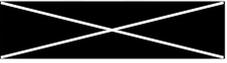


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Tou Pao Lee, A 

Petitioner,

v.

PAMELA BONDI,
ATTORNEY GENERAL;
KRISTI NOEM,
SECRETARY OF THE
DEPARTMENT OF HOMELAND
SECURITY;
RYAN SHEA,
FREEBORN COUNTY SHERIFF
TODD M. LYONS,
DIRECTOR OF ICE FOR THE
WASHINGTON, D.C.
HEADQUARTERS

Respondents

Case No. 0:25-CV-02926-PJS-SGE

**PETITIONER'S MEMORANDUM IN SUPPORT OF EMERGENCY MOTION
FOR A TEMPORARY RESTRAINING ORDER**

I. Background

Petitioner brings this emergency motion for a Temporary Restraining Order preventing his removal from the state of Minnesota in conjunction with a petition for a Writ of Habeas Corpus. Petitioner is a 43-year-old man, he was born in a refugee camp in Thailand on  His family had fled the Secret War in Laos. Petitioner was admitted to the U.S. on December 18, 1991, when he was 10 years old. On June 29 2004 Petitioner was convicted of Soliciting-Under 18yrs Old to Practice Prostitution under Minnesota Statute §609.322.1(1). On February 1, 2005, Petitioner was ordered removed

after a hearing in Immigration Court. From February 1, 2005 to June 27, 2005 Petitioner was held by ICE prior to being released on an Order of Supervision. For the intervening 20 years Petitioner has lived a peaceful life with his U.S. Citizen Spouse and six U.S. Citizen children. Petitioner was then picked up by ICE again on June 6, 2025 and detained. Petitioner remains in ICE detention at the Freeborn Adult Detention Center in Albert Lea, MN. Meaning that Petitioner has been detained for a total of One-Hundred and Ninety-Two (192) days. This is well in excess of the 6 month or 180 day detention timeframe stated in *Zadvydas v. Davis*. *See Zadvydas v. Davis* 533 U.S. 678 (2001) (Stating that a reasonable period to detain a person with a final order of removal is per se 6 months and that indefinite detention is a violation of the individuals 5th Amendment Rights).

II. Legal Standard

The Federal Courts have the authority to grant a Temporary Restraining Order when immediate and irreparable injury, loss or damage will result to the requesting party. Fed. R. Civ. P. 65(b). *See Berge v. Sch. Comm. of Gloucester*, 107 F.4th 33, 37 n.6 (1st Cir. 2024). The Court considers four factors: (1) the threat of the irreparable harm to the requesting party; (2) the balance between the potential harm to the requesting harm and the injury that granted the temporary restraining order will inflict on the opposing party; (3) likelihood that the requesting party will succeed on the merits; and (4) the public interest involved. *Phelps-Roper v. Nixon*, 509 F.3d 480, 484 (8th Cir. 2007) (citing *Dataphase Sys. Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc)). No

single factor is determinative, but instead they “must be balanced to determine whether they tilt towards or away from granting” the injunction. *Noodles Dev., LP. v. Ninth St. Partners, LLP*, 507 F. Supp. 2d 1030, 1034 (E.D. Mo. 2007).

III. Argument

A Temporary Restraining Order is appropriate here as all four of the enumerated factors weigh heavily in the favor of the Petitioner.

A) Irreparable Harm

Petitioner will suffer and continues to suffer irreparable harm every day that he continues to be in ICE detention. A showing of irreparable requires that there is no sufficient remedy at law and that it is certain and imminent such “that there is a clear and present need for equitable relief.” *Iowa Utils Fd. v. F.C.C.*, 109 F.3d 418, 425 (8th Cir. 1996) *see also* *Noodles Dev., LP.* At 1036-37. Petitioner has a Final Order of Removal and is in ICE detention and is therefore in immediate threat of removal from Minnesota as DHS may shift detainees around to accommodate for space and immediate threat of removal from the U.S. Petitioner has a pending petition in Immigration Court regarding the Final Order of Removal and a Petitioner for a Writ of Habeas Corpus pending before this Honorable Court. Removal from Minnesota, and the U.S. in general would make it impossible for Petitioner to conclude the two actions that have been started. More importantly if Petitioner is successful in Immigration Court but has already been removed from the U.S., he would not be able to re-enter as he would be rendered an inadmissible

alien. 8 U.S.C. §1182(a)(2)(A)(i). Meaning that even if Petitioner is found by the Immigration Court to not be removeable, he would have no recourse of being able to re-enter even though he should never have been removed in the first place. Additionally, Petitioner is currently being detained by ICE in violation of his Fifth Amendment Rights. *See Zadvydas v. Davis*. Any attempt to move or remove Petitioner prior to a resolution to the pending court actions would therefore create irreparable harm that can only be solved by Petitioner remaining in Minnesota while the motions and petitions are pending.

B) Injury to the Government

Were this Honorable Court to grant Petitioner's requested Temporary Restraining Order, the Defendants would suffer no injury. The Government has an interest in keeping Petitioner in Minnesota so that they can appropriately contest Petitioner's claims. Alternatively, if Defendants do not plan on moving or removing Petitioner in the near future then there is no injury accomplished by mandating that Petitioner remain in Minnesota. Even if Defendants had travel documents for Petitioner, Petitioner's claims in Immigration Court go directly to the heart of his removability. By mandating that Petitioner remain in Minnesota this Honorable Court would only be requiring that the Defendants show in Immigration Court that Petitioner is removeable despite Petitioner's contentions to the contrary. This is the bare minimum of what the law requires of Defendants before they can remove an alien from the U.S.

C) Likelihood of Success

Petitioner has two pending actions, one in front of this Honorable Court and a second in Immigration Court. Petitioner need only show that he has a “fair chance” of success on the merits. *See* *Crista Eggers v. Robert Even*, No. 22-2268 (8th Cir. 2022) quoting *Rodgers v. Bryant*, 942 F.3d 451, 455 (8th Cir. 2019). Petitioner has a “fair chance” of success in both actions for the following reasons:

1) Immigration Court

Petitioner has a Motion to Reopen pending before the Immigration Court on the basis that he is not now nor ever was removeable. Petitioner was initially found to be removable in 2005 due to what was then considered to be an Aggravated Felony—sexual assault of a minor—under 8 USC §1101(a)(43). However, in *Esquivel-Quintana v. Sessions* 581 U.S. 385 (2017) the Supreme Court stated that for a crime where the ages of the participants in a sexual encounter are at issue the age of the victim must be under 16 years old. As such the Minnesota is categorically overbroad because it criminalizes more conduct than the federal government does and therefore cannot be considered a crime involving the sexual abuse of a minor. *See generally* *Moncrieffe v. Holder*, 569 U.S. 184 (2013). As such, Petitioner is not removable as a matter of law.

2) Writ of Habeas Corpus

Petitioner has petitioned this Honorable Court for a Writ of Habeas Corpus as his detention has exceeded 6 months. Under the holding in *Zadvydas v. Davis* 533 U.S. 678 (2001) the Supreme Court held that indefinite detention of individuals with final orders of removal is unconstitutional. The Supreme Court further stated that there is a per se

reasonable period of detention that ends after 6 months. *Id.* at 680. After 6 months, if the Petitioner can show that there is not significant likelihood of removal from the U.S. in the near future, the government must present sufficient evidence to rebut that showing. *Id.* Here, Petitioner has remained on an order of supervision for 20 years, and he has nothing to show that he is a citizen or national of Laos as he was born in a refugee camp. As of right now there is no reason the believe that there has been a significant enough change in circumstances to warrant Petitioner's detention in excess of 6 months, especially after 20 years of compliance with the government's requests.

D) Public Interest

Petitioner is a 43 year old man who has been living peacefully in Minnesota with his wife, six children and extended family for over 20 years. To the extent that there is any public interest in Mr. Lee's case, he is not violent—he has not had any new offenses, excluding some moving violations, in the last 20 years—he is not a flight risk—his entire family lives Minnesota—and the requested Temporary Restraining Order only prohibits Mr. Lee's removal from Minnesota while his two actions are pending, meaning that Mr. Lee would remain in detention, segregated from the public at large.

IV. Conclusion

All of the above factors weigh in favor of granting Petitioner's requested Temporary Restraining Order. The harm caused by Petitioner's possibility of removal from Minnesota is too great and unconscionable, whereas there is little to no harm to Defendants by mandating that Petitioner remain in Minnesota while his actions in this

Honorable Court and Immigration Court are pending. Additionally, Petitioner has more than a "fair chance" of success on the merits in both his petition for a Writ of Habeas Corpus and his motions in Immigration Court. Finally, there is little to no concern of public interest as Petitioner would continue to be detained even if his requested Temporary Restraining Order is granted.

WHEREFORE, for the foregoing reasons Petitioner respectfully requests that a Temporary Restraining Order preventing his removal from the state of Minnesota be granted.

Respectfully submitted,
The Petitioner,
By his Attorney,

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Date: July 21, 2025

Date: July 21, 2025

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