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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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

Hereby, Respondent opposes Petitioner's second motion for a temporary restraining order ("TRO"), ECF 16.

**DISCUSSION**

First, by his second TRO motion, ECF 16, Petitioner abuses process by demanding another bite at this court-of-custody, and its time via expedited briefing and hearing schedule. *Schlup v. Delo*, 513 U.S. 298, 319 n.34 (1995). Via his second TRO motion, Petitioner (except as to third country removal) unlawfully attempts to relitigate the denial of first TRO motion claims. 28 U.S.C. § 2244(a). In other words, except as to Petitioner's claim to bar, by TRO injunction, his fantasy scenario of third country

[1] Hereby, Respondent renews its motion 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).

removal (which is his conjecture and which is not based on action by Respondents), *see infra*, Respondents move to strike and to dismiss all superfluous successive and repetitive TRO claims (previously raised (ECF 2) and already adjudicated (ECF 14)). *See* 28 U.S.C. § 2244(a). Indeed, the successive second TRO claims in ECF 16, are repeated as if this court-of-custody has not already ruled.[2] Significantly, Petitioner cites no fault in attack of this court-of-custody's prior ruling, zero error is alleged, and nothing is cited as factually or legally incorrect. *See generally* ECF 16. *Accord Schlup*, 513 U.S. at 319 (explaining a successive § 2241 application raises claims identical to those raised and rejected on the merits in a prior application, and an abusive application raises new claims that were available but were not raised in a prior application). To the contrary, in violation of 28 U.S.C. § 2244(a), he merely reiterates prior first TRO motion demands (rejected claims contained in his first TRO motion, ECF 2) for 28 U.S.C. § 2241 injunctive relief in ECF 16 (his second TRO motion).

Second, Petitioner makes no showing, and presents zero evidence, that the ends of justice warrant reconsideration of the previously rejected first TRO motion claims in his second TRO motion. *See generally* ECF 16. In accord with *Schlup,* a petitioner's right to have his claims heard under § 2241 is limited by § 2244(a) which authorizes a court to decline to hear in habeas under § 2241 a claim that was raised and adjudicated on the merits in an earlier proceeding unless hearing the claim would serve the ends of justice. Further, regarding ends of justice, Petitioner's repetitive claims (contained in his second TRO motion) have not been adjudicated in addressing the merits of the instant underlying petition. ECF 14. In fact, via its resolution of the first TRO motion claims, this court-of-custody referred the parties to the magistrate court for, to any extent issues are not resolved, merits proceedings. *See id.* While Respondents maintain this court-of-custody has already foreclosed, via ECF 14, each claim on each claim's merit, *arguendo,* Petitioner may not be barred from tangential reliance on the repetitive claims in merits briefing as ordered by this court-of-custody.

Third, in support of Respondent's motion to strike and dismiss repetitive claims, Respondent submits the successive claims are a shocking display of impudence. For example, Petitioner merely

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[2] After paragraph-by-paragraph review, the instant second TRO, ECF 16, appears to be identical to the second TRO in 25-cv-1740, ECF 23. The key difference appears to be factual, to wit: Petitioner length of time on OSUP and name change. Accordingly, Respondents herein submit a similar answering brief in response to the cut / paste repetitive, circular, motions.

declares a section within his second TRO motion, captioned "THIS MOTION FOR TEMPORARY RESTRAINING ORDER IS NOT DUPLICATIVE", and then – apparently asking this court-of-custody and Respondents to suspend disbelief, proceeds to repeat virtually every errant and rejected claim made in his prior first TRO motion.[3] ***Compare*** **ECF 2** at 2, 7-8, 10-12 (falsely claiming likelihood of success because Petitioner cannot be deported to Vietnam); 12-13 (falsely claiming U.S. treaty with Vietnam makes removal impossible, resulting in Petitioner's -- divining the future -- unconstitutionally limitless and indefinite detention); 13 (falsely claiming the supposedly applicable 90-day time period of 8 U.S.C. 1231(a)(2) applies and has been violated so re-detention is a violation of due process); 11-13 (falsely claiming likelihood of success under § 1231(a)(3)-(6) since he cannot be re-detained without finding of danger or flight risk); 11-14 (falsely claiming likelihood of success because there is no change of circumstances as to flight risk or danger); 11-14, 16-17 (falsely claiming likelihood of success because pre-deprivation hearing is required under § 1231(a)(3)-(6), and applicable regulations, including as to flight risk or danger); 13-16 (falsely claiming time on OSUP creates a protected liberty interest from removal notwithstanding changed circumstances under applicable law and regulations); 14-17 (falsely claiming this court-of-custody should find *Morrissey* and Bail Reform Act cases from the criminal detention context apply to OSUP (thereby, as with the above claims in ECF 2, demanding judicial legislation by this court-of-custody of additional constitutional due process rights)); and 17-24 (falsely claiming supposed *Mathews v Eldridge*, 424 U.S. 319 (1976), balancing dictates that that this court-of-custody take responsibility for Petitioner in perpetuity by ordering despite changed circumstances for Petitioner, who has been convicted of murder, under OSUP prior conditions), ***with*** **ECF 16** at 11-15 (falsely claiming likelihood of success because Petitioner cannot be deported to Vietnam); 12-14 (falsely claiming U.S. treaty with Vietnam makes removal impossible, resulting in Petitioner's -- divining the the future -- unconstitutionally limitless and indefinite detention); 14-16 (falsely claiming the supposedly applicable 90-day time period of 8 U.S.C. 1231(a)(2) applies and has been violated so re-detention is a

[3] In the so-called "NOT DUPLICATIVE" section, Petitioner -- in contradiction to the very point he attempts to make -- demands a rehash is warranted by this court-of-custody because, instead of denying remedy in ECF 14, this court-of-custody on the same claims may elect a re-imagined remedy. ECF 16 at 10-11. Respondents submit that if such a rehash of TRO claims is permitted, then in perpetuity rehash of TRO claims will be justified via another successive TRO motion.

violation of due process); 16-18 (falsely claiming likelihood of success under § 1231(a)(3)-(6) since he cannot be re-detained without finding of danger or flight risk); 16-18 (falsely claiming likelihood of success because there is no change of circumstances as to flight risk or danger); 14-16, 18-21 (falsely claiming likelihood of success because pre-deprivation hearing is required under § 1231(a)(3)-(6), and applicable regulations, including as to flight risk or danger); 18-21 (falsely claiming time on OSUP creates a protected liberty interest from removal notwithstanding changed circumstances under applicable law and regulations); 18-22 (falsely claiming this court-of-custody should find *Morrissey* and Bail Reform Act cases from the criminal detention context apply to OSUP (thereby, as with the above claims, demanding judicial legislation by this court-of-custody of additional constitutional due process rights)); and 14, 22-32 (falsely claiming supposed *Mathews v Eldridge*, 424 U.S. 319 (1976), balancing dictates that that this court-of-custody take responsibility for Petitioner in perpetuity by ordering despite changed circumstances for Petitioner, who has been convicted of murder, under OSUP prior conditions).

Fourth, Respondent's motion to strike and dismiss the repetitive first TRO motion claims (from the second TRO motion) is the appropriate measure to limit further manipulation of this court-of-custody. Very importantly, Respondents submit striking and dismissing the repetitive claims is, at least, fully warranted to the extent Petitioner strategically failed to raise new TRO claims (aside from his fantasy third country removal scenario) intending later by reply brief or argument (after Respondents submit an opposition brief) to offer re-imagined and re-invented layers of nuance and possible remedy in the repeated claims.

Fifth, Petitioner's fantasy of third country removal does not support a speculative injunction. Under *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), here there are no facts to support such relief. *Id.* (the Supreme Court stating, "plaintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy").

In *Winter,* the Supreme Court found a moving party's burden for injunctive relief is aptly described as "heavy." *Id.* In fact, a preliminary injunction requires "substantial proof" and a "clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). Here, Petitioner fails his heavy burden as to both requirements. Petitioner's fantasy claim of third country removal is based on supposed facts, and even those suppositions are embellished with additional fictional conjectures of due process error that

might happen, and all such guesswork is then topped-off with the projection that the intended third country may present Convention Against Torture risk that Petitioner may not be allowed to litigate. ECF 16 at 11, 25-29. These layers of fantasy, fiction, and projection topping are unsupported by the undisputed effort to repatriate him only to his country of origin (Vietnam). *See* Declaration of GallenKamp (filed herewith) at 2; *see also* ECF 11-1.

In the instant underlying matter, Respondents have been clear that due to a change in circumstances, *see* ECF 11 at 6; *see generally* ECF 14, including a pending updated travel document request, Petitioner is detained for removal to Vietnam, his country of origin, in the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2). ECF 11 at 5-6. *See also* 8 C.F.R. § 241.13(f) (allowing re-detention for changed circumstances). The reasonably foreseeable removal to his country of origin (Vietnam) stems from Petitioner, on 5/4/2021, in his sworn appearance before an Immigration Judge, stating, as is undisputed, that he declined to apply for relief from removal and requested a removal order to Vietnam. ECF 11 at 2; ECF 11-1 at 2. *See also* ECF 2 at 8-9; ECF 14 at 2-3; ECF 16 at 8, 12-13. The Immigration Judge ordered Petitioner removed to Vietnam and both parties waived appeal, thereby rendering the removal order final. *Id. See also 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). Thus, exactly as Petitioner has requested and the Immigration Court has ordered, Respondents are processing Petitioner for immediate removal to Vietnam. *See* GallenKamp Declaration at 2; *see also* ECF 11-1 at 2.

Sixth, in this case, the legislative scheme has played out flawlessly for Petitioner's benefit. In 2021, due to § 1231(a)(2) concerns with travel documents, Petitioner enjoyed release on OSUP to avoid prolonged civil detention. In 2025, the legislative scheme under § 1231(a)(3)-(6) then allowed, to avoid risk of flight and danger to the community, and to promote executive branch efficiency, re-detention for reasonably foreseeable removal as compelled under the undisputed extant final order of removal. Petitioner's re-detention is thus in full accord with the immigration legislative scheme and its regulatory purpose. *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"). *See also Jennings v. Rodriguez,* 138 S. Ct. 830, 836 (2017); *Fraihat v. ICE,* 16 F.4th 613, 647 (9th Cir. 2021) (the government has an understandable interest in detaining non-citizens to ensure attendance at immigration proceedings, improve public safety, and promote compliance with the immigration laws). In fact, as the Ninth Circuit found, the risk of a non-citizen absconding "inevitably escalates as the time for removal becomes more imminent." *Rodriguez Diaz,* 53 F.4th at 1208.

Seventh, removal to Vietnam not only is possible under the U.S. Treaty with Vietnam, but removal -- as known by the undersigned (as recent as 3/19/2025) -- is in fact occurring to Vietnam. *See e.g.* EDCA 24-cv-1579, ECF 16 (findings and recommendation to dismiss § 2241 petition as moot because Petitioner (an aggravated felon under § 1226(c)), whose country of origin is Vietnam and who is a non-citizen who arrived in the United States prior to 1995, was in fact deported to Vietnam). Accordingly, Petitioner's fantasy scenario of sneaky removal to a third country because Vietnam deportation is impossible is unsupported. In other words, Petitioner's removal to Vietnam is possible through the current travel document request, and there is no evidence in this case of stealth maneuvering for third country removal. Indeed, his claim in this case of third country removal is based only on conjecture, rumor, and innuendo; he does not provide any action that Respondents have taken to remove him to a third country. Thus, he has not met his heavy burden to show "on balance" a TRO is required nor has he met his heavy burden that he is "likely to suffer irreparable harm" (via third country removal) in the absence of preliminary injunction relief. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

Eighth, to be clear, to date, there is no effort to remove Petitioner to a third country. As understood by the undersigned, under normalized repatriation circumstances (as in this case), it is not Respondents who raise a third country removal option. It is the non-citizen, in these circumstances and facing deportation, who requests a third country option. While Respondents may routinely provide non-citizens advisements and notice of third country deportation options, Petitioner has not requested such removal. Against this background, Respondents are pleased that in accordance with Petitioner's 5/4/2021 stipulation and request for removal to Vietnam, and the resulting final order of removal, such removal is now reasonably foreseeable. The status quo, as this court-of-custody found in ECF 14, is that

changed circumstances warrant Petitioner's civil detention pending his reasonably foreseeable removal to Vietnam, his country of origin. In this light, Petitioner's demand for third country injunctive relief, as if such is part of the current foreseeable removal action of the executive branch, is absurd. *Martin v. International Olympic Committee,* 740 F.2d 670, 675 (9th Cir. 1984) (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.").

And lastly, Respondents request clarity from this court-of-custody regarding the bar or stay of removal previously issued in this case. *See* ECF 5 (minute order stating "Respondents may not remove Petitioner pending the court's issuance of a ruling on Petitioner's Motion for Temporary Restraining Order"). Since in ECF 14 this court-of-custody denied the TRO motion basis for the ECF 5 bar or stay to removal, it *appears* there is no pending bar or stay preventing removal of Petitioner to his country of origin.

Nevertheless, Respondents respectfully submit, as follows, that this court-of-custody has no authority to issue a bar or stay of removal based on the extant, non-appealable, final order of removal. Respondents thus request this court-of-custody *unequivocally* lift the bar or stay of removal.

Federal courts are "courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,377 (1994). "The burden for establishing federal subject matter jurisdiction rests with the party bringing the claim." *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1247 (11th Cir. 2005). "Once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue." *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405,410 (11th Cir. 1999).

Here, Petitioner brings this case under § 2241, which authorizes federal courts to hear "statutory and constitutional challenges to post-removal-period detention." *Zadvydas v. Davis,* 533 U.S. 678, 700-01 (2001). However, 8 U.S.C. § 1252(g) precludes a bar or stay of removal based on Petitioner's claims. Section 1252(g) provides that "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." 8 U.S.C. § 1252(g) (underscore supplied). As the Supreme Court has explained, § 1252(g) is a "discretion protecting provision" designed to prevent the

"deconstruction, fragmentation, and hence prolongation of removal proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,487 (1999). A non-citizen who seeks a stay or bar of a removal order or challenges the Attorney General's deportation authority runs headlong into § 1252(g) regardless of how the alien frames their claim because, at bottom, the action being challenged is the decision to "execute" a removal order. *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021).

In no uncertain terms, Petitioner here is challenging legality of U.S. Attorney General discretion in connection with civil detention pending reasonably foreseeable removal. Petitioner in this case is not challenging, and may not challenge in a federal district court, the "underlying legal bases" of his final order of removal. In fact, the finality of the removal order is undisputed. *Accord United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004). *See also Parra v. Perryman*, 172 F.3d 954,957 (7th Cir. 1999) (finding that § 1252(g) did not bar review of a claim related to detention where § 2241 petitioner did not ask the district court to block a decision to commence proceedings, adjudicate cases, or execute removal orders). Accordingly, this court-of-custody's order barring removal to Vietnam, to any extent it remains, must be unambiguously lifted. Petitioner here does not challenge, and may not challenge in this federal district court, the decision to execute his removal. Petitioner's collateral challenges, *e.g.*, that DHS ICE did not comply with the statutory requirements required to revoke an OSUP outlined in 8 C.F.R. § 241.4(1)(2), do not provide basis to bar or stay removal under the extant final order of removal. *Id.*

Dated: July 15, 2025

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