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

11 HAI THAI,

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
 20 Director, San Diego Field Office,
 21 CHRISTOPHER LAROSE, Warden at
 22 Otay Mesa Detention Center,

23 Respondents.

CIVIL CASE NO.: 26CV0252 TWR MSB

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

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1 **I. Introduction**

2 Petitioner Hai Thai faces immediate irreparable harm on account of his
3 detention in immigration custody. Specifically, the government has redetained
4 Mr. Thai when a factual dispute exists as to whether there are “changed
5 circumstances” justifying the revocation of his order of supervision under the
6 regulations. Alternatively, Mr. Thai’s removal is not significantly likely in the
7 reasonably foreseeable future because 1) ICE has not removed him in the month
8 since his redetention, 2) he is not scheduled on any flight, and 3) ICE’s primary
9 airline carrier recently cancelled its contract with the agency. For these reasons,
10 this Court should grant temporary relief of his release on his pre-existing order of
11 supervision to preserve the status quo.

12 **II. Statement of Facts**

13 Mr. Thai came from Vietnam to the United States with his family in 1979
14 and became a lawful permanent resident soon after. Declaration of Hai Thai,
15 Exhibit A of habeas petition at ¶ 1. In 2009, he was ordered removed on the basis
16 of a criminal conviction. *Id.* at ¶ 2. But because Vietnam would not issue him a
17 travel document, ICE eventually released him on an order of supervision.

18 In August 2025, ICE revoked Mr. Thai’s order of supervision and took him
19 back into custody. *Id.* at ¶ 3. He filed a petition for a writ of habeas corpus, which
20 this Court granted on October 23, 2025. *See Thai v. Noem*, 25-cv-2436-RBM.
21 ICE released him but told him he needed to continue to check in. *Id.* at ¶ 3.

22 When he went to his ICE check in San Diego on December 16, 2025, the
23 officer told Mr. Thai that they had received a travel document for him. *Id.* at ¶ 4.
24 ICE redetained him and transferred him back to Otay Mesa Detention Center. *Id.*
25 at ¶ 4. But when he subsequently talked to an ICE officer at the facility, the
26 officer told him, “We don’t have your travel document. I don’t know why they
27 took you in.” *Id.* at ¶ 4.

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1 At least three other individuals have been redetained under similar
2 circumstances. One individual was redetained on December 18, 2025, and told
3 that ICE had his travel document but then subsequently informed by an ICE
4 officer that “I don’t see your travel document.” Exhibit B, Declaration of
5 Saengphet Lnu, at ¶ 5. Another person was redetained on December 19, 2025, and
6 and later told by an ICE officer, “I don’t have nothing on you.” Exhibit C,
7 Declaration of Sonxai Rasakhamdee at ¶ 5. Another person was redetained on
8 December 18, 2025, and not even told that ICE had a travel document—only that
9 he was “ordered removed by the judge.” Exhibit D, Declaration of Bounpheng
10 Soryadvongsa. None of these four individuals have been scheduled for a flight or
11 told when they would be removed.

12 Argument

13 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
14 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
15 relief, that the balance of equities tips in his favor, and that an injunction is in the
16 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
17 *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
18 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
19 “substantially identical” analysis). A “variant[] of the same standard” is the
20 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
21 going to the merits—a lesser showing than likelihood of success on the merits—
22 then a preliminary injunction may still issue if the balance of hardships tips
23 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
24 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
25 (internal quotation marks omitted). Under this approach, the four *Winter* elements
26 are “balanced, so that a stronger showing of one element may offset a weaker
27 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
28 (9th Cir. 2011). A TRO may be granted where there are “serious questions going

1 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
2 long as the other *Winter* factors are met. *Id.* at 1132.

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

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

10 **A. Petitioner is likely to succeed on the merits of his claims.**

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

20 The regulations further provide noncitizens with a chance to contest a re-
21 detention decision. ICE must “notif[y] [the person] of the reasons for revocation
22 of his or her release.” *Id.* § 241.13(i)(3). ICE must then “conduct an initial
23 informal interview promptly” after re-detention “to afford the alien an opportunity
24 to respond to the reasons for revocation stated in the notification.” *Id.* During the
25 interview, the person “may submit any evidence or information” showing that the
26 prerequisites to re-detention have not been met, and the interviewer must evaluate
27 “any contested facts.” *Id.*

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

9 None of the prerequisites to detention apply here. Since this Court granted
10 Mr. Thai’s habeas petition several months ago, he has not been convicted of any
11 crimes. And a material issue of facts exists as to whether local ICE has a travel
12 document that would constitute “changed circumstances” justifying his
13 redetention. Moreover, his removal is not significantly likely in the reasonably
14 foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because 1) ICE
15 has not removed him in the month since his redetention, 2) he is not scheduled on
16 any flight, and 3) ICE’s primary airline carrier recently cancelled its contract with
17 the agency. For either reason, Mr. Thai is likely to succeed on the merits of his
18 claim.

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

20 Petitioner also meets the second factor, irreparable harm. “It is well
21 established that the deprivation of constitutional rights ‘unquestionably constitutes
22 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
23 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged
24 deprivation of a constitutional right is involved, most courts hold that no further
25 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
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1 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
2 *Practice and Procedure*, § 2948.1 (2d ed. 2004)).

3 Here, the potential irreparable harm to Petitioner is even more concrete.
4 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and
5 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d
6 976, 999 (9th Cir. 2017). These and other threats to Petitioner’s health and life
7 independently constitute irreparable harm.

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

10 The final two factors for a TRO—the balance of hardships and public
11 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
12 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On
13 the one hand, the government “cannot reasonably assert that it is harmed in any
14 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,
15 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to
16 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,
17 556 U.S. at 436 (describing public interest in preventing noncitizens “from being
18 wrongfully removed, particularly to countries where they are likely to face
19 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218
20 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with federal
21 law, . . . the balance of hardships and public interest factors weigh in favor of a
22 preliminary injunction.”). On the other hand, Petitioner faces weighty hardships:
23 unlawful, indefinite detention. The balance of equities thus favors preventing the
24 violation of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*,
25 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect
26 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: January 15, 2026

14 *s/ Kara Hartzler*
15 _____
16 Federal Defenders of San Diego, Inc.
17 Attorneys for Mr. Thai
18 Email: kara_hartzler@fd.org
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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 15, 2026 */s/ Kara Hartzler*
Kara Hartzler