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11
 12 UNITED STATES DISTRICT COURT
 13 DISTRICT OF NEVADA

14 Juak Albino Gabriel Biel,
 15 Petitioner,
 16 v.
 17 John Mattos, NSDC Warden; Michael
 18 Bernacke, Field Director, Salt Lake City
 19 Field Office of ICE ERO; Todd Lyons, ICE
 20 Acting Director; Kristi Noem DHS
 Secretary; Pam Bondi, U.S. Attorney
 General
 21 Respondents.

Case No. 2:25-cv-02432-APG-EJY
**Motion for Temporary Restraining
 Order**

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1 In granting this motion, this Court would not break new ground. Several
2 courts have granted TROs or preliminary injunctions mandating release for post-
3 final-removal-order immigrants like Mr. Biel. *See Rodriguez-Gutierrez v. Noem*, No.
4 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025); *Phetsadakone v. Scott*, No. 2:25-CV-
5 01678-JNW, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*,
6 No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025);
7 *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal.
8 July 16, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D.
9 Wash. Aug. 21, 2025).

10 Several more have ordered release for petitioners whose immigration cases
11 are still pending.¹ *See, e.g., Hiestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL
12 2606983, at *2 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK,
13 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-
14 CV-01141-KES-SKO (HC), 2025 WL 2617255, at *6 (E.D. Cal. Sept. 9, 2025). These
15 courts have determined that, for these long-term releasees, liberty is the status quo,
16 and only a return to that status quo can avert irreparable harm.

17 Several courts have likewise granted temporary restraining orders
18 preventing third-country removals without due process. *See, e.g., J.R. v. Bostock*,
19 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v.*
20 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega*
21 *v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Hoac v.*
22 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16,
23
24

25 ¹ Because immigration detainees whose cases have not been adjudicated are
26 entitled only to a bond hearing—not to outright release—some of these TROs
27 require release unless ICE provides that hearing. But because *Zadvydus* requires
outright release on supervision, a TRO fitted to Mr. Biel’s claims should order that
relief.

1 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D.
2 Cal. July 16, 2025).

3 Granting this relief would not be breaking new ground in this District.
4 Another court in this District recently granted habeas relief on this very basis. *See*
5 *Gomez v. Mattos*, No. 2:25-CV-00975-GMN-BNW, 2025 WL 3101994, at *6–7 (D.
6 Nev. Nov. 6, 2025). Mr. Biel therefore respectfully requests that this Court grant
7 this TRO.

8 STATEMENT OF FACTS

9 Concurrent with this motion, Petitioner files his amended § 2241 petition. He
10 incorporates by reference the statement of facts set forth in those pleadings.

11 ARGUMENT

12 To obtain a TRO, a petitioner “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); *accord*
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 [petitioner] 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 Defs. L. Ctr. v.*
23 *Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks omitted). Under
24 this approach, the four *Winter* elements are “balanced, so that a stronger showing of
25 one element may offset a weaker showing of another.” *All. for the Wild Rockies v.*
26 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be granted where there
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1 are “serious questions going to the merits’ and a hardship balance ... tips sharply
2 toward the [petitioner],” so long as the other *Winter* factors are met. *Id.* at 1132.

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

10 **I. Mr. Biel will likely succeed on the merits, or at a minimum, Mr. Biel**
11 **raises serious questions on the merits.**

12 In his amended § 2241 petition, Mr. Biel raises four claims that he has been
13 unconstitutionally detained and that he cannot be removed to a third country. He
14 addresses the merits of each claim below.

15 **A. Mr. Biel is likely to succeed on the merits of his claim that his**
16 **detention violates *Zadvydas* and the Immigration and**
17 **Nationality Act, 8 U.S.C. § 1231(a)(6) (Grounds 1 and 2).**

18 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a
19 problem impacting people like Mr. Biel: Federal law requires ICE to detain a
20 noncitizen during the “removal period,” which spans the first 90 days after the
21 removal order becomes final. 8 U.S.C. § 1231(a)(1)–(2). After the 90-day removal
22 period expires, ICE may detain the noncitizen while continuing to try to remove
23 them. *Id.* § 1231(a)(6). If that subsection were understood to allow for “indefinite,
24 perhaps permanent, detention,” it would pose “a serious constitutional threat.”
Zadvydas, 533 U.S. at 699.

25 In *Zadvydas*, the Supreme Court avoided this constitutional concern by
26 interpreting Section 1231(a)(6) to incorporate implicit limits. *Id.* at 689. As an
27 initial matter, *Zadvydas* held that detention is “presumptively reasonable” for six

1 months after the removal order becomes final. *Id.* at 701. After six months,
2 detention ceases to be presumptively reasonable. Courts use a burden-shifting
3 framework to decide whether detention remains authorized. First, the noncitizen
4 must prove that there is “good reason to believe that there is no significant
5 likelihood of removal in the reasonably foreseeable future.” *Id.* If he does so, the
6 burden shifts to “the Government [to] respond with evidence sufficient to rebut that
7 showing.” *Id.* Ultimately, then, the burden of proof rests with the government: The
8 government must prove that there is a “significant likelihood of removal in the
9 reasonably foreseeable future,” or the noncitizen must be released. *Id.*

10 Here, Mr. Biel was ordered removed more than six months ago, as his
11 removal order became final in 2014. He has been re-detained since May 30, 2025,
12 almost seven months ago. On information and belief, Mr. Biel was previously
13 detained for the initial 90-day removal period in 2014, so he has cumulatively been
14 detained for well over 6 months. Even without counting the initial 90-day detention
15 from 2014, Mr. Biel’s present detention has already spanned more than six months,
16 and there is no significant likelihood of removal. Thus, this Court will likely find
17 that *Zadvydas* relief is warranted.

18 **B. Petitioner is likely to succeed on the merits of his claim that he**
19 **is entitled to adequate notice and an opportunity to be heard**
20 **prior to any third country removal (Grounds 3 and 4).**

21 Mr. Biel is also likely to succeed on the merits of his claim that he may not be
22 removed to a third country absent adequate notice and an opportunity to be heard.

23 U.S. law enshrines protections against dangerous and life-threatening
24 removal decisions. By statute, the government is prohibited from removing a
25 noncitizen to any third country where a person may be persecuted or tortured, a
26 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
27 The government “may not remove [a noncitizen] to a country if the Attorney
General decides that the [noncitizen’s] life or freedom would be threatened in that

1 country because of the [noncitizen’s] race, religion, nationality, membership in a
2 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
3 1208.16. Withholding of removal is a mandatory protection.

4 Similarly, Congress codified protections enshrined in the Convention Against
5 Torture (CAT) prohibiting the government from removing a person to a country
6 where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231
7 note) (“It shall be the policy of the United States not to expel, extradite, or
8 otherwise effect the involuntary return of any person to a country in which there
9 are substantial grounds for believing the person would be in danger of being
10 subjected to torture, regardless of whether the person is physically present in the
11 United States.”); 28 C.F.R. § 200.1; *id.* §§ 208.16–208.18, 1208.16–1208.18. CAT
12 protection is also mandatory.

13 To comport with the requirements of due process, the government must
14 provide notice of a planned third-country removal and an opportunity to respond.
15 Due process requires “written notice of the country being designated” and “the
16 statutory basis for the designation, i.e., the applicable subsection of [Section]
17 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord*
18 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at
19 *1 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

20 Due process also requires “ask[ing] the noncitizen whether they fear
21 persecution or harm upon removal to the designated country and memorialize in
22 writing the noncitizen’s response.” *Aden*, 409 F. Supp. 3d at 1019. “This
23 requirement ensures DHS will obtain the necessary information from the noncitizen
24 to comply with Section 1231(b)(3) and avoids [a dispute about what was said].” *Id.*
25 “Failing to notify individuals who are subject to deportation that they have the right
26 to apply for asylum in the United States and for withholding of deportation to the
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1 country to which they will be deported violates both INS regulations and the
2 constitutional right to due process.” *Andriasian*, 180 F.3d at 1041.

3 If the noncitizen claims fear, measures must be taken to ensure that the
4 noncitizen can seek asylum, withholding, and relief under CAT before an
5 immigration judge reopened removal proceedings. The amount and type of notice
6 must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
7 circumstances, he would have a reasonable opportunity to raise and pursue his
8 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing
9 *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405,
10 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring a minimum of 15
11 days’ notice).

12 “[L]ast minute” notice of the country of removal will not suffice. *Andriasian*,
13 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016). And
14 for good reason: To have a meaningful opportunity to apply for fear-based protection
15 from removal, immigrants must have time to prepare and present relevant
16 arguments and evidence. Merely telling a person where they may be sent, without
17 giving them a chance to consider country conditions, does not give them a
18 meaningful chance to determine whether and why they have a credible fear.

19 Respondents’ third country removal policy skips over these statutory and
20 constitutional protections. According to ICE’s July 9, 2025 guidance, individuals can
21 be removed to third countries “without the need for further procedures,” so long as
22 “the [U.S.] has received diplomatic assurances.”² Petitioner is likely to succeed on
23 the merits of his claim on this fact alone, because the policy instructs officers to
24 provide no notice or opportunity to be heard of any kind. The same is true of the
25 minimal procedures ICE offers when no diplomatic assurances are present. The
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27 ² P.Ex. 1.

1 policy provides no meaningful notice (6–24 hours), instructs officers not to ask about
2 fear, and provides no actual opportunity to see counsel and prepare a fear-based
3 claim, let alone reopen removal proceedings. In sum, it directs ICE officers to violate
4 the rights of those whom they seek to subject to third-country removal.

5 Faced with similar arguments, several courts have recently granted
6 individual TROs against removal to third countries. See *Rodriguez-Gutierrez*, No.
7 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025); *J.R.*, 2025 WL 1810210; *Vaskanyan*,
8 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL 1993771, at *7; *Phan*,
9 2025 WL 1993735, at *7.

10 Because ICE’s new policies for third country removal fail to comply with
11 existing law, they also violate the Administrative Procedures Act. Furthermore,
12 given the unlawfulness and unconstitutionality of ICE’s policies, Mr. Biel’s
13 detention under the color of those policies is unlawful.

14 **II. Mr. Biel will suffer irreparable harm absent injunctive relief.**

15 Mr. Biel also meets the second factor, irreparable harm. “It is well
16 established that the deprivation of constitutional rights ‘unquestionably constitutes
17 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
18 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation
19 of a constitutional right is involved, most courts hold that no further showing of
20 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02
21 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*
22 *Procedure*, § 2948.1 (2d ed. 2004)). Further, unlawful detention itself “constitutes
23 extreme or very serious damage, and that damage is not compensable in damages.”
24 *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (internal citations
25 omitted).

26 Third-country deportations pose that risk and more. Recent third-country
27 deportees have been held, indefinitely and without charge, in hazardous foreign

1 prisons.³ They have been subjected to solitary confinement.⁴ They have been
2 removed to countries so unstable that the U.S. government recommends making a
3 will and appointing a hostage negotiator before traveling to them.⁵ These and other
4 threats to Mr. Biel’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*, 556
9 U.S. 418,435 (2009). That balance tips decidedly in Mr. Biel’s favor.

10 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. at
14 436 (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) (when
17 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 Mr. Biel also faces weighty hardships: unlawful, indefinite detention and
20 removal to a third country where he is likely to suffer imprisonment and serious
21 harm. The balance of equities favors preventing the violation of “requirements of

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23 ³ Edward Wong et al., *Inside the Global Deal-Making Behind Trump’s Mass*
24 *Deportations*, N.Y. Times (Jun. 25, 2025), available at <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html>

25 ⁴ Gerald Imray, *Men deported by US to Eswatini in Africa will be held in*
26 *solitary confinement for undetermined time*, Associated Press (Jul. 18, 2025),
27 available at <https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbbcfe6caff87d0bb8>

⁵ *See* Wong, *supra*.

1 federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir.
2 2014), by granting emergency relief to protect against unlawful detention and third-
3 country removal.

4 **CONCLUSION**

5 For these reasons, Mr. Biel requests that this Court grant this motion and
6 issue a temporary restraining order.

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Dated December 29, 2025

Respectfully submitted,

Rene L. Valladares
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/s/ Ellesse Henderson

Ellesse Henderson
Assistant Federal Public Defender

/s/ Margaret Lambrose


Margaret Lambrose
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on December 29, 2025. I personally served a true and correct copy of the foregoing motion for temporary restraining order by CM/ECF to the following individuals:

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I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

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/s/ Mayra Castillo

An Employee of the Federal Public
Defender

