District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHONG THANH NGUYEN, Petitioner, v. BRUCE SCOTT[1], *et al.*, Respondents.[2]	Case No. 2:25-cv-01398-TMC-SKV FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner Phong Thanh Nguyen, a Vietnamese citizen who is subject to a final removal order, has been lawfully detained by U.S. Immigration and Customs Enforcement ("ICE") in order to facilitate his removal to Vietnam. Seeking to forestall his possible removal to a third country, Nguyen has sought a temporary restraining order ("TRO") barring such removal until ICE affords him further process. On July 25, the Court issued an *ex parte* TRO preventing Nguyen's removal to a third country. Dkt. 8. However, the Court did not order Respondents to

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents' substitute Seattle Field Office Director Cammilla Wamsley for Drew Bostock.

[2] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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release the Nguyen from custody, nor did it enjoin Respondents from executing his removal order and removing him to Vietnam. Thus, because neither Nguyen's Complaint nor his motion seek any relief in regard to his removability to Vietnam, the only remaining issue appears to whether ICE has the authority to hold Nguyen in custody while in the process of securing his removal to Vietnam. The Court should refuse to grant Nguyen's motion.

Nguyen has not demonstrated that the law and facts clearly favor the grant of emergency mandatory injunctive relief here and the balance of equities and public interest tilt against granting a TRO. Indeed, the mandatory injunction sought by Nguyen would inappropriately have this Court, on a time-compressed basis, grant him the ultimate relief that he seeks in his habeas petition without the requisite showing of facts that clearly favor his position. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits").

Accordingly, Respondents respectfully request that the Court deny Nguyen's motion. This Opposition is supported by the Declaration of Jamie Burns ("Burns Decl.").

II. FACTUAL BACKGROUND

Petitioner Phong Tanh Nguyen is a native and citizen of Vietnam who entered the United States as a refugee at Seattle, Washington on July 31, 1978. Burns Decl. ¶ 3. Removal proceedings against Nguyen were initiated on February 3, 2000, due to his 1999 conviction for Assault in the Second Degree, for which he was sentenced to a term of imprisonment of 13 months. *Id.* ¶¶ 4-5. On October 4, 2000, an Immigration Judge ordered Nguyen removed from the United States. Nguyen waived appeal of that decision. *Id.* ¶ 6.

On September 18, 2001, this Court granted a Petition for Writ of Habeas Corpus filed by Nguyen and ordered his release pursuant to *Zadvyas v. Davis*, 533 U.S. 678 (2001). *Nguyen v.*

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INS, et al., Case No. C01-076-P (WDWA), at Dkt. 15. Nguyen was released from ICE custody on an Order of Supervision ("OSUP"). The OSUP permitted Nguyen to be released subject to certain conditions pending removal from the United States. *Id.* ¶ 7.

On December 13, 2002, Nguyen was convicted of Unlawful Possession of a Firearm in the Second Degree in violation of RCW § 9.41.040(1)(b)(2)(b), and sentenced to 12 months. *Id.* ¶ 8. Less than a year later, in or about October 2003, ICE revoked his OSUP based on violations of the conditions of his release and took him into custody. *Id.* ¶ 9. The following January, ICE again released Nguyen on an OSUP. *Id.* ¶ 10.

In the intervening years since Nguyen's last release from custody, ICE has undertaken a number of negotiations with the Government of Vietnam to establish a process for regularized removals of final order Vietnamese citizens who entered the U.S. on or prior to July 12, 1995. *Id.* ¶ 11.

On June 18, 2025, ICE's Middle East and Eastern Africa Unit, which covers cases involving removals to Vietnam, informed ICE's Seattle Office of Enforcement and Removal Operations ("ERO") that there is currently a significant likelihood for removal in the reasonably foreseeable future ("SLRRF") as to all Vietnamese citizens, regardless of date of entry; that the Government of Vietnam has been issuing travel documents to such aliens in less than 30 days; and that a charter flight for removals to Vietnam would be scheduled soon. *Id.* ¶¶ 12-13. Jamie Burns, the Acting Assistant Field Office Director at the ERO office in Tacoma, Washington, reports that she has "observed the government of Vietnam issue travel documents to Vietnamese nationals who entered the United States before July 12, 1995." *Id.* ¶ 14. ICE anticipates that a travel document for Nguyen will be issued and he will be removed to Vietnam shortly thereafter. *Id.* ¶ 17.

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On July 16, 2025, Nguyen reported to Seattle ERO pursuant to the reporting requirements of his OSUP. Nguyen was taken into custody for processing, during which time he was notified in writing that his OSUP was revoked, and an informal interview was conducted. Nguyen was then transferred to the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. *Id.* ¶ 15; Ex. A.

As stated in the OSUP revocation letter, issued July 16, 2025, Nguyen's OSUP was revoked because ICE has determined that he can be removed on the outstanding order of removal against him and his case is currently under review by the Government of Vietnam for issuance of travel documents. *Id.* ¶ 16; Ex. A (Notice of Revocation of Release)

Nguyen filed the Petition in this case late in the evening on Thursday, July 24, 2025, along with a motion for TRO. As set forth in his Memorandum of Law in Support of a TRO, Nguyen asked the Court to (1) order his immediate release; and (2) enjoin Respondents from removing him to a third country. Dkt. 2-1, at page 8 (Introduction). The next afternoon, the Court issued a TRO ordering "that Respondents and all their officers, agents, servants, employees, attorneys, and persons acting on their behalf in concert or in participation with them are immediately enjoined from removing or deporting Petitioner Phong Thanh Nguyen from this country or jurisdiction to any third country in the world absent prior approval from this Court." Dkt. 8, at page 6. The Court further ordered that "[n]othing in this order may be construed as preventing the Government from executing Petitioner's removal order and removing him to Vietnam," and directed Respondents to respond to the otion for TRO. *Id.*

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,

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240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing,* carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). For mandatory preliminary relief to be granted, Nguyen "must establish that the law and facts *clearly favor* [his] position." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

And, "[w]here 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).

"A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed on the merits, (2) [he] 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." *Id.* (internal quotation omitted). Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the

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status quo pending a determination of the action on the merits.'" *Id.*, (internal quotation omitted). "A mandatory injunction orders a responsible party to take action." *Id.*, at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* (internal quotation omitted). "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* (internal quotation omitted). Where a plaintiff seeks mandatory injunctive relief, "courts should be extremely cautious." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). Thus, in a mandatory injunction request, the moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia,* 786 F.3d at 740 (emphasis original).

Here, in addition to asking the Court to preserve the status quo by prohibiting his release to a third country, Nguyen seeks mandatory injunctive relief in the form of an order requiring his immediate release.

IV. ARGUMENT

The Court should deny Nguyen's request for a TRO as he has failed to clearly establish a likelihood of success on the merits or irreparable harm. Additionally, Nguyen has not established that public interest weighs decidedly in his favor.

A. Nguyen does not satisfy the requirements for preliminary relief.

1. *Nguyen is unlikely to succeed on the merits.*

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a

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habeas petition, Nguyen must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241. Nguyen claims both that ICE's revocation of his OSUP is unlawful and that his detention is indefinite and violates due process.[3] These claims lack merit.

a. Nguyen's is not likely to succeed on the merits of his claim that his re-detention is unlawful.

Nguyen's contention that he is suffering irreparable injury as a consequence of his re-detention is dependent on establishing that his re-detention was unlawful. That argument in turn depends on his contention that "there is no lawful justification for Petitioner's re-detention and continued detention." Dkt. 2-1, p. 21, *ll.* 7-8. To support this contention, Nguyen argues that there is no significant likelihood that he can be removed to Vietnam in the reasonably foreseeable future and that he is being detained in violation of Respondents' own procedural requirements. Neither argument has merit.

i. Respondents have shown that there is a significant likelihood of removal in the reasonably foreseeable future.

In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus,

[3] Nguyen also raises a claim pertaining to removal to a third country. Because ICE is only seeking to remove Nguyen to Vietnam at this time, Respondents do not address this issue here. If ICE is unable to remove a noncitizen to the country designated for removal during removal proceedings, 8 U.S.C. 1231(b)(2)(C)-(E) gives ICE authority to remove an alien to a different country other than the one designated in removal proceedings. In 2019, this Court held that in these circumstances due process requires ICE to provide sufficient notice of the newly designated country of removal, as well as a reasonable opportunity to raise and pursue a claim for withholding of removal. *Aden v. Nielsen, et al.*, WDWA Case No. C18-1441-RSL, at Dkt. 16. Pursuant to the holding in *Aden*, even if ICE is unable to obtain a travel document from Vietnam, it would not pursue removal to a third country for Nguyen without first providing notice and an opportunity to pursue a protection relief claim.

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"once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.*, at 699.

The *Zadvydas* Court recognized that as the length of post-order detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*, at 701 (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). However, the Supreme Court determined that it is "presumptively reasonable" for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court implicitly recognized that six months is the earliest point at which a noncitizen's detention could raise constitutional issues. *Id.* Moreover, as the Supreme Court has noted, the six-month presumption "does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

The burden is on the Nguyen to show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (*citing Zadvydas*). If a petitioner meets his evidentiary burden, the government must then introduce evidence to refute the petitioner's assertion. *Id.*

Following an obvious strategy, Nguyen attempts to shift the burden to Respondents by commencing his argument not with evidence, but with a conclusion, *i.e.*, that "there is no evidence that the Vietnam is likely to issue a travel document." *Id.* at p. 14, *ll.* 16-17. He then seeks to force Respondents to rebut this conclusory statement within 48 hours (much of which

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was over a weekend), apparently expecting Respondents to produce the modicum of evidence considered in cases such as *Nguyen v. Hyde,* 2025 WL 1725791, at *3 (D. Mass. June 20, 2025), within that highly truncated time period.[4]

In support of their burden, Respondents submit the Declaration of Jamie Burns, and assert:

> 12. On June 18, 2025, ERO Seattle reached out to ERO Headquarters Removal and International Operations ("RIO") to inquire if there is a significant likelihood that Petitioner could be removed in the reasonably foreseeable future.
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> 13. On the same day, the Middle East and Eastern Africa Unit, which covers cases involving removals to Vietnam, advised that there is currently a significant likelihood for removal in the reasonably foreseeable future ("SLRRF") as to all Vietnamese citizens, regardless of date of entry; that the Government of Vietnam has been issuing travel documents to such aliens in less than 30 days; and that a charter flight for removals to Vietnam would be scheduled soon.
>
> 14. Based on my recent experience, I have observed the government of Vietnam issue travel documents to Vietnamese nationals who entered the United States before July 12, 1995.

Further, as set forth in the Burns declaration, "ICE anticipates that a travel document will be issued and Petitioner will be removed to Vietnam shortly thereafter. *Id.* at ¶ 17.

For purposes of responding to Nguyen's late-night application for a TRO within the time allotted, that should be sufficient. Respondents are as much entitled to equitable treatment as is Nguyen and there is a significant governmental interest in having Nguyen in custody in order to secure his removal when his travel document is issued.

If the Court is inclined to require a greater modicum of evidence from Respondents of the likelihood of Petitioner's removal to Vietnam within 30 days, Respondents request a reasonable opportunity to gather and produce that evidence before the Court makes a determination on Nguyen's request for release. Notably, in none of the cases cited by Nguyen did any District

[4] The U.S. Attorney's Office was informed of the filing by email after 10:00 p.m. on Thursday, July 24.

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Judge require the Government to produce its evidence in response to a TRO or on the highly truncated schedule that Nguyen seeks to impose on Respondents here.

Here, Nguyen moved beyond the presumptively-reasonable time period many years prior to the revocation of his OSUP, but this does not make his detention indefinite. To the contrary, Vietnam is now issuing travel documents in less than 30 days to Vietnamese nationals, such as Nguyen, who entered the United States before July 12, 1995. ICE anticipates Vietnam will issue a travel document for Nguyen and that he will be removed to Vietnam shortly thereafter. Burns Decl. ¶¶ 13-14, 17.

Accordingly, Nguyen's detention has not become "indefinite," and this Court should not order that he be released.

ii. Nguyen's re-detention did not violate ICE's regulations.

The Petition's argument that in re-detaining Nguyen the Respondents violated their own procedural requirement depends upon a fundamental misreading of the relevant regulations. The revocation of Nguyen's OSUP was effectuated under 8 C.F.R. § 241.13(i)(2), which provides:

> (2) Revocation for removal. The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. *Thereafter*, if the alien is not released from custody *following the informal interview provided for in paragraph (h)(3) of this section*, the provisions of § 241.4 shall govern the alien's continued detention pending removal (emphasis added).

Nguyen was given the informal interview called for in this regulation and he was notified of the reasons for his release. Declaration of Burns, ¶ 15. Nguyen's unevidenced contention to the contrary is simply incorrect.

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Nguyen implies that he should have been *simultaneously* assessed for a determination as to whether to recommend further detention or release, pursuant to 8 C.F.R. § 241.4(e), considering the factors set forth in 8 C.F.R. § 241.4(f). However, Nguyen's argument depends on entirely overlooking the word "thereafter" in the regulation. The regulations states that if an alien is not released as a result of his informal interview, "thereafter . . . the provisions of § 241.4 shall govern the alien's continued detention pending removal." The regulation does not state that the assessment under § 241.4 must occur "simultaneously," or "immediately thereafter." Nguyen's contrary reading of the regulation to require an assessment simultaneously with the informal interview is non-sensical. This reading of the regulation would have Respondents first make a determination not to release in an informal interview and then immediately reconsider whether to release again but this time using the 8 C.F.R. § 241.4(f) factors. If the regulations intended Respondents to consider the 8 C.F.R. § 241.4(f) factors at the time of revoking the OSUP and making a decision not to release an alien, it would have specifically required that those factors should be considered during the informal interview. Nguyen's reading of the regulations should be rejected. Respondents correctly followed the applicable procedural requirements.

2. *Nguyen has not shown irreparable harm.*

Nguyen has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). "The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on a [preliminary injunction]." *Juarez v. Asher*, 556 F. Supp.3d 1181,

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1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674 (9th Cir. 1988)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

The only immediate irreparable injury asserted in Nguyen's Petition and TRO Motion is the possibility of removal to a third country. As the Burns Declaration makes clear, however, ICE does not seek removal to any country other than Vietnam at this time. And, even if Vietnam ultimately refuses Respondents' request with respect to Nguyen, ICE cannot pursue a third country removal without first providing notice and an opportunity to claim fear, so there is no risk of irreparable harm with respect to a third country removal. *See* n. 3, *supra*.

Nguyen asserts that his detention constitutes irreparable injury. Dkt. No. 2-1, Motion, page 22. But this irreparable harm argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, additional time in immigration detention pending removal does not constitute immediate irreparable injury. *See Resendiz v. Holder*, 12-cv-4850, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012) ("loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations").

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Accordingly, Nguyen has not made a clear showing that he will be subject to immediate irreparable injury without the requested mandatory injunctive relief.

D. The balance of the equities and public interests favor the Government.

It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders). This public interest outweighs Nguyen's private interest here.

Accordingly, this Court should deny his motion.

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CONCLUSION

For all of the foregoing reasons, Nguyen has not satisfied his high burden of establishing entitlement to mandatory injunctive relief, and his motion should be denied.

DATED this 26 day of July, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3766 words, in compliance with the Local Civil Rules.