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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  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 *Stuhlberg 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(l), 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,

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13 Dated: December 23, 2025

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