

1 **Kara Hartzler**  
2 Cal. Bar No. 293751  
3 **Federal Defenders of San Diego, Inc.**  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467  
7 Facsimile: (619) 687-2666  
8 Kara\_hartzler@fd.org

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

12 BOUANGERN PHOUTTHAVONG,  
13  
14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the  
17 Department of Homeland Security,  
18 PAMELA JO BONDI, Attorney General,  
19 TODD M. LYONS, Acting Director,  
20 Immigration and Customs Enforcement,  
21 JESUS ROCHA, Acting Field Office  
22 Director, San Diego Field Office,  
23 CHRISTOPHER LAROSE, Warden at  
24 Otay Mesa Detention Center,  
25  
26 Respondents.

CIVIL CASE NO.: '26CV0583 LL DDL

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

27  
28

1 **I. Introduction**

2 Petitioner Bouangern Phouthavong faces immediate irreparable harm:  
3 (1) revocation of his release on immigration supervision after 15 years of living in  
4 the community, despite ICE’s failure to follow its own revocation procedures; and  
5 (2) indefinite immigration detention with no individualized, significantly likely  
6 prospect of removal to Laos in the reasonably foreseeable future. This Court  
7 should grant temporary relief of his release on his pre-existing order of  
8 supervision to preserve the status quo.

9 Mr. Phouthavong has spent the last 15 years in the community on an order  
10 of supervision. Throughout that time, the government has proved unable to  
11 remove him to Laos. Yet on December 2, 2025, the government re-detained him  
12 when he appeared as scheduled at his check-in. ICE gave him no opportunity to  
13 contest his re-detention, and did not identify changed circumstances justifying it.  
14 ICE does not appear to have a travel document in hand.

15 Because Mr. Phouthavong is facing unlawful detention, the requested  
16 temporary restraining order (“TRO”) would preserve the status quo while  
17 Petitioner litigates these claims by reinstating Mr. Phouthavong’s release on  
18 supervision.

19 In granting this motion, this Court would not break new ground. Courts in  
20 this district and around the Ninth Circuit have granted TROs or preliminary  
21 injunctions mandating release for post-final-removal-order immigrants like  
22 Petitioner. *See, e.g., Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D.  
23 Cal. Sept. 30, 2025); *Van Phouthavong v. Noem*, 2025 WL 2770623, No. 25-cv-  
24 2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES,  
25 ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-  
26 02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *see also, e.g.,*  
27 *Phetsadakone v. Scott*, 2025 WL 2579569, at \*6 (W.D. Wash. Sept. 5, 2025);  
28 *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D.

1 Cal. July 16, 2025); *Phouthavong v. Beccerra*, No. 2:25-CV-01757-DC-JDP,  
2 2025 WL 1993735, at \*7 (E.D. Cal. July 16, 2025); *Phouthavong v. Scott*, No.  
3 2:25-CV-01398, 2025 WL 2419288, at \*29 (W.D. Wash. Aug. 21, 2025). These  
4 courts have determined that, for these long-term releasees, liberty is the status  
5 quo, and only a return to that status quo can avert irreparable harm. Mr.  
6 Phouthavong therefore respectfully requests that this Court grant this TRO.

## 7 **II. Statement of Facts**

8 In 1986, Mr. Phouthavong fled Laos and entered the United States as a  
9 refugee. Declaration of Bouangern Phouthavong, Exhibit A (“Exh. A”) ¶ 1. He  
10 soon obtained a green card. *Id.*

11 In 2011, as a result of several criminal convictions, Mr. Phouthavong was  
12 placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him  
13 removed on May 25, 2011. *Id.* at ¶ 3.

14 But after ICE was not able to effectuate Mr. Phouthavong’s removal to  
15 Laos. ICE continued to detain him for three months before finally releasing him  
16 on an order of supervision. *Id.* at ¶ 4. In the years since his removal order,  
17 Mr. Phouthavong does not believe he has missed a check-in appointment. *Id.* at  
18 ¶ 5.

19 On December 2, 2025, ICE officials arrested Mr. Phouthavong during his  
20 annual check in appointment. *Id.* at ¶ 6. He does not believe that they provided  
21 him any notice or gave him an interview or an opportunity to contest his  
22 detention. *Id.*

## 23 **Argument**

24 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on  
25 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
26 relief, that the balance of equities tips in his favor, and that an injunction is in the  
27 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
28 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7

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

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

19 **III. Petitioner is likely to succeed on the merits, or at a minimum, raises**  
20 **serious merits questions.**

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

23 The regulations set forth the procedures for someone who, like Petitioner, is  
24 re-detained following a period of release. Under 8 C.F.R. § 241.4(l), ICE may re-  
25 detain an immigrant on supervision only with an interview and a chance to contest  
26 a re-detention. When an immigrant is specifically released after giving good  
27 reason why they cannot be removed, additional regulations apply: ICE may  
28 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

1 changed circumstances,” a noncitizen likely can be removed in the reasonably  
2 foreseeable future. *Id.* § 241.13(i)(2).

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

11 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
12 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,  
13 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to  
14 abide by certain internal policies is well-established.”). A court may review a re-  
15 detention decision for compliance with the regulations. *See Phouthavong v.*  
16 *Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at \*3 (E.D. Cal. July 16,  
17 2025); *Phouthavong v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at \*3  
18 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st  
19 Cir. 2023)).

20 None of the prerequisites to detention apply here. Since ICE last tried to  
21 deport him in 2011, Petitioner does not believe he has missed a check-in  
22 appointment. And there are no changed circumstances that justify re-detaining  
23 him. ICE already tried—and failed—to remove Petitioner and has given Petitioner  
24 no indication that agents have a travel document in hand for him. Of course, ICE  
25 may be planning to renew their request for a travel document from Laos. But  
26 absent any evidence for “why obtaining a travel document is more likely this time  
27 around[,] Respondents’ intent to eventually complete a travel document request  
28 for Petitioner does not constitute a changed circumstance.” *Hoac v. Becerra*, No.

1 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025)  
2 (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at \*2 (D. Kan. June  
3 17, 2025)). Nor has Petitioner received an interview where he was able to respond  
4 to the purported “reasons” for his revocation.

5 “[B]ecause officials did not properly revoke petitioner's release pursuant to  
6 the applicable regulations,” this Court will likely find that “petitioner is entitled to  
7 his release” on an order of supervision. *Liu*, 2025 WL 1696526, at \*3.

8 **B. Petitioner is likely to succeed on the merits of his claim that his**  
9 **detention violates *Zadvydas*.**

10 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered  
11 a problem affecting people like Mr. Phouthavong: Federal law requires ICE to  
12 detain an immigrant during the “removal period,” which typically spans the first  
13 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And  
14 after that 90-day removal period expires, ICE may detain the migrant while  
15 continuing to try to remove them. *Id.* § 1231(a)(6). If that subsection were  
16 understood to allow for “indefinite, perhaps permanent, detention,” it would pose  
17 “a serious constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the  
18 Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to  
19 incorporate implicit limits. *Id.* at 689.

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

27 If he does so, the burden shifts to “the Government [to] respond with  
28 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of

1 proof rests with the government: The government must prove that there is a  
2 “significant likelihood of removal in the reasonably foreseeable future,” or the  
3 immigrant must be released. *Id.*

4 Here, Petitioner was ordered removed more than six months ago, as his  
5 removal order became final in 2011. Phouthavong Dec. at ¶ 3. Thus, it is clear  
6 that the *Zadvydas* grace period has ended.

7 There is also strong evidence that there is no “significant likelihood of  
8 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Laos  
9 refused to accept Mr. Phouthavong when he was detained in 2011. Phouthavong  
10 Dec. at ¶ 4, 5. Nothing has changed since the last time ICE attempted to deport  
11 him. And to date, there is no indication that ICE has obtained a travel document.

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

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

17 **IV. Petitioner will suffer irreparable harm absent injunctive relief.**

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

26 Here, the potential irreparable harm to Petitioner is even more concrete.  
27 “Unlawful detention certainly constitutes ‘extreme or very serious damage, and  
28 that damage is not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d

1 976, 999 (9th Cir. 2017). These and other threats to Petitioner’s health and life  
2 independently constitute irreparable harm.

3 **V. The balance of hardships and the public interest weigh heavily in**  
4 **petitioner’s favor.**

5 The final two factors for a TRO—the balance of hardships and public  
6 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
7 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On  
8 the one hand, the government “cannot reasonably assert that it is harmed in any  
9 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,  
10 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to  
11 prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*,  
12 556 U.S. at 436 (describing public interest in preventing noncitizens “from being  
13 wrongfully removed, particularly to countries where they are likely to face  
14 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218  
15 (W.D. Wash. 2019) (when government’s treatment “is inconsistent with federal  
16 law, . . . the balance of hardships and public interest factors weigh in favor of a  
17 preliminary injunction.”). On the other hand, Petitioner faces weighty hardships:  
18 unlawful, indefinite detention. The balance of equities thus favors preventing the  
19 violation of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*,  
20 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect  
21 against unlawful detention and unlawful third country removal.

22 **VI. Petitioner gave the government notice of this TRO, and the TRO**  
23 **should remain in place throughout habeas litigation.**

24 Upon filing this motion, proposed counsel emailed Janet Cabral, from the  
25 United States Attorney’s Office, notice of this request for a temporary restraining  
26 and all the filings associated with it. Additionally, Petitioner requests that this  
27 TRO and injunction remain in place until the habeas petition is decided. Fed. R.  
28 Civ. Pro. 65(b)(2). Good cause exists, because the same considerations will  
continue to warrant injunctive relief throughout this litigation, and habeas

1 petitions must be adjudicated promptly. *See In re Habeas Corpus Cases*, 216  
2 F.R.D. 52 (E.D.N.Y. 2003).

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted,

Dated: January 29, 2026

*s/ Kara Hartzler*  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Phouthavong  
Email: kara\_hartzler@fd.org

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Proof of Service**

I, the undersigned, will cause the attached Motion for a Temporary Restraining Order to be emailed to the U.S. Attorney’s Office for the Southern District of California at [USACAS.Habeas2241@usdoj.gov](mailto:USACAS.Habeas2241@usdoj.gov) when I receive the court-stamped copy.

Dated: January 29, 2026

*/s/ Kara Hartzler*  
Kara L. Hartzler