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10 **AVETIK ARUTYUNOVICH MOSKOVYAN**

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 **AVETIK ARUTYUNOVICH**
14 **MOSKOVYAN,**

15 Petitioner,

16 v.

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

27 Respondents.

Civil Case No.: **'25CV3537 RBM AHG**

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

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

1 **I. Introduction**

2 Petitioner Avetik Arutyunovich Moskovyan faces immediate
3 irreparable harm: (1) revocation of his release on immigration
4 supervision and withholding of removal under the Convention Against
5 Torture (CAT) after living freely in the community for almost six years,
6 despite ICE's failure to follow its own revocation procedures;
7 (2) indefinite immigration detention with no individualized,
8 significantly likely prospect of removal to a third country in the
9 reasonably foreseeable future; and (3) potential removal to a prison in
10 an unidentified, potentially dangerous third country never considered
11 by an immigration judge. This Court should grant temporary relief of
12 his release on his pre-existing withholding of removal order to preserve
13 the status quo.

14 Mr. Moskovyan has spent almost six years living freely in the
15 community on a withholding of removal under the CAT. Throughout
16 that time, the government has proved unable to remove him to a third
17 country. Ever since January 2020, Mr. Moskovyan has complied with
18 his conditions of immigration supervision. Yet on October 15, 2025, the
19 government re-detained him. Indeed, he has now been in immigration
20 custody for almost two months. ICE gave him no opportunity to contest
21 his re-detention, and did not identify changed circumstances justifying
22 it. ICE does not appear to have a travel document in hand. Worse yet,
23 given ICE is unable to remove Mr. Moskovyan to his home country—
24 the Union of Soviet Socialist Republics (also known as the Soviet
25 Union or U.S.S.R.)² —ICE's own policies allow ICE to remove Mr.
26 Moskovyan to a third country never before considered by an
27 immigration judge, with either six-to-24 hours' notice or no notice at
28 all.

1 Mr. Moskovyan is therefore facing both unlawful detention and a
2 threat of removal to a dangerous third country without due process.
3 The requested temporary restraining order (“TRO”) would preserve the
4 status quo while Mr. Moskovyan litigates these claims by:
5 (1) reinstating Mr. Moskovyan’s order of supervision and release on
6 withholding of removal under the CAT, and (2) prohibiting the
7 government from removing him to a third country without an
8 opportunity to file a motion to reopen 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. Moskovyan. *See, e.g., Sun v. Noem*,
13 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van*
14 *Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal.
15 Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10
16 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-
17 JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g.,*
18 *Phetsadakone v. Scott*, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5,
19 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
20 at *7 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-
21 DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Nguyen v.*
22 *Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D. Wash. Aug.
23 21, 2025). These courts have determined that, for these long-term
24 releasees, liberty is the status quo, and only a return to that status quo
25 can avert irreparable harm.

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27
28 ² The Soviet Union officially dissolved on December 26, 1991, and was replaced by 15 independent countries.

1 Courts have likewise granted temporary restraining orders
2 preventing third-country removals without due process. *See, e.g., Van*
3 *Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-
4 cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v.*
5 *Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9,
6 2025); *see also, e.g., J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL
7 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v. Janecka*, 25-cv-
8 01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v.*
9 *Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025);
10 *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7
11 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-
12 JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025).

13 Mr. Moskovyan therefore respectfully requests that this Court
14 grant this TRO.

15 **II. Statement of Facts: Mr. Moskovyan is ordered removed,**
16 **granted withholding of removal under CAT, and then**
17 **released by ICE for almost six years, until he is re-**
18 **detained while dropping off a Lyft rider at Camp**
Pendleton.

19 Mr. Moskovyan was ordered removed from the United States and
20 granted withholding of removal to the Soviet Union on May 31, 2019.
21 Declaration of Avetik Arutyunovich Moskovyan, Exhibit A (“Exh. A”)
22 to Petition for Writ of Habeas Corpus, at ¶ 8.³ He was held in
23 immigration detention for about nine and a half months before filing a
24 pro se habeas petition. *Id.* at ¶¶ 7–8. On January 23, 2020, he was
25 released on an Order of Supervision. *Id.* at ¶ 9.

26 About a week or two later, Mr. Moskovyan went to the Los
27 Angeles ICE office and was told he needed to check-in every three

28 ³ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 months. *Id.* at ¶ 9. He went to two check-in appointments before being
2 told he did not have to report in person anymore due to the COVID-19
3 global pandemic. *Id.* During his second check-in, an ICE officer told
4 him he would receive an email about his next appointment, which he
5 never received. *Id.* However, Mr. Moskovyan was still on supervised
6 release during that time, and continued to check-in with the U.S.
7 Probation Office over Facetime during the pandemic. *Id.* at ¶ 10. He
8 believes his supervised release term ended on or around April 8, 2022.
9 *Id.*

10 During the early morning hours of October 15, 2025, Mr.
11 Moskovyan was hired as a Lyft driver for a passenger traveling from
12 the Los Angeles International Airport (LAX) to Camp Pendleton. *Id.* at
13 ¶ 11. He picked up the passenger from LAX at around midnight, and
14 arrived to Camp Pendleton at around 1:20 a.m. *Id.* When he arrived to
15 Camp Pendleton, the military personnel asked Mr. Moskovyan and his
16 passenger for identification. *Id.* They both complied, and the personnel
17 told Mr. Moskovyan to pull over. *Id.* The personnel scanned Mr.
18 Moskovyan's identification, had him wait outside for an hour, placed
19 something near his tire, and told him he would get a flat tire if he
20 moved the car. *Id.*

21 The personnel asked Mr. Moskovyan if he had a green card or
22 passport, to which he responded "no." *Id.* at ¶ 13. They then said he
23 was being detained because he was there illegally. *Id.*

24 About an hour later, the personnel told Mr. Moskovyan he was
25 under arrest, and placed handcuffs on him. *Id.* at ¶ 14. They took him
26 inside of Camp Pendleton for about an hour before two ICE officers
27 came to transport him to the ICE office in downtown San Diego. *Id.*
28

1 Mr. Moskovyan told the ICE officers he had won a habeas
2 petition back in 2019. *Id.* at ¶ 15. The officers simply responded that
3 was during the Biden administration, and that they were now under
4 the Trump administration. *Id.* When Mr. Moskovyan explained he
5 came from U.S.S.R., he was told he was going to be deported to Russia.
6 *Id.* at ¶ 16.

7 The ICE officers never told Mr. Moskovyan why he was being re-
8 detained. *Id.* at ¶ 16. Nor did he ever receive notice of why he was
9 being re-detained. *Id.* He was not given an informal interview. *Id.* He
10 has not been able to contest his detention. *Id.* He has not spoken to an
11 immigration judge since his re-detention. *Id.* He has not been given
12 any paperwork. *Id.* No one has told him what changed to make his
13 removal more likely. *Id.* And no one has told him that he violated the
14 conditions of his release. *Id.*

15 Mr. Moskovyan is scared to go to Russia, or any former U.S.S.R.
16 country, for the same reasons he was granted withholding of removal
17 back in 2019. *Id.* at ¶ 21. He is also scared to go to those countries
18 because of the ongoing war in those areas. *Id.*

19 **III. Argument: Mr. Moskovyan meets all *Winter* factors.**

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

1 going to the merits—a lesser showing than likelihood of success on the
2 merits—then a preliminary injunction may still issue if the balance of
3 hardships tips *sharply* in the plaintiff’s favor, and the other two *Winter*
4 factors are satisfied.” *Immigrant Defenders Law Center v. Noem*, 145
5 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks omitted).

6 Under this approach, the four *Winter* elements are “balanced, so that a
7 stronger showing of one element may offset a weaker showing of
8 another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
9 Cir. 2011). A TRO may be granted where there are “serious questions
10 going to the merits’ and a hardship balance. . . tips sharply toward the
11 plaintiff,” and so long as the other *Winter* factors are met. *Id.* at 1132.

12 Here, this Court should issue a temporary restraining order
13 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).
15 Respondents have not only re-detained Mr. Moskovyan in violation of
16 his due process, statutory, and regulatory rights. ICE policy also allows
17 them to remove him to a third country in violation of his due process,
18 statutory, and regulatory rights. This Court should order
19 Mr. Moskovyan’s release and enjoin removal to a third country with no
20 or inadequate notice.

21 **A. Mr. Moskovyan is likely to succeed on the merits, or**
22 **at a minimum, raises serious merits questions.**

23 As described in detail in Mr. Moskovyan’s habeas petition, he is
24 likely to succeed on each of his three claims.

25 First, ICE failed to follow its own regulations requiring changed
26 circumstances before Mr. Moskovyan’s re-detention, as well as its
27 procedural regulations requiring it to notify him of those circumstances
28 and allow him an opportunity to contest them. This was a violation of

1 both the regulations and due process and requires his release. *See, e.g.*,
2 *See Phan v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–
3 *5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory framework and
4 granting a habeas petition for ICE’s failure to follow these regulations
5 for a refugee of Vietnam who entered the United States before 1995);
6 *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same
7 as to an Iranian national).

8 Second, *Zadvydas v. Davis* holds that immigration statutes do
9 not authorize the government to detain immigrants like Mr.
10 Moskovyan, for whom there is “no significant likelihood of removal in
11 the reasonably foreseeable future.” 533 U.S. 678, 701 (2001); *see, e.g.*,
12 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 *17 (W.D.
13 Wash. Aug. 21, 2025) (granting habeas petition on *Zadvydas* grounds
14 and ordering pre-1995 Vietnamese immigrant released); *Hoac v.*
15 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *5, *7 (E.D.
16 Cal. July 16, 2025) (granting preliminary injunction and temporary
17 restraining order on these same grounds).

18 Third, Respondents cannot remove Mr. Moskovyan to a third
19 country without first providing notice and a sufficient opportunity to be
20 heard before an immigration judge. Their current policy allowing third-
21 country removal “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No.
22 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025)
23 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit
24 law on the process due to noncitizens in detail); *see also Van Tran v.*
25 *Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29,
26 2025) (granting temporary restraining order preventing a noncitizen’s
27 deportation to a third country pending litigation in light of due process
28 problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.

1 6 (S.D. Cal. Sept. 18, 2025) (same).

2 **B. Mr. Moskovyan will suffer irreparable harm absent**
3 **injunctive relief.**

4 Mr. Moskovyan also meets the second factor, irreparable harm.
5 “It is well established that the deprivation of constitutional rights
6 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*,
7 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S.
8 347, 373 (1976)). Where the “alleged deprivation of a constitutional
9 right is involved, most courts hold that no further showing of
10 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989,
11 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al.,
12 *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).

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

25 **IV. The balance of hardships and the public interest weigh**
26 **heavily in Mr. Moskovyan’s favor.**

27 The final two factors for a TRO—the balance of hardships and
28 public interest—“merge when the Government is the opposing party.”
Nken v. Holder, 556 U.S. 418, 435 (2009). That balance tips decidedly

1 in Mr. Moskovyan’s favor.

2 On the one hand, the government “cannot reasonably assert that
3 it is harmed in any legally cognizable sense” by being compelled to
4 follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).
5 Moreover, it is always in the public interest to prevent violations of the
6 U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436
7 (describing public interest in preventing noncitizens “from being
8 wrongfully removed, particularly to countries where they are likely to
9 face substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d
10 1208, 1218 (W.D. Wash. 2019) (when government’s treatment “is
11 inconsistent with federal law, . . . the balance of hardships and public
12 interest factors weigh in favor of a preliminary injunction.”).

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

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PROOF OF SERVICE

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

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

Date: December 11, 2025

/s/ Armilla Staley-Ngomo
Armilla Staley-Ngomo