ground. Several  
27 courts have granted TROs or preliminary injunctions mandating release for post-  
28 final-removal-order immigrants like Petitioner. *See Phetsadakone v. Scott*, 2025

1 WL 2579569, at \*6 (W.D. Wash. Sept. 5, 2025) (Laos); *Hoac v. Becerra*, No. 2:25-  
2 CV-01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D. Cal. July 16, 2025) (Vietnam);  
3 *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*7 (E.D.  
4 Cal. July 16, 2025) (Vietnam); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL  
5 2419288, at \*29 (W.D. Wash. Aug. 21, 2025) (Vietnam). These courts have  
6 determined that, for these long-term releasees, liberty is the status quo, and only a  
7 return to that status quo can avert irreparable harm. Several courts have likewise  
8 granted temporary restraining orders preventing third-country removals without  
9 due process. *See infra* (collecting cases). Petitioner therefore respectfully requests  
10 that this Court grant this TRO.

### 11 Argument

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

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

10 **I. Petitioner is likely to succeed on the merits, or at a minimum, raises**  
11 **serious merits questions.**

12 Concurrent with this TRO motion, Mr. Pham files a habeas petition setting  
13 forth in detail why he is likely to succeed on the merits. He does not re-raise these  
14 arguments here but provides a list of recent cases in which courts in this district  
15 have granted TROs or habeas petitions after reviewing regulatory, *Zadvydas*, and  
16 third-country-removal claims:

17 (1) *Regulatory and due process violations: Constantinovici v. Bondi*, \_\_ F.  
18 Supp. 3d \_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025);  
19 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.  
20 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, \*3-\*5  
21 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB  
22 (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-  
23 JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF  
24 No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-  
25 SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

26 (2) *Zadvydas violations: See Conchas-Valdez*, 2025 WL 2884822, No. 25-  
27 cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Alic v. Dep’t of Homeland Sec./Immigr.*  
28 *Customs Enft*, No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept.

1 30, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept.  
2 25, 2025).

3 (3) *Third-country removal statutory and due process violations*: This Court  
4 should enjoin ICE from removing Mr. Pham to a third country without providing  
5 an opportunity to assert fear of persecution or torture before an immigration judge.  
6 *See, e.g., Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v.*  
7 *Noem*, 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF  
8 No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No.  
9 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9, 2025).

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

11 Petitioner also meets the second factor, irreparable harm. “It is well  
12 established that the deprivation of constitutional rights ‘unquestionably constitutes  
13 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
14 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation  
15 of a constitutional right is involved, most courts hold that no further showing of  
16 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02  
17 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*  
18 *Procedure*, § 2948.1 (2d ed. 2004)).

19 Here, the potential irreparable harm to Petitioner is even more concrete. the  
20 Ninth Circuit has specifically recognized the “irreparable harms imposed on anyone  
21 subject to immigration detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th  
22 Cir. 2017). That is because “[u]nlawful detention constitutes ‘extreme or very  
23 serious damage, and that damage is not compensable in damages.’” *Hernandez v.*  
24 *Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

25 Finally, “[i]t is beyond dispute that Petitioner would face irreparable harm  
26 from removal to a third country.” *Nguyen*, 2025 WL 2419288, at \*26. Recent third-  
27 country deportees have been held, indefinitely and without charge, in hazardous  
28 foreign prisons. *See Wong et al., supra*. They have been subjected to solitary

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

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

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

25 Respectfully submitted,

26 Dated: December 1, 2025

27 *s/ Elizabeth M. Barros*  
28 Federal Defenders of San Diego, Inc.  
Attorneys for Petitioner  
DUC VAN PHAM  
Email: Elizabeth.Barros@fd.org