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

12 Ysmel Santos-Diaz,
13
14 Petitioner,
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16 v.
17 KRISTI NOEM, Secretary of the
18 Department of Homeland Security,
19 PAMELA JO BONDI, Attorney General,
20 TODD M. LYONS, Acting Director,
21 Immigration and Customs Enforcement,
22 JESUS ROCHA, Acting Field Office
23 Director, San Diego Field Office,
24 CHRISTOPHER LAROSE, Warden at
25 Otay Mesa Detention Center,
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27 Respondents.
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CIVIL CASE NO.: '26CV0582 LL DEB

**Notice of Motion
and
Memorandum of Law
in Support of
Temporary Restraining Order**

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INTRODUCTION

Petitioner has simultaneously filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 (“Habeas Petition”). In the Habeas Petition, Petitioner asserts three claims that his continued detention violates the Fifth Amendment’s Due Process Clause. Specifically, Petitioner alleges that ICE re-detained him after many years of living in the community under an order of supervision without any notice or opportunity to be heard in violation of ICE’s own regulations. He also alleges because more than 6 months have passed since his final order of removal and there is no significant likelihood of removal in the reasonably foreseeable future, his continued detention is a violation his due process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Finally, Petitioner alleges that ICE may not remove Petitioner to a third country without first following the procedures set out in 8 U.S.C. § 1231(b)(2) and without adequate notice and an opportunity to be heard.

Petitioner is therefore facing both unlawful detention and a threat of removal to a dangerous third country without due process. The requested temporary restraining order (“TRO”) would preserve the status quo while Petitioner litigates these claims by (1) reinstating Petitioner’s release on supervision, (2) prohibiting the government from removing him to a third country without first following the required removal statutory procedures and (3) prohibiting the government from removing him to a third country without an opportunity to file a motion to reopen with an IJ.

Petitioner incorporates by reference the facts and arguments set forth in that Habeas Petition.

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

1 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
2 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
3 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
4 “substantially identical” analysis). A “variant[] of the same standard” is the
5 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
6 going to the merits—a lesser showing than likelihood of success on the merits—
7 then a preliminary injunction may still issue if the balance of hardships tips
8 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
9 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
10 (internal quotation marks omitted). Under this approach, the four *Winter* elements
11 are “balanced, so that a stronger showing of one element may offset a weaker
12 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
13 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
14 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
15 long as the other *Winter* factors are met. *Id.* at 1132.

16 The *Winter* factors weigh in favor of granting a TRO as to all claims set out
17 in the Habeas Petition. *See Winter*, 555 U.S. at 20.

18 Here, this Court should issue a temporary restraining order because his
19 unlawful immigration detention has caused, and will continue to cause,
20 “immediate and irreparable injury . . . or damage.” Fed. R. Civ. P. 65(b). This
21 Court should therefore order Petitioner’s release.

22 **I. Petitioner is likely to succeed on the merits.**

23 Petitioner is likely to succeed on the merits as to all claims. The Fifth
24 Amendment’s Due Process Clause forbids the Government to “depriv[e]” any
25 “person ... of ... liberty ... without due process of law.” *Zadvydas*, 533 U.S. at 690.
26 Due process requires that “a person in jeopardy of a serious loss [be given] notice
27 of the case against him and the opportunity to meet it.” *Mathews v. Eldridge*, 424
28 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S.

1 123, 171-72 (Frankfurter, J., concurring). Petitioner’s detention in immigration
2 custody and removal to a third country violates due process.

3 First, ICE failed to follow its own regulations requiring changed
4 circumstances before Petitioner’s re-detention, as well as its procedural
5 regulations requiring it to notify him of those circumstances and allow him an
6 opportunity to contest them. This was a violation of both the regulations and due
7 process and requires his release. *See, e.g., See Phan v. Noem*, 2025 WL 2898977,
8 No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this
9 regulatory framework and granting a habeas petition for ICE’s failure to follow
10 these regulations for a refugee of Vietnam who entered the United States before
11 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same).

12 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize
13 the government to detain immigrants like Petitioner, for whom there is “no
14 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
15 678, 701 (2001); *see, e.g., Alic v. Dep’t of Homeland Sec./Immigr. Customs Enft.*,
16 No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025);
17 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 *17 (W.D. Wash. Aug.
18 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
19 *5, *7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary
20 restraining order on these same grounds).

21 Third, Respondents also cannot remove Petitioner to a third country
22 without providing notice and a sufficient opportunity to be heard before an
23 immigration judge. Their current policy allowing third-country removal
24 “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL
25 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE
26 memo contravenes Ninth Circuit law on the process due to noncitizens in detail);
27 *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D.
28 Cal. Sept. 29, 2025) (granting temporary restraining order preventing a

1 noncitizen’s deportation to a third country pending litigation in light of due
2 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
3 6 (S.D. Cal. Sept. 18, 2025) (same).

4 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

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

13 “Unlawful detention” itself “constitutes ‘extreme or very serious damage,
14 and that damage is not compensable in damages.” *Hernandez v. Sessions*, 872
15 F.3d 976, 999 (9th Cir. 2017).

16 Third-country deportations pose that risk and more. Recent third-country
17 deportees have been held, indefinitely and without charge, in hazardous foreign
18 prisons. See Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s*
19 *Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to
20 solitary confinement. Gerald Imray, *3 Deported by US held in African Prison*
21 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They have
22 been removed to countries so unstable that the U.S. government recommends
23 making a will and appointing a hostage negotiator before traveling to them. See
24 Wong, *supra*. These and other threats to Petitioner’s health and life independently
25 constitute irreparable harm.

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1 **III. The balance of hardships and the public interest weigh heavily in**
2 **Petitioner’s favor.**

3 Third, and finally, when the government is a party, as it is here, “the
4 balance of equities and public interest factors merge.” *Pimental-Estrada v. Barr*,
5 464 F. Supp. 3d 1225, 1237 (W.D. Wash 2020) (citing *Drakes Bay Osyter v.*
6 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). The risk of harm to Petitioner far
7 outweighs the government’s interest in illegally detaining him, fir it is “always in
8 the public interest to prevent the violation of a party’s constitutional rights.”
9 *Melendres*, 695 F.3d at 1002.

10 **CONCLUSION**

11 For all these reasons, this Court should grant this motion for a temporary
12 restraining order and order immediate release.

13
14 Respectfully submitted,

15 Dated: January 8, 2026

16 *s/ Zandra L. Lopez*
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PROOF OF SERVICE

I, the undersigned, will cause the attached motion 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: January 8, 2026

s/ Zandra L. Lopez
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