

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NOU XIONG, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 4:25-CV-558-O

**RESPONSE TO RENEWED EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

A renewed application for temporary restraining order has now been filed on behalf of petitioner “V.L.” (ECF No. 15) after the Court issued an order denying an earlier such application (ECF No. 14). As discussed below, V.L.’s newest application should also be denied and, in fact, the application makes clear that this case should be dismissed for lack of jurisdiction.

I. Background

Shortly after the filing of this case, the Court issued an order directing the defendants not to remove V.L. from the United States “[p]ending further order of the Court.” (ECF No. 2 at 1.) This order was entered before the U.S. Attorney’s Office was notified of the existence of the case. At that point, the complaint was the only document before the Court, and it alleged that V.L. was being “summarily removed, disappeared, or subjected to extraordinary rendition” with “no due process.” (ECF No. 1, ¶¶ 8, 17.) The

complaint also extensively discussed the Alien Enemies Act (AEA) and a proclamation from President Trump earlier this year relating to the use of AEA removal authority in connection with members of the Venezuelan gang Tren de Aragua. (*See* ECF No. 1, ¶¶ 89–203.) Per that proclamation, certain Venezuelan citizens who are members of Tren de Aragua may be apprehended and removed from the United States under the authority of the AEA (i.e., as an alternative removal procedure that at the government’s option can be used in lieu of the Title 8 removal procedures provided for in the Immigration and Nationality Act). *See* Proclamation 10903, Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua, 90 Fed. Reg. 13033 (Mar. 14, 2025). In the complaint, V.L. suggested that the AEA and Tren de Aragua Proclamation were being used to remove V.L., a non-Venezuelan, and possibly to a prison in El Salvador. (*See, e.g.*, ECF No. 1, ¶¶ 171, 205, 219.) With those allegations on file, the Court issued its initial order that V.L. not be removed pending further order of the Court. (ECF No. 2.)

The government was thereafter notified of the case and of that initial order through an email sent by petitioner’s counsel to the Acting U.S. Attorney for the Northern District of Texas on the afternoon of Sunday, May 25, 2025 (at approximately 3:45 p.m. local Central time).¹ That email was within a couple hours forwarded to the undersigned, who saw it after dinner on that same Sunday evening and immediately reached out to personnel at the U.S. Department of Homeland Security (DHS) to ensure that DHS was

¹ Petitioner’s counsel also included on this email to the Acting U.S. Attorney the personal Gmail email address of an Assistant U.S. Attorney who has recently departed the office.

made aware of the Court's requirement that V.L. not be removed from the United States. During this time, however, V.L. had already left the detention center where he was in custody, for transportation to the airport for his removal flight. That flight eventually transported him as far as Guam, en route to the ultimate planned removal destination of Laos.

Meanwhile, on Monday, May 26, 2025, the government made a filing in this Court to explain that V.L.'s removal was not related to the AEA as the complaint suggested (nor was he being removed to El Salvador), but instead explained that V.L. was subject to removal under Title 8 (i.e., the Immigration and Nationality Act) pursuant to a Title 8 order of removal issued against him in 2018. Specifically, V.L. had been convicted of attempted murder in California in 1998, and after serving prison time in California, he was issued a Notice to Appear in 2018 charging him with removability due to his aggravated felony conviction, and later that year he was in fact ordered removed by an immigration judge. (*See* ECF No. 11 at 4–11.) These proceedings all occurred under Title 8 and had nothing to do with the AEA or the Tren de Aragua Proclamation (which of course was not even in existence at the time).

Simultaneously on Monday, May 26, 2025, with the relevant agency personnel now aware of the order not to remove V.L. pending further order of the Court, DHS made arrangements to take V.L. off the removal flight at a planned stop-over in Guam. V.L. was in fact taken off the flight in Guam on the afternoon/early evening of Monday, May 26, 2025 (in Fort Worth time), because although the government had by that time made its submission to this Court explaining that the AEA was not being used for the removal,

the Court had not yet issued any further order, and the earlier order not to remove V.L. was still in place. Accordingly, V.L. was taken off the plane rather than being transported all the way to Laos where the planned removal would ultimately have been effected.

Shortly thereafter, the Court issued its order denying V.L.'s application for a temporary restraining order, and as part of that order, the Court explained that the government "may effectuate Petitioner's and proposed class members' removals pursuant to the INA." (ECF No. 14 at 4.) This had the effect of extinguishing the prior order not to remove V.L. pending further order of the Court, because now there was a further order, and it said that removal under Title 8 authority was permissible. As noted above, however, V.L. had already been taken off the removal flight in Guam.

The order prompted V.L.'s most recent filing, the renewed emergency application for temporary restraining order. (ECF No. 15.) It is not entirely clear what relief the application is requesting—V.L.'s original request for a temporary restraining order sought to enjoin "any removal outside the country pursuant to the Alien Enemies Act" (ECF No. 3 at 2), but the renewed application does not appear to reiterate this request (which as discussed above is in any event completely inapplicable, because the government is not relying on the AEA for V.L.'s removal). The application instead complains that V.L. has "been separated from the plane carrying the class apparently because of this Court's order and is now in Guam, likely held at a U.S. military base and potentially in military custody." (ECF No. 15 at 1.) The application goes on to state that V.L. "is, and never was, an enemy of the state or enemy combatant, but . . . is being

treated as one,” and further speculates that he will now be subject to “prolonged detention in a military prison in Guam.” (ECF No. 15 at 1–2, 3.) The application additionally asserts that there will be a “chilling effect on anyone in the future contemplating the assertion of their rights if the Court does not enforce its own order”—presumably referring to the Court’s prior order (that the government complied with) that directed the government not to remove V.L. pending further order of the Court. (ECF No. 15 at 3.)

II. Argument and Authorities

V.L.’s latest application for a temporary restraining order should be denied. As the above discussion makes clear, V.L. was taken off the removal flight in Guam for the purpose of ensuring compliance with the Court’s prior order that he not be removed from the United States pending further order of the Court. V.L.’s attempt to re-cast this action—an action taken in conformity with a prior order of the Court that was issued at V.L.’s request—as a violation of V.L.’s rights is meritless and borders on nonsensical. The government was intending to remove V.L. and therefore would have kept him on the scheduled removal flight, except that V.L. procured an order directing otherwise by baselessly suggesting that he was being removed under the AEA—and because of that order, the government did not remove V.L. but instead took him off the removal flight. As V.L. surely knew, though, his planned removal had nothing to do with the AEA and instead was being done pursuant to a Title 8 order of removal issued several years ago.

Indeed, although it ultimately has no bearing on the merits of whether V.L. is subject to removal, the government notes for the record that in addition to the Title 8 order and related materials previously submitted to the Court (*see* ECF No. 11), V.L. also

received notifications from DHS on two separate occasions within the past six weeks making clear that he was subject to removal under Title 8 and that DHS was seeking to remove him on that basis—not under the AEA. Specifically, on April 19, 2025, V.L. was issued a “Warning for Failure to Depart” which cited a removal provision of the Immigration and Nationality Act, along with an instruction sheet reminding him of his obligations to assist in removal. And on May 6, 2025, V.L. was issued a “Notice of Alien to File Custody Review” that again cited the Immigration and Nationality Act and in which V.L. was again reminded of his obligation “to cooperate with ICE in effecting your removal from the United States.” Both documents are attached hereto (with notations showing that V.L. refused to sign). Notwithstanding receiving this additional, recent notice through these documents of the Title 8 nature of the planned removal, V.L. filed suit here based on allegations that the AEA was somehow being used to effectuate the removal. But as V.L. knew, it was not.

V.L.’s suggestion that the Court’s original order must somehow be “enforced” through a temporary restraining order is also baseless. There was no violation of the Court’s original order—V.L. was not removed from the United States but instead was taken off the removal flight to comply with the Court’s order—and there otherwise is no merit to V.L.’s vague and unsubstantiated allegations in the application that some constitutional rights of his were violated. Indeed, this newest application provides no legal authority in support of any of its claims, and V.L.’s belated attempt to somehow link up the AEA and the Immigration and Nationality Act (i.e., Title 8) contradicts V.L.’s own prior pleadings. In the application, V.L. now states that “[r]espectfully, the Court’s

order appears to believe that INA and AEA are mutually exclusive, but they are not.” (ECF No. 15 at 2.) However, no explanation is provided for this statement, and the complaint says the opposite, by alleging that “[t]he AEA Process creates an alternative removal mechanism outside of the immigration laws set forth by Congress in Title 8.” (ECF No. 1, ¶ 223.) V.L. provides no basis for any grant of relief by the Court.

Finally, in addition to showing no entitlement to a temporary restraining order on the merits, the government notes that V.L. cannot establish jurisdiction for any claim of his that might bar his removal under Title 8. Under 8 U.S.C. § 1252(g), “[e]xcept as provided in [§ 1252] and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter” (emphasis added).

V.L. appears to be attempting to use this case to prevent the execution of his Title 8 removal order, but he is not doing so through any approved § 1252 procedure—to the contrary, under § 1252(a)(5), “a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e)” (which does not relate to V.L.’s claims); *see also Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the

courts of appeals”). If V.L. had wanted to challenge the order of removal, he had the right to file an administrative appeal and then file a petition for review in a court of appeals. He did not. And he cannot now avoid § 1252(g)’s jurisdictional bar by conflating Title 8 and the AEA. Thus, in addition to denying V.L.’s application, dismissal of his petition for lack of jurisdiction would also be appropriate at this time. *See, e.g., Westley v. Harper*, No. 25-229, 2025 WL 592788, at *4 (E.D. La. Feb. 24, 2025) (denying a request for preliminary injunction and simultaneously dismissing the habeas petition filed by an alien subject to an order of removal who was seeking to stop her removal, with the court explaining that “by its explicit terms, § 1252(g) strips this Court of subject-matter jurisdiction – whether invoked by habeas petition, under the All Writs Act, or under any other statutory or nonstatutory provision of law – to review claims ‘arising from’ a decision or action to execute a removal order against an alien”); *Berhane v. Prendis*, No. 3:04-CV-2145-N, 2004 WL 2348226, at *3 (N.D. Tex. Oct. 18, 2004) (explaining that no general jurisdiction provisions, including the APA, federal question, the Declaratory Judgment Act, the All Writs Act, the mandamus provision, the suspension clause, or common law gives a federal district court jurisdiction over a petitioner’s claims arising from the execution of a final order of removal), *adopted*, 2004 WL 2624260 (N.D. Tex. Nov. 12, 2004).

III. Conclusion

V.L.’s renewed application for a temporary restraining order should be denied.

Respectfully submitted,

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ACTING UNITED STATES ATTORNEY

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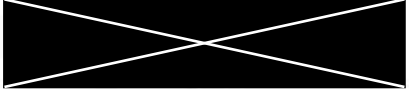
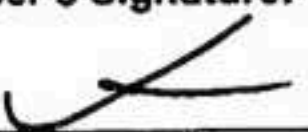
Certificate of Service

On May 27, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Brian W. Stoltz
Brian W. Stoltz
Assistant United States Attorney

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Warning for Failure to Depart

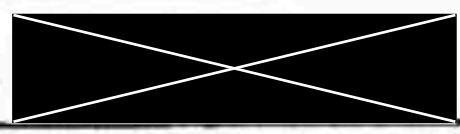
Name: LOR, VANG	Field Office: PRL-T	File #: 
Section 243(a) of the Immigration and Nationality Act provides, in part, that: Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 237(a) who-- (A) willfully fails or refuses to depart from the United States within a period of 90 days* from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court, (B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure, (C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or (D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order, shall be fined under title 18, United States Code, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 237(a)), or both. Nothing in this section shall make it a violation to take proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien's release from incarceration or custody. Any action Immigration and Customs Enforcement may take to obtain a travel document for your departure or to remove you will NOT relieve you of the liability for compliance with the provisions of law referred to in the first paragraph above. * Section 241(a)(1)(C) provides for the extension of the statutory removal period if the alien refuses, during the removal period, to make application in good faith, for a travel or other document necessary for the alien's removal or departure or conspires or acts to prevent the alien's removal subject to an order of removal.		
Date Order Final: March 20, 2018		Ordered Removed under Section:
Record of Service (Check method used)		
() Served By: (Print Name and Title of Officer) ANDRES GOCHE, Deportation Officer		Date: April 19, 2025
Officer's Signature: 	Location of Service: 1209 Sunflower Lane Alvarado TX 76009	
Served On: (Alien's Signature) Refused to Sign		Date: April 19, 2025
() Warning administered in Court (Copy of order attached)		Record of Personal Service (Cont.)
() Certified Mail Service		Fingerprint of Alien (Specify finger used)
Attach certified mail receipts here.		 Right Index

INSTRUCTION SHEET TO DETAINEE REGARDING REQUIREMENT TO ASSIST IN REMOVAL

The following is a list of things you are required to complete within 30 days of receiving this form, in order comply with your obligation to assist in obtaining a travel document:

Mandatory requirements will be checked off by the ICE officer depending on the facts of each case. Failure to comply or provide sufficient evidence of your inability to comply, may result in the extension of the removal period and subject you to further detention. In addition, you may be subject to criminal prosecution. If you need assistance in complying with any of the requirements, please contact a Deportation Officer.

- ☒ Submit passports (current and expired) to ICE. If you have a copy of your passport, you are to submit it.
- ☒ Apply for a travel document/passport from your embassy or consulate, or directly from your government in your native country, or any other embassy or consulate of your native country in another country.
- ☒ Comply with all instructions from all embassies or consulates requiring completion of documentation for issuance of a travel document.
- ☒ Submit to ICE birth certificates, national identification cards, and any other document issued by a foreign government indicating your citizenship, nationality, place of birth, and place of residence prior to entering the United States.
- ☒ Provide names and addresses of family and friends residing in the United States and request that they contact your embassy or consulate in the United States, in order to facilitate the issuance of a travel document.
- ☒ Provide names and addresses of family and friends residing in your country of citizenship and request family and friends residing abroad contact your government in reference to issuing a travel document.
- ☒ You are required to take measures to request reinstatement of your previous nationality, register as required, or take any other action that will ensure the issuance of a travel document and your removal from the United States.
- ☐ Provide ICE with written copies of requests to embassies or consulates requesting issuance of a travel document.
- ☐ Provide ICE with written copies of responses from embassies or consulates regarding your requests.
- ☒ Solicit permission from another country, which may be able to accept you, to enter that country to affect your removal from the United States.
- ☒ Provide your true and correct name and date of birth and any other identities you have ever used.
- ☐ Other: _____

Alien's Signature Refused to Sign A Number 

Served by ANDRES GOCHE on April 19, 2025 at PRL-T
 Officer's Name Date Location

To be served with I-229 (a) no later than 30 days after the final order

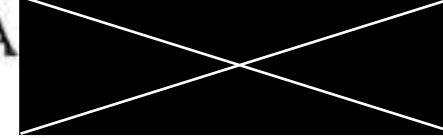
Enforcement and Removal Operations

U.S. Department of Homeland Security
8101 N. Stemmons Fwy
Dallas, TX 75247



**U.S. Immigration
and Customs
Enforcement**

Lor, Vang
c/o Immigration and Customs Enforcement
Dallas Field Office

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Notice to Alien of File Custody Review

You are detained in the custody of U.S. Immigration and Customs Enforcement (ICE) and you are required to cooperate with ICE in effecting your removal from the United States. If ICE has not removed you from the United States within the removal period as set forth in INA 241(a) (normally 90-days of either: 1) your entering ICE custody with a final order of removal, deportation or exclusion, or 2) the date of any final order you receive while you are in ICE custody), ICE's Deciding Official will review your case for consideration of release on an Order of Supervision. Release, however, is dependent on your demonstrating to the satisfaction of the Attorney General that you will not pose a danger to the community and will not present a flight risk.

Your custody status will be reviewed on or about 6/27/2025 . The Deciding Official may consider, but is not limited to considering the following:

1. Criminal convictions and criminal conduct;
2. Other criminal and immigration history;
3. Sentence(s) imposed and time actually served;
4. History of escapes, failures to appear for judicial or other proceedings, and other defaults;
5. Probation history;
6. Disciplinary problems while incarcerated;
7. Evidence of rehabilitative effort or recidivism;
8. Equities in the United States;
9. Cooperation in obtaining your travel document.
10. Any available mental health reports.

You may submit any documentation you wish to be reviewed in support of your release, prior to the date listed above, to the attention of the Officer and address below. English translations must be provided pursuant to 8 CFR 103.2(b)(3). An attorney or other person may submit materials on your behalf. The deciding official will notify you of the decision in your case. Attached to this notice is a list of free or low cost legal representatives who may be able to provide assistance to you in preparing your case.

Notice to Alien of File Custody Review
Lor, Vang

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Page 2

PROOF OF SERVICE

(1) Personal Service (Officer to complete both (a) and (b) below.)

(a) I S. Bela, Deportation Officer,
Name of ICE Officer Title
certify that I served Lor, Vang with a copy of this
Name of detainee
document at Bluebonnet Detention Center on 5/6/25, at 1500.
Institution Date Time

(b) I certify that I served the custodian _____,
Name of Official
_____, at _____, on
Title Institution
_____ with a copy of this document.
Date

OR

(2) Service by certified mail, return receipt. (Attach copy of receipt)

I _____, _____, certify
Name of ICE Officer Title
that I served _____ and the custodian _____,
Name of detainee Name of Official
with a copy of this document by certified mail at _____ on _____.
Institution Date

Detainee Signature: Refused to sign

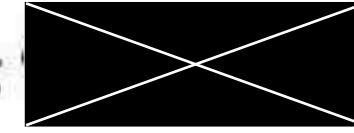
Date: 5/6/25

() cc: Attorney of Record or Designated Representative
() cc: A-File

POCR INFORMATION WORKSHEET

NAME: Lor, Vang

A#:

**Do you have a place to live in the United States?**☐ Yes☐ No

Address: (Must include house number, street, apt#, city, and state)

Phone number:

Do you have close family ties within the United States?☐ Yes☐ NoDescribe:

Cooperation in obtaining your travel document.Do you have a birth certificate, voter registration card, certificate of baptism, cedula, national identity card, Military identification card, passport or travel document? ☐ Yes ☐ No• If yes, where are those documents?

• If the documents are not in the possession of ICE, why have you not provided them?

• What have you done to assist ICE in obtaining a travel document for your return to your country of citizenship?
