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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PHONG CHUHANG PHAN, aka Paul Chu Hang Phan, Petitioner, v. FACILITY ADMINISTRATOR, GOLDEN STATE ANNEX,[1] Respondents.	CASE NO. 2:25-CV-01757-DC-JDP OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Respondent opposes Petitioner's motion for a temporary restraining order ("TRO"). ECF 2. By the motion, Petitioner does not seek to maintain the status quo against irreparable injury pending a determination on the merits. Instead, he only demands, by means of a TRO, the supervised release relief he seeks on the merits. *Compare* ECF 1 at 20-24 *with* ECF 2 at 23-24. Such use of a TRO is improper. *See Keo v. Warden of Mesa Verde Ice Processing Center,* Slip Op., 2024 WL 3970514, (E.D. Cal. August 28, 2024). Also, in adjudicating the demand for supervised release relief, this EDCA court-of-custody has no jurisdiction to bar execution of the undisputed extant removal order and thus (at least to minimize detention) must vacate its minute order preventing removal. *See* 8 U.S.C. § 1252(g).

[1] Hereby, Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla,* 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F3rd 891, 894 (9th Cir. 1996). *Doe v. Garland,* 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, among other things, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). In the instant case, Petitioner's custodian at the time of filing was the facility administrator at the Golden State Annex located in McFarland, California. Also, for operational needs, Phan is now residing at the Florence Service Processing Center, Florence, Arizona. *See* Declaration (Decl.) p 2. Nevertheless, when a petitioner is transferred after filing a § 2241 petition, the court in which the original petition was filed retains jurisdiction despite the custodial change. *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004).

I. BACKGROUND

On 12/17/1992, a state of California jury found Petitioner guilty of first-degree murder in violation of § 187(a) of the California Penal Code and further found that he attempted to murder two additional persons, each victim also in violation of §187, with personal use of a firearm in furtherance of the murder and attempted murders, in violation of California Penal Code section 12022.5(a). *See* Declaration (Decl.) p 2; *People v. Hao Day Thai and Phong Paul Chuhang Phan,* Orange County Superior Court, No. C-87820. *See also* ECF 1 at 9; ECF 2 at 8. Specifically, on 9/8/1990, Phan, participating with criminal associates, intentionally discharged a gun several times to cause bullets to strike his victims. Phan thereafter commenced using a fictitious name to escape apprehension and continue criminal gang conduct. On 1/15/1993, Phan was sentenced *inter alia* to state incarceration of 25-years to life. Decl. Exh. 2.

Petitioner, as a non-citizen whose country of origin is Vietnam, is subject to removal. Under 8 U.S.C. § 1226(c), for Petitioner's qualifying offenses (including his murder and attempted murders committed in 1990), statutorily his civil detention pending removal proceedings is mandatory. *Jennings v. Rodriguez,* 583 U.S. 281, 303 (2018) (citing 8 U.S.C. § 1226(c)(2)).

Immediately after Petitioner was released from state custody for *inter alia* his murder and attempted murders, on 5/4/2021, DHS ICE detained Petitioner and placed him into mandatory custody pending removal proceedings against him. Decl. p 2; Exh. 3. Again, Petitioner is subject to mandatory detention as an alien who is deportable for having been convicted of an aggravated felony pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii). *Id. See also* 8 U.S.C. § 1226(c). *Accord* ECF 1 at 9; ECF 2 at 8.

On 5/27/2021, Petitioner appeared before an Immigration Judge, after conceding removal, Petitioner agreed to imposition of a final order of removal. Decl. p 2. *See also* ECF 1 at 9; ECF 2 at 8-9. The Immigration Judge ordered Petitioner removed, both parties waived appeal, thereby rendering the removal order final. Decl. p 2; *see also* Decl., Exh. 4. *Riley v. Bondi,* 606 U.S. ---, 2025 WL 1758502 (2025) (jurisdictionally barring final removal order challenge after 30-days from issuance of the final order of removal).

Through Petitioner's undisputed final order of removal, Petitioner became subject to mandatory detention, pursuant to 8 U.S.C. § 1231(a)(2), for the 90-day "removal period." On 7/8/2021, while

pending removal. Petitioner was placed under an order of supervision, pursuant to 8 U.S.C. § 1231(a)(3). Decl. p 2. After a 6/2/2025 updated assessment for removal, on 6/3/2025, DHS ICE re-detained Petitioner for removal. *Id. See* 8 U.S.C. § 1231(a)(6).

II. ARGUMENT

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Plaintiffs' burden is aptly described as "heavy." *Id.* A preliminary injunction requires "substantial proof" and a "'clear showing.'" *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted). "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

As the purpose of preliminary injunctive relief is to preserve the status quo pending final adjudication on the merits, [2] there is "heightened scrutiny" for mandatory preliminary injunctions, which herein is what Petitioner seeks. *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). Where "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Committee of Cent. American Refugees v. Immigration and Naturalization Serv.*, 795 F.2d 1434, 1442 (9th Cir. 1986).

[2] "A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014).

In this case, Petitioner's TRO motion is improper and should be denied. The purpose of a preliminary injunction is to preserve the status quo between the parties pending a resolution of a case on the merits. *See U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir 2010). To that end, "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). By the instant TRO motion, Petitioner seeks only to alter the status quo by demand for issuance of an expedited order that would grant him the ultimate relief he seeks in his petition (*i.e.* return to release on supervision despite an updated pending request for travel documents for removal)—all while depriving Respondent (and this court-of-custody) an opportunity to address the merits.

1. Petitioner is not likely to succeed in his petition demand for compelled supervised release.

There simply is no basis for granting Petitioner's injunctive (compelled supervision) demand. DHS ICE has authority to re-detain Petitioner under 8 C.F.R. § 241.13(f). For changed circumstances, Petitioner has failed his heavy burden for TRO relief (continuation of supervision).

Petitioner in this matter suffered an undisputed final order of removal, he was then detained under § 1231(a)(2) for removal, and subsequently, under 8 C.F.R. § 241.4, he was released pending removal on an order of supervision. *See* 8 U.S.C. § 1231(a)(3). However, 8 C.F.R. § 241.13(i), further applies to non-citizens in Petitioner's situation. Due to a change in circumstances, *see* Decl. 2, including an updated executive branch assessment indicating likelihood of removal, there is now high probability Petitioner will be removed in the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2).[3] *Accord* 8 C.F.R. § 241.13(f) (allowing re-detention for changed circumstances). Thus, he was properly re-detained.

Moreover, Petitioner does not dispute that his re-detention is lawful for changed circumstances. As Petitioner conceded, after the removal period under § 1231(a)(2), following § 1231(a)(6), Petitioner may be returned to detention pending removal. *Zadvydas v. Davis,* 533 U.S. 678, 682 (2001). *See* ECF

[3] Under 8 C.F.R. § 241.13(i), the government, DHS ICE, may revoke an alien's release and return the alien to custody if the government determines a change of circumstances. *See also* 8 C.F.R. § 241.13(i)(2). Thus, the government has discretion to re-detain when the government, as here, identified changed circumstances (*e.g.*, the updated removal assessment).

1 at 11; ECF 2 at 11. Specifically, § 1231 (a)(6) broadly authorizes the executive branch of government, through its Attorney General and agencies, including DHS ICE, the discretion to detain and re-detain certain categories of aliens.

> An alien ordered removed [1] who is inadmissible ... [2] [or] removable [as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy] or [3] who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision ....

Zadvydas, 533 U.S. at 682 (quoting 8 U.S.C. § 1231(a)(6)). By its plain language, the statute does not impose any limitation on the length of an alien's detention. *See id.* Significantly, the Supreme Court in *Zadvydas* addressed § 1231(a)(6) constitutional concern with indefinite detention by clearly holding an alien could be detained "until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. This limitation is linked to the statute's "basic purpose," which is to "assur[e] the alien's presence at the moment of removal." *Id.* at 699.

Here, following *Zadvydas,* Petitioner is plainly wrong in his claim that his re-detention is unconstitutional because it is indefinite. *See* ECF 2 at 12-14. Petitioner's § 1231(a)(6) re-detention has been only about 24-days (since 6/3/2025) with a specific reason, *i.e.,* executive branch assessment indicating high probability for removal. *See* Decl. p 2. Since Petitioner has conceded removal and waived appeal, (*i.e.,* Petitioner is without jurisdiction to challenge the final order of removal), once his travel document is obtained, he will no longer be detained but removed. Also, Petitioner's speculation that he cannot be deported to Vietnam is simply false self-serving projection. *Id.* According to the executive branch of government and its implementing government agency, there is no legal bar to removal. Indeed, as can be understood from the information provided by the executive branch, the latest assessment indicates foreseeable removal (and thus travel documents are being processed for removal).[4]

Further, Petitioner falsely projects the 24-day to date period as already unreasonable and,

[4] The only basis identified by Petitioner to support his contention that his removal is not substantially likely to occur in the reasonably foreseeable future is a supposed treaty provision that he alleges precludes the removal of Vietnamese citizens who entered the United States before 1995. However, even if such a treaty provision existed at one time, such agreements are commonly modified. Indeed, in the case of Vietnam, certain treaty provisions have been superseded by the provisions in a 2020 treaty memorandum of understanding, whereby removal and repatriation of Vietnamese citizens who arrived in the United States before July 1995, such as Petition, are indeed possible. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020).

alternatively, as already indefinite. *See* ECF 2 at 12-15. The characterization of the 24-day period as unreasonable or indefinite is false. *Gomez v. Chestnut,* Slip Op, 2025 WL 1695359 (June 17, 2025, D. Nevada) (denying § 2241 non-citizen's claim that his detention beyond the 90-day removal period was unconstitutional because travel documents have not yet been secured for a third country). Moreover, while making such exaggeration and inflated rhetoric, Petitioner conceded the Supreme Court in *Zadvydas* recognized 6-months detention is a presumptively reasonable period when, as here, removal is reasonably foreseeable due to the updated request for travel documents. *See* ECF 2 at 12 (citing *Zadvydas,* 533 U.S. at 699-701.). *See also Atkinson v. DHS,* Slip Op, 2025 WL 1737017 (June 6, 2025, W.D. Wash.), adopted 2025 WL 1736596 (June 23, 2025, W.D. Wash.) (stating that, though § 2241 petitioner's detention has extended past the removal period, his continued detention remains presumptively reasonable unless and until more than 6-months have passed (citing *Zadvydas*, 533 U.S. at 701)).

Additionally, for purposes of TRO denial to maintain the status quo against irreparable injury pending a determination on the merits, Petitioner's TRO motion presents a substantially similar situation to that in *Keo,* Slip Op., 2024 WL 3970514. While *Keo* did not involve supervision revocation, the non-citizen in ICE detention filed both a petition and a TRO motion. *Id.* In *Keo,* this court-of-custody observed that "Petitioner summarily requests that he be released from custody or provided with a bond hearing, which is precisely the same ultimate relief sought in his underlying Petition" and, in denying the TRO this court-of-custody found "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits." *Id.* This court-of-custody further found that the *Keo* TRO demand, as in the instant case, "in the guise of preliminary relief[,] is a highly inappropriate result." *Id.* (citing *Senate of Cal.*, 968 F.2d at 978). Like *Keo*, the relief Petitioner demands via TRO is not 'temporary' or 'preliminary' but rather is the same ultimate relief he demands in his underlying petition. This court-of-custody should follow well established law that it is inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits. *See Univ. of Tex. v. Camenisch,* 451 U.S. 390, 395 (1981).

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2. Petitioner has not met his heavy burden to show he is likely to suffer irreparable harm without immediate injunctive relief.

This court-of-custody may not grant injunctive relief on the sweeping and speculative 'irreparable harm' claims, *see generally* ECF 2, supposed by Petitioner. *See Mathews v. Diaz*, 426 U.S. 67, 80 (1976) (recognizing it is well established that detention is a constitutionally valid aspect of the deportation process and that in the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens). *See also Fiallo v. Bell*, 430 U.S. 787, 792 (1977). *See generally, Gomez*, 2025 WL 1695359 (finding non-specific claims of irreparable harm insufficient to grant non-citizen preliminary injunctive relief under § 1231(a)(6) (citing *Sierra Forest Legacy v. Sherman*, 951 F. Supp. 2d 1100, 1112 (E.D. Cal. 2013) ("[B]road and untethered allegations of harm cannot serve as the irreparable injury required to demonstrate the need for injunctive relief.")).

Also, Petitioner's has no due process right to never-ending supervision-pending-removal.[5] From onset, the supervision period here inherently and plainly was limited to the date of foreseeable removal. In other words, the supervision duration period is conditional (and was always conditional) – and may be revoked (and was always subject to revocation) -- on operative removal which, based on the updated assessment by the executive branch, here is reasonably foreseeable and even appears immediate. *See Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), adopted, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). In *Ahmad*, which is factually like this case, the district court upheld supervision revocation for change of circumstances. The *Ahmad* revocation was upheld even though it came without notice or an opportunity to be heard. The *Ahmad* court, in denying continued supervision

[5] Petitioner's reliance on *Morrissey v. Brewer*, 408 U.S. 471, 482, (1972) and cases involving probationer and parolee rights, is flatly misplaced. The Supreme Court's decision in *Morrissey* is distinct from the immigration court context. Indeed, the Supreme Court in *Morrissey* and progeny, focused *inter alia* on the extent criminal post-conviction supervision is guided by constitutional due process. In other words, *Morrissey* involved post-conviction and post-incarceration supervision under applicable federal criminal statutes, and, by contrast, such criminal post-conviction and or post-criminal incarceration decision has no application to civil supervision in executive branch immigration court removal proceedings. *See Mathews v. Diaz*, 426 U.S. 67, 80 (1976).

Significantly, by contrast, the executive branch, through its Attorney General and DHS ICE, is in Immigration Court matters specifically empowered to revoke such civil matter supervised release "in the exercise of discretion." *See* 8 C.F.R. § 241.4. Indeed, this statute bars courts from second-guessing the exercise of such discretion. *See* 8 U.S.C. § 1252(a)(2)(B)(ii).

relief, recognized that the applicable supervision regulations only provide for an informal interview and further recognized that a change of circumstances (related to efforts to obtain travel documents) occurred. *Id.* (*citing Doe v. Smith*, 2018 WL 4696748, at *9-*10 (D. Mass. Oct. 1, 2018) (denial of informal interview upon revocation does not entitle habeas petitioner to release). In this case, as in *Ahmad,* there is no evidence that the government assured Petitioner that he had due process safeguards beyond those provided to a non-citizen whose removal was foreseeable. *Id.*

3. The balance of equities strongly weighs in favor of denying the injunction (compelled supervised release) in favor of detention pending full briefing on the merits or, at least, ordered referral to the Immigration Court for a detention (bond) hearing (*with,* if the Immigration Court determines release on bond is warranted, *additional supervision safeguards).*

As a threshold matter, Respondent submits that continued supervision under the 8 C.F.R. § 241.4 current conditions is, without doubt, at significant risk to the public. This is especially true considering Petitioner (who may have believed his country of origin would not ever receive him) is now aware that there is renewed effort for removal based on updated executive branch information.

Here, in weighing re-detention (under undisputed changed circumstances allowing revocation of supervision), the government assessed the increasing risks as progressively alarming (posing greater risk of danger and flight). In other words, Respondent submits, while at large under supervision, Petitioner is nevertheless a convicted murderer and attempted murder, with gang affiliations, who poses a great risk to the community. Based on the redoubled removal efforts of the government, Petitioner will undoubtedly experience *inter alia* increased distress, anxiety, and pressure. Indeed, against this background, Petitioner has only been at liberty (with supervision) for 47-months in the last 30-years.

At least, the factors and considerations during the *prior* supervision period are now different. Respondent submits that, going forward, Petitioner presents increased risks of dangerousness to the community and, especially, increased risks that he will take flight. As the Supreme Court and Ninth Circuit have repeatedly held, the government's interest in protecting the public and preventing deportable non-citizens from fleeing are strong and compelling. *See e.g., Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1208 (9th Cir. 2022) (government's interests in "protecting the public from dangerous criminal aliens" and "increas[ing] the chance that, if ordered removed, the aliens will be successfully removed" are "interests of the highest order that only increase with the passage of time"); *Jennings,* 138

S. Ct. at 836 ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings").

4. Issuance of an injunction compelling the liberty of Petitioner, a convicted non-citizen murderer, whose removal appears foreseeable, is not in the public interest.

To the extent *Mathews v Eldridge,* 424 U.S. 319 (1976), is relied upon by Petitioner, his reliance is misplaced.

In evaluation of Petitioner's private interest, Petitioner has now been on supervision (which is not itself an unconstrained private interest) for about 47-months. During this time, any expectation of a greater protected private liberty interest was, as a matter of law, zero. His supervised liberty was, from onset, impermanent. His supervision was not set to expire as in the criminal context. His supervision was not for a limited duration in any respect. His supervision and hence any privacy interest, to the extent it exists in this context, was automatically to expire upon execution of his pending and undisputed final order of removal. Indeed, the supervision ending event, *i.e.,* removal, established the very impermanence of any expectation for continued supervised liberty in the United States.

As to the next factor, the risk of an erroneous deprivation of [Petitioner's already limited and impermanent supervised liberty] interest through the procedures used is minimal. *Mathews,* 424 U.S. at 335. Respondent submits it is difficult to discern erroneous deprivation of privacy interests that are already so minimal and impermanent under the shadow of execution of an undisputed final removal order. The fact, as in this case, of now foreseeable execution of the undisputed final order of removal makes said minimal continued-supervision-stemming-interest even lower, especially where, as set forth, his supervision was, from onset, impermanent and any expectations stemming from the supervised release were transitory. *Arguendo*, to the extent this court-of-custody orders the matter for Immigration Court detention (bond) hearing, whatever interests in liberty that may have existed under prior supervision conditions may be significantly more encumbered to protect the community from Petitioner (a demonstrably dangerous person) and from the now-increased risk of danger and flight (with knowledge of foreseeable removal based on updated assessment and measures to obtain travel documents).

As to the remaining factor, as set forth above, the government's interest, "including the function involved and the fiscal and administrative burdens," *Mathews*, 424 U.S. at 335, is significant. As previously discussed, the government has a strong interest in effecting removal. Petitioner is a dangerous non-citizen with a pending and undisputed final order of removal now to be executed as a foreseeable near-term event.

III. CONCLUSION

For the foregoing reasons, it is respectfully requested that this court-of-custody dismiss the TRO demand. Petitioner, impermissibly seeking ultimate relief, has flatly failed his TRO burden.

Dated: June 27, 2025

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