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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HAGOP BARKEV CHIRINIAN,[1]

Petitioner,

v.

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

Respondents.

Civil Case No.: 25-cv-3707-JLS-AHG

Amended Petition for Writ of Habeas Corpus

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

[1] Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134. Mr. Chirinian's financial eligibility for representation is included in a sworn statement attached to this petition.

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I. Introduction

Mr. Chirinian and his family came to the United States from Lebanon in 1980. In 2005, Mr. Chirinian was ordered removed on the basis of two drug-related crimes. But after Lebanon wouldn't accept him back, Mr. Chirinian was released on an order of supervision.

Mr. Chirinian remained on supervision for the next twenty years. He was never convicted of any other crimes. He never missed a check-in appointment. But on August 24, 2025, he was arrested when he and several friends were camping on the beach too close to Camp Pendleton. Military officials turned him over to ICE, which revoked Mr. Chirinian's supervised release and has been holding him in custody for more than four months.

Mr. Chirinian's detention violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this district have agreed in similar circumstances as to both of Mr. Chirinian's claims. Specifically:

(1) Regulatory and due process violations: Mr. Chirinian must be released because ICE's failure to follow its own regulations about notice and an opportunity to be heard violate due process. *See, e.g.*, *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Chirinian v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Chirinian v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v.*

Noem, 25-cv-2836-JO-AHG (S.D. Cal. Nov. 3, 2025); *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D. Cal. Nov. 8, 2025) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed).

(2) Zadvydas violations: Mr. Chirinian must also be released under *Zadvydas* because—having proved unable to remove him for the last twenty years—the government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. *See, e.g.*, *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

(3) Third-country removal statutory and due process violations: This Court should enjoin ICE from removing Mr. Chirinian to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. *See, e.g.*, *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all either granting temporary restraining orders or habeas petitions ordering the government to not remove petitioners to third countries pending litigation or reopening of their immigration cases).

This Court should grant this habeas petition and issue appropriate injunctive relief on all three grounds.

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II. Statement of Facts

Mr. Chirinian was born in Lebanon and came to the United States in 1975 with his mother and brothers on a tourist visa when he was five years old. Exhibit A, Declaration of Hagop Barkev Chirinian at ¶ 1. In 1980, he became a lawful permanent resident. *Id.* at ¶ 1.

In 1990 and 1997, Mr. Chirinian was convicted of two crimes related to drugs. *Id.* at ¶ 2. As a result, he was placed in deportation proceedings. *Id.* at ¶ 2. He paid a bond and was out of custody during these proceedings. *Id.* at ¶ 2.

On June 23, 2005, an immigration judge ordered Mr. Chirinian removed. *Id.* at ¶ 3. Immigration officials picked him up in May 2006 and tried to deport him to Lebanon. *Id.* at ¶ 4. However, Lebanon refused to accept him or issue him travel documents. *Id.* at ¶ 4. ICE continued to detain him for about five months before finally releasing him on an order of supervision. *Id.* at ¶ 4.

After Mr. Chirinian was released, he always complied with his ICE check-in requirements. *Id.* at ¶ 5. He never violated the conditions of his supervised release and has not been convicted of any other crimes. *Id.* at ¶ 5.

On August 24, 2025, Mr. Chirinian was camping on the beach with some friends near Camp Pendleton. *Id.* at ¶ 6. The Military Police approached them, told them they were trespassing on the base, and asked whether they were U.S. citizens. *Id.* at ¶ 5. Mr. Chirinian told them he was not, and the MPs called ICE. *Id.* at ¶ 6. ICE arrested him and took him to Otay Mesa. *Id.* at ¶ 6. ICE never told him why they were revoking his supervision and never gave him an informal interview or a chance to contest his detention. *Id.* at ¶ 6.

On approximately November 10, 2025, ICE arranged for Mr. Chirinian to talk to the Lebanese embassy by phone. *Id.* at ¶ 7. The embassy said they had no record of his citizenship in Lebanon. *Id.* at ¶ 7. They asked him to provide proof of his Lebanese citizenship, but after fifty years of living in the United States, he had lost any such proof. *Id.* at ¶ 7.

III. Legal Analysis.

This Court should grant this petition and order Mr. Chirinian's immediate release. ICE failed to follow its own regulations requiring changed circumstances before re-detention, as well as a chance to promptly contest a re-detention decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Chirinian, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). Finally, this Court should not permit ICE to remove him to a third country without notice and proper safeguards.

A. Claim One: ICE failed to comply with its own regulations when it re-detained Mr. Chirinian, violating his rights under applicable regulations and due process.

Two regulations establish the process due to someone who is re-detained in immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping framework to persons released upon good reason to believe that they will not be removed in the reasonably foreseeable future, as Mr. Chirinian was. *See Phan v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory framework and granting a habeas petition for ICE's failure to follow these regulations for a refugee of Vietnam who entered the United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same as to an Iranian national).

These regulations permit an official to "return [the person] to custody" only when the person "violate[d] any of the conditions of release," 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," and makes that finding "on account of changed circumstances," 8 C.F.R. § 241.13(i)(2).

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No matter the reason for re-detention, the re-detained person is entitled to certain procedural protections. For one, "'[u]pon revocation,' the noncitizen 'will be notified of the reasons for revocation of his or her release or parole.'" *Phan*, 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the person "'will be afforded an initial informal interview promptly after his or her return' to be given 'an opportunity to respond to the reasons for revocation stated in the notification.'" *Id.*

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

ICE is required to follow its own regulations. *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 agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations, and "where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4 (collecting cases); *accord Chirinian*, 2025 WL 2898977 at *5.

ICE followed none of its regulatory prerequisites to re-detention here.

First, ICE did not identify a proper reason under the regulations to re-detain Mr. Chirinian. Mr. Chirinian was not returned to custody because of a conditions violation, and there was apparently no determination before or at his arrest that there are "changed circumstances" such that there is "a significant likelihood that [Mr. Chirinian] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

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Second, ICE did not notify Mr. Chirinian of the reasons for his re-detention upon revocation of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-detained on August 24, 2025. Exh. A at ¶ 6. As he has explained, "[t]hey did not tell me why they were revoking my supervision." *Id.* at ¶ 6.

Third, Mr. Chirinian does not believe he received an informal interview where an officer explained the purported "changed circumstances" underlying his revocation. "Simply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Id.* By "identif[ying] the category—'changed circumstances'—but fail[ing] to notify [Petitioner] of the reason—the circumstances that changed and created a significant likelihood of removal in the reasonably foreseeable future—[ICE] failed to follow the relevant regulation." *Id.* This failure to identify any changed circumstances also means he has he been afforded a meaningful opportunity to respond to the reasons for revocation or submit evidence rebutting his re-detention. Exh. A at ¶ 6.

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with these regulations. These have included courts in this

district,[2] as well as courts outside this district.[3]

"[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Mr. Chirinian] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

B. Claim Two: Mr. Chirinian's detention violates *Zadvydas* and 8 U.S.C. § 1231.

1. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Chirinian: 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)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain

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[2] *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Chirinian v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Ca. Nov. 3, 2025) (same); *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D. Cal. Nov. 8, 2025).

[3] *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If federal law 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.

Zadvydas held that § 1231(a)(6) presumptively permits the government to detain an immigrant for 180 days after his or her removal order becomes final. After those 180 days have passed, the immigrant must be released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six months have passed, the petitioner must only make a prima facie case for relief—there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Then the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.*

Further, even before the 180 days have passed, the immigrant must still be released if he *rebuts* the presumption that his detention is reasonable. *See, e.g.*, *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v. Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, *6 (D. Md. Sept. 8, 2025)

(finding the presumption rebutted for a person who was immediately released after being ordered removed and, years later, re-detained for less than six months).

Mr. Chirinian can make all the threshold showings needed to prove his *Zadvydas* claim and shift the burden to the government.

2. Mr. Chirinian's six-month grace period expired in 2005.

The six-month grace period has long since ended. The *Zadvydas* grace period is linked to the date the final order of removal is issued. It lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal period to issuance of the final order and other proceedings associated with the original removal order).

Here, Mr. Chirinian's order of removal was entered in June 2005. Exh. A at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in December 2005, three months after the removal period ended. *See, e.g.*, *Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3.[4]

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[4] The government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen,* No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

It has also sometimes argued that rearrest creates a new three-month grace period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of 'the date the order of removal becomes administratively final,' the date of a reviewing court's final order where the removal order is judicially removed and that court orders a stay of removal, or the alien's release from detention or confinement where he was detained for reasons other than immigration purposes at the time of his final order of removal." *Id.* None of these statutory starting points have anything to do with whether or when

3. Mr. Chirinian's personal experience and the Lebanese government's statements provide good reason to believe that he will not be removed in the reasonably foreseeable future.

This Court uses a burden-shifting framework to evaluate Mr. Chirinian's *Zadvydas* claim. At the first stage of the framework, Mr. Chirinian must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

"Good reason to believe." The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to believe' . . . place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a "good reason"—not prove anything to a certainty.

"Significant likelihood of removal." This component focuses on <u>whether</u> Mr. Chirinian will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet its

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an immigrant is detained. *See id.* Because the statutorily-defined removal period has nothing to do with release and rearrest, releasing and rearresting the immigrant cannot reset the removal period.

burden if there is good reason to believe that successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

"In the reasonably foreseeable future." This component of the test focuses on when Mr. Chirinian will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Chirinian "would *eventually* receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Mr. Chirinian satisfies this standard for two reasons.

First, Mr. Chirinian's own experience bears this out. ICE has now had twenty years to deport him. He has cooperated with ICE's removal efforts throughout that time. Yet ICE has proved unable to remove him.

Second, the Lebanese embassy has told Mr. Chirinian and the government that it will not accept him. On approximately November 10, 2025, ICE facilitated a call with the embassy, during which officials said that they had no record of Mr. Chirinian being a citizen of Lebanon. Exh. A at ¶ 7. They asked if he had any proof of his citizenship, but after fifty years of living in the United States, he had no such proof. *Id.* at ¶ 7. Thus, there is no reasonable likelihood of removing Mr. Chirinian to Lebanon in the reasonably foreseeable future.

Because Mr. Chirinian has met his initial burden, the burden shifts to the government. Unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Chirinian must be released. *Zadvydas*, 533 U.S. at 701.

C. Claim Three: ICE may not remove Mr. Chirinian to a third country without adequate notice and an opportunity to be heard.

In addition to unlawfully detaining him, ICE's policies threaten his removal to a third country without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations.

When immigrants cannot be removed to their home country, ICE has begun deporting those individuals to third countries without adequate notice or a hearing. *See* Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. This summer and fall, ICE has carried out highly publicized third country deportations to prisons in South Sudan, Eswatini, Ghana, and Rwanda. Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025).[5] At least four men deported to Eswatini have remained in a maximum-security prison there for nearly three months without charge and without access to counsel; another six are detained incommunicado in South Sudan, and another seven are being held in an undisclosed facility in Rwanda. *Id.*

In February, Panama and Costa Rica imprisoned hundreds of deportees in hotels, a jungle camp, and a detention center. Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025)[6];

[5] Available at https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2.

[6] Available at https://www.bbc.com/news/articles/cwyrn42kp7no.

Human Rights Watch, *'Nobody Cared, Nobody Listened': The US Expulsion of Third-Country Nationals to Panama*, Apr. 24, 2025.[7]

On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Instead, under new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to the removal."

Under this policy, the United States has deported noncitizens to prisons and military camps in Rwanda, Eswatini, South Sudan, and Ghana. Many are still detained to this day, in countries to which they have never been, without charge.

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 they 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,

[7] Available at https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to.

1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections enshrined in the 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 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).

The government must also "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize 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 the officer and noncitizen 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. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

"[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.

The policies in the June 6, 2025, memo do not adhere to these requirements. The memo "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining

order preventing a noncitizen's deportation to a third country pending litigation in light of due process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ.

An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far.

Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Chirinian without these due process safeguards.

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

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

V. Prayer for relief

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

1. Order and enjoin Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Laos, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
    b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
    c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
    d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a

minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

5. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: January 5, 2026

s/ Kara Hartzler

Federal Defenders of San Diego, Inc.
Attorneys for Mr. Chirinian
Email: kara_hartzler@fd.org

Proof of Service

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: December 8, 2025

/s/ Kara Hartzler
Kara L. Hartzler

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HAGOP BARKEV CHIRINIAN,

Petitioner,

v.

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

Respondents.

Civil Case No.: 25-cv-3707-JLS-AHG

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

I. Introduction

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

Mr. Chirinian was born in Lebanon and came to the United States in 1980 when he was five years old. He became a lawful permanent resident but was ordered removed for several drug-related convictions in 2005. When Lebanon would not accept him for deportation, he was released on an order of supervision. For the next twenty years he complied with all his check-in appointments and was never convicted of another crime.

But on August 24, 2025, Mr. Chirinian and several friends were camping on the beach near Camp Pendleton when military officials told them they were trespassing on the base and questioned them about their citizenship. They called ICE, which arrested Mr. Chirinian and transferred him to Otay Mesa. ICE has given no reason for revoking his supervision, did not provide him with an informal interview, and has not told him when he will be released.

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

In granting this motion, this Court would not break new ground. Courts in this district and around the Ninth Circuit have granted TROs or preliminary injunctions mandating release for post-final-removal-order immigrants like Petitioner. *See, e.g.*, *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.

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

II. Statement of Facts

Mr. Chirinian was born in Lebanon and came to the United States in 1975 with his mother and brothers on a tourist visa when he was five years old. Exhibit A, Declaration of Hagop Barkev Chirinian at ¶ 1. In 1980, he became a lawful permanent resident. *Id.* at ¶ 1.

In 1990 and 1997, Mr. Chirinian was convicted of two crimes related to drugs. *Id.* at ¶ 2. As a result, he was placed in deportation proceedings. *Id.* at ¶ 2. He paid a bond and was out of custody during these proceedings. *Id.* at ¶ 2.

On June 23, 2005, an immigration judge ordered Mr. Chirinian removed. *Id.* at ¶ 3. Immigration officials picked him up in May 2006 and tried to deport him to Lebanon. *Id.* at ¶ 4. However, Lebanon refused to accept him or issue him travel documents. *Id.* at ¶ 4. ICE continued to detain him for about five months before finally releasing him on an order of supervision in September 2006. *Id.* at ¶ 4.

After Mr. Chirinian was released, he always complied with his ICE check-in requirements. *Id.* at ¶ 5. He never violated the conditions of his supervised release and has not been convicted of any other crimes. *Id.* at ¶ 5.

On August 24, 2025, Mr. Chirinian was camping on the beach with some friends near Camp Pendleton. *Id.* at ¶ 6. The Military Police approached them, told them they were trespassing on the base, and asked whether they were U.S. citizens. *Id.* at ¶ 5. Mr. Chirinian told them he was not, and the MPs called ICE. *Id.* at ¶ 6. ICE arrested him and took him to Otay Mesa. *Id.* at ¶ 6. ICE never told him why they were revoking his supervision and never gave him an informal interview or a chance to contest his detention. *Id.* at ¶ 6.

On approximately November 10, 2025, ICE arranged for Mr. Chirinian to talk to the Lebanese embassy by phone. *Id.* at ¶ 7. The embassy said they had no record of his citizenship in Lebanon. *Id.* at ¶ 7. They asked him to provide proof of his Lebanese citizenship, but after fifty years of living in the United States, he had lost any such proof. *Id.* at ¶ 7.

Argument

To obtain a TRO, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *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 temporary restraining order and an injunction because "immediate and irreparable injury . . . or damage" is occurring and will continue in the absence of an order. Fed. R. Civ. P. 65(b). Respondents have re-detained Petitioner in violation of his due process, statutory, and regulatory rights, and this Court should order Petitioner's immediate release.

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

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

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

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

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

ICE is required to follow its own regulations. *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 agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations. *See Chirinian v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Chirinian v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

None of the prerequisites to detention apply here. Since ICE released Mr. Chirinian on an order of supervision in September 2006, he has not missed a check-in appointment or been convicted of a crime. The only reason he was taken into custody is because he was camping on the beach too close to Camp Pendleton. Exhibit A at ¶ 7. When ICE took him into custody, it failed to cite any regulatory basis justifying the revocation of his supervised release or explain that basis to Mr. Chirinian. "Simply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, __ F. Supp. 3d __, 2025 WL 2533673, *10 (D. Minn. 2025). "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition." *Id.* Any notice here included no particularized information about what had changed with Mr. Chirinian's supervised release or why.

"[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.

B. 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.

Second, 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 in the 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.

To comport with due process, the government must provide notice of 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 "ask[ing] the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize 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. I.N.S.*, 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, 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 program skips over these statutory and constitutional procedural protections. According to ICE's July 7 guidance, individuals can be removed to third countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic assurances." 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. The same is true of the minimal procedures ICE offers when no diplomatic assurances are present. The policy provides no meaningful notice (6-24 hours), instructs officers *not* to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone reopen removal proceedings.

Faced with similar arguments, several courts have recently granted individual TROs against removal to third countries. *See 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.

III. Petitioner will suffer irreparable harm absent 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 potential irreparable harm to Petitioner is even more concrete. "Unlawful detention certainly 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). Third-country deportations pose that risk and more.

Recent third-country deportees have been held, indefinitely and without charge, in hazardous foreign prisons. *See* Wong et al., *supra*. They have been subjected to solitary confinement. *See* Imray, *supra*. 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. *See* Wong, *supra*. These and other threats to Petitioner's health and life independently constitute irreparable harm.

IV. 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. On the one hand, the government "cannot reasonably assert that it is harmed in any legally cognizable sense" by being compelled to follow the law. *Zepeda v. I.N.S.*, 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 removed, particularly to countries where they are likely to face substantial harm"); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government's treatment "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction."). On the other hand, Petitioner faces weighty hardships: unlawful, indefinite detention and removal to a third country where he is likely to suffer imprisonment or serious harm. The balance of equities thus favors preventing the violation of "requirements of federal law," *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful detention and unlawful third country removal.

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

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

Respectfully submitted,

Dated: January 5, 2026

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