

Hon. Tiffany M. Cartwright

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

PHONG THANH NGUYEN,

Petitioner,

v.

BRUCE SCOTT¹, *et al.*,

Respondents.

Case No. 2:25-cv-01398-TMC-SKV

FEDERAL RESPONDENTS’
OPPOSITION TO PETITIONER’S
MOTION FOR A PRELIMINARY
INJUNCTION

(Hearing Scheduled on August 14, 2025)

I. INTRODUCTION

Petitioner Phong Thanh Nguyen, a Vietnamese citizen who is unlawfully present in the United States and is subject to a final removal order, had been lawfully detained by U.S. Immigration and Customs Enforcement (“ICE”) in order to facilitate his removal to Vietnam. Seeking to obtain a release from custody and to preclude his possible removal to a third country, Petitioner sought a temporary restraining order (“TRO”) and now requests that the Court enter a preliminary injunction that will both compel ICE to release him from custody and constrain ICE’s authority to remove him to a third country. On July 25, the Court issued an *ex parte* TRO

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

1 preventing Petitioner's removal to a country other than Vietnam. Dkt. 8. On July 29, during a
2 hearing on Petitioner's application, the Court ordered that its TRO would remain in place until
3 Petitioner's motion for a preliminary injunction could be heard. Dkt. 20. Petitioner's request for
4 an order directing ICE to release him from custody was denied. Dkt. 22.

5 Whether analyzed under the standards applicable to prohibitory preliminary injunctions
6 or mandatory ones, Petitioner has not demonstrated that he is entitled to any relief. ICE's legal
7 authority to detain Petitioner pursuant to a removal order is unquestioned, as is its authority to
8 remove Petitioner to Vietnam. Because of changed circumstances, Petitioner's current detention
9 is not indefinite because Petitioner is unable to carry his burden under *Zadvydas v. Davis*,
10 533 U.S. 678 (2001), of showing that there is no significant likelihood that ICE will be unable to
11 remove him to Vietnam in the reasonably foreseeable future. Indeed, ICE's recent success in
12 removing pre-1995 U.S. entrants to Vietnam shows that there is indeed such a likelihood.

13 Petitioner also seeks to enjoin ICE from removing him to a third country. Not only is it
14 unnecessary for the Court to reach this issue now because Respondents have no plans to remove
15 Petitioner to a third country at this time and will not consider doing so unless and until Vietnam
16 refuses to issue a travel document, but also the Court may not issue the injunction sought by
17 Petitioner here because he is a member of the plaintiff class in *D.V.D. v. Dep't of Homeland Sec.*,
18 Civ. A. No. 25-10676 (D. Mass.). The plaintiff class in *D.V.D.* sought and received an injunction
19 barring ICE from removing members of the class to third countries. That injunction was stayed
20 by two orders of the Supreme Court. Petitioner cannot end-run the Supreme Court's stay of an
21 injunction barring his removal to a third country by seeking the same relief in a different court.
22 Thus, Petitioner's request for a preliminary injunction barring his removal to a third country
23 should also be denied.

1 **II. FACTUAL BACKGROUND**

2 **A. Petitioner’s Immigration History**

3 Petitioner Phong Tanh Nguyen is a native and citizen of Vietnam who, according to his
4 Petition, entered the United States with his parents as a refugee on July 25, 1975. Dkt. 1 ¶ 1. He
5 obtained permanent resident status along with his family in 1978. *Id.*

6 Petitioner was convicted in King County Superior Court in December 1999, of Assault in
7 the Second Degree in violation of RCW § 9A.040(1)(b)(2)(b), for which he was sentenced to
8 13 months. *Id.* at ¶ 22; Dkt. 14 ¶ 4. On October 4, 2000, an Immigration Judge ordered
9 Petitioner removed from the United States. *See* First Declaration of Jamie Burns filed on
10 July 26, 2026, at Dkt. 14 ¶¶ 5-6. Petitioner waived appeal of that decision. *Id.* ¶ 6.

11 On September 18, 2001, this Court granted a Petition for Writ of Habeas Corpus filed by
12 Petitioner and ordered his release pursuant to *Zadvydas. Nguyen v. INS, et al.*, Case No. C01-
13 076-P (WDWA), at Dkt. 15. Petitioner was released from ICE custody on an Order of
14 Supervision (“OSUP”). The OSUP permitted Petitioner to be released subject to certain
15 conditions pending removal from the United States. Dkt. 14 ¶ 7.

16 On December 13, 2002, while on supervised release, Petitioner was again convicted of a
17 felony – this time, Unlawful Possession of a Firearm in the Second Degree in violation of
18 RCW § 9A.040(1)(b)(2)(b) for which he received a sentence of 12 months. *Id.* ¶ 8. Based on
19 this conviction, ICE revoked his OSUP based on violations of the conditions of his release and
20 again took him into custody. *Id.* ¶ 9. However, in January 2004, ICE again released Petitioner
21 on an OSUP. *Id.* ¶ 10.

1 **B. Petitioner’s Current Period of Detention**

2 In the intervening years since Petitioner’s last release from custody, ICE has undertaken a
3 number of negotiations with the Government of Vietnam to establish a process for regularized
4 removals of final order Vietnamese citizens who entered the United States on or prior to July 12,
5 1995. *Id.* ¶ 11.

6 On June 18, 2025, ICE’s Middle East and Eastern Africa Unit, which covers cases
7 involving removals to Vietnam, informed ICE’s Seattle Office of Enforcement and Removal
8 Operations (“ERO”) that there is currently a significant likelihood for removal in the reasonably
9 foreseeable future (“SLRRF”) as to all Vietnamese citizens, regardless of date of entry; that the
10 Government of Vietnam has been issuing travel documents to such aliens in less than 30 days;
11 and that a charter flight for removals to Vietnam would be scheduled soon. *Id.* ¶¶ 12-13. This
12 information is reinforced by the declaration of Jessie D. Gonzales, the Detention and Deportation
13 Officer for the Removal Management Division (RMD) East, Removal and International
14 Operations Unit (RIO), who reports that the Government of Vietnam has “agreed to increase
15 cooperation with the United States and issue travel documents in less than 30 days.” Dkt. 18-1
16 ¶ 6 (submitted July 29, 2025). As reported in the Gonzales Declaration, in FY25, “[i]n 225
17 cases, ICE obtained the necessary travel documents from the Government of Vietnam. Of those
18 225 cases, 154 entered the United States before July 12, 1995.” *Id.* ¶ 8.

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

1 As stated in the OSUP revocation letter, issued July 16, 2025, Petitioner's OSUP was
2 revoked because ICE has determined that he can be removed on the outstanding order of removal
3 against him. *Id.* ¶ 16; Dkt. 13-1. As clarified by counsel during the July 29 TRO hearing, the
4 letter's statement that Petitioner's case was "currently under review by the Government of
5 Vietnam for issuance of travel documents" was incorrect. *Id.* ¶ 16; Dkt. 13-1. On August 7, a
6 formal request for a travel document was sent to ICE's attaché in Vietnam for presentation to the
7 Government of Vietnam. Second Declaration of Jamie Burns, submitted herewith, at ¶ 3.

8 **C. *D.V.D. v. Dep't of Homeland Security***

9 In March 2025, three plaintiffs instituted a putative class action suit challenging their
10 third country removals in the District of Massachusetts. *D.V.D. v. DHS*, No. 25-cv-10676
11 (D. Mass.). On March 28, 2025, that court entered a TRO enjoining DHS and others from
12 "[r]emoving any individual subject to a final order of removal from the United States to a third
13 country, *i.e.*, a country other than the country designated for removal in immigration
14 proceedings" unless certain conditions were met. *D.V.D. v. U.S. Dep't of Homeland Sec.*,
15 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). On April 18, 2025, the court in *D.V.D.* issued
16 an order granting the plaintiffs' motion for class certification and motion for preliminary
17 injunction. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 394 (D. Mass. 2025).
18 A class was certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure without a
19 provision for an opt out. *See id.* at 386.² The Preliminary Injunction was national in effect and
20 established certain procedures that DHS was required to follow before removing an alien with a
21 final order of removal to a third country. Specifically, the class in *D.V.D.* is defined as:

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23 ² *See Crawford v. Honig*, 37 F.3d 485, 487 (9th Cir. 1994), *as amended on denial of reh'g* (Jan. 6, 1995) ("[A] class
24 action for injunctive relief certified under Fed.R.Civ.P. 23(b)(2) . . . does not require notice or permit members to
opt out.").

1 All individuals who have a final removal order issued in proceedings under
2 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
3 proceedings) who DHS has deported or will deport on or after February 18, 2025,
4 to a country (a) not previously designated as the country or alternative country of
5 removal, and (b) not identified in writing in the prior proceedings as a country to
6 which the individual would be removed.

7 *Id.* at 378.

8 On May 21, 2025, the *D.V.D.* court issued a Memorandum on Preliminary Injunction
9 offering the following summary and clarification of its Preliminary Injunction:
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11 All removals to third countries, *i.e.*, removal to a country other than the country or
12 countries designated during immigration proceedings as the country of removal
13 on the non-citizen’s order of removal, see 8 U.S.C. § 1231(b)(1)(C), must be
14 preceded by written notice to both the non-citizen and the non-citizen’s counsel in
15 a language the non-citizen can understand. Dkt. 64 at 46– 47. Following notice,
16 the individual must be given a meaningful opportunity, and a minimum of ten
17 days, to raise a fear-based claim for CAT protection prior to removal. *See id.* If
18 the non-citizen demonstrates “reasonable fear” of removal to the third country,
19 Defendants must move to reopen the non-citizen’s immigration proceedings. *Id.*
20 If the non-citizen is not found to have demonstrated a “reasonable fear” of
21 removal to the third country, Defendants must provide a meaningful opportunity,
22 and a minimum of fifteen days, for the non-citizen to seek reopening of their
23 immigration proceedings. *Id.*

24 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). The
D.V.D. court indicated that the Order applied “to the Defendants, including the Department of
Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person
acting in concert, and any person with notice of the Preliminary Injunction.” *Id.*

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts’
preliminary injunction pending appeal in the First Circuit Court of Appeals. *Dep’t of Homeland
Sec. v. D.V.D.*, ___ U.S. ___, 145 S. Ct. 2153 (2025). That same day, the District Court ordered
that, notwithstanding the Supreme Court’s order, its remedial order granting relief to eight
individual class members DHS sought to remove to South Sudan remained in effect. Order,

1 *D.V.D.* (Dkt. 176). Defendants moved to clarify the Supreme Court’s Order and, on July 3,
2 2025, the Supreme Court granted the motion, allowing the eight individual aliens to be removed
3 to South Sudan. *Dep’t of Homeland Sec. v. D. V. D.*, ___ U.S. ___, 145 S. Ct. 2627, 2629
4 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court’s
5 stay. *See id.*

6 II. LEGAL STANDARDS

7 “It frequently is observed that a preliminary injunction is an extraordinary and drastic
8 remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden
9 of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal
10 quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff
11 seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is
12 likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities
13 tips in his favor, and (4) an injunction is in the public interest. *See Winter*, 555 U.S. at 20 (“*Winter*
14 factors”).

15 “A preliminary injunction can take two forms.” *Marlyn Nutraceuticals, Inc. v. Mucos*
16 *Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). “A prohibitory injunction prohibits a
17 party from acting and ‘preserves the status quo pending a determination of the action on the
18 merits.’” *Id.* (internal quotation omitted). “A mandatory injunction orders a responsible party to
19 take action.” *Id.*, at 879 (internal quotation omitted). “A mandatory injunction goes well beyond
20 simply maintaining the status quo pendente lite and is particularly disfavored.” *Id.* (internal
21 quotation omitted).

22 “In general, mandatory injunctions are not granted unless extreme or very serious damage
23 will result and are not issued in doubtful cases.” *Id.* (internal quotation omitted). Where a plaintiff
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1 seeks mandatory injunctive relief, “courts should be extremely cautious.” *Stanley v. Univ. of S.*
2 *California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The burden on a party
3 seeking a mandatory injunction is “doubly demanding.” *Garcia v. Google, Inc.*, 786 F.3d 733,
4 740 (9th Cir. 2015). He “must establish that the law and facts *clearly favor* [his] position, not
5 simply that [he] is likely to succeed.” (emphasis in original).³

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

9 **III. ARGUMENT**

10 The Court should deny Petitioner’s request for a mandatory preliminary injunction
11 ordering his release from lawful detention as he has failed to clearly establish a likelihood of
12 success on the merits or irreparable harm. Additionally, Petitioner has not established that the
13 public interest weighs decidedly in his favor.

14 The Court should also deny Petitioner’s request for a prohibitory preliminary injunction
15 preventing Respondents from removing him to a third country. Petitioner faces no reasonable
16 threat of imminent irreparable injury as Respondents have no present plans to remove Petitioner
17 to any country other than Vietnam. Moreover, because Petitioner’s application for such relief in
18 the District of Massachusetts as a member of the certified class in *D.V.D.* has been stayed by the
19 Supreme Court, Petitioner is not entitled to seek that same relief from this Court.

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³ While the Ninth Circuit has held that its alternative “sliding scale” test for preliminary injunctions remains viable after *Winter* as to requests for prohibitory injunctions, that alternative test does not apply in the case of a request for a mandatory preliminary injunction because of the heightened showing required. *Doe v. Snyder*, 28 F.4th 103, 111 n.4 (9th Cir. 2022).

1 **A. Petitioner has not met the heightened standard for a mandatory injunction**
2 **compelling his release from custody.**

3 Petitioner's request for an order releasing him from immigration detention goes well
4 beyond simply maintaining the status quo. Such an order constitutes mandatory injunctive relief.
5 A party seeking mandatory injunctive relief "must establish that the law and facts *clearly favor*
6 [his] position, not simply that [he] is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740
7 (9th Cir. 2015) (emphasis in original)). In general, mandatory injunctions should not be granted
8 "unless extreme or very serious damage will result" and should not be issued "in doubtful cases or
9 where the injury complained of is capable of compensation in damages." *Anderson v. United*
10 *States*, 612 F.2d 1112, 1115 (9th Cir. 1979).

11 **1. The law and facts do not clearly favor Petitioner's position in requesting**
12 **release because he cannot show his re-detention is unlawful or indefinite.**

13 To succeed on his request for release, Petitioner must show that he is "in custody in
14 violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241.
15 Petitioner claims both that ICE's revocation of his OSUP is unlawful and that his detention is
16 indefinite and violates due process. These claims lack merit.

17 *i. Petitioner's detention is not "indefinite."*

18 In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court analyzed whether the
19 potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional.
20 The Court read an implicit limitation of post-removal detention "to a period reasonably
21 necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at
22 689. It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.*
23 Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer
24 authorized by statute." *Id.*, at 699.

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

14 Here, Petitioner moved beyond the presumptively-reasonable time period many years
15 prior to the revocation of his OSUP, but this does not make his present detention indefinite.
16 *Zadvydas* places the burden is on a petitioner to come forward with evidence that there is "good
17 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
18 future." *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (citing *Zadvydas*). If the petitioner
19 meets his evidentiary burden, the government must then introduce evidence to refute the
20 petitioner's assertion. *Id.*⁴

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22 ⁴ The Court should reject Petitioner's repeated efforts to shift his burden to Respondents. *See e.g.*, Dkt. 25, p. 22,
23 *ll.* 21-25 ("Respondents also cannot prove that removal is 'significantly likely.'"). Contrary to Petitioner's
24 representations, Respondents are not here "ask[ing] this court to authorize detention." Dkt. 25, p. 25, *ll.* 55-9.
Instead, Petitioner is here asking to be released from detention that is clearly authorized under the law. Thus, it is
Petitioner who bears the initial burden of showing that "no significant likelihood" of removal exists.

1 Petitioner has not carried his initial burden. Petitioner relies entirely on the Declaration
2 of Tin Thanh Nguyen, an immigration attorney who practices in North Carolina. Dkt. 28, ¶¶ 3-4.
3 The Declarant testifies that he is “not aware of any formal change in Vietnam’s repatriation
4 process this year[.]” *id.* at ¶ 6, but he fails to explain how his work as an immigration attorney in
5 North Carolina representing primarily Vietnamese clients would necessarily make him privy to
6 such information. Yet, the Declarant admits to his awareness that “Vietnam has issued many
7 more travel documents for pre-1995 individuals than it ever has in the past.” *Id.* at 8. The
8 Declarant also admits that on a May 2025 deportation flight to Vietnam carrying 93 Vietnamese,
9 there were “pre-1995 arrivals” on the flight, although he is unaware how many of the deportees
10 were pre-1995 arrivals. *Id.* at 9. These admissions should reasonably impart a recognition that
11 circumstances have indeed changed.⁵

12 Much of the Declarant’s testimony is devoted to establishing that the Government of
13 Vietnam may not issue a travel document in thirty days and may take much longer because of
14 efforts it makes to gather additional information about potential arrivals. *Id.* at ¶¶ 8, 12-14.
15 However, that is not relevant to the inquiry. “In order to shift the burden to the Government, an
16 alien must demonstrate that the circumstances of his status or the existence of the particular
17 individual barriers to his repatriation to his country of origin are such that there is no significant
18 likelihood of removal in the foreseeable future.” *Galtogbah v. Sessions*, 2019 WL 3766280, at
19 *2 (W.D. La. June 18, 2019), *report and recommendation adopted*, 2019 WL 3761637 (W.D.
20 La. Aug. 8, 2019). While Petitioner speculates that the process of removing him to Vietnam may

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23 ⁵ The Declarant’s testimony that he has worked on “hundreds of cases” of pre-1995 arrivals (during some
24 undisclosed time period) and that travel documents were issued “in only a handful of cases,” *id.* at ¶ 11, is useless
information here. In light of clearly changed circumstances, what happened in the past is not relevant to the Court’s
inquiry.

1 be protracted, his current period of detention so far has been relatively short, and he has not
2 shown that there are any individual barriers to his particular removal. Nevertheless, Petitioner,
3 supported by the Declarant, argues that Respondents may not be able to remove him to Vietnam
4 within 30 days. However, that is not the measure of indefinite detention. “Slow progress in
5 removal process does not meet the burden under *Zadvydas*.” *Walcott v. Homeland Sec. (BICE)*,
6 2005 WL 3544342, at *2 (D.N.J. Dec. 28, 2005); and see *Nasr v. Larocca*, 2016 WL 3710200, at
7 *4 (C.D. Cal. June 1, 2016), *report and recommendation adopted*, 2016 WL 3704675 (C.D. Cal.
8 July 11, 2016) (and cases cited) (“Although Petitioner complains of delay, mere delay in the
9 issuance of a travel document is insufficient to show that there is ‘no significant likelihood of
10 removal in the reasonably foreseeable future,’ particularly where, as here, efforts to obtain the
11 travel document are ongoing.”).

12 More to the point, that Vietnam may not move with sufficient alacrity in acting on ICE’s
13 request for a travel document, also is not the measure of indefinite detention. *Estenor v. Holder*,
14 2011 WL 5572596, at *3 (W.D. Mich. Oct. 24, 2011), adopted, 2011 WL 5589279 (W.D. Mich.
15 Nov. 16, 2011) (“Mere delay by the foreign government in issuing travel documents, despite
16 reasonable efforts by United States authorities to secure them, does not satisfy a detainee’s
17 burden under *Zadvydas* to provide good reason to believe that there is no significant likelihood
18 of removal in the reasonably foreseeable future.”) (citation omitted).

19 In short, Petitioner’s evidence does not establish that there is “no significant likelihood of
20 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 771 (emphasis added).
21 Under *Zadvydas*, the burden has not shifted to Respondents to show otherwise. *Barenboyn v.*
22 *Att’y Gen. of U.S.*, 160 F. App’x 258, 261 n.3 (3d Cir. 2005) (“Only then does the burden shift to
23 the Government, which ‘must respond with evidence sufficient to rebut that showing.’”)

1 (quoting *Zadvydas*). Regardless, as practically conceded by Petitioner’s declarant, circumstances
2 have changed. Even Petitioner cannot dispute, based on his own evidence, that removals to
3 Vietnam of pre-1995 arriving Vietnamese citizens are now occurring.

4 In summary, Respondents have demonstrated both that circumstances have changed and
5 they are now routinely able to remove pre-1995 entrants to Vietnam, and that the process of
6 effectuating removals is moving quickly once a travel document from Vietnam is issued.
7 Respondents cannot guarantee that Petitioner will be removed to Vietnam in 30 days, but that is
8 an artificial standard created by Petitioner. The only requirement on Respondents under
9 *Zadvydas* is to rebut a sufficient showing by Petitioner that there is no significant likelihood of
10 removal in the reasonably foreseeable future. Respondents have certainly negated Petitioner’s
11 deficient effort to show that there is “no significant likelihood” that they will be able to remove
12 him in the reasonably foreseeable future. Respondents have shown that his removal in relatively
13 short order is highly likely. Petitioner’s request for release from detention should therefore be
14 denied.

15 *ii. Petitioner’s re-detention did not violate ICE’s regulations.*

16 As he argued at the TRO stage, Petitioner contends that in re-detaining him, the
17 Respondents violated their own procedural requirements. Although Petitioner’s argument has
18 been somewhat enlarged, he makes basically the same arguments as before and they are still
19 incorrect.

20 As set forth previously, the revocation of the Petitioner’s OSUP was effectuated under
21 8 C.F.R. § 241.13(i)(2), which provides:

22 (2) Revocation for removal. The Service may revoke an alien’s release under this
23 section and return the alien to custody if, on account of changed circumstances,
24 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

1 released from custody *following the informal interview provided for in paragraph*
2 *(h)(3) of this section*, the provisions of § 241.4 shall govern the alien’s continued
detention pending removal. (Emphasis added).

3 Petitioner was given the informal interview called for in this regulation. Dkt. 14, ¶ 15
4 (“Petitioner was taken into custody for processing, during which time Petitioner was notified in
5 writing that his OSUP was revoked and an informal interview was conducted.”). Although
6 Petitioner now claims that he did not receive a prompt informal interview, that contention is of
7 doubtful credibility. *See* Dkt. 27 ¶ 14 (describing Petitioner’s interview by an “ICE
8 supervisor.”). Petitioner’s self-serving statements as to the substance of his informal interview
9 should be rejected. By Petitioner’s own admission, the “ICE supervisor” conducting his
10 interview explained to Petitioner that he was being detained in order to effectuate his removal to
11 Vietnam. *Id.* Clearly, Petitioner understood. *Id.*⁶

12 Instead, Petitioner now argues that pursuant to 8 C.F.R. § 241.13(i)(2), “ICE must make
13 ‘an individualized determination’ *at the point of re-detention*” as to “whether, based on ‘changed
14 circumstances,’ ‘there is a significant likelihood of removal in the reasonably foreseeable
15 future.’” Dkt. 25, page 20 (*citing Kong v. U.S.*, 62 F.4th 608, 619-20 (1st Cir. 2023) (emphasis
16 added)). However, Petitioner’s argument drastically overreads the holding in *Kong*. Nowhere in
17 the opinion does the Court indicate that under 8 C.F.R. § 241.13(i)(2) (or any other regulation)
18 ICE is required to conduct an individualized determination “at the point of re-detention.”
19 Indeed, the opinion says nothing about timing at all except that “the plain language of the
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22 ⁶ The alien is also afforded an opportunity at the informal hearing to “submit any evidence or information that he or
23 she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future.”
24 8 C.F.R. § 241.13(i)(3). Petitioner does not claim in his declaration either that he had any relevant information or
evidence to provide in the informal interview or, if he had such information or evidence, that he was prevented from
presenting it to the ICE officer.

1 regulation . . . does not allow *a court* in the first instance to make the required individualized
2 finding.” *Id.* at 620 (emphasis added).

3 Petitioner’s contention that ICE’s regulations required the agency to provide him with
4 more than an informal interview “at the point of re-detention” is strictly Petitioner’s own
5 embellishment on the ICE regulations that simply cannot be squared with the actual regulatory
6 language. The relevant regulation, 8 C.F.R. § 241.13(i), requires only that the agency provide an
7 “informal interview.” It says nothing about an “individualized” determination. Rather, the
8 regulation states that “following the informal interview provided for in paragraph (h)(3), of this
9 section, the provisions of § 242.4 shall govern the alien’s continued detention pending removal.”
10 Both the regulation’s use of the word “following” and common-sense defeat Petitioner’s
11 argument that the individualized review he is seeking must occur at the point of re-detention. As
12 Respondents argued at the TRO stage, and Petitioner has not genuinely rebutted, Petitioner’s
13 reading of the regulation would have Respondents first making a determination not to release an
14 individual in an informal interview and then immediately reconsidering whether to release again
15 but this time using the 8 C.F.R. § 241.4(f) factors. Logic dictates that if it was the intent of the
16 regulations to have Respondents consider the 8 C.F.R. § 241.4(f) factors at the time the OSUP is
17 revoked and a decision is made not to release an alien, those regulations would have specifically
18 required that those factors be considered during the informal interview.

19 Instead, the regulation is more sensibly read to indicate that after an alien is re-detained
20 and provided the informal interview specified in 8 C.F.R. § 241.13(i), determinations about his
21 continuing detention are to be made in accordance with the procedures set out in 8 C.F.R.
22 § 241.4. A process for an individualized determination is provided by 8 C.F.R. § 241.4(e), and
23 the factors to consider in making the determination are set forth in 8 C.F.R. § 241.4(f).

1 However, nothing in § 241.4 can be reasonably read to require that the individualized
2 determination must occur at “the point of re-detention.”

3 Lastly, Petitioner argues that “no authority authorizes ICE to re-detain Petitioner without
4 first obtaining his travel document.” Dkt. 25, p. 24 *ll.* 14-17. To the contrary, because Petitioner
5 is subject to an order of removal, ICE’s legal authority to detain him is clear. 8 U.S.C.
6 § 1231(a)(6); *Zadvydus*, 533 U.S. at 683. While it may be necessary under certain circumstance
7 to release a detainee on supervision to avoid having the detainee’s detention become “indefinite,”
8 no authority cited by Petitioner requires ICE to have a travel document in-hand before detaining
9 or re-detaining an individual who is subject to a removal order.

10 **B. Petitioner is not likely to succeed on the merits of his claim that the government**
11 **lacks the legal authority to remove him to a third country.**

12 The Court should also deny Petitioner’s request for an order barring his removal to a third
13 country. First and foremost, Respondents have indicated that “ICE is currently seeking to
14 remove Petitioner solely to Vietnam and will not attempt a third country removal unless and until
15 Vietnam denies the pending travel document request.” *See* Second Burns Declaration ¶ 4.
16 Further, they indicate that, should ICE decide to remove the Petitioner to a third country, ICE
17 will “provide Petitioner’s counsel 24 hours advance notice.” *Id.* ¶ 5.⁷ With these assurances, it
18 is unnecessary for the Court to issue the requested relief to Petitioner as the issue is not ripe and
19

20
21 ⁷ As noted in Petitioner’s Motion for TRO and the accompanying Declaration of Petitioner’s Counsel, ICE issued a
22 memo dated July 9, 2025, regarding third country removals following the Supreme Court’s order in *D.V.D.*
23 *Dkt.* 26-1. The July 9 memo sets forth Respondents’ current policy on third country removals both nationwide and
24 in the Western District of Washington where Respondents are no longer fully following the process discussed in
Aden v. Nielsen, et al., WDWA Case No. C18-1441-RSL, at Dkt. 16. The memo applies to Petitioner except to the
extent set forth in the Second Declaration of Jamie Burns (i.e., ICE will not attempt to remove Petitioner unless and
until Vietnam denies the request for a travel document, and ICE would give 24-hour notice before doing so).

1 Petitioner cannot claim to be faced with imminent irreparable injury from the prospect of third
2 country removal.

3 Moreover, Petitioner is not entitled to the relief he seeks in any event. Petitioner is a
4 member of the non-opt out *D.V.D.* certified class. He is an individual subject to a final order of
5 removal who fears removal to a third country if ICE is unsuccessful in removing him to
6 Vietnam. (That said, as noted above, ICE has no present plans to remove Petitioner to a third
7 country. Thus, Petitioner's request for relief in this respect may be seen as an effort to obtain the
8 intervention of the Court to assuage his fear that removal to a third country *could* occur.⁸)

9 Because Petitioner is bound as a member of the non-opt out class of individuals governed by the
10 *D.V.D.* nationwide preliminary injunction, which the Supreme Court has now stayed finding that
11 the government is likely to prevail on the merits of its appeal, this Court should dismiss the
12 action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to
13 obtain relief that has already been stayed by the Supreme Court. Given that dismissal of this
14 claim is the appropriate remedy, Petitioner is not entitled to the relief sought in his motion.

15 As explained above, the District of Massachusetts entered a preliminary injunction
16 prescribing the process to which *D.V.D.* class members were entitled before removal to a third
17 country and certified a non-opt out class. Petitioner is undisputedly a member of that class.
18 Dkt. 1 ¶ 24. The Supreme Court stayed the preliminary injunction but left certification of the
19 non-opt out class intact, signaling that the *D.V.D.* class members would not succeed on the
20 merits of their claims and the Government would ultimately prevail.

21
22 _____
23 ⁸ Because ICE has no current plans to remove Petitioner to a third country, he cannot satisfy the *Winter* standards
24 for a preliminary injunction with respect to third country removal. *See Janvey v. Alguire*, 647 F.3d 585, 600
(5th Cir. 2011) (A showing of speculative injury is not sufficient; there must be more than an unfounded fear on the
part of the applicant.).

1 First, this Court should avoid providing Petitioner with relief that eventually may conflict
2 with the relief, if any, ultimately provided to the *D.V.D.* class. Petitioner's request for a
3 preliminary injunction preventing his removal to a third country challenges how Respondents
4 should implement a decision to remove Petitioner to a third country should that occur. Dkt. 25,
5 pp. 24-30. That is precisely the challenge brought by the *D.V.D.* class. This Court, therefore,
6 should not wade into Petitioner's claims because such claims are being actively litigated in the
7 *D.V.D.* class action, which is currently before the First Circuit. To do otherwise would cut
8 against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will
9 conflict with not only the relief, if any, eventually provided to the *D.V.D.* class, but also the
10 Supreme Court's rejection of the relief initially temporarily provided to class members by the
11 District of Massachusetts.

12 Second, this Court should avoid providing Petitioner with relief that is likely to be
13 rejected and overturned by the Supreme Court. The District of Massachusetts attempted to set
14 parameters around third country removals, but the Supreme Court, in staying the *D.V.D.*
15 preliminary injunction, effectively rejected those parameters and signaled that ultimately the
16 class members would not succeed on the merits of the case and the Government would prevail.
17 The Supreme Court confirmed that its stay applied to individual class members by granting the
18 government's motion for clarification on July 3, 2025. Petitioner cannot now make an end run
19 around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court
20 has already found that Respondents are likely to succeed on the legal arguments presented in
21 response to the instant habeas petition. Allowing Petitioner's habeas petition to proceed and
22 continuing to stay his removal to a third country would therefore be directly contrary to the
23 Supreme Court's decision to stay the preliminary injunction in *D.V.D.*

1 Additionally, courts recognize that members of class action lawsuits should not be
2 permitted to bring separate actions that litigate issues raised in the class action. See *Wynn v.*
3 *Vilsack*, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (“Multiple courts
4 of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the
5 ground that the plaintiff is a member of a parallel class action.”) (internal quotations omitted).
6 This prevents class members from avoiding the binding results of the class action. *Goff v.*
7 *Menke*, 672 F.2d 702, 704 (8th Cir. 1982).

8 This is also the rule in this Circuit. A district court may properly dismiss an individual
9 complaint where the plaintiff is a member in a class action, to the extent the individual action
10 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d
11 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)).
12 Such a dismissal is up to the court’s discretion based on its inherent power to control its own
13 docket. *Crawford*, 599 F.2d at 893. But it is “imperative to avoid concurrent litigation in more
14 than one forum whenever consistent with the rights of the parties.” *Id.*; see *Frost v. Symington*,
15 197 F.3d 348, 359 (9th Cir. 1999) (“To the extent that a class action involving the same issues
16 raised by [plaintiff] is currently pending . . . [he] may have to bring all of this related claims for
17 equitable relief . . . through . . . class counsel.”).

18 This Court should decline to exercise jurisdiction over the third country removal claim as
19 a matter of comity because the District of Massachusetts has certified a class action that includes
20 the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d
21 93, 94-95 (9th Cir. 1982) (“There is a generally recognized doctrine of federal comity which
22 permits a district court to decline jurisdiction over an action when a complaint involving the
23 same parties and issues has already been filed in another district.”). Thus, dismissal of
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1 Petitioner’s claims for relief from third country removal is warranted and no preliminary
2 injunction on the same claim should be issued.

3 Consequently, in light of *D.V.D.*, federal district courts in other jurisdictions have denied
4 claimants the same relief that Petitioner is seeking here *See Ghamelian v. Baker*, 2025 WL
5 2049981, at *3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155 (D. Md. July
6 23, 2025) (“In light of Plaintiff’s apparent class membership, claims relating to his potential third
7 country removal are more appropriately resolved in the *D.V.D.* case and will not be addressed in
8 this Court.”) (footnote omitted); *Tanha v. Warden*, 2025 WL 2062181, at *5 (D. Md. July 22,
9 2025) (matters pertaining to Petitioner’s removal destination are more properly addressed by the
10 District of Massachusetts).

11 **C. Petitioner has not shown irreparable harm.**

12 Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory
13 injunctive relief he seeks. To do so, he must demonstrate “immediate threatened injury.”
14 *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los*
15 *Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201
16 (9th Cir. 1980)). “The Ninth Circuit makes clear that a showing of immediate irreparable harm
17 is essential for prevailing on a [preliminary injunction].” *Juarez v. Asher*, 556 F. Supp.3d 1181,
18 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674
19 (9th Cir. 1988)). Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*,
20 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious
21 damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted).
22 “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent
23 with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that
24

1 may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*,
2 555 U.S. at 22.

3 The only immediate irreparable injury asserted in the Petition and TRO Motion is the
4 possibility of removal to a third country. As the Second Burns Declaration makes clear, however,
5 ICE does not seek removal to any country other than Vietnam at this time. And, even if Vietnam
6 ultimately refuses Respondents’ request with respect to Petitioner, ICE would provide notice to
7 Petitioner’s counsel before pursuing a third country removal.

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

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

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

19 It is well settled that the public interest in enforcement of United States’ immigration
20 laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976);
21 *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme
22 Court has recognized that the public interest in enforcement of the immigration laws is
23 significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is
24

1 always a public interest in prompt execution of removal orders). This public interest outweighs
2 Petitioner's private interest here.

3 Accordingly, this Court should deny his Motion.

4 **IV. CONCLUSION**

5 For all of the foregoing reasons, Petitioner is not entitled to a preliminary injunction, and
6 his Motion should be denied.

7 DATED this 8th day of August, 2025.

8 Respectfully submitted,

9
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18 *I certify that this memorandum contains 6730
words, in compliance with the Local Civil Rules.*