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

12 REY CARLOS TRUJILLO PEDRAZA,

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 Respondents.

26 CIVIL CASE NO. 26CV1461 BAS JLB

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

Introduction

Mr. Trujillo (“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 four claims that his continued detention and Respondent’s attempts to remove him to a third country violates the Fifth Amendment’s Due Process Clause. Specifically, Petitioner alleges that ICE re-detained him after decades 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 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.

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

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

I. Petitioner is likely to succeed on the merits.

Petitioner is likely to succeed on the merits as to all claims. The Fifth Amendment’s Due Process Clause forbids the Government to “depriv[e]” any

1 “person ... of ... liberty ... without due process of law.” *Zadvydas*, 533 U.S. at 690.
2 Due process requires that “a person in jeopardy of a serious loss [be given] notice
3 of the case against him and the opportunity to meet it.” *Mathews v. Eldridge*, 424
4 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S.
5 123, 171-72 (Frankfurter, J., concurring)). Petitioner’s detention in immigration
6 custody and removal to a third country violates due process.

7 First, ICE failed to follow its own regulations requiring changed
8 circumstances before Petitioner’s re-detention, as well as its procedural
9 regulations requiring it to notify him of those circumstances and allow him an
10 opportunity to contest them. ICE did not provide him with proper notice of the
11 reasons for revocation, nor did they provide him with a prompt interview so that
12 he could contest the detention. This was a violation of both the regulations and
13 due process and requires his release. *See, e.g., See Phan v. Noem*, 2025 WL
14 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025)
15 (explaining this regulatory framework and granting a habeas petition for ICE’s
16 failure to follow these regulations for a refugee of Vietnam who entered the
17 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
18 2646165 at *2 (same).

19 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize
20 the government to detain immigrants like Petitioner, for whom there is “no
21 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
22 678, 701 (2001); *see, e.g., Alic v. Dep’t of Homeland Sec./Immigr. Customs Enft*,
23 No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025);
24 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 *17 (W.D. Wash. Aug.
25 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
26 *5, *7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary
27 restraining order on these same grounds).
28

1 Third, Respondents also cannot remove Petitioner to a third country
 2 without providing notice and a sufficient opportunity to be heard before an
 3 immigration judge. Their current policy allowing third-country removal
 4 “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL
 5 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE
 6 memo contravenes Ninth Circuit law on the process due to noncitizens in detail);
 7 *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D.
 8 Cal. Sept. 29, 2025) (granting temporary restraining order preventing a
 9 noncitizen’s deportation to a third country pending litigation in light of due
 10 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
 11 6 (S.D. Cal. Sept. 18, 2025) (same).

12 II. Petitioner will suffer irreparable harm absent injunctive relief.

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

21 Here, the potential irreparable harm to Petitioner is even more concrete.
 22 Petitioner is medically vulnerable and has been on immigration supervision for 25
 23 years. *See* Declaration, Exhibit A to Habeas Petition. Furthermore, “[u]nlawful
 24 detention” itself “constitutes ‘extreme or very serious damage, and that damage is
 25 not compensable in damages.’” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir.
 26 2017).

27 Third-country deportations pose that risk and more. Recent third-country
 28

1 deportees have been held, indefinitely and without charge, in hazardous foreign
 2 prisons. *See* Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
 3 *Mass Deportations*, N.Y. Times, June 25, 2025. They have been subjected to
 4 solitary confinement. Gerald Imray, *3 Deported by US held in African Prison*
 5 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). They have been
 6 removed to countries so unstable that the U.S. government recommends making a
 7 will and appointing a hostage negotiator before traveling to them. *See* Wong, *supra*.
 8 These and other threats to Petitioner's health and life independently constitute
 9 irreparable harm.

10 **III. The balance of hardships and the public interest weigh heavily in**
 11 **Petitioner's favor.**

12 Third, and finally, when the government is a party, as it is here, "the balance
 13 of equities and public interest factors merge." *Pimental-Estrada v. Barr*, 464 F.
 14 Supp. 3d 1225, 1237 (W.D. Wash 2020) (citing *Drakes Bay Osyter v. Jewell*, 747
 15 F.3d 1073, 1092 (9th Cir. 2014). The risk of harm to Petitioner far outweighs the
 16 government's interest in illegally detaining him, for it is "always in the public
 17 interest to prevent the violation of a party's constitutional rights." *Melendres*, 695
 18 F.3d at 1002.

19 **Conclusion**

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

22
 23
 24 Respectfully submitted,

25
 26 Dated: March 8, 2026

27 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: March 8, 2026

s/ Zandra L. Lopez

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