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

11 **PATRIS LABULO,**
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.: '25CV3602 BAS SBC

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

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1 **I. Introduction**

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

9 Mr. Labulo has spent the last several years in the community on an order of
10 supervision. Throughout that time, the government has proved unable to remove
11 him. Yet on August 17, 2025, the government re-detained him when he appeared
12 to try to correct an error on his work permit application. ICE gave him no
13 opportunity to contest his re-detention and did not identify changed circumstances
14 justifying it. ICE does not appear to have a travel document in hand.

15 Because Mr. Labulo 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. Labulo'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 Labulo v. Noem*, 2025 WL 2770623, No. 25-cv-2334-
23 JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF
24 No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-
25 JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g., Phetsadakone v.*
26 *Scott*, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*, No.
27 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025);
28 *Labulo v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D.

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

6 **II. Statement of Facts**

7 Mr. Labulo was born in 1989 in what was then part of Sudan but is now the
8 separate country of South Sudan. Declaration of Patris Labulo, Exhibit A of
9 Habeas Petition at ¶ 1. Mr. Labulo left with his uncle's family and came to the
10 United States as a refugee in 2002. *Id.* at ¶ 1. After arriving in the United States,
11 he adjusted his status to that of a lawful permanent resident. *Id.* at ¶ 1.

12 Due to a 2018 assault conviction, Mr. Labulo was placed in removal
13 proceedings and ordered removed on January 12, 2022. *Id.* at ¶ 2, 3. However, the
14 immigration judge granted him protection under the Convention Against Torture,
15 which meant that he could not be removed to South Sudan. *Id.* at ¶ 3. The
16 government detained him for about four months while it attempted to remove
17 him. *Id.* at ¶ 4. But the government could not remove him to South Sudan
18 because of the judge's CAT order, and it could not remove him to Sudan because
19 the government of Sudan did not recognize him as a citizen. *Id.* at ¶ 3. So after
20 spending about four months in ICE custody, Mr. Labulo was released on an order
21 of supervision. *Id.* at ¶ 4.

22 Mr. Labulo remained on supervision for the next several years. He checked
23 in with ICE every year without incident and has had no new criminal convictions.
24 *Id.* at ¶ 5. But while he was in the process of applying for a new work permit,
25 USCIS sent him a letter requesting that he come in to fix an error regarding his
26 date of birth. *Id.* at ¶ 6. On August 17, 2025, he mistakenly went to the ICE office,
27 rather than the USCIS office, and ICE re-detained him. *Id.* at ¶ 6. Contrary to
28 regulation, ICE did not notify Mr. Labulo of any changed circumstances that

1 made his removal more likely, like receiving news from Sudan that it would now
2 accept Mr. Labulo despite not accepting him several years ago. *Id.* at ¶ 6. ICE also
3 did not provide him any notice or give him an interview or an opportunity to
4 contest his detention. *Id.*

5 **Argument**

6 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
7 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
8 relief, that the balance of equities tips in his favor, and that an injunction is in the
9 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
10 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
11 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
12 “substantially identical” analysis). A “variant[] of the same standard” is the
13 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
14 going to the merits—a lesser showing than likelihood of success on the merits—
15 then a preliminary injunction may still issue if the balance of hardships tips
16 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
17 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
18 (internal quotation marks omitted). Under this approach, the four *Winter* elements
19 are “balanced, so that a stronger showing of one element may offset a weaker
20 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
21 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
22 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
23 long as the other *Winter* factors are met. *Id.* at 1132.

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

1 **I. Petitioner is likely to succeed on the merits, or at a minimum, raises**
2 **serious merits questions.**

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

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

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

22 ICE is required to follow its own regulations. *United States ex rel. Accardi*
23 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
24 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
25 abide by certain internal policies is well-established."). A court may review a re-
26 detention decision for compliance with the regulations. *See Labulo v. Beccerra*,
27 No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Labulo*
28 *v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20,
2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

1 None of the prerequisites to detention apply here. Since ICE last tried to
2 deport him in 2022, Petitioner has not missed a check-in appointment, nor has he
3 been convicted of any other crime. And there are no changed circumstances that
4 justify re-detaining him. ICE already tried—and failed—to remove Petitioner and
5 has given Petitioner no indication that agents have a travel document in hand for
6 him. Of course, ICE may be planning to renew their request for a travel document
7 from Sudan. But absent any evidence for “why obtaining a travel document is
8 more likely this time around[,] Respondents’ intent to eventually complete a
9 travel document request for Petitioner does not constitute a changed
10 circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
11 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL,
12 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Petitioner received an
13 interview where he was able to respond to the purported “reasons” for his
14 revocation.

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

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

20 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
21 a problem affecting people like Mr. Labulo: Federal law requires ICE to detain an
22 immigrant during the “removal period,” which typically spans the first 90 days
23 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that
24 90-day removal period expires, ICE may detain the migrant while continuing to
25 try to remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow
26 for “indefinite, perhaps permanent, detention,” it would pose “a serious
27 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court

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1 avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate
2 implicit limits. *Id.* at 689.

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

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

15 Here, Petitioner was ordered removed more than six months ago, as his
16 removal order became final in 2022. Labulo Dec. at ¶ 3. Thus, it is clear that the
17 *Zadvydas* grace period has ended.

18 There is also strong evidence that there is no “significant likelihood of
19 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. The
20 immigration judge’s grant of CAT relief prohibits the government from removing
21 Mr. Labulo to South Sudan. Labulo Dec. at ¶ 3. And Sudan refused to accept Mr.
22 Labulo when he was detained in 2022. Labulo Dec. at ¶ 4. Nothing has changed
23 since the last time ICE attempted to deport him. And to date, there is no indication
24 that ICE has obtained a travel document.

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

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

2 **III. Petitioner will suffer irreparable harm absent injunctive relief.**

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

11 Here, the potential irreparable harm to Petitioner is even more concrete.
12 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and
13 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d
14 976, 999 (9th Cir. 2017). These and other threats to Petitioner’s health and life
15 independently constitute irreparable harm.

16
17 **IV. The balance of hardships and the public interest weigh heavily in
petitioner’s favor.**

18
19 The final two factors for a TRO—the balance of hardships and public
20 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
21 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On
22 the one hand, the government “cannot reasonably assert that it is harmed in any
23 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,
24 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to
25 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,
26 556 U.S. at 436 (describing public interest in preventing noncitizens “from being
27 wrongfully removed, particularly to countries where they are likely to face
28 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218

1 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with federal
2 law, . . . the balance of hardships and public interest factors weigh in favor of a
3 preliminary injunction.”). On the other hand, Petitioner faces weighty hardships:
4 unlawful, indefinite detention. The balance of equities thus favors preventing the
5 violation of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*,
6 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect
7 against unlawful detention and unlawful third country removal.

8 **V. Petitioner gave the government notice of this TRO, and the TRO should**
9 **remain in place throughout habeas litigation.**

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

18 Respectfully submitted,

19
20 Dated: December 15, 2025

21 *s/ Kara Hartzler*
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