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8 Attorney for Petitioner  
9 THAT TOM NGIAM

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 THAT TOM NGIAM,

13 Petitioner,

14 vs.

15 KRISTI NOEM, Secretary of Homeland  
16 Security, PAM BONDI, Attorney General,  
17 TODD M. LYONS, Director of Immigration  
18 and Customs Enforcement, PATRICK  
19 DIVVER, San Diego ICE Field Office  
20 Director; CHRISTOPHER J. LAROSE,  
21 Director – Otay Mesa Detention Center,

22 Respondents.

Case No.: 3:25-cv-03405-TWR-BLM

**EX PARTE EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION SHOULD  
NOT ISSUE**

Hearing Date:

Time:

Department:

23 Petitioner THAT TOM NGIAM, who is detained in the Otay Detention Center in San Diego,  
24 California, hereby and through his attorneys of record respectfully moves this Court for an  
25 emergency Temporary Restraining Order ("TRO") pursuant to Rule 65 of the Federal Rules  
26 of Civil Procedure, and requests that this Court:

- 27
- 28 1. Immediately stay Petitioner's removal from the United States pending adjudication of his  
Petition for Writ of Habeas Corpus and Motion to Reopen currently pending before the  
Immigration Court;
  2. Immediately stay Petitioner's removal from the United States pending adjudication of his  
Motion to Reopen Proceedings filed with the Adelanto Immigration Court filed on

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November 25, 2025 and is still pending before the Immigration Court.

- 3. Order Respondents to provide Petitioner with a bond hearing before an Immigration Judge with appropriate procedural safeguards;
- 4. Order Respondents to conduct a reasonable fear interview pursuant to Section 241(a)(5) of the Immigration and Nationality Act; and
- 5. Issue an Order to Show Cause why a preliminary injunction should not issue maintaining these protections during the pendency of this action.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of That Tom Ngiam, the Petition for Writ of Habeas Corpus filed herewith, and all papers and pleadings on file in this action.

Dated: 12-4-25

  
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Jason A. Ronis, Esq.  
Attorney for Petitioner  
THAT TOM NGIAM

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**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE EMERGENCY MOTION FOR  
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AND ORDER TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION SHOULD  
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23 I. INTRODUCTION

24 This is an emergency motion to prevent irreparable harm to Petitioner That Tom Ngiam, a 52-  
25 year-old lawful permanent resident who has lived in the United States for 46 years—since the age  
26 of six. Petitioner faces imminent deportation to Cambodia, a country he left in 1979 and to which  
27 he has expressed fear of returning. According to United States Immigration and Custom's  
28 Enforcement, the deportation is scheduled to occur in the next three days before:

1. His pending Motion to Reopen can be adjudicated by the Immigration Court (the court file is in storage and will take 30 days to retrieve);

- 1 2. He can receive the statutorily-required reasonable fear interview he requested;
- 2 3. He can receive any bond hearing or individualized determination of his detention; and
- 3 4. This Court can review the constitutional violations inherent in his detention and removal
- 4 as stated in his Writ of Habeas Corpus filed with his court.

5 Most critically, the sole basis for Petitioner's 1998 removal order—his criminal convictions—  
6 have been vacated by the California Superior Court due to constitutional infirmities. On  
7 November 21 and November 24, 2025, both underlying convictions were vacated and dismissed  
8 with findings of "procedural and substantive defects and constitutional infirmity."

9 Without immediate intervention by this Court, Petitioner will suffer irreparable harm that no  
10 subsequent legal victory can remedy. The irreparable harm would be separation from his family  
11 for at least 10 years. His wife is a United States Citizen and so are his two minor children.

## 12 **II. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER**

13 A temporary restraining order is an "extraordinary remedy that may only be awarded upon a  
14 clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council,*  
15 *Inc.*, 555 U.S. 7, 22 (2008). To obtain a TRO, Petitioner must demonstrate:

- 16 1. A likelihood of success on the merits;
- 17 2. A likelihood of irreparable harm in the absence of preliminary relief;
- 18 3. That the balance of equities tips in his favor; and
- 19 4. That an injunction is in the public interest.

20 *Id.* at 20; *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

21 Alternatively, under the Ninth Circuit's "sliding scale" approach, a plaintiff may obtain a  
22 TRO by showing "serious questions going to the merits" and a balance of hardships that "tips  
23 sharply" in the plaintiff's favor, along with the other two *Winter* factors. *Alliance for the Wild*  
24 *Rockies*, 632 F.3d at 1135.

25 Petitioner satisfies both standards.

## 26 **III. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS**

27 **A. Petitioner's Removal Order Is No Longer Valid Because Its Sole Basis Has Been**  
28 **Eliminated**

1 Petitioner's 1998 removal order was predicated entirely on two criminal convictions: a 1994  
2 conviction for second-degree commercial burglary (Cal. Penal Code § 459), and a 1997  
3 conviction for Vehicle Code Section 10851(a).

4 Both convictions have been vacated and dismissed by the California Superior Court with  
5 explicit findings that the guilty pleas were invalid "due to procedural and substantive defects and  
6 constitutional infirmity." (See Exhibits attached to Habeas Petition and attached herein as Exhibit  
7 1.)

8 When the conviction underlying a removal order is vacated for legal defects, the removal order  
9 loses its foundation. *See Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003) (a vacated  
10 conviction "must be treated as if it never existed for immigration purposes"); *Matter of Roldan*,  
11 22 I&N Dec. 512, 520 (BIA 1999).

12 The Immigration Court has not yet adjudicated Petitioner's Motion to Reopen, which directly  
13 challenges the validity of his removal order based on these vacated convictions. The court file is  
14 in storage and will not be available for approximately 30 days. Petitioner filed his Motion to  
15 Reopen on November 25, 2025, and requested a stay of removal pending adjudication.

16 Removing Petitioner before the Immigration Court can consider whether his removal order  
17 remains valid would render his Motion to Reopen meaningless and violate basic principles of  
18 fairness and judicial economy.

19 **B. Respondents' Refusal to Provide a Reasonable Fear Interview Violates Statutory**  
20 **Requirements**

21 When an individual under a final order of removal expresses fear of persecution or torture in  
22 the country of removal, immigration law requires specific procedures before removal can proceed.  
23 Section 241(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(5), provides:  
24 "If an alien ordered removed [who] expresses a fear of returning to the country designated for  
25 removal, the Attorney General shall refer the alien to an asylum officer for a reasonable fear  
26 determination under subsection 235(b)(1)(B)." See also 8 C.F.R. § 241.8(e) (implementing  
27 regulations for reasonable fear interviews).

28 Petitioner clearly expressed fear of returning to Cambodia to ICE officials and

1 documented this in writing on his Order of Supervision revocation form. (See Exhibit 1 to Habeas  
2 Petition.) Despite this unambiguous expression of fear, Respondents have refused to schedule a  
3 reasonable fear interview; informed counsel that "orders come from above" and they will not  
4 delay removal; and scheduled Petitioner for imminent deportation without any fear screening.

5 This refusal directly violates the plain language of the statute and implementing  
6 regulations. Petitioner is likely to succeed in demonstrating that his removal without the  
7 statutorily-mandated reasonable fear interview is unlawful.

8 **C. Petitioner's Continued Detention Without a Bond Hearing Violates Due Process**

9 Petitioner has been continuously detained since October 24, 2025, without any bond  
10 hearing or individualized determination of whether his detention is necessary. He has not been  
11 afforded an opportunity to demonstrate that he poses neither a flight risk nor a danger to the  
12 community.

13 The Fifth Amendment's Due Process Clause applies to all persons within the United States,  
14 including aliens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Reno v. Flores*, 507 U.S. 292, 306  
15 (1993).

16 While *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), held that immigration detention  
17 statutes do not mandate periodic bond hearings, the Supreme Court "expressly declined to address  
18 whether, as respondents also argued, the Due Process Clause requires" such hearings. *Id.* at 851.  
19 The constitutional question remains open.

20 The Ninth Circuit has held that prolonged immigration detention without individualized  
21 review violates due process. *Rodriguez v. Robbins*, 804 F.3d 1060, 1089 (9th Cir. 2015) (requiring  
22 bond hearings with certain safeguards for prolonged detention).

23 Given Petitioner's 46 years of residence in the United States; U.S. citizen wife and two  
24 minor U.S. citizen children; 15+ years of compliance with supervised release; vacated criminal  
25 convictions; pending Motion to Reopen; and stable employment history, continued detention  
26 without any hearing violates fundamental due process principles.

27 **D. The Balance of Hardships and Public Interest Favor Granting the TRO**

28 Petitioner faces irreparable harm if removed: permanent separation from his family and

1 country, with no meaningful ability to return even if he ultimately prevails in his legal challenges.  
2 This harm is immediate, concrete, and irreversible.

3 By contrast, Respondents face minimal burden in temporarily staying removal pending  
4 adjudication of Petitioner's Motion to Reopen and this habeas petition. Petitioner has complied  
5 with supervised release for over 15 years, demonstrating he is not a flight risk or danger to the  
6 community.

7 The public interest favors ensuring that removal orders are legally valid before they are  
8 executed, particularly when the underlying criminal convictions have been vacated. Allowing  
9 individuals to be deported before courts can determine whether their removal orders remain valid  
10 undermines the integrity of both the criminal and immigration systems.

#### 11 IV. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT A TRO

12 Irreparable harm is established where "there is a risk of [harm] that cannot be compensated  
13 by monetary damages and cannot be undone." *Rent Stabilization Ass'n v. Dinkins*, 5 F.3d 591, 605  
14 (2d Cir. 1993).

15 If Petitioner is removed before this Court can adjudicate his claims:

- 16 1. He will be permanently separated from his U.S. citizen wife and two minor children, who  
17 depend on him emotionally and financially;
- 18 2. His pending Motion to Reopen will become moot, as he will be in Cambodia without  
19 practical ability to litigate his case;
- 20 3. He will be unable to participate in these proceedings, making meaningful access to counsel  
21 and the courts impossible;
- 22 4. Even if he ultimately prevails, returning to the United States will be extraordinarily  
23 difficult or impossible, making the harm permanent rather than temporary;
- 24 5. He may face persecution or torture in Cambodia, a fear he has expressed and which has  
25 not been evaluated through the required reasonable fear process; and
- 26 6. The vacatur of his criminal convictions will be rendered meaningless for immigration  
27 purposes if he is removed before the Immigration Court can consider their effect on his  
28 removal order.

1 No subsequent legal victory can undo these harms. Money damages cannot reunite a father  
2 with his children or restore years of separation. This constitutes quintessential irreparable harm  
3 warranting emergency relief.

4 **V. THE BALANCE OF EQUITIES AND PUBLIC INTEREST STRONGLY FAVOR**  
5 **PETITIONER**

6 **A. Balance of Equities**

7 The hardship Petitioner faces—permanent exile from the only country he has known since  
8 age six, separation from his wife and children, and removal before his legal claims can be  
9 adjudicated—vastly outweighs any burden on Respondents.

10 Petitioner has lived in the United States for 46 of his 52 years; has been compliant with  
11 supervised release for over 15 years; has vacated the only criminal convictions that formed the  
12 basis of his removal order; has filed a timely Motion to Reopen raising substantial legal claims;  
13 has expressed fear of return that requires statutory evaluation; and presents no evidence of being  
14 a flight risk or danger to the community.

15 Respondents, by contrast, can easily maintain the status quo by allowing Petitioner to remain  
16 under supervised release (as he has successfully done for 15+ years) pending resolution of his  
17 legal claims. The government's interest in finality of removal orders must be balanced against the  
18 fundamental imperative of ensuring those orders remain legally valid.

19 **B. Public Interest**

20 The public interest strongly favors granting this TRO:

- 21 1. **Ensuring Legal Validity:** The public has an interest in ensuring removal orders are based  
22 on valid criminal convictions. Where convictions have been vacated for constitutional  
23 defects, removing someone before courts can assess the impact undermines both criminal  
24 and immigration law integrity.
- 25 2. **Access to Courts:** The public interest is served by ensuring individuals have meaningful  
26 access to courts to challenge unlawful detention and removal. Removing Petitioner before  
27 his Motion to Reopen can be adjudicated eviscerates this right.
- 28 3. **Statutory Compliance:** The public interest is served when government agencies comply

1 with statutory mandates like the reasonable fear interview requirement in Section  
2 241(a)(5).

3 4. Family Unity: The public interest favors keeping families together, particularly where U.S.  
4 citizen children would lose their father.

5 5. Due Process: The public has a fundamental interest in ensuring constitutional due process  
6 protections apply to all persons within the United States.

7 VI. CONCLUSION

8 Petitioner has demonstrated all elements necessary for issuance of a TRO: likelihood of  
9 success on the merits, irreparable harm, favorable balance of equities, and public interest. The  
10 extraordinary circumstances of this case—vacated convictions, pending Motion to Reopen,  
11 denied statutory fear screening, 46 years of U.S. residence, and imminent removal warrant  
12 immediate intervention to preserve the status quo and prevent irreparable harm.

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Dated: 12-04-2025

  
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Jason A. Ronit, Esq.  
Attorney for Petitioner  
THAT TOM NGIAM