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9 Attorneys for Petitioner¹
10 **FELIX ENI**

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 **FELIX ENI,**

14 **Petitioner,**

15 **v.**

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

22 **Respondents.**

Civil Case No.: **'25CV3524 JLS DEB**

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

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27 ¹ Federal Defenders of San Diego, Inc., is filing the instant motion and
28 associated petition with provisional appointment under Chief Judge
Order No. 134. Mr. Eni's financial eligibility for representation is
included in a sworn statement attached to the habeas corpus petition.

1 **I. Introduction**

2 Petitioner Felix Eni faces immediate irreparable harm:

3 (1) revocation of his release on immigration supervision [REDACTED]

4 [REDACTED]

5 after 17 years of living freely in the community, despite ICE's failure to
6 follow its own revocation procedures; (2) indefinite immigration

7 detention with no individualized, significantly likely prospect of

8 removal to a third country in the reasonably foreseeable future; and (3)

9 potential removal to a prison in an unidentified, potentially dangerous

10 third country never considered by an immigration judge. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Throughout

16 that time, the government has proved unable to remove him to a third

17 country. Since October 2008, Mr. Eni has complied with his conditions

18 of immigration supervision. Yet on October 31, 2025, the government

19 re-detained him. Indeed, he has now been in immigration custody for

20 almost a month and a half. ICE gave him no opportunity to contest his

21 re-detention, and did not identify changed circumstances justifying it.

22 ICE does not appear to have a travel document in hand. [REDACTED]

23 [REDACTED]

24 ICE's own policies allow ICE to remove Mr. Eni to a third country

25 never before considered by an immigration judge, with either six-to-24

26 hours' notice or no notice at all.

27

28

1 Mr. Eni is therefore facing both unlawful detention and a threat
2 of removal to a dangerous third country without due process. The
3 requested temporary restraining order (“TRO”) would preserve the
4 status quo while Mr. Eni litigates these claims by: (1) reinstating
5 Mr. Eni’s order of supervision [REDACTED]
6 [REDACTED], and (2) prohibiting the government from removing him
7 to a third country without an opportunity to file a motion to reopen
8 with an immigration judge.

9 In granting this motion, this Court would not break new ground.
10 Courts in this district and around the Ninth Circuit have granted
11 TROs or preliminary injunctions mandating release for post-final-
12 removal-order immigrants like Mr. Eni. *See, e.g., Sun v. Noem*, 2025
13 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran*
14 *v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29,
15 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal.
16 Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC,
17 ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g., Phetsadakone v.*
18 *Scott*, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v.*
19 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D.
20 Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP,
21 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Nguyen v. Scott*, No.
22 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025).
23 These courts have determined that, for these long-term releasees,
24 liberty is the status quo, and only a return to that status quo can avert
25 irreparable harm.

26 Courts have likewise granted temporary restraining orders
27 preventing third-country removals without due process. *See, e.g., Van*
28

1 *Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-
2 cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v.*
3 *Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9,
4 2025); *see also, e.g., J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL
5 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v. Janecka*, 25-cv-
6 01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v.*
7 *Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025);
8 *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7
9 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-
10 JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025).

11 Mr. Eni therefore respectfully requests that this Court grant this
12 TRO.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] He was released from immigration
20 on October 28, 2008, and placed on an Order of Supervision. *Id.* at
21 ¶ 13; *see also* Order of Supervision, Exhibit B (“Exh. B”).

22 Mr. Eni remained in the United States for the next 17 years.
23 While under the supervision order, he attended check-ins at the ICE
24 office in downtown San Diego every six months, which eventually
25 changed to once per year. Exh. A at ¶ 11.; *see also* Exh. B. His last visit
26

27 _____
28 ² EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 was on October 10, 2025, less than a month before he was re-detained
2 on October 31, 2025. Exh. A at ¶¶ 14, 17–19.

3 On Friday, October 31, 2025, Mr. Eni was hired as a Lyft driver
4 to drop a person off at Camp Pendleton. Exh. A at ¶ 17. Mr. Eni had
5 gone to Camp Pendleton and the Marine Corps Recruit Depot (MCRD)
6 in San Diego several times to pick up family members of the recruits
7 without issue, and never had any fear of being arrested there. *Id.* at
8 ¶ 21. When he arrived there, the guards checked his identification and
9 told him to park on the side of the road. *Id.* at ¶ 17. They said they
10 were going to run a check on him because they saw a sign on his
11 driver’s license that said “limited,” which meant that he was not a U.S.
12 citizen. *Id.* They also looked at his work permit. *Id.* They then asked if
13 he had a green card, and he said no. *Id.*

14 The guards did not tell him why he was being re-detained. *Id.* at
15 ¶ 18. They simply said that once his identification is flagged, they had
16 to do additional background checks on him. *Id.* They then took his car
17 registration, keys, and fingerprints. *Id.*

18 The guards then drove him from Camp Pendleton to another
19 military instillation, where he was met by ICE officers. *Id.* at ¶ 19. ■

20 ■
21 ■ They said that was the “new
22 order.” *Id.* He was eventually transported to the Otay Mesa Detention
23 Center, where he has remained for the past month and a half. *Id.* at
24 ¶ 2.

25 As Mr. Eni explains, “No one told me why I was re-detained. No
26 one has offered me an informal interview. I have not had the chance to
27 contest my detention. No one has told me what changed to make my
28

1 removal more likely. No one has told me that I violated the conditions
2 of my release.” *Id.* ¶ 24.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 **III. Argument: Mr. Eni meets all *Winter* factors.**

10 To obtain a TRO, Mr. Eni “must establish that he is likely to
11 succeed on the merits, that he is likely to suffer irreparable harm in
12 the absence of preliminary relief, that the balance of equities tips in his
13 favor, and that an injunction is in the public interest.” *Winter v. Nat.*
14 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co.*
15 *v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th Cir. 2001)
16 (noting that a TRO and preliminary injunction involve “substantially
17 identical” analysis). A “variant[] of the same standard” is the “sliding
18 scale”: “if a plaintiff can only show that there are ‘serious questions
19 going to the merits—a lesser showing than likelihood of success on the
20 merits—then a preliminary injunction may still issue if the balance of
21 hardships tips *sharply* in the plaintiff’s favor, and the other two *Winter*
22 factors are satisfied.” *Immigrant Defenders Law Center v. Noem*, 145
23 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks omitted).
24 Under this approach, the four *Winter* elements are “balanced, so that a
25 stronger showing of one element may offset a weaker showing of
26 another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
27 Cir. 2011). A TRO may be granted where there are “serious questions
28

1 going to the merits' and a hardship balance. . . tips sharply toward the
2 plaintiff," and so long as the other *Winter* factors are met. *Id.* at 1132.

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

12 **A. Mr. Eni is likely to succeed on the merits, or at a**
13 **minimum, raises serious merits questions.**

14 As described in detail in Mr. Eni's habeas petition, he is likely to
15 succeed on each of his three claims.

16 First, ICE failed to follow its own regulations requiring changed
17 circumstances before Mr. Eni's re-detention, as well as its procedural
18 regulations requiring it to notify him of those circumstances and allow
19 him an opportunity to contest them. This was a violation of both the
20 regulations and due process and requires his release. *See, e.g., See*
21 *Phan v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3-*5
22 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory framework and
23 granting a habeas petition for ICE's failure to follow these regulations
24 for a refugee of Vietnam who entered the United States before 1995);
25 *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same
26 as to an Iranian national).

27 Second, *Zadvydas v. Davis* holds that immigration statutes do
28 not authorize the government to detain immigrants like Mr. Eni, for

1 whom there is “no significant likelihood of removal in the reasonably
2 foreseeable future.” 533 U.S. 678, 701 (2001); *see, e.g., Nguyen v. Scott*,
3 No. 2:25-CV-01398, 2025 WL 2419288 *17 (W.D. Wash. Aug. 21, 2025)
4 (granting habeas petition on *Zadvydas* grounds and ordering pre-1995
5 Vietnamese immigrant released); *Hoac v. Becerra*, No. 2:25-CV-01740-
6 DC-JDP, 2025 WL 1993771, *5, *7 (E.D. Cal. July 16, 2025) (granting
7 preliminary injunction and temporary restraining order on these same
8 grounds).

9 Third, Respondents cannot remove Mr. Eni to a third country
10 without first providing notice and a sufficient opportunity to be heard
11 before an immigration judge. Their current policy allowing third-
12 country removal “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No.
13 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025)
14 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit
15 law on the process due to noncitizens in detail); *see also Van Tran v.*
16 *Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29,
17 2025) (granting temporary restraining order preventing a noncitizen’s
18 deportation to a third country pending litigation in light of due process
19 problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
20 6 (S.D. Cal. Sept. 18, 2025) (same).

21 **B. Mr. Eni will suffer irreparable harm absent**
22 **injunctive relief.**

23 Mr. Eni also meets the second factor, irreparable harm. “It is well
24 established that the deprivation of constitutional rights
25 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*,
26 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S.
27 347, 373 (1976)). Where the “alleged deprivation of a constitutional
28 right is involved, most courts hold that no further showing of

1 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989,
2 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al.,
3 *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).

4 Third-country deportations pose that risk and more. Recent
5 third-country deportees have been held, indefinitely and without
6 charge, in hazardous foreign prisons. See Edward Wong et al, *Inside*
7 *the Global Deal-Making Behind Trump’s Mass Deportations*, N.Y.
8 Times, June 25, 2025. They have been subjected to solitary
9 confinement. Gerald Imray, *3 Deported by US held in African Prison*
10 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They
11 have been removed to countries so unstable that the U.S. government
12 recommends making a will and appointing a hostage negotiator before
13 traveling to them. See Wong, *supra*. These and other threats to
14 Mr. Eni’s health and life independently constitute irreparable harm.

15 **IV. The balance of hardships and the public interest weigh**
16 **heavily in Mr. Eni’s favor.**

17 The final two factors for a TRO—the balance of hardships and
18 public interest—“merge when the Government is the opposing party.”
19 *Nken v. Holder*, 556 U.S. 418, 435 (2009). That balance tips decidedly
20 in Mr. Eni’s favor.

21 On the one hand, the government “cannot reasonably assert that
22 it is harmed in any legally cognizable sense” by being compelled to
23 follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).
24 Moreover, it is always in the public interest to prevent violations of the
25 U.S. Constitution and ensure the rule of law. See *Nken*, 556 U.S. at 436
26 (describing public interest in preventing noncitizens “from being
27 wrongfully removed, particularly to countries where they are likely to
28 face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d

1 1208, 1218 (W.D. Wash. 2019) (when government’s treatment “is
2 inconsistent with federal law, . . . the balance of hardships and public
3 interest factors weigh in favor of a preliminary injunction.”).

4 On the other hand, Mr. Eni faces weighty hardships: unlawful,
5 indefinite detention, and possible removal to a third country where he
6 is likely to suffer imprisonment or other serious harm. The balance of
7 equities thus favors preventing the violation of “requirements of
8 federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069
9 (9th Cir. 2014), by granting emergency relief to protect against
10 unlawful detention and prevent unlawful third country removal.

11 Finally, Mr. Eni requests that this TRO remain in place until the
12 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists,
13 because the same considerations will continue to warrant injunctive
14 relief throughout this litigation, and habeas petitions must be
15 adjudicated promptly. *See In re Habeas Corpus Cases*, 216 F.R.D. 52
16 (E.D.N.Y. 2003). A proposed order is attached.

17
18 Respectfully submitted,

19 Dated: December 11, 2025

20 s/ Armilla Staley-Ngomo

21 Armilla Staley-Ngomo
22 Federal Defenders of San Diego, Inc.

23 Attorneys for Petitioner
24 FELIX ENI
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1 **PROOF OF SERVICE**

2 I, the undersigned, caused to be served the within Notice of
3 Motion and Memorandum of Law in Support of Temporary Restraining
4 Order by email, at the request of Janet Cabral, Chief of the Civil
5 Division, to:

6 U.S. Attorney's Office, Southern District of California
7 Civil Division
8 USACAS.Habeas2241@usdoj.gov

9
10 Date: December 11, 2025

/s/ Armilla Staley-Ngomo
Armilla Staley-Ngomo