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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SANG XI,

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.: **'26CV0175 TWR SBC**

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

I. Introduction

Petitioner Sang Xi faces immediate irreparable harm: (1) revocation of his release on immigration supervision after 23 years of living in the community, despite ICE's failure to follow its own revocation procedures; and (2) indefinite immigration detention with no individualized, significantly likely prospect of removal to Vietnam in the reasonably foreseeable future. This Court should grant temporary relief of his release on his pre-existing order of supervision to preserve the status quo.

Mr. Xi has spent the last 23 years in the community on an order of supervision. Throughout that time, the government has proved unable to remove him to Vietnam. Yet on December 19, 2025, the government re-detained him at his annual check in. ICE gave him no opportunity to contest his re-detention and did not identify changed circumstances justifying it. ICE does not appear to have a travel document in hand.

Because Mr. Xi is facing unlawful detention, the requested temporary restraining order ("TRO") would preserve the status quo while Petitioner litigates these claims by reinstating Mr. Xi's release on supervision.

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 Xi 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); *Xi v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July

16, 2025); *Xi 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. Xi therefore respectfully requests that this Court grant this TRO.

II. Statement of Facts

Mr. Xi was born in Vietnam and came to the United States in 1989 as a refugee. Declaration of Sang Xi, Exhibit A ("Exh. A") ¶ 1. Soon after, he became a lawful permanent resident. *Id.*

Between 1995 and 2002, Mr. Xi was convicted of various crimes relating to drugs and domestic violence. *Id.* at ¶ 2. As a result of these convictions, Mr. Xi was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on March 25, 1998. *Id.* at ¶ 3.

But ICE was not able to effectuate Mr. Xi's removal to Vietnam and continued to detain him before eventually releasing him on an order of supervision around 2002 or 2003. *Id.* In years since then, Mr. Xi has not missed a check-in appointment and has no other criminal convictions. *Id.* at ¶ 5.

On December 19, 2025, ICE agents took him into custody when he went to his check-in appointment. *Id.* at ¶ 6. They did not tell him why they were revoking his supervision or give him an interview or an opportunity to contest his detention. *Id.*

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 Xi v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Xi 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 last tried to deport him in 2002, Petitioner has not been convicted of any crimes. And there are no changed circumstances that justify re-detaining him. ICE already tried—and failed—to remove Petitioner and has given Petitioner no indication that agents have a travel document in hand for him. Of course, ICE may be planning to renew their request for a travel document from Vietnam. But absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No.

2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Petitioner received an interview where he was able to respond to the purported "reasons" for his revocation.

"[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 his detention violates *Zadvydas*.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Xi: 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). And after that 90-day removal period expires, ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

Here, Petitioner was ordered removed more than six months ago, as his removal order became final in 1998. Xi Dec. at ¶ 3. Thus, it is clear that the *Zadvydas* grace period has ended.

There is also strong evidence that there is no "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Vietnam refused to accept Mr. Xi when he was detained in 2002. Xi Dec. at ¶ 4, 5. Nothing has changed since the last time ICE attempted to deport him. And to date, there is no indication that ICE has obtained a travel document.

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

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

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). 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. 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 12, 2026

s/ Kara Hartzler

Federal Defenders of San Diego, Inc.
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Proof of Service

I, the undersigned, caused to be served the within Petition for Writ of Habeas Corpus by email, at the request of Janet Cabral, Chief of the Civil Division, to:

U.S. Attorney's Office, Southern District of California
Civil Division
USACAS.Habeas2241@usdoj.gov

Date: January 12, 2026

/s/ *Kara Hartzler*
Kara Hartzler