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

11 **HOANG KIET LAM,**
12 **Petitioner,**

13 **v.**

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

CIVIL CASE NO.: '25CV3470 JO VET

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

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1 **I. Introduction**

2 Petitioner Hoang Kiet Lam faces immediate irreparable harm:

3 (1) revocation of his release on immigration supervision after 14 years of living in
4 the community, despite ICE’s failure to follow its own revocation procedures; and
5 (2) indefinite immigration detention with no individualized, significantly likely
6 prospect of removal to Vietnam in the reasonably foreseeable future. This Court
7 should grant temporary relief of his release on his pre-existing order of
8 supervision to preserve the status quo.

9 Mr. Lam has spent the last 14 years in the community on an order of
10 supervision. Throughout that time, the government has proved unable to remove
11 him to Vietnam. Yet on August 22, 2025, the government re-detained him when
12 he appeared as scheduled at his check-in. ICE gave him no opportunity to contest
13 his re-detention, and did not identify changed circumstances justifying it. ICE
14 does not appear to have a travel document in hand.

15 Because Mr. Lam is facing unlawful detention, the requested temporary
16 restraining order (“TRO”) would preserve the status quo while Petitioner litigates
17 these claims by reinstating Mr. Lam’s release on supervision.

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

1 16, 2025); *Lam v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D.
2 Wash. Aug. 21, 2025). These courts have determined that, for these long-term
3 releasees, liberty is the status quo, and only a return to that status quo can avert
4 irreparable harm. Mr. Lam therefore respectfully requests that this Court grant this
5 TRO.

6 **II. Statement of Facts**

7 In 1985, Mr. Lam fled Vietnam and entered the United States as a refugee.
8 Declaration of Hoang Kiet Lam, Exhibit A (“Exh. A”) ¶ 1. He soon obtained a
9 green card. *Id.*

10 In 2009, Mr. Lam was convicted of an offense relating to robbery. *Id.* at
11 ¶ 2. As a result of this conviction, Mr. Lam was placed in removal proceedings.
12 *Id.* at ¶ 2. An immigration judge ordered him removed on June 1, 2011. *Id.* at ¶ 3.

13 But ICE was not able to effectuate Mr. Lam’s removal to Vietnam and
14 released him on an order of supervision. *Id.* In the years since his removal order,
15 Mr. Lam has never missed a check-in appointment. *Id.* at ¶ 5.

16 On August 22, 2025, ICE officials arrested Mr. Lam during his annual
17 check in appointment. *Id.* at ¶ 6. They did not provide him any notice or give him
18 an interview or an opportunity to contest his detention. *Id.*

19 **Argument**

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

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

10 Here, this Court should issue a temporary restraining order and an
11 injunction because “immediate and irreparable injury . . . or damage” is occurring
12 and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Respondents
13 have re-detained Petitioner in violation of his due process, statutory, and
14 regulatory rights, and this Court should order Petitioner’s immediate release.

15 **III. Petitioner is likely to succeed on the merits, or at a minimum, raises**
16 **serious merits questions.**

17 **A. Petitioner is likely to succeed on the merits of his claim that ICE**
18 **violated its own regulations.**

19 The regulations set forth the procedures for someone who, like Petitioner, is
20 re-detained following a period of release. Under 8 C.F.R. § 241.4(l), ICE may re-
21 detain an immigrant on supervision only with an interview and a chance to contest
22 a re-detention. When an immigrant is specifically released after giving good
23 reason why they cannot be removed, additional regulations apply: ICE may
24 revoke a noncitizen’s release and return them to ICE custody due to failure to
25 comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if, “on account of
26 changed circumstances,” a noncitizen likely can be removed in the reasonably
27 foreseeable future. *Id.* § 241.13(i)(2).

28 The regulations further provide noncitizens with a chance to contest a re-
detention decision. ICE must “notif[y] [the person] of the reasons for revocation

1 of his or her release.” *Id.* § 241.13(i)(3). ICE must then “conduct an initial
2 informal interview promptly” after re-detention “to afford the alien an opportunity
3 to respond to the reasons for revocation stated in the notification.” *Id.* During the
4 interview, the person “may submit any evidence or information” showing that the
5 prerequisites to re-detention have not been met, and the interviewer must evaluate
6 “any contested facts.” *Id.*

7 ICE is required to follow its own regulations. *United States ex rel. Accardi*
8 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
9 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
10 abide by certain internal policies is well-established.”). A court may review a re-
11 detention decision for compliance with the regulations. *See Lam v. Beccerra*, No.
12 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Lam v.*
13 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
14 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

15 None of the prerequisites to detention apply here. Since ICE last tried to
16 deport him in 2011, Petitioner has not missed a check-in appointment. And there
17 are no changed circumstances that justify re-detaining him. ICE already tried—
18 and failed—to remove Petitioner and has given Petitioner no indication that
19 agents have a travel document in hand for him. Of course, ICE may be planning
20 to renew their request for a travel document from Vietnam. But absent any
21 evidence for “why obtaining a travel document is more likely this time around[,]”
22 Respondents’ intent to eventually complete a travel document request for
23 Petitioner does not constitute a changed circumstance.” *Hoac v. Becerra*, No.
24 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025)
25 (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June
26 17, 2025)). Nor has Petitioner received an interview where he was able to respond
27 to the purported “reasons” for his revocation.

28

1 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
2 the applicable regulations,” this Court will likely find that “petitioner is entitled to
3 his release” on an order of supervision. *Liu*, 2025 WL 1696526, at *3.

4 **B. Petitioner is likely to succeed on the merits of his claim that his
5 detention violates *Zadvydas*.**

6 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
7 a problem affecting people like Mr. Lam: Federal law requires ICE to detain an
8 immigrant during the “removal period,” which typically spans the first 90 days
9 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that
10 90-day removal period expires, ICE may detain the migrant while continuing to
11 try to remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow
12 for “indefinite, perhaps permanent, detention,” it would pose “a serious
13 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court
14 avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate
15 implicit limits. *Id.* at 689.

16 As an initial matter, *Zadvydas* held that detention is “presumptively
17 reasonable” for at least six months after the removal order becomes final. *Id.* at
18 701. This acts as a kind of grace period for effectuating removals. Following the
19 six-month grace period, courts must use a burden-shifting framework to decide
20 whether detention remains authorized. First, the petitioner must prove that there is
21 “good reason to believe that there is no significant likelihood of removal in the
22 reasonably foreseeable future.” *Id.*

23 If he does so, the burden shifts to “the Government [to] respond with
24 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
25 proof rests with the government: The government must prove that there is a
26 “significant likelihood of removal in the reasonably foreseeable future,” or the
27 immigrant must be released. *Id.*

1 Here, Petitioner was ordered removed more than six months ago, as his
2 removal order became final in 2011. Lam Dec. at ¶ 3. Thus, it is clear that the
3 *Zadvydas* grace period has ended.

4 There is also strong evidence that there is no “significant likelihood of
5 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.
6 Vietnam refused to accept Mr. Lam when he was detained in 2011. Lam Dec. at
7 ¶ 4, 5. Nothing has changed since the last time ICE attempted to deport him. And
8 to date, there is no indication that ICE has obtained a travel document.

9 Finally, Petitioner’s criminal history cannot change this equation. Not only
10 has Petitioner proved that he poses no danger or flight risk, *Zadvydas* also
11 squarely prohibits ICE from indefinitely detaining immigrants because they pose
12 risks of danger or flight. 533 U.S. at 684–91.

13 Thus, this Court will likely find that Petitioner warrants *Zadvydas* relief.

14 **IV. Petitioner will suffer irreparable harm absent injunctive relief.**

15 Petitioner 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
19 deprivation of a constitutional right is involved, most courts hold that no further
20 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
21 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
22 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

23 Here, the potential irreparable harm to Petitioner is even more concrete.
24 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and
25 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d
26 976, 999 (9th Cir. 2017). These and other threats to Petitioner’s health and life
27 independently constitute irreparable harm.

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1 **V. The balance of hardships and the public interest weigh heavily in**
2 **petitioner's favor.**

3 The final two factors for a TRO—the balance of hardships and public
4 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
5 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor. On
6 the one hand, the government “cannot reasonably assert that it is harmed in any
7 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,
8 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to
9 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,
10 556 U.S. at 436 (describing public interest in preventing noncitizens “from being
11 wrongfully removed, particularly to countries where they are likely to face
12 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218
13 (W.D. Wash. 2019) (when government's treatment “is inconsistent with federal
14 law, . . . the balance of hardships and public interest factors weigh in favor of a
15 preliminary injunction.”). On the other hand, Petitioner faces weighty hardships:
16 unlawful, indefinite detention. The balance of equities thus favors preventing the
17 violation of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*,
18 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect
19 against unlawful detention and unlawful third country removal.

20 **VI. Petitioner gave the government notice of this TRO, and the TRO**
21 **should remain in place throughout habeas litigation.**

22 Upon filing this motion, proposed counsel emailed Janet Cabral, from the
23 United States Attorney's Office, notice of this request for a temporary restraining
24 and all the filings associated with it. Additionally, Petitioner requests that this
25 TRO and injunction remain in place until the habeas petition is decided. Fed. R.
26 Civ. Pro. 65(b)(2). Good cause exists, because the same considerations will
27 continue to warrant injunctive relief throughout this litigation, and habeas
28 petitions must be adjudicated promptly. *See In re Habeas Corpus Cases*, 216
F.R.D. 52 (E.D.N.Y. 2003).

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Respectfully submitted,

Dated: December 8, 2025

s/ Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Lam
Email: kara_hartzler@fd.org

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Proof of Service

I, the undersigned, will cause the attached Motion for a Temporary Restraining Order to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: December 8, 2025 /s/ Kara Hartzler
Kara L. Hartzler