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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Vitaly Fedorov,

Petitioner,

v.

John Mattos, NSDC Warden; Michael Bernacke, Field Director, West Valley City Office of ICE ERO; Todd Lyons, ICE Acting Director; Kristi Noem DHS Secretary; Pam Bondi, U.S. Attorney General, Kerri Ann Quihuis, ICE Field Office Director, Las Vegas

Respondents.

Case No. 2:25-cv-02518-APG-NJK

Motion for Temporary Restraining Order

POINTS AND AUTHORITIES

Vitaly Fedorov, who was born in the extinct USSR, came to the United States as a refugee in 1989, but was then ordered removed to Ukraine on August 30, 2006. In the nearly two decades since he was ordered removed, the United States has been unable to remove him to Ukraine. Indeed, upon information and belief, Fedorov received correspondence from the Ukrainian consulate as recently as December of last year that indicated that Ukraine did not recognize him as a citizen. In short, Fedorov cannot be removed to Ukraine.

Fedorov moves now to remedy immediate and irreparable harm: (1) revocation of his release on immigration supervision, despite ICE's failure to follow its own revocation procedures; (2) indefinite immigration detention with no reasonable prospect of removal in the reasonably foreseeable future to the country designated by the immigration judge ("IJ"); and (3) potential removal to a third country never considered by an IJ. Beyond that, his arrest has caused irreparable emotional harm to his family members: his 23-year-old daughter Carma Ann Fedorov, his sister Oksana Fedorova, and his brother Sasha Sabanov. This Court should grant temporary relief to preserve the status quo.

The requested temporary restraining order ("TRO") would preserve the status quo ante while Petitioner litigates these claims by (1) reinstating Petitioner's release on supervision, (2) prohibiting the government from revoking his order of supervision without first following the required statutory procedures, and (3) prohibiting the government from removing him to a third country without an opportunity to file a motion to reopen with an IJ.

In granting this motion, this Court would not break new ground. Several courts have granted TROs or preliminary injunctions mandating release for post-final-removal-order immigrants like Petitioner. *See Rodriguez-Gutierrez v. Noem*, No. 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025); *Phetsadakone v. Scott*, No. 2:25-

1 cv-01678-JNW, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v.*
2 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16,
3 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D.
4 Cal. July 16, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *29
5 (W.D. Wash. Aug. 21, 2025).

6 Several courts have likewise granted TROs preventing third-country
7 removals without due process. *See, e.g., J.R. v. Bostock,* No. 25-cv-01161-JNW, 2025
8 WL 1810210 (W.D. Wash. June 30, 2025); *Vaskanyan v. Janecka*, No. 25-cv-01475-
9 MRA-AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025); *Ortega v. Kaiser*, No. 25-cv-
10 05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Hoac v. Becerra*, No. 2:25-
11 CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v.*
12 *Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16,
13 2025).

14 Granting this relief would not even break new ground in this District, where
15 a court recently granted habeas relief on this basis. *See Cavieres Gomez v. Mattos*,
16 No. 2:25-CV-00975-GMN-BNW, 2025 WL 3101994, at *6-7 (D. Nev. Nov. 6, 2025).
17 Petitioner therefore respectfully requests that this Court grant this TRO.

18 ## STATEMENT OF FACTS

19 Along with this motion, Petitioner files his amended § 2241 petition.
20 Petitioner incorporates by reference the statement of facts set forth in that
21 pleading.

22 ## ARGUMENT

23 To obtain a TRO, a petitioner "must establish that he is likely to succeed on
24 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
25 relief, that the balance of equities tips in his favor, and that an injunction is in the
26 public interest." *Winter v. Nat. Res. Def Council, Inc.*, 555 U.S. 7, 20 (2008); *accord*
27 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th

Cir. 2001) (noting that a TRO and preliminary injunction involve "substantially identical" analysis). A "variant[] of the same standard" is the "sliding scale": "if a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the balance of hardships tips *sharply* in the plaintiff's favor, and the other two *Winter* factors are satisfied." *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks omitted). Under this approach, the four *Winter* elements are "balanced, so that a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be granted where there are "'serious questions going to the merits' and a hardship balance . . . tips sharply toward the plaintiff," and so long as the other *Winter* factors are met. *Id.* at 1132.

Here, this Court should issue a TRO because "immediate and irreparable injury . . . or damage" is occurring and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents re-detained Petitioner in violation of his due process, statutory, and regulatory rights, ICE policy also allows them to remove him to a third country in violation of his due process, statutory, and regulatory rights. This Court should order Petitioner's release and enjoin removal to a third country with no or inadequate notice.

I. Petitioner will likely succeed on the merits, or at a minimum, Petitioner raises serious merits questions.

In his amended § 2241 petition, Petitioner raises five claims that he has been unconstitutionally detained and that he cannot be removed to a third country. Petitioner addresses the merits of each claim below.

A. Petitioner is likely to succeed on the merits of his claim that his detention violates *Zadvydas* and the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6) (Grounds 1 and 2).

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

In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689. As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" for six months after the removal order becomes final. *Id.* at 701. But after six months, detention ceases to be presumptively reasonable. Courts use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must prove that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of proof rests with the government: the government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

Here, Petitioner was ordered removed much more than six months ago, as his removal order became final in 2006. He has also been detained since at least June of 2025—first in state custody on ICE detainers, and then formally transferred to ICE custody in August. On information and belief, Fedorov was previously detained for 86 days of the initial 90-day removal period in 2006, so he has cumulatively been detained for approximately 10 months. Even without counting the initial 86-day detention from 2006, Fedorov's present detention has already spanned roughly

1 seven months, and there is no reasonable likelihood of removal, so Fedorov still
2 prevails. Thus, this Court will likely find that Petitioner warrants *Zadvydas* relief.

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

5 In addition to *Zadvydas*'s protections, 8 C.F.R. §§ 241.4(l), 241.13(i) provide
6 extra process for re-detentions. These regulations permit an official to "return[s]
7 [the person] to custody" because they "violate[d] any of the conditions of release." 8
8 C.F.R. § 241.13(i)(1); *accord id.* § 241.4(l)(1). Otherwise, they permit revocation of
9 release only if the appropriate official (1) "determines that there is a significant
10 likelihood that the [person] may be removed in the reasonably foreseeable future,"
11 and (2) makes that finding "on account of changed circumstances." *Id.* § 241.13(i)(2).

12 No matter the reason for re-detention, the re-detained person is entitled to
13 "an initial informal interview promptly," during which they "will be notified of the
14 reasons for revocation." *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must
15 "afford[] the [person] an opportunity to respond to the reasons for revocation,"
16 allowing them to "submit any evidence or information" relevant to re-detention and
17 evaluating "any contested facts." *Id.*

18 ICE is required to follow its own regulations. *United States ex rel. Accardi v.*
19 *Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th
20 Cir. 2004) ("The legal proposition that agencies may be required to abide by certain
21 internal policies is well-established."). A court may review a re-detention decision
22 for compliance with the regulations. *See Cavieres Gomez v. Mattos*, No. 2:25-CV-
23 00975-GMN-BNW, 2025 WL 3101994, at *3 (D. Nev. Nov. 6, 2025); *Phan v. Becerra*,
24 No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v.*
25 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)
26 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).
27

Here, none of the prerequisites to detention apply. ICE did not detain Petitioner due to a violation. And there are no changed circumstances that justify re-detaining him, given that it is as unforeseeable now that Petitioner will be removed to Ukraine or a third country as it has always been. Respondents' intent to eventually complete a travel document request to remove Petitioner does not constitute a "changed circumstance" under 8 C.F.R. § 241.13(i)(2). *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Further, upon information and belief, ICE failed to provide Petitioner with "reasons for revocation," they failed to allow Petitioner an "opportunity to respond to the reasons for revocation," and Petitioner was not allowed to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3).

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

C. Petitioner is likely to succeed on the merits of his claim that he is entitled to adequate notice and an opportunity to be heard prior to any third country removal (Grounds 4 and 5).

Finally, Petitioner is likely to succeed on the merits of his claim that he may not be removed to a third country absent adequate notice and an opportunity to be heard.

U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that

country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections enshrined in the Convention Against Torture (CAT) prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

To comport with the requirements of due process, the government must provide notice of the intended third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

Due process also requires the following: "[A]sk[ing] the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorializ[ing] in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS

regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring a minimum of 15 days' notice).

"[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason. To have a meaningful opportunity to apply for fear-based protection from removal, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear.

Respondents' third country removal policy skips over these statutory and constitutional procedural protections. According to ICE's July 9, 2025 Directive, individuals can be removed to third countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic assurances."[1] Petitioner is likely to succeed on the merits of his claim on this fact alone, because the policy instructs officers to provide no notice or opportunity to be heard of any kind. The same is true of the minimal procedures ICE offers when no diplomatic assurances

[1] Amended Petition Ex. 8

are present. The policy provides no meaningful notice (only 6-24 hours), instructs officers not to ask about fear, and provides no actual opportunity to speak to counsel and prepare a fear-based claim, let alone to reopen removal proceedings. In sum, it directs ICE officers to violate the rights of those whom they seek to subject to the third country removal program.

Faced with similar arguments, several courts have recently granted individual TROs against removal to third countries. *See Rodriguez-Gutierrez*, No. 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025); *J.R.*, 2025 WL 1810210; *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

Because ICE's new policies for third country removal fail to comply with existing law, they also violate the Administrative Procedure Act. Furthermore, given the blatant unlawfulness and unconstitutionality of ICE's policies, Petitioner's detention under the color of those policies is unlawful.

II. Petitioner will suffer irreparable harm without injunctive relief.

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

Here, the irreparable harm to Petitioner includes the deprivation of his constitutional rights. This has had a concrete impact on him. Due to his detention, he has been unable to complete a rehabilitative drug court program ordered by a

Nevada state court.[2] Furthermore, unlawful detention itself "constitutes extreme or very serious damage, and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (internal citations omitted).

Third country deportations pose that risk and more. Recent third country deportees have been held, indefinitely and without charge, in hazardous foreign prisons.[3] They have been subjected to solitary confinement.[4] They have been removed to countries so unstable that the U.S. government recommends making a will and appointing a hostage negotiator before traveling to them.[5] These and other threats to Petitioner's health and life independently constitute irreparable harm.

III. The balance of hardships and the public interest weigh heavily in Petitioner's favor.

The final two factors for a TRO—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor.

The government "cannot reasonably assert that it is harmed in any legally cognizable sense" by being compelled to follow the law. *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens "from being wrongfully

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[2] Amended Petition Exhibits 2 & 3

[3] Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations,* N.Y. Times (June 25, 2025), available at https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html.

[4] Gerald Imray, *Men Deported by US to Eswatini in Africa Will Be Held in Solitary Confinement for Undetermined Time*, Associated Press (Jul. 18, 2025), available at https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbcbfe6caff87d0bb8.

[5] *See* Wong, *supra.*

1 removed, particularly to countries where they are likely to face substantial harm");
2 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (When
3 government's treatment "is inconsistent with federal law, . . . the balance of
4 hardships and public interest factors weigh in favor of a preliminary injunction.").
5 Petitioner also faces weighty hardships: ICE thwarting a rehabilitative drug
6 court program that a state court judge granted him; his unlawful, indefinite
7 detention, away from his family; his possible removal to, and his fear of removal to,
8 a third country where he is likely to suffer imprisonment or other serious harm. The
9 balance of equities thus favors preventing the violation of "requirements of federal
10 law," *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by
11 granting emergency relief to protect against unlawful detention and prevent
12 unlawful third country removal.

13 ## CONCLUSION

14 For those reasons, Petitioner requests that this Court issue a temporary
15 restraining order.

16 Dated January 12, 2026.

17

18 Respectfully submitted,

19 Rene L. Valladares
20 Federal Public Defender

21 */s/ Stacy Newman*

22 Stacy Newman
Assistant Federal Public Defender

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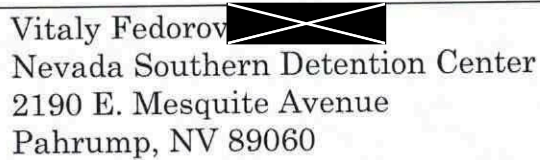
CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 12, 2026. I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:



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