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

12  
13 **ABDULGANI DAVUT,**  
14 **Petitioner,**

15 **v.**

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

21 **Respondents.**

Civil Case No.: **'25CV3740 CAB DDL**

**Petition for Writ**  
**of**  
**Habeas Corpus**

**[Civil Immigration Habeas,**  
**28 U.S.C. § 2241]**

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26 \_\_\_\_\_  
27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing the instant petition with  
28 provisional appointment under Chief Judge Order No. 134. Mr. Davut's financial  
eligibility for representation is included in a sworn statement attached to this  
petition.

1 **I. Introduction**

2 Mr. Davut was born in Afghanistan, and the Taliban killed his parents when  
3 he was only ten years old. When he was 24 years old, Mr. Davut made his way to  
4 Mexico and crossed the border to apply for asylum. He passed his credible fear  
5 interview and was released on an order of supervision. After returning to San  
6 Diego, an immigration judge granted him withholding of removal on July 31,  
7 2025. For the next four months, he remained out of custody on an order of  
8 supervision and was subject to regular calls and home visits.

9 But on November 26, 2025, an Afghani national shot and killed two  
10 National Guardsmen in Washington D.C. Four days later, ICE called Mr. Davut at  
11 11 pm, and told him to report for a check in the next day. But even though he  
12 called back, three ICE agents came and arrested him outside his home. They  
13 questioned him aggressively about whether he knew the Afghani shooter in D.C.,  
14 and Mr. Davut responded truthfully that he did not. Nevertheless, they revoked  
15 his order of supervision and transferred him to Otay Mesa Detention Center,  
16 where he remains incarcerated. Although there is no evidence that Mr. Davut had  
17 any connection to the D.C. shooter, ICE has given no reason for revoking his  
18 supervision and has not told him when he will be released.

19 Mr. Davut’s re-detention violates his regulatory and due process rights.  
20 Specifically, Mr. Davut must be released because ICE’s failure to follow its own  
21 regulations—about timely notifying noncitizens of the reasons for their re-  
22 detention, about promptly providing a meaningful opportunity to be heard  
23 following re-detention, and about the limited reasons ICE can invoke to re-detain  
24 someone who is complying with their conditions of release—repeatedly violated  
25 due process. *See, e.g., Nguyen v. Noem*, No. 25-cv-2791-BAS, ECF No. 12 (S.D.  
26 Cal. Nov. 7, 2025); *Nguyen v. Noem*, No. 25-cv-2792-LL, ECF No. 10 (S.D. Cal.  
27 Nov. 6, 2025); *Ghafouri v. Noem*, 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov.  
28 4, 2025); *Tran v. Noem*, No. 25-cv-2391-BTM, 2025 WL 3005347 (S.D. Cal. Oct.

1 27, 2025); *Bui v. Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23,  
2 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17  
3 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB  
4 (S.D. Cal. Sept. 30, 2025); *Rokhfirooz v. Larose*, \_\_ F. Supp. 3d \_\_, 2025 WL  
5 2646165 (S.D. Cal. Sept. 15, 2025) (granting temporary restraining orders  
6 releasing noncitizens, or granting habeas petitions, due to ICE regulatory  
7 violations during recent re-detentions of released noncitizens previously ordered  
8 removed under 8 C.F.R. §§ 241.13(i), 241.4(l)).

9 Additionally, this Court should enjoin ICE from removing Mr. Davut to a  
10 third country without providing an opportunity to assert fear of persecution or  
11 torture before an immigration judge. *See, e.g., Rebenok v. Noem*, No. 25-cv-2171-  
12 TWR at ECF No. 13; *Van Nguyen v. Noem*, 2025 WL 2770623 at \*3; *Nguyen v.*  
13 *Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Davut v.*  
14 *Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9, 2025) (all  
15 either granting temporary restraining orders or habeas petitions ordering the  
16 government to not remove petitioners to third countries pending litigation or  
17 reopening of their immigration cases).

18 This Court should grant this habeas petition and issue appropriate  
19 injunctive relief on both grounds.

## 20 **II. Statement of Facts**

21 Mr. Davut was born in Afghanistan on  2000. Declaration of  
22 Abdulgani Davut, Exhibit A, at ¶ 1. When Mr. Davut was ten years old, the  
23 Taliban killed his mother and father. *Id.* at ¶ 1. He was an only child and had no  
24 other family in Afghanistan that he knew of. *Id.* at ¶ 1. With the help of a  
25 neighbor, he fled to Turkey. *Id.* at ¶ 2. But because he had no legal status in  
26 Turkey, he spent the next 14 years moving from town to town and working odd  
27 jobs to try to survive. *Id.* at ¶ 2, 3.

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1 In 2024, a major earthquake hit the town in Turkey where Mr. Davut was  
2 living. *Id.* at ¶ 4. After the earthquake, there was a heavy police presence in the  
3 town for months, and Mr. Davut was fearful that he would be sent back to  
4 Afghanistan. *Id.* at ¶ 4. He left Turkey in October 2024 and managed to make his  
5 way to Mexico. *Id.* at ¶ 5.

6 After arriving in Mexico, Mr. Davut made his way to Tijuana. *Id.*  
7 at ¶ 5. On approximately November 20, 2024, he crossed into the United States  
8 through a gap in the fence near Tecate and was immediately stopped by a Border  
9 Patrol agent. *Id.* at ¶ 5.

10 Mr. Davut was taken to a camp for several days and then transferred to a  
11 detention facility in Texas. *Id.* at ¶ 6. He passed his credible fear interview and  
12 was released on an order of supervision on approximately December 28, 2024. *Id.*  
13 at ¶ 6. He then returned to San Diego and was placed in removal proceedings  
14 before an immigration judge. *Id.* at ¶ 6.

15 While he was on supervised release, Mr. Davut had three hearings before  
16 the immigration judge. *Id.* at ¶ 7. At his third and final hearing on July 31, 2025,  
17 the judge ordered him removed but granted him withholding of removal that  
18 prevented him from being removed to Afghanistan. *Id.* at ¶ 7.

19 After the judge granted Mr. Davut withholding, he remained out of custody  
20 on supervised release. *Id.* at ¶ 8. Once a month, ICE would call and schedule a  
21 home visit with him for the following day. *Id.* at ¶ 8. Mr. Davut always complied  
22 with these calls and visits. *Id.* at ¶ 8.

23 On November 26, 2025, an Afghan national named Rahmanullah Lakanwal  
24 shot two National Guardsmen in Washington D.C. *See* “Afghan National Charged  
25 With the Murder of National Guard Soldier Sarah Beckstrom,” U.S. Dept. of  
26 Justice, Dec. 2, 2025, *available at*: <https://www.justice.gov/usao-dc/pr/afghan-national-charged-murder-national-guard-soldier-sarah-beckstrom>. In the weeks  
27 following this shooting, the government halted the processing of Afghani asylum  
28

1 applications, announced increased vetting procedures, and began arresting  
2 Afghani nationals at check-in appointments. *See* “ICE Arrests of Afghans Are on  
3 the Rise in the Wake of National Guard Attack, Immigration Lawyers Say,”  
4 Associated Press, Dec. 9, 2025, *available at*: [https://apnews.com/article/afghans-](https://apnews.com/article/afghans-ice-immigration-b4f5f1563f04fed7f85af2070efea12d)  
5 [ice-immigration-b4f5f1563f04fed7f85af2070efea12d](https://apnews.com/article/afghans-ice-immigration-b4f5f1563f04fed7f85af2070efea12d). For instance, in  
6 Sacramento, “Afghan men arrived one by one to the ICE office Dec. 1 after being  
7 asked to immediately report there.” *Id.* “As each man entered the office, agents  
8 handcuffed them” and took them into custody. *Id.*

9 On November 30, 2025, at 11 p.m. ICE attempted to call Mr. Davut but  
10 was not able to reach him. Exh. A at ¶ 10. As soon as Mr. Davut heard the  
11 message from ICE, he called back. *Id.* at ¶ 10. ICE told him to check in that day.  
12 *Id.* at ¶ 10. But when he left his apartment to go check in, three ICE officers  
13 pulled up in a vehicle and arrested him. *Id.* at ¶ 10.

14 After arresting Mr. Davut, ICE agents aggressively questioned him about  
15 whether he knew the Afghan shooter in D.C. *Id.* at ¶ 11. Mr. Davut told them  
16 truthfully that he did not know the shooter or have any connection with him. *Id.* at  
17 ¶ 11. Nevertheless, ICE took Mr. Davut into custody and transferred him to Otay  
18 Mesa Detention Center. *Id.* at ¶ 12. ICE has never explained why it revoked  
19 Mr. Davut’s supervised release or how long it intends to detain him. *Id.* at ¶ 12.

### 20 **III. Legal Analysis.**

21 This Court should grant this petition by ordering Mr. Davut’s immediate  
22 release and enjoining the government from removing him to a third country  
23 absent notice and an opportunity to apply for protection

#### 24 **A. Claim One: ICE failed to comply with its own regulations before** 25 **re-detaining Mr. Davut, violating his rights under applicable** 26 **regulations and due process.**

27 ICE is required to follow its own due-process-implementing regulations  
28 under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). *See*  
*Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that

1 agencies may be required to abide by certain internal policies is well-  
2 established.”). A court may review a re-detention decision for compliance with  
3 the regulations, and “where ICE fails to follow its own regulations in revoking  
4 release, the detention is unlawful and the petitioner’s release must be ordered.”  
5 *Rokhfirooz v. Larose*, \_\_ F. Supp. \_\_, 2025 WL 2646165, \*4 (S.D. Cal. Sept. 15,  
6 2025); *accord Reyes v. Larose*, No. 25-cv-2959-JLS, 2025 WL 3204733 at \*2  
7 (S.D. Cal. Nov. 17, 2025) (collecting cases).

8 Two regulations establish the process due to someone who is re-detained in  
9 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
10 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
11 framework to persons released upon good reason to believe that they will not be  
12 removed in the reasonably foreseeable future, as Mr. Davut was. *See Duong v.*  
13 *Charles*, No. 25-cv-1375-SKO, 2025 WL 3187313 (E.D. Cal. Nov. 14, 2025)  
14 (explaining this regulatory framework and granting a habeas petition for ICE’s  
15 failure to follow these regulations); *Nguyen v. Noem*, No. 25-cv-2792-LL-VET,  
16 2025 WL 3101979 (S.D. Cal. Nov. 6, 2025) (same); *Phan v. Noem*, 2025 WL  
17 2898977, No. 25-CV-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025) (same).

18 These regulations establish important substantive limitations before a  
19 noncitizen’s re-detention. Officials are allowed to “return [the person] to custody”  
20 only when the person “violate[d] any of the conditions of release,” 8 C.F.R.  
21 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official  
22 “determines that there is a significant likelihood that the alien may be removed in  
23 the reasonably foreseeable future,” and makes that finding “on account of  
24 changed circumstances,” § 241.13(i)(2). Section “241.13(i)(2) requires that this  
25 determination is made before the removable alien has had his release revoked.”  
26 *Nugyen*, 2025 WL 3101979 at \*2 (quoting *Tran v. Noem*, No. 25-cv-2391-BTM-  
27 BLM, 2025 WL 3005347, \*2 (S.D. Cal. Oct. 27, 2025)).

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1 No matter the reason for re-detention, the re-detained person is also entitled  
2 to certain procedural protections during and after re-detention.

3 First, “[u]pon revocation,’ the noncitizen ‘will be notified of the reasons  
4 for revocation of his or her release or parole.’” *Phan*, 2025 WL 2898977 at \*3, \*4  
5 (quoting §§ 241.4(l)(1), 241.13(i)(3)). A noncitizen must receive “adequate notice  
6 of the basis for the revocation decision such that he c[an] meaningfully respond at  
7 the post-detention informal interview.” *Rasakhamdee v. Noem*, No. 25-cv-2817-  
8 RBM, ECF No. 10 at 7 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No.  
9 25-cv-1079-JLT, 2025 WL 2581575, \*8 (E.D. Cal. Sept. 5, 2025)).

10 Second, the person “‘will be afforded an initial informal interview promptly  
11 after his or her return’ to be given ‘an opportunity to respond to the reasons for  
12 revocation stated in the notification.’” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).  
13 “[P]romptly,” commonly understood, “means ‘[q]uickly; without delay’ or ‘[a]s  
14 soon as practicable.’” *Soryadvongsa*, No. 25-cv-2663-AGS, ECF No. 11 at 4  
15 (quoting *Promptly*, Black’s Law Dictionary (12th ed. 2024)). “The chance to  
16 advocate for release must ordinarily come within days of a criminal arrest. Surely,  
17 it must happen at least that quickly in the more constitutionally protected civil-  
18 arrest arena, too.” *Id.*

19 Third, in the case of someone released under § 241.13(i), the regulations  
20 also explicitly require the interviewer to allow the re-detained person to “submit  
21 any evidence or information that he or she believes shows there is no significant  
22 likelihood he or she be removed in the reasonably foreseeable future, or that he or  
23 she has not violated the order of supervision.” § 241.13(i)(3).

24 ICE followed none of its substantive or procedural regulatory prerequisites  
25 to re-detention or continued detention here.

26 First, ICE does not have a proper reason to re-detain Mr. Davut: there is no  
27 reason to think that there is “a significant likelihood that [he] may be removed in  
28 the reasonably foreseeable future,” § 241.13(i)(2), and he has not “violate[d] any

1 of the conditions of release,” § 241.13(i)(1). Given that he was granted  
2 withholding of removal to Afghanistan and is not a citizen of any other country,  
3 there is no individualized reason to think that ICE can remove him to another  
4 country.

5 Second, ICE did not notify Mr. Davut of the “reasons” for his re-detention  
6 “upon revocation” of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). Mr. Davut  
7 was told to check in on December 1, 2025, but was then re-detained before he  
8 could even present himself for the check in. Exhibit A at ¶ 10. Though the  
9 revocation of Mr. Davut’s supervised release was almost certainly motivated by  
10 the shooting in Washington D.C., ICE agents nevertheless failed to cite any  
11 regulatory basis justifying the revocation of his supervised release or explain that  
12 basis to Mr. Davut. “Simply to say that circumstances had changed or there was a  
13 significant likelihood of removal in the foreseeable future is not enough.” *Sarail*  
14 *A. v. Bondi*, \_\_ F. Supp. 3d \_\_, 2025 WL 2533673, \*10 (D. Minn. 2025).  
15 “Petitioner must be told *what* circumstances had changed or *why* there was now a  
16 significant likelihood of removal in order to meaningfully respond to the reasons  
17 and submit evidence in opposition.” *Id.* Any notice here included no  
18 particularized information about what had changed with Mr. Davut’s supervised  
19 release or why.

20 Third, it does not appear that Mr. Davut received the informal interview  
21 required by regulation. 8 C.F.R. §§ 241.13(i)(2); 241.4(l)(1). Although ICE agents  
22 aggressively questioned Mr. Davut about whether he knew the D.C. shooter, it  
23 does not appear he ever had “an opportunity to respond to the reasons for  
24 revocation stated in the notification.” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1). And  
25 if he were to receive one now, such an interview would not be “prompt[ ],” as  
26 required by regulation. *Id.*

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1 Fourth, Mr. Davut has not been afforded a meaningful opportunity to  
2 respond to the reasons for revocation or submit evidence rebutting his re-  
3 detention. §§ 241.13(i)(2); 241.4(l)(1).

4 Numerous courts have released re-detained immigrants after finding that  
5 ICE failed to comply with some or all of the applicable regulations this summer  
6 and fall. *See, e.g., Villanueva v. Tate*, \_\_ F. Supp. 3d \_\_, 2025 WL 2774610 (S.D.  
7 Tex. Sept. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.  
8 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at \*7–9  
9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL  
10 2430267, at \*10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-  
11 00182-MJT, 2025 WL 2491782, at \*2–3 (E.D. Tex. July 18, 2025); *Hoac*, 2025  
12 WL 1993771 at \*4; *Liu v. Carter*, 2025 WL 1696526, \*2 (D. Kan. June 17, 2025);  
13 *M.Q. v. United States*, 2025 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025);  
14 *Bui v. Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai*  
15 *v. Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025);  
16 *Constantinovici v. Bondi*, \_\_ F. Supp. 3d \_\_, 2025 WL 2898985, (S.D. Cal. Oct.  
17 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal.  
18 Sept. 30, 2025); *Rokhfirooz v. Larose*, 2025 WL 2646165. “[B]ecause officials  
19 did not properly revoke petitioner’s release pursuant to the applicable regulations,  
20 that revocation has no effect, and [Mr. Davut] is entitled to his release (subject to  
21 the same Order of Supervision that governed his most recent release).” *Liu*, 2025  
22 WL 1696526 at \*3.

23 Here, Mr. Davut does not dispute that ICE officials may ask him to check  
24 in and question him for national security purposes. But there is no evidence that  
25 Mr. Davut had any knowledge or connection to the D.C. shooter. The mere fact  
26 that Mr. Davut is of the same nationality as the D.C. shooter does not constitute a  
27 basis for revoking his supervised release under the regulations or due process. Nor  
28 do the agency’s actions here comply with the notice and opportunity to be heard

1 that the regulations and due process require. Accordingly, Mr. Davut’s detention  
2 is unlawful, and this Court should order his immediate release.

3 **B. Claim Two: ICE may not remove Mr. Davut to a third country**  
4 **without adequate notice and an opportunity to be heard.**

5 In addition to unlawfully detaining him, ICE’s policies threaten  
6 Mr. Davut’s removal to a third country without adequate notice and an  
7 opportunity to be heard. This Court should order that the government may not do  
8 so without notice.

9 U.S. law enshrines protections against dangerous and life-threatening  
10 removal decisions. By statute, the government is prohibited from removing an  
11 immigrant to any third country where they may be persecuted or tortured, a form  
12 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).  
13 The government “may not remove [a noncitizen] to a country if the Attorney  
14 General decides that the [noncitizen’s] life or freedom would be threatened in that  
15 country because of the [noncitizen’s] race, religion, nationality, membership in a  
16 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,  
17 1208.16. Withholding of removal is a mandatory protection.

18 Similarly, Congress codified protections prohibiting the government from  
19 removing a person to a country where they would be tortured. *See* FARRA 2681-  
20 822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of the United States  
21 not to expel, extradite, or otherwise effect the involuntary return of any person to  
22 a country in which there are substantial grounds for believing the person would be  
23 in danger of being subjected to torture, regardless of whether the person is  
24 physically present in the United States.”); 28 C.F.R. § 200.1; *id.* §§ 208.16-  
25 208.18, 1208.16-1208.18. CAT protection is also mandatory.

26 To satisfy due process, the government must provide notice of the third  
27 country removal and an opportunity to respond. Due process requires “written  
28 notice of the country being designated” and “the statutory basis for the

1 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409  
2 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); accord *D.V.D. v. U.S. Dep’t of*  
3 *Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May  
4 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

5 The government must also “ask the noncitizen whether he or she fears  
6 persecution or harm upon removal to the designated country and memorialize in  
7 writing the noncitizen’s response. This requirement ensures DHS will obtain the  
8 necessary information from the noncitizen to comply with section 1231(b)(3) and  
9 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.  
10 3d at 1019. “Failing to notify individuals who are subject to deportation that they  
11 have the right to apply for asylum in the United States and for withholding of  
12 deportation . . . violates both INS regulations and the constitutional right to due  
13 process.” *Andriasian*, 180 F.3d at 1041.

14 If the noncitizen claims fear, measures must be taken to ensure that the  
15 noncitizen can seek asylum, withholding, and relief under CAT before an  
16 immigration judge in reopened removal proceedings. The amount and type of  
17 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and  
18 circumstances, he would have a reasonable opportunity to raise and pursue his  
19 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009  
20 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132  
21 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at \*1 (requiring the  
22 government to move to reopen the noncitizen’s immigration proceedings if the  
23 individual demonstrates “reasonable fear” and to provide “a meaningful  
24 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening  
25 of their immigration proceedings” if the noncitizen is found to not have  
26 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice  
27 and time for a respondent to file a motion to reopen and seek relief).

28 //

1 “[L]ast minute” notice of the country of removal will not suffice,  
2 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th  
3 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for  
4 fear-based protection from removal, immigrants must have time to prepare and  
5 present relevant arguments and evidence. Merely telling a person where they may  
6 be sent, does not give them a meaningful chance to determine whether and why  
7 they have a credible fear. This Court must prohibit the government from removing  
8 Mr. Davut without these due process safeguards.

9 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

10 Resolution of a prolonged-detention habeas petition may require an  
11 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).  
12 Mr. Davut hereby requests such a hearing on any material, disputed facts.

13 **V. Prayer for relief**

14 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 15 1. Order and enjoin Respondents to immediately release Petitioner from  
16 custody;
- 17 2. Enjoin Respondents from re-detaining Petitioner without first following  
18 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other  
19 applicable statutory and regulatory procedures;
- 20 3. Enjoin Respondents from removing Petitioner to a third country without  
21 adequate notice and an opportunity to raise a fear-based claim;
- 22 4. Order all other relief that the Court deems just and proper.

23 Respectfully submitted,

24  
25 Dated: December 23, 2025

26 *s/ Kara Hartzler*  
27 Federal Defenders of San Diego, Inc.  
28 Attorneys for Mr. Davut  
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# EXHIBIT A

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

10 **ABDULGANI DAVUT,**  
11  
12 **Petitioner,**

Civil Case No.:

13 v.

14 **Declaration of**  
15 **Abdulgani Davut**  
16 **in Support of Petition**  
17 **for a Writ of Habeas Corpus**

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

27 **Respondents.**

28 I, Abdulgani Davut, declare:

1. I was born in Afghanistan on  2000. When I was ten years old, the Taliban killed both my parents. I have no brothers or sisters and no other family in Afghanistan that I know of.
2. After my parents were killed, a neighbor paid a smuggler to help his two sons escape to Turkey and sent me along with them. But because I did not have money to pay the smuggler, I had to stay and work for him for four years after we arrived in Turkey to pay off my debt.
3. Once my debt was paid, I moved around to various towns in Turkey and worked a variety of jobs. But I never had any legal status or permission to be in Turkey.

- 1 4. In 2024, the town I lived in was hit by a major earthquake. After the  
2 earthquake, there were a lot of police around, and I was afraid that I would  
3 be discovered, so I left.
- 4 5. In October 2024, I came on a boat to Mexico and then made my way to  
5 Tijuana, Mexico. On approximately November 20, 2024, I crossed the U.S.  
6 border through a gap in the fence near Tecate and was immediately stopped  
7 by a Border Patrol agent.
- 8 6. I was taken to a camp and then transferred to a detention facility in Texas. I  
9 passed my credible fear interview and was released on an order of  
10 supervision on approximately December 28, 2024. I returned to San Diego  
11 because I had a sponsor who was living here.
- 12 7. After I was released from custody, I had three hearings before an  
13 immigration judge in San Diego. At my final hearing on July 31, 2025, the  
14 judge ordered me removed but granted me withholding of removal that  
15 prevented me from being removed to Afghanistan.
- 16 8. After the judge granted me withholding, I remained out of custody on  
17 supervised release. Once a month, ICE would call and schedule a home  
18 visit with me for the next day. I always complied with these calls and visits.
- 19 9. On November 26, 2025, I heard that an Afghan national had shot and killed  
20 two National Guardsmen in Washington D.C.
- 21 10. Several days later, at 11 pm on November 30, 2025, ICE tried to call me.  
22 My phone had two lines, and the line ICE tried to call me on was not  
23 working. As soon as I heard they had left a message, I called them back and  
24 they told me to come in. But when I was leaving my apartment the next day  
25 (December 1, 2025), three ICE officers pulled up and arrested me.
- 26 11. After ICE arrested me, they questioned me over and over about the  
27 Afghani D.C. shooter and whether I knew him. I told them truthfully that I  
28 did not know him. Other than these questions, they never told me why they  
were arresting me.
12. Since then, I have been detained at Otay Mesa Detention Center. ICE has  
never told me why they revoked my supervised release or how long they  
will keep me incarcerated.

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I declare under penalty of perjury that the foregoing is true and correct,  
executed on 12-14-25, in San Diego, California.

  
\_\_\_\_\_

Declarant

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2 Cal. Bar No. 293751  
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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **ABDULGANI DAVUT,**  
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**  
**Director, San Diego Field Office,**  
**CHRISTOPHER LAROSE, Warden at**  
**Otay Mesa Detention Center,**  
20 **Respondents.**

CIVIL CASE NO.: 25CV3740 CAB DDL

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

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1 **I. Introduction**

2 Petitioner Abdulgani Davut faces immediate irreparable harm:  
3 (1) revocation of his release on immigration supervision despite ICE’s failure to  
4 follow its own revocation procedures; and (2) potential removal to a third country  
5 never considered by an IJ. This Court should grant temporary relief to preserve  
6 the status quo.

7 Mr. Davut was born in Afghanistan, and the Taliban killed his parents when  
8 he was only ten years old. After making his way to the United States, he was  
9 released on an order of supervision, and the immigration judge granted him  
10 withholding of removal on July 31, 2025. For the next four months, he remained  
11 out of custody.

12 But four days after an Afghani national shot and killed two National  
13 Guardsmen in Washington D.C., three ICE agents came and arrested him outside  
14 his home. They questioned him aggressively about whether he knew the Afghani  
15 shooter in D.C., and Mr. Davut responded truthfully that he did not. Nevertheless,  
16 they revoked his order of supervision and transferred him to Otay Mesa Detention  
17 Center, where he remains incarcerated. Although there is no evidence that Mr.  
18 Davut had any connection to the D.C. shooter, ICE has given no reason for  
19 revoking his supervision and has not told him when he will be released.

20 Because Mr. Davut is facing unlawful detention, the requested temporary  
21 restraining order (“TRO”) would preserve the status quo while Petitioner litigates  
22 these claims by reinstating Mr. Davut’s release on supervision. It would also  
23 prohibit the government from removing Mr. Davut to a third country without an  
24 opportunity to file a motion to reopen with an IJ or apply for fear-based  
25 protection.

26 In granting this motion, this Court would not break new ground. Courts in  
27 this district and around the Ninth Circuit have granted TROs or preliminary  
28 injunctions mandating release for post-final-removal-order immigrants like

1 Petitioner. *See, e.g., Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.  
2 Cal. Sept. 30, 2025); *Van Davut v. Noem*, 2025 WL 2770623, No. 25-cv-2334-  
3 JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF  
4 No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-  
5 JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g., Phetsadakone v.*  
6 *Scott*, 2025 WL 2579569, at \*6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*, No.  
7 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D. Cal. July 16, 2025);  
8 *Davut v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*7 (E.D.  
9 Cal. July 16, 2025); *Davut v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at  
10 \*29 (W.D. Wash. Aug. 21, 2025). These courts have determined that, for these  
11 long-term releasees, liberty is the status quo, and only a return to that status quo  
12 can avert irreparable harm. Mr. Davut therefore respectfully requests that this  
13 Court grant this TRO.

## 14 **II. Statement of Facts**

15 Mr. Davut was born in Afghanistan on  2000. Declaration of  
16 Abdulgani Davut, Exhibit A of Habeas Petition, at ¶ 1. When Mr. Davut was ten  
17 years old, the Taliban killed his mother and father. *Id.* at ¶ 1. He was an only child  
18 and had no other family in Afghanistan that he knew of. *Id.* at ¶ 1. With the help  
19 of a neighbor, he fled to Turkey. *Id.* at ¶ 2. But because he had no legal status in  
20 Turkey, he spent the next 14 years moving from town to town and working odd  
21 jobs to try to survive. *Id.* at ¶ 2, 3.

22 In 2024, a major earthquake hit the town in Turkey where Mr. Davut was  
23 living. *Id.* at ¶ 4. After the earthquake, there was a heavy police presence in the  
24 town for months, and Mr. Davut was fearful that he would be sent back to  
25 Afghanistan. *Id.* at ¶ 4. He left Turkey in October 2024 and managed to make his  
26 way to Mexico. *Id.* at ¶ 5.

27 After arriving in Mexico, Mr. Davut made his way to Tijuana. *Id.*  
28 at ¶ 5. On approximately November 20, 2024, he crossed into the United States

1 through a gap in the fence near Tecate and was immediately stopped by a Border  
2 Patrol agent. *Id.* at ¶ 5.

3 Mr. Davut was taken to a camp for several days and then transferred to a  
4 detention facility in Texas. *Id.* at ¶ 6. He passed his credible fear interview and  
5 was released on an order of supervision on approximately December 28, 2024. *Id.*  
6 at ¶ 6. He then returned to San Diego and was placed in removal proceedings  
7 before an immigration judge. *Id.* at ¶ 6.

8 While he was on supervised release, Mr. Davut had three hearings before  
9 the immigration judge. *Id.* at ¶ 7. At his third and final hearing on July 31, 2025,  
10 the judge ordered him removed but granted him withholding of removal that  
11 prevented him from being removed to Afghanistan. *Id.* at ¶ 7.

12 After the judge granted Mr. Davut withholding, he remained out of custody  
13 on supervised release. *Id.* at ¶ 8. Once a month, ICE would call and schedule a  
14 home visit with him for the following day. *Id.* at ¶ 8. Mr. Davut always complied  
15 with these calls and visits. *Id.* at ¶ 8.

16 On November 26, 2025, an Afghan national named Rahmanullah Lakanwal  
17 shot two National Guardsmen in Washington D.C. *See* “Afghan National Charged  
18 With the Murder of National Guard Soldier Sarah Beckstrom,” U.S. Dept. of  
19 Justice, Dec. 2, 2025, *available at*: <https://www.justice.gov/usao-dc/pr/afghan-national-charged-murder-national-guard-soldier-sarah-beckstrom>. In the weeks  
20 following this shooting, the government halted the processing of Afghani asylum  
21 applications, announced increased vetting procedures, and began arresting  
22 Afghani nationals at check-in appointments. *See* “ICE Arrests of Afghans Are on  
23 the Rise in the Wake of National Guard Attack, Immigration Lawyers Say,”  
24 Associated Press, Dec. 9, 2025, *available at*: <https://apnews.com/article/afghans-ice-immigration-b4f5f1563f04fed7f85af2070efea12d>. For instance, in  
25 Sacramento, “Afghan men arrived one by one to the ICE office Dec. 1 after being  
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1 asked to immediately report there.” *Id.* “As each man entered the office, agents  
2 handcuffed them” and took them into custody. *Id.*

3 On November 30, 2025, at 11 p.m. ICE attempted to call Mr. Davut but  
4 was not able to reach him. Exh. A at ¶ 10. As soon as Mr. Davut heard the  
5 message from ICE, he called back. *Id.* at ¶ 10. ICE told him to check in that day.  
6 *Id.* at ¶ 10. But when he left his apartment to go check in, three ICE officers  
7 pulled up in a vehicle and arrested him. *Id.* at ¶ 10.

8 After arresting Mr. Davut, ICE agents aggressively questioned him about  
9 whether he knew the Afghan shooter in D.C. *Id.* at ¶ 11. Mr. Davut told them  
10 truthfully that he did not know the shooter or have any connection with him. *Id.* at  
11 ¶ 11. Nevertheless, ICE took Mr. Davut into custody and transferred him to Otay  
12 Mesa Detention Center. *Id.* at ¶ 12. ICE has never explained why it revoked  
13 Mr. Davut’s supervised release or how long it intends to detain him. *Id.* at ¶ 12.

#### 14 **Argument**

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

1 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
2 (9th Cir. 2011). A TRO may be granted where there are “serious questions going  
3 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so  
4 long as the other *Winter* factors are met. *Id.* at 1132.

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

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

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

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

23 The regulations further provide noncitizens with a chance to contest a re-  
24 detention decision. ICE must “notif[y] [the person] of the reasons for revocation  
25 of his or her release.” *Id.* § 241.13(i)(3). ICE must then “conduct an initial  
26 informal interview promptly” after re-detention “to afford the alien an opportunity  
27 to respond to the reasons for revocation stated in the notification.” *Id.* During the  
28 interview, the person “may submit any evidence or information” showing that the

1 prerequisites to re-detention have not been met, and the interviewer must evaluate  
2 “any contested facts.” *Id.*

3 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
4 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,  
5 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to  
6 abide by certain internal policies is well-established.”). A court may review a re-  
7 detention decision for compliance with the regulations. *See Davut v. Beccerra*,  
8 No. 2:25-CV-01757, 2025 WL 1993735, at \*3 (E.D. Cal. July 16, 2025); *Davut v.*  
9 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025)  
10 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

11 None of the prerequisites to detention apply here. Since ICE released  
12 Mr. Davut on an order of supervision on approximately December 28, 2024, and  
13 he was granted withholding of removal, he has not missed a check-in  
14 appointment. Mr. Davut was told to check in on December 1, 2025, but was then  
15 re-detained before he could even present himself for the check in. Exhibit A at  
16 ¶ 10. Though the revocation of Mr. Davut’s supervised release was almost  
17 certainly motivated by the shooting in Washington D.C., ICE agents nevertheless  
18 failed to cite any regulatory basis justifying the revocation of his supervised  
19 release or explain that basis to Mr. Davut. “Simply to say that circumstances had  
20 changed or there was a significant likelihood of removal in the foreseeable future  
21 is not enough.” *Sarail A. v. Bondi*, \_\_ F. Supp. 3d \_\_, 2025 WL 2533673, \*10 (D.  
22 Minn. 2025). “Petitioner must be told *what* circumstances had changed or *why*  
23 there was now a significant likelihood of removal in order to meaningfully  
24 respond to the reasons and submit evidence in opposition.” *Id.* Any notice here  
25 included no particularized information about what had changed with Mr. Davut’s  
26 supervised release or why.

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

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

7 Second, Petitioner is likely to succeed on the merits of his claim that he  
8 may not be removed to a third country absent adequate notice and an opportunity  
9 to be heard. U.S. law enshrines protections against dangerous and life-threatening  
10 removal decisions. By statute, the government is prohibited from removing an  
11 immigrant to any third country where a person may be persecuted or tortured, a  
12 form of protection known as withholding of removal. *See* 8 U.S.C.  
13 § 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if  
14 the Attorney General decides that the [noncitizen’s] life or freedom would be  
15 threatened in that country because of the [noncitizen’s] race, religion, nationality,  
16 membership in a particular social group, or political opinion.” *Id.*; *see also* 8  
17 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

18 Similarly, Congress codified protections in the CAT prohibiting the  
19 government from removing a person to a country where they would be tortured.  
20 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy  
21 of the United States not to expel, extradite, or otherwise effect the involuntary  
22 return of any person to a country in which there are substantial grounds for  
23 believing the person would be in danger of being subjected to torture, regardless  
24 of whether the person is physically present in the United States.”); 28 C.F.R.  
25 § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18.

26 To comport with due process, the government must provide notice of third  
27 country removal and an opportunity to respond. Due process requires “written  
28 notice of the country being designated” and “the statutory basis for the

1 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409  
2 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of*  
3 *Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May  
4 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

5 Due process also requires “ask[ing] the noncitizen whether he or she fears  
6 persecution or harm upon removal to the designated country and memorialize in  
7 writing the noncitizen’s response. This requirement ensures DHS will obtain the  
8 necessary information from the noncitizen to comply with section 1231(b)(3) and  
9 avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing  
10 to notify individuals who are subject to deportation that they have the right to  
11 apply for asylum in the United States and for withholding of deportation to the  
12 country to which they will be deported violates both INS regulations and the  
13 constitutional right to due process.” *Andriasian*, 180 F.3d at 1041.

14 If the noncitizen claims fear, measures must be taken to ensure that the  
15 noncitizen can seek asylum, withholding, and relief under CAT before an  
16 immigration judge in reopened removal proceedings. The amount and type of  
17 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and  
18 circumstances, he would have a reasonable opportunity to raise and pursue his  
19 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009  
20 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132  
21 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring a  
22 minimum of 15 days’ notice). “[L]ast minute” notice of the country of removal  
23 will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed.  
24 App’x 724 (9th Cir. 2016), and for good reason: To have a meaningful  
25 opportunity to apply for fear-based protection, immigrants must have time to  
26 prepare and present relevant arguments and evidence. Merely telling a person  
27 where they may be sent, without giving them a chance to look into country  
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1 conditions, does not give them a meaningful chance to determine whether and  
2 why they have a credible fear.

3 Respondents' third country removal program skips over these statutory and  
4 constitutional procedural protections. According to ICE's July 7 guidance,  
5 individuals can be removed to third countries "without the need for further  
6 procedures," so long as "the [U.S.] has received diplomatic assurances." Exh. B to  
7 Habeas Petition at 1. Petitioner is likely to succeed on the merits of his claim on  
8 this fact alone, because the policy instructs officers to provide no notice or  
9 opportunity to be heard. The same is true of the minimal procedures ICE offers  
10 when no diplomatic assurances are present. The policy provides no meaningful  
11 notice (6-24 hours), instructs officers *not* to ask about fear, and provides no actual  
12 opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone  
13 reopen removal proceedings.

14 Faced with similar arguments, several courts have recently granted  
15 individual TROs against removal to third countries. *See J.R.*, 2025 WL 1810210;  
16 *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL  
17 1993771, at \*7; *Phan*, 2025 WL 1993735, at \*7.

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

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

27 Here, the potential irreparable harm to Petitioner is even more concrete.  
28 "Unlawful detention certainly constitutes 'extreme or very serious damage, and

1 that damage is not compensable in damages.” *Hernandez v. Sessions*, 872 F.3d  
2 976, 999 (9th Cir. 2017). Third-country deportations pose that risk and more.  
3 Recent third-country deportees have been held, indefinitely and without charge, in  
4 hazardous foreign prisons. *See Wong et al., supra*. They have been subjected to  
5 solitary confinement. *See Imray, supra*. They have been removed to countries so  
6 unstable that the U.S. government recommends making a will and appointing a  
7 hostage negotiator before traveling to them. *See Wong, supra*. These and other  
8 threats to Petitioner’s health and life independently constitute irreparable harm.

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

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

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

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

11 Respectfully submitted,

12  
13 Dated: December 23, 2025

14 *s/ Kara Hartzler*  
15 \_\_\_\_\_  
16 Federal Defenders of San Diego, Inc.  
17 Attorneys for Mr. Davut  
18 Email: kara\_hartzler@fd.org  
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