IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BAO PHONG HUU NGUYEN,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondent.

Civil Action No. 3:25-CV-01913-L-BT

RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

Petitioner seeks a preliminary injunction to require his immediate release from immigration detention. *See* ECF No. 2. As explained herein, Petitioner cannot demonstrate that he is entitled to the extraordinary remedy of a preliminary injunction because he is not entitled to immediate release. The Court should deny the request for a preliminary injunction.

I. Background

Petitioner is a native and citizen of Vietnam. He was granted lawful permanent resident status on or about January 25, 1985. App. p. 3. On May 24, 2000, Petitioner was convicted of Possession with Intent to Distribute MDMA and was sentenced to four-years imprisonment. App. p. 8. On July 13, 2001, Petitioner was issued a Notice to Appear. App. p. 10. On September 10, 2001, Petitioner was ordered removed by an immigration judge. App. p. 14. Thereafter, on December 28, 2001, Petitioner was placed on an Order

of Supervision because Enforcement and Removal Operations (ERO) was unable to remove Petitioner at that time. App. p. 3, ¶ 7. On July 24, 2025, Petitioner was taken into custody because ERO now believes they can remove Petitioner to Vietnam. *Id.* at ¶ 8, 9.

On July 24, 2025, Petitioner filed a combined petition for a habeas corpus and request for preliminary injunction. ECF Nos. 1, 2. In connection with his habeas corpus claim seeking release, Petitioner alleges that there is no evidence of changed circumstance specific to him that makes his removal reasonably foreseeable and therefore his detention is impermissible. ECF No. 1, ¶ 67. He additionally asserts that ICE did not follow its own regulations when re-detaining him and that he is therefore entitled to immediate release from custody. ECF No. 1, ¶68.

In his motion for a preliminary injunction, Petitioner seeks relief in connection with his habeas claims, by arguing that he is likely to succeed in establishing that his re-detention is in violation of ICE regulations and Supreme Court precedence. *See* ECF No. 2 at 6-8. Petitioner's motion for a preliminary injunction and habeas petition are both improper and should be denied.

II. Legal Standard

A preliminary injunction is an "extraordinary and drastic remedy." *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is "not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). "The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the

merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest." *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has "clearly" carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

III. Argument and Authorities

Petitioner is not entitled to a preliminary injunction.

Petitioner's preliminary injunction motion is largely premised on his habeas claim that he cannot be re-detained or removed to Vietnam. *See* ECF No. 2 at 4-5. But Petitioner does not—can cannot—dispute that ICE has authority to re-detain noncitizens such as Petitioner when there are changed circumstances such that there is a significant likelihood that the noncitizen may be removed in the reasonable future. As explained below, circumstances have changed and there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonable future. Petitioner's re-detention is proper, and all procedural requirements were followed, and thus his detention is not unconstitutional. Petitioner, therefore, cannot meet the requirements to obtain a preliminary injunction.

1. No likelihood of success on the merits is shown.

a. Petitioner is lawfully re-detained.

DHS ICE has authority to re-detain Petitioner. The authority of ICE to detain noncitizens under federal law derives from 8 U.S.C. § 1231, which directs the Attorney General of the United States to affect the removal of any noncitizen from this country

within 90 days of any order of removal. 8 U.S.C. § 1231(a) (1). However, once that time passes and after "removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute" and the noncitizen must be released. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

Upon release, a noncitizen subject to a final order of removal must comply with certain conditions of release. 8 U.S.C. § 1231(a)(3), (6). The revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. Specifically, a noncitizen's release may be revoked "if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

Petitioner requests this Court enjoin ICE from re-detaining him claiming that there has been no change in circumstances and no individual assessment specific to Petitioner that would make his removal reasonably foreseeable. Petitioner is incorrect on both points. First, Petitioner has a final order of removal, and he was subsequently released pending removal on an order of supervision. *See* 8 U.S.C. § 1231(a)(3). However, due to a change in circumstances, including an updated executive branch assessment indicating likelihood of removal as well as requested travel documents for Petitioner, there is now a high probability Petitioner will be removed in the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2).[1] *Accord* 8 C.F.R. § 241.13(f) (allowing re-detention for changed

[1] 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).

circumstances). The change in circumstances here is that while in past, as Petitioner noted, Vietnam would not accept pre-1995 arrivals, it has recently changed its stance and began to accept such persons. *See generally* App. p. 4, ¶ 12. Approximately 20 pre-1995 Vietnam noncitizens were recently returned to Vietnam under this new change. *Id.* Thus, Petitioner was properly re-detained and his detention is not unconstitutional.

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. *See* ECF 3, at 6. 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.

Petitioner's § 1231(a)(6) re-detention has been less than sixty-days (since July 24, 2025) with a specific reason, *i.e.*, executive branch assessment indicating high probability for removal including a recent flight to Vietnam from the United States removing other pre-1995 Vietnamese citizens. App. pp. 4, ¶ ¶ 10, 12. Since 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. *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).[2] Travel documents are being gathered for Petitioner and will be submitted soon. App. p. 3, ¶ 11. Approximately 20 Vietnamese individuals were removed to Vietnam on July 15, 2025. App. p. 4, ¶ 12. These removals included pre-1995 individuals, the same as Petitioner. App. p. 4, ¶ 12. Removals to Vietnam are occurring and there is no impediment to removing Petitioner. App. p. 4, ¶ 16. It is clear there are sufficient changed circumstances that permit ICE to determine there is a significant likelihood of Petitioner's removal in the near future. Therefore, Petitioner is lawfully re-detained.

b. Respondent complied with procedural requirements.

Petitioner's claims that ICE did not follow its own regulations also fails. The revocation of Petitioner's supervised release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. Specifically, a noncitizen's release may be revoked "if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Upon such a determination: [T]he alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody

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[2] 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 Petitioner, are indeed possible. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020).

to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. § 241.13(i)(3). Respondents complied with this procedural requirement. App. p. 3, ¶ 9. Petitioner was notified of the reason for the revocation of his release (namely, a significant likelihood removal could be effectuated due to changed circumstances between the United States and the Socialist Republic of Vietnam) and was given an informal interview. *Id.* Petitioner was not entitled to additional process under the regulations.

Petitioner was undeniably put on notice that Respondents contended they could secure Petitioner's removal to Vietnam, which allowed Petitioner to seek relief in this Court. There is now a "significant likelihood" that Petitioner can be removed due to a change of circumstances between the United States and Vietnam, such that Vietnam is now issuing travel papers and accepting its citizens who left before 1995. App. p. 4. ¶ 16. Whatever removal obstacles may have existed for other Vietnamese nationals, the record shows progress is being made on *this* Petitioner's removal, as travel documents are being compiled and a request will soon be sent.

Petitioner asserts that when ICE fails to provide the interview and notice required by § 241.13(i), "multiple federal courts" have determined the decision to re-detain is invalid and release is the proper remedy. ECF. No. 2 at 5. The cases cited by Petitioner, however, do not actually support this claim. *See* ECF. No. 2 at 5 n.6. Instead, in each of the cases Petitioner cites, the courts found that the informal-interview requirement had not been satisfied, but then also went on to consider whether there in fact were changed circumstances showing a significant likelihood of removal that would justify each alien's re-detention. *See Phan v. Beccerra*, No. 2:25-CV-1757, 2025 WL 1993735, at *4–*5 (E.D.

Cal. July 26, 2025); *Nguyen v. Hyde*, --- F. Supp. 3d ----, 2025 WL 1725791, at *3–*4 (D. Mass. June 10, 2025); *Hoac v. Becerra*, No. 25-CV-11471, 2025 WL 1993771, at *4–*5 (E.D. Cal. July 16, 2025) (all cited by Petitioner in footnote 6 ECF No. 2.).

In contrast to the cases cited by Petitioner, Respondent has shown why it is highly likely that Petitioner's removal will occur soon, and Respondent is in the process of requesting a travel document. App. pp. 3-4, ¶¶ 10-16. Petitioner is subject to a final order of removal and cannot challenge that order here; a travel document is being requested; and other pre-1995 Vietnamese citizens have been removed recently. All procedural requirements were followed when Petitioner's prior release was revoked.

2. The remaining preliminary-injunction factors do not favor relief.

With respect to the remaining equitable factors, Petitioner has not met his burden of establishing he is entitled to relief. This court 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).

Moreover, Petitioner has no due process right to never-ending supervision-pending-removal. 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).

Finally, with respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is properly the subject of a final order or removal and the government is entitled to detain aliens in the post-removal period to bring about removal, and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws and the removal of aliens who are unlawfully present in the United States. Under these circumstances, equity does not support Petitioner's claims for relief from this Court.

IV. Conclusion

Petitioner's motion for preliminary injunction should be denied.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On August 8, 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).

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