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

11 **AMKHA SOUVANNASENG,**
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.: '25CV3473 CAB DEB

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

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1 **I. Introduction**

2 Petitioner Amkha Souvannaseng faces immediate irreparable harm:
3 (1) revocation of his release on immigration supervision after 25 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 Laos 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. Souvannaseng has spent the last 25 years in the community on an order
10 of supervision. Throughout that time, the government has proved unable to
11 remove him to Laos. Yet on November 28, 2025, the government arrested him as
12 he was taking his wife to work and re-detained him. ICE gave him no opportunity
13 to contest his re-detention, and did not identify changed circumstances justifying
14 it. ICE does not appear to have a travel document in hand.

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

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

1 Cal. July 16, 2025); *Souvannaseng v. Beccerra*, No. 2:25-CV-01757-DC-JDP,
2 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Souvannaseng v. Scott*, No.
3 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025). These
4 courts have determined that, for these long-term releasees, liberty is the status
5 quo, and only a return to that status quo can avert irreparable harm.

6 Mr. Souvannaseng therefore respectfully requests that this Court grant this TRO.

7 **II. Statement of Facts**

8 In 1979, Mr. Souvannaseng fled Laos and entered the United States as a
9 refugee. Declaration of Amkha Souvannaseng, Exhibit A (“Exh. A”) ¶ 1. He soon
10 obtained a green card. *Id.*

11 In 2000, as a result of a drug conviction, Mr. Souvannaseng was placed in
12 removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on
13 July 3, 2000. *Id.* at ¶ 3.

14 But after ICE was not able to effectuate Mr. Souvannaseng’s removal to
15 Laos. ICE continued to detain him for a year before finally releasing him on an
16 order of supervision. *Id.* at ¶ 4. In the years since his removal order,
17 Mr. Souvannaseng has not missed a check-in appointment. *Id.* at ¶ 5.

18 On November 28, 2025, ICE officials arrested Mr. Souvannaseng as he was
19 driving his wife to work. *Id.* at ¶ 6. They did not provide him any notice or give
20 him an interview or an opportunity to contest his detention. *Id.*

21 **Argument**

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

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

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

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

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

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

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

9 ICE is required to follow its own regulations. *United States ex rel. Accardi*
10 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
11 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
12 abide by certain internal policies is well-established.”). A court may review a re-
13 detention decision for compliance with the regulations. *See Souvannaseng v.*
14 *Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16,
15 2025); *Souvannaseng v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3
16 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st
17 Cir. 2023)).

18 None of the prerequisites to detention apply here. Since ICE last tried to
19 deport him in 2000, Petitioner has not missed a check-in appointment. And there
20 are no changed circumstances that justify re-detaining him. ICE already tried—
21 and failed—to remove Petitioner and has given Petitioner no indication that
22 agents have a travel document in hand for him. Of course, ICE may be planning
23 to renew their request for a travel document from Laos. But absent any evidence
24 for “why obtaining a travel document is more likely this time around[,]”
25 Respondents’ intent to eventually complete a travel document request for
26 Petitioner does not constitute a changed circumstance.” *Hoac v. Becerra*, No.
27 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025)
28 (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June

1 17, 2025)). Nor has Petitioner received an interview where he was able to respond
2 to the purported “reasons” for his revocation.

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

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

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

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

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

3 Here, Petitioner was ordered removed more than six months ago, as his
4 removal order became final in 2000. *Souvannaseng Dec.* at ¶ 3. Thus, it is clear
5 that the *Zadvydas* grace period has ended.

6 There is also strong evidence that there is no “significant likelihood of
7 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Laos
8 refused to accept Mr. *Souvannaseng* when he was detained in 2000.
9 *Souvannaseng Dec.* at ¶ 4, 5. Nothing has changed since the last time ICE
10 attempted to deport him. And to date, there is no indication that ICE has obtained
11 a travel document.

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

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

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

18 Petitioner also meets the second factor, irreparable harm. “It is well
19 established that the deprivation of constitutional rights ‘unquestionably constitutes
20 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
21 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged
22 deprivation of a constitutional right is involved, most courts hold that no further
23 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
24 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
25 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

26 Here, the potential irreparable harm to Petitioner is even more concrete.
27 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and
28 that damage is not compensable in damages.” *Hernandez v. Sessions*, 872 F.3d

1 976, 999 (9th Cir. 2017). These and other threats to Petitioner’s health and life
2 independently constitute irreparable harm.

3 **V. The balance of hardships and the public interest weigh heavily in**
4 **petitioner’s favor.**

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

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

24 Upon filing this motion, proposed counsel emailed Janet Cabral, from the
25 United States Attorney’s Office, notice of this request for a temporary restraining
26 and all the filings associated with it. Additionally, Petitioner requests that this
27 TRO and injunction remain in place until the habeas petition is decided. Fed. R.
28 Civ. Pro. 65(b)(2). Good cause exists, because the same considerations will
continue to warrant injunctive relief throughout this litigation, and habeas

1 petitions must be adjudicated promptly. *See In re Habeas Corpus Cases*, 216
2 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. Souvannaseng
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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