District Judge Richard A. Jones
Magistrate Judge Theresa L. Fricke

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

DABONA TANG, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-01473-RAJ-TLF FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S PRELIMINARY INJUNCTION MOTION

This Court should deny Petitioner Dabona Tang's motion for a preliminary injunction seeking release from custody and seeking federal court oversight of any hypothetical future re-detention. Tang's detention and arrest are lawful. Petitioner relies heavily on the recent *Nguyen* litigation to speculate that his removal is unlikely, but factual developments in Nguyen's case undermine Petitioner's arguments here. After Nguyen's court-ordered release from custody, his travel document was issued promptly. Petitioner's beliefs about the state of removals to Vietnam are unfounded and do not justify his release.

Nor do the circumstances of his arrest. U.S. Immigration and Customs Enforcement (ICE) has the regulatory authority to revoke an individual's release if they violate the conditions of their release (as Petitioner did) or if changed circumstances make it likely they can be removed in the reasonably foreseeable future (as the new cooperation with Vietnam has done). On this record,

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Petitioner's detention is lawful, and he has not met the high burden for emergency relief. The Court should deny the preliminary injunction motion and adjudicate his habeas corpus petition in due course.

FACTS

Petitioner does not allege that any emergency has arisen since he filed a habeas corpus petition. The facts underlying that petition are set forth in Federal Respondents' return and motion to dismiss. *See* Dkt. 12.

Since that filing, ICE Enforcement and Removal Operations (ERO) has completed and submitted Petitioner's travel document request to ICE Removal and International Operations (RIO) for forwarding to the ICE attaché in Vietnam. Second Declaration of Deportation Officer Enrique Rodriguez ¶ 3. Once received, ICE anticipates that Vietnam will issue a travel document within 30 days. 1st Rodriguez Decl. (Dkt. 13) ¶ 22; Gonzalez Decl. (Dkt. 14) ¶ 6.

Also since Federal Respondents' filing, the government of Vietnam has issued a travel document to the petitioner in *Nguyen v. Scott*, a habeas corpus proceeding before Judge Cartwright on which Petitioner heavily relies. *See* No. 2:25-cv-01398, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025). In that case, ICE ERO submitted the travel document request on July 31, 2025, and it was forwarded to the ICE attaché for Vietnam on August 7, 2025. *See* 2nd Rodriguez Decl. ¶ 4; *Nguyen*, 2025 WL 2419288, at *5. On August 25, four days after Nguyen was ordered released, the attaché in Vietnam confirmed that Vietnam would issue a travel document. 2nd Rodriguez Decl. ¶ 4. On September 3, the travel document was issued. *Id.*

STANDARD

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A stay "is not a matter of right, even if irreparable injury might otherwise

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

result" but rather an exercise of judicial discretion that depends on the particular circumstances of the case. *Nken v. Holder*, 556 U.S. 418, 433 (2009) (citation omitted). To justify an injunction, a petitioner must establish 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 his favor"; and (4) "an injunction is in the public interest." *Winter*, 555 U.S. at 20.

Preliminary relief is meant to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). When preliminary relief would change the status quo and "order a responsible party to take action," it is "particularly disfavored." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009). In such cases, the moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original).

ARGUMENT

I. Petitioner is unlikely to succeed on the merits of his claims

A. Petitioner's *Zadvydas* claim fails because his removal is likely in the reasonably foreseeable future

For the reasons set forth in Federal Respondents' return and motion to dismiss (Dkt. 12), Petitioner is unlikely to succeed on his *Zadvydas* claim because his detention is not prolonged or indefinite. Petitioner has been in custody for approximately six months, including his initial three-month removal period in 2011 and his current detention since late May. *See* 1st Rodriguez Decl. ¶¶ 11–12, 14. This time is presumptively reasonable and permissible under *Zadvydas* v. *Davis*, 533 U.S. 678, 701 (2001). Regulation also allows his detention for an additional six months following the revocation of his release where he violated the terms of his release. *See* 8 C.F.R. § 241.13(i)(1) ("The alien may be continued in detention for an additional six months in order to

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

effect the alien's removal, if possible, and to effect the conditions under which the alien had been released.").

Additionally, since Federal Respondents filed their return and motion to dismiss, ICE ERO has submitted a request for a travel document for Petitioner's removal. *See* 2nd Rodriguez Decl. ¶ 3. Petitioner alleges he is stateless based on an old immigration record that predated his removal proceedings and final order of removal. *See* Dkts. 16 at 10; 16-2. That 42-year-old record shines no light on Petitioner's current status. It was issued before Petitioner entered removal proceedings and was issued a final removal order. *See* 1st Rodriguez Decl. ¶¶ 8–10. The truth is that Petitioner is not stateless but rather a citizen of Vietnam, and he has a lawful final order of removal to Vietnam. *Id.* ¶¶ 3, 10.

Because Vietnam has agreed to grant travel document requests within 30 days, ICE expects it will have Petitioner's travel document soon and will be able to effectuate his removal to Vietnam. 1st Rodriguez Decl. ¶ 22; Gonzalez Decl. ¶ 6. This is true regardless of the 2020 Memorandum of Understanding (MOU) that Petitioner cites. *See* Dkt. 16 at 10. On this point, *Nguyen v. Scott* is instructive. No. 2:25-cv-01398-TMC, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025). Nguyen argued that his detention was illegal because Vietnam would not accept him: he lacked ties to the country, and he believed an MOU meant he could not be repatriated. *See id.* at *14–15. However, four days after the Court ordered Nguyen's release, Vietnam confirmed it would issue his travel document, and it was issued approximately a week later on September 3, 2025. 2nd Rodriguez Decl. ¶ 4. Vietnam issued Nguyen's travel document quickly, consistent with the country's agreement. *Nguyen*, 2025 WL 2419288, at *5 (noting Nguyen's travel document request was forwarded to the ICE attaché for Vietnam on August 7, 2025).

There is no reason to believe the same will not happen here. Petitioner's arguments to the contrary are unpersuasive. Under Petitioner's view, Vietnam would not have accepted Nguyen's

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

repatriation either, and it has done so. Petitioner's *Zadvydas* claim fails because he is not being indefinitely detained, and his removal is likely in the reasonably foreseeable future. *See* Dkt. 12 at 6–8 (setting forth *Zadvydas* argument).

B. Petitioner's arrest was lawful

Petitioner argues that his arrest was unlawful because, in his view, some recent district-court rulings gave him a due process right to receive some sort of "pre-deprivation process" before ICE could lawfully revoke his release and bring him into custody. Dkt. 16 at 11. Those rulings do not apply here because they do not concern noncitizens who have final removal orders, like Petitioner. In fact, there is no legal support for any sort of pre-deprivation process before ICE may revoke the release of a person with a final removal order, and the existing procedural safeguards meet the Constitution's requirements. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4, 241.13.

i. Procedural safeguards for post-final-removal-order re-detention

Because Petitioner has a final removal order, his procedural due process rights are set forth in 8 C.F.R. § 241.13(i)(3). Under that section, "[u]pon revocation"—not *before* revocation—"the alien will be notified of the reasons for revocation of his or her release." Additionally, ICE "will conduct an initial informal interview promptly after his or her return to . . . custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3). At that time, "[t]he alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." *Id.* If the noncitizen remains in custody following this process, their detention is governed by 8 C.F.R. § 241.4.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

ii. The cases Petitioner relies on do not apply here

Petitioner does not argue that he did not receive the procedural due process to which he is entitled under section 241.13(i)(3). *See* Dkt. 16 (offering no argument that Petitioner did not receive a notice of revocation or an informal interview once detained). Instead, he argues that this Court should upend the regulatory framework governing the re-detention of noncitizens with final removal orders and should superimpose a federal-district-court-created pre-deprivation hearing requirement based on distinguishable district-court cases. Such a ruling would be at odds with the plain language of 8 C.F.R. § 241.13. It would essentially deprive ICE of its operational discretion and regulatory authority to take such action, and ultimately improperly interfere with the Executive Branch's operations. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022) (Sotomayor, J.) (in the absence of any such requirement in the text of section 1231(a)(6), detainee not entitled to a bond hearing before an immigration judge).

Petitioner relies heavily on *E.A.T.-B. v. Wamsley*, where Judge Evanson held that based on the circumstances of that case, "due process requires that [the petitioner] receive a hearing before an immigration judge before he can be re-detained." No. C25-1192-KKE, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). First, *E.A.T.-B.*—and the other cases on which Petitioner relies—do not apply here and are distinguishable because the petitioners there did not have final removal orders. *See id.* at *1.[1] When a person does not have a final removal order and is not subject to mandatory detention, the questions surrounding potential detention are whether they pose a danger to the community or a flight risk. *See* 8 C.F.R. § 1236.1(c)(8). Foreseeability

[1] *See Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *1 (S.D.N.Y. Aug. 15, 2025) (describing that the noncitizen was in pending removal proceedings); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *1–2 (N.D. Cal. July 24, 2025) (same); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *1 (E.D. Cal. Mar. 3, 2025) (same); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *2 (S.D.N.Y. June 18, 2025) (same); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179, at *1 (N.D. Cal. July 14, 2025) (same). Petitioner cites these cases on pages 12 and 13.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

of removal is not part of that analysis because without a final removal order, removal is not yet at issue. By contrast, when an individual has a final removal order and has previously been released on an order of supervision, the relevant considerations for revoking that release are whether the person has violated the conditions of their release (as Petitioner has done) or whether changed circumstances make their removal likely (as is true here). *See* 8 C.F.R. § 241.13. The due process considerations are different for people who have final removal orders (like Petitioner) and those who do not (like E.A.T.-B. and the petitioners whose cases are cited in footnote 1). Petitioner does not argue that any district court has imposed a pre-deprivation hearing requirement where the petitioner had a final removal order.

Second, while reasonable minds could debate whether it would be sound policy to have immigration courts conduct pre-arrest hearings for noncitizens with final removal orders, such hearings would be a novel invention. Because section 241.13(i)(3) provides all the due process a person is to be afforded when their post-removal-order release is revoked, it is unlikely that an immigration court would find that it had jurisdiction to conduct a hearing like the *E.A.T.-B.* court created for noncitizens in removal proceedings. *See Ahmad v. Whitaker*, No. 18-cv-287-JLR-BAT, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019) (discussing requirements of section 241.13 and stating that "[t]he regulations do not require notice"). This Court should decline Petitioner's invitation to extend Judge Evanson's ruling to post-final-removal-order re-detention.

iii. The existing regulatory procedures are constitutionally adequate

There is no reason for this Court to create a new pre-deprivation hearing requirement because the existing regulatory procedures meet the Constitution's requirements. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process Clause." *Mathews*

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

v. Eldridge, 424 U.S. 319, 332 (1976). "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine whether procedural protections satisfy the due process clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

Each of these factors weighs against Petitioner's request that this Court create a new pre-deprivation hearing requirement for noncitizens with final removal orders. As to the first, while Petitioner has a liberty interest, it is limited because he is subject to a final removal order. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011) (agreeing with the government that § 1231(a)(6) detainees have a lesser liberty interest because they are closer to actual removal), *abrogated on other grounds as recognized in Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1200–01 (9th Cir. 2022); *see also Mathews*, 426 U.S. at 79–80 ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."). Petitioner's diminished liberty interest does not weigh in favor of creating a pre-deprivation hearing requirement.

The second *Mathews* factor also favors Federal Respondents. Under the existing procedures, individuals with final removal orders (including Petitioner) face little risk of erroneous deprivation. Petitioner is indisputably subject to a final removal order, and section 1231(a)(6) indisputably authorizes his detention to effectuate that order. Petitioner is further afforded the procedural protections provided by regulations, including those contained in 8 C.F.R.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

§ 241.4 (requiring reasoned custody determinations and listing factors to be considered in weighing detention or release) and § 241.13 (requiring ICE to review whether there is a significant likelihood that the noncitizen will be removed in the reasonably foreseeable future on account of changed circumstances). Section 241.13 specifically allows a detainee to submit "any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(3). These regulations explicitly provide Petitioner notice and opportunity to be heard. In fact, Petitioner does not argue that he has any evidence that he has been unable to submit to ICE, and in this Court, his arguments have focused only on his beliefs about the success or lack thereof of recent attempts to repatriate Vietnamese citizens. On these facts, there is no basis to rule that the longstanding procedural framework is constitutionally deficient.

The final factor also weighs in Federal Respondents' favor. The government has a strong interest in effectuating final removal orders. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). "The Supreme Court has thus specifically instructed that in a *Mathews* analysis, [courts] must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Id.* (quotation omitted). The achievement of this objective warrants not placing additional fiscal and administrative hurdles through process that will provide no additional safeguards. Petitioner's request for a pre-deprivation hearing essentially seeks a judicially created stay (and opportunity to abscond) that would impede execution of an indisputably lawful final removal order. Petitioner's arrest was lawful, and his arguments to the contrary fail.

C. Petitioner's substantive due process arguments do not apply here

Petitioner's substantive due process challenge fundamentally misunderstands the role of post-final-removal-order detention. Like in his procedural due process argument, he cites case

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

law that applies when a noncitizen remains in immigration proceedings and does not have a final removal order. *See* Dkt. 16 at 14 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017), for the proposition that the government does not have an interest in detaining an individual whose appearance "at *future* immigration proceedings" can be ensured by lesser alternatives) (emphasis added). He then argues, circularly, that because he has no future immigration hearings, there is no risk he will not appear for them. *See id.*

Petitioner ignores the government's well-established interest in making sure that noncitizens with final removal orders do not flee before their removal may be effectuated. *See Zadvydas*, 533 U.S. at 701 (holding that after a final removal order, "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"); *see also Demore v. Kim*, 538 U.S. 510, 528 (2003) (noting that pre-removal detention "necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed"). Petitioner's detention is not punitive but rather a permissible part of the immigration system that allows detention as necessary to effectuate removal.

D. Petitioner's request for an order barring future arrest or detention lacks support

Petitioner requests an order "barring future arrest or detention by the Respondents absent leave of this Court." Dkt. 16 at 1. This request (1) lacks any supporting argument or legal authority, (2) does not sound in habeas, and (3) goes beyond the relief sought in the petition. The motion's only mention of this request is in the introductory paragraph; there is no argument section that attempts to explain what legal authority the Court might have to issue such an order. In fact, there is none. In the immigration context, "[n]o court may set aside any action or decision

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

. . . regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e).

Moreover, the Supreme Court held in *Wilkinson v. Dotson* that a claim seeking "an injunction barring *future* unconstitutional procedures did *not* fall within habeas' exclusive domain." 544 U.S. 74, 81 (2005) (emphases in original); *see also Nelson v. Campbell*, 541 U.S. 637, 647 (2004) ("If a request for a permanent injunction does not sound in habeas, it follows that the lesser included request for a temporary stay (or preliminary injunction) does not either."). If Petitioner wishes to seek relief that goes beyond what the habeas statute allows (i.e., release from custody), he must seek leave to file a complaint.

II. Petitioner has not shown imminent, irreparable harm

Petitioner has not demonstrated that he will suffer irreparable injury absent his release. The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on [an emergency motion]." *Juarez v. Asher*, 556 F.Supp.3d 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Servs. Co., Inc. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988)). To do so, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine*, 844 F.2d at 674 (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22.

Here, Petitioner does not allege that facts have changed since he filed his habeas corpus petition or that he faces any emergency while detained. Instead, he argues in conclusory fashion that he "faces irreparable harm unless this Court intervenes." Dkt. 16 at 2. He adds (in the balance of hardships section) that he faces "indefinite and prolonged" detention, and thus separation from his family, community, and livelihood. *Id.* at 16.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). Nothing distinguishes Petitioner from any other person in immigration detention who challenges their arrest and detention. *See Taha v. Bostock*, No. C25-649-RSM, 2025 WL 1126681, at *3 (W.D. Wash. Apr. 16, 2025) ("The Court agrees with Defendants that Petitioner's 'irreparable harm-based argument begs the constitutional questions presented in his petition by assuming that [P]etitioner has suffered constitutional injury[,]' and his emotional harm from this 'loss of liberty' is 'common to all' like Petitioner."); *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) ("[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm[.]"). Petitioner has not shown extraordinary circumstances warranting emergency relief.

III. The balance of interests favors Federal Respondents

It is well settled that the public interest in enforcement of the United States's 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 Petitioner's private interest here. Petitioner asks the Court to declare his detention unlawful, despite the government's valid reasons and statutory bases for detaining him to effectuate his removal pursuant to valid final removal order that he does not challenge.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

CONCLUSION

For these reasons, Federal Respondents request that the Court deny Petitioner's preliminary injunction motion.

Dated September 10, 2025.

Respectfully submitted,

TEAL LUTHY MILLER
Acting United States Attorney

s/ Annalisa L. Cravens
ANNALISA L. CRAVENS
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: 206-553-7970
Fax: 206-553-4067
Email: annalisa.cravens@usdoj.gov

Counsel for Federal Respondents

I certify this memorandum contains 3,734 words, in compliance with the Local Civil Rules.