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UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Long TON,

Petitioner,

v.

Kristi NOEM, Secretary, Department of Homeland Security; Todd LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; Pam BONDI, Attorney General of the United States; Ernesto SANTACRUZ Jr., Acting Director, Los Angeles ICE Field Office; and Fereti SEMAIA, Warden, Adelanto ICE Processing Center.

Respondents.

No.

PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

Immigration Case

For the reasons explained in the accompanying Memorandum of Points and Authorities, Petitioner hereby makes this Ex Parte Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioner is a native of Vietnam who was detained in 2007 for just less than 6 months after the entry of a removal order by an immigration judge. He was released in December 2007 because the government could not remove him from the United States, but was redetained on May 2, 2025, and has been held by immigration authorities since that time. He challenges his detention as a violation of the Immigration and Nationality Act, the implementing regulations, and Due Process. Expedited relief is necessary to prevent irreparable injury before a hearing on a preliminary injunction may be held.

Petitioner requests that the Court issue a temporary restraining order and order to show case re: preliminary injunction in the form of the proposed order submitted concurrently with this Application. This Application is based on the Complaint, Memorandum of Points and Authorities, and the declaration and exhibits in support thereof.

Respondents were advised on August 4, 2025 that Petitioner would be filing this ex parte application and of the contents of this application. Tolchin Decl. ¶ 4. *See* Local Rule 17-19.1.

Counsel for Respondents is as follows:

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Dated : August 5, 2025

/s/ *Stacy Tolchin*

Stacy Tolchin

I. INTRODUCTION

Petitioner is a citizen of Vietnam who was born in a refugee camp in Hong Kong, and who came to the United States almost 45 years ago. He is married to a United States citizen and has United States citizen children. He was ordered removed in 2007 by an immigration judge, based on a conviction that was later found to be invalid in the criminal court.

Petitioner spent just shy of six months in immigration detention after he was ordered removed on July 19, 2007, but released because he could not be removed from the United States. He regularly reported to immigration officials on an order of supervision, but was detained by immigration authorities on May 2, 2025, and is currently being held at the Adelanto Detention Center. It has been more than three months since his re-detention and Immigration and Customs Enforcement (ICE) is *still* unable to remove him. Petitioner's family is suffering immensely without him, as his wife who is raising their three children alone, in addition to his brother's two children who the couple have been raising since the brother's death. Petitioner's detention is in violation of the Immigration and Nationality Act and his due process rights. He requires an ex parte order from this Court ordering his immediate release.

II. STATEMENT OF FACTS

Petitioner was born in 1979 in a refugee camp in Hong Kong to parents who were Vietnamese citizens. He is a citizen of Vietnam. Tolchin Dec. Exh. A. He was admitted to the United States on December 17, 1980 as a refugee when he was under the age of two. Id. at Exhs. A, F. Petitioner has resided in the United States for almost 45 years.

Petitioner got in with the wrong crowd when he was growing up and was friends with gang members. In 2000, at the age of 22, he was in a shopping mall in Orange, California when his friends got involved in a fight. At that time, a gang injunction was in place. Id. at Exh. A. One of the friends used a knife in the fight

and punctured the lung of another person, who died as a result. Id. Petitioner was not present during the fight and did not witness the events, but was convicted on April 8, 2002 of voluntary manslaughter as a result of the underlying gang injunction and felony murder rule. Id. at Exhs. A, H.

Petitioner was sentenced to six years in custody for voluntary manslaughter and eight months in custody for the gang offense. He served six years and then was transferred to immigration detention. Id. at Exhs. A, H.

Petitioner was placed into removal proceedings and was ordered removed by an immigration judge on July 19, 2007. Id. at Exh. D. Petitioner was released just prior to six months later because he could not be removed. Id. at Exh. A. He was regularly reporting to ICE since 2007 on an order of supervision. Id. at Exh. A.

Petitioner married his wife on December 4, 2013. Id. at Exh. G. His wife became a U.S. citizen in 2006 and they have three U.S. citizen children, ages 4, 7 and 9. Id. at Exh. G. They are also guardians for Petitioner's brother's two children, ages 8 and 12, because his brother died in 2015 and he has been raising the children since then. Id. at Exh. G. Petitioner works steadily and has not had any other convictions since the 2002 conviction. Id. at Exh. A. He has overwhelming support from friends, family, and community. Id. at Exh. L.

Further, Petitioner was granted a certificate of rehabilitation on September 10, 2021 from the criminal court. Id. at Exh. I. On May 7, 2025, Petitioner's conviction was vacated and he was resentenced to a conviction under California Penal Code § 245 for assault, with a sentence of 364 days.[1] Id. at Exh. H.

On May 2, 2025, Petitioner went to report to immigration and was detained. Tolchin Dec. Exh. A. He is currently in immigration detention in Adelanto, CA, and has been detained for more than 90 days. Id. at B.

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[1] A motion to reopen was filed with the immigration judge which was denied, and that case is currently on appeal at the Board of Immigration Appeals. Tolchin Dec. Exhs. J, K.

III. STANDARD OF REVIEW

A Temporary Restraining Order ("TRO") may be issued upon a showing "that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). A trial court may grant a TRO or a preliminary injunction to "preserve the status quo and the rights of the parties" until a decision can be made in the case. *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in this context "refers not simply to any situation before the filing of a lawsuit, but instead to 'the last uncontested status which preceded the pending controversy[.]' " *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis*, Inc., 316 F.2d 804, 809 (9th Cir. 1963). The analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc., Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009).

To obtain a preliminary injunction, a Petitioner "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in their favor, and [4] that an injunction is in the public interest." *City & County of San Francisco v. USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019)(quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "Likelihood of success on the merits is the most important factor." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quotations omitted). If the first two factors are met, the third and fourth factors merge when the Government is the opposing party. *Nken v. Holder,* 556 U.S. 418, 435 (2009).

Additionally, in the Ninth Circuit, courts also "employ an alternative 'serious questions' standard, also known as the 'sliding scale' variant of the *Winter* standard." *Fraihat v. U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 635 (9th Cir. 2021) (quotations and citations omitted and alterations accepted). "Under that

formulation, 'serious questions going to the merits' and a balance of hardships that tips sharply towards the Petitioner[s] can support issuance of a preliminary injunction, so long as the Petitioner[s] also show[ ] that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).

In addition, the APA provides that "to the extent necessary to prevent irreparable injury," the Court may issue "all necessary and appropriate process . . . to preserve status or rights pending" these proceedings. 5 U.S.C. § 705. The standard used by courts for a request to stay agency action "is the same legal standard as that used in a motion for preliminary injunction." *Hill Dermaceuticals, Inc. v. U.S. Food & Drug Admin.*, 524 F. Supp. 2d 5, 8 (D.D.C. 2007); *Nken*, 556 U.S. at 428 (describing a stay as "halting or postponing" operation of an action or "temporarily divesting an order of enforceability").

Petitioner meets all the requirements for relief.

IV. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

1. Petitioner is Likely to Succeed on the Merits of his *Zadvydas* Statutory Claim

Petitioner is being detained in excess of the six months authorized by the Immigration and Nationality Act at 8 U.S.C. § 1231(a)(6). The Administrative Procedure Act (APA) provides that a court shall hold unlawful and set aside an agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C). The Immigration and Nationality Act authorizes a post-removal-period detention of six months to allow the United States to effectuate removal. 8 U.S.C. § 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001).

In *Zadvydas v. Davis*, 533 U.S. at 682, 689, the Supreme Court held that the post-removal-period detention scheme contains "an implicit 'reasonable time' limitation" and does not permit indefinite detention. The Court reasoned that "[a] statute permitting indefinite detention of an [noncitizen] would raise a serious constitutional problem," because "[t]he Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' " *Id.* at 690. The Supreme Court deemed it "practically necessary to recognize some presumptively reasonable period of detention" and deemed a six-month period to be presumptively reasonable. *Id.* at 701. After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

Courts are clear that the six month removal period does not start again unless the government demonstrates that a substantial likelihood of removal is now reasonably foreseeable. *See Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably forseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while shifting the burden to the Government to establish a "significant likelihood that the petitioner will be removed within the reasonably foreseeable future.").

Petitioner was released in December 2007 because he could not be removed from the United States. More than 17 years later he was taken into custody on May 2, 2025 and has now been detained additional 90 days. Respondents cannot demonstrate that a substantial likelihood of removal is now reasonably foreseeable given that Petitioner has been detained for three more months, and has not been

removed. Petitioner is being held in violation of 8 U.S.C. § 1231(a)(6), *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the APA.

2. Petitioner is Likely to Succeed on the Merits of His Changed Circumstances Claim

DHS regulations authorize the revocation of an order of release only when "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." 8 C.F.R. § 241.13(i). The APA provides that a court shall hold unlawful and set aside an agency action that is "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

An agency has the duty to follow its own federal regulations. *Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018); *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir.1998). When agency regulations are "intended to protect the interests of a party before the agency ... [they] 'must be scrupulously observed.' " *Sameena, Inc. v. U.S. Air Force*, 147 F.3d at 1153 (internal citation omitted). As here, "where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute ... and [ICE] fails to adhere to it, the challenged [action] is invalid." *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025) *citing id.* (cleaned up). *See also Sanchez v. Sessions,* 904 F.3d at 651 (invalidating agency action that is premised on an egregious violation of a regulation).

Petitioner was detained on May 2, 2025, and continues to be detained, without evidence of changed circumstances that he may be removed in the reasonably foreseeable future, in violation of 8 C.F.R. § 241.13(i) and the APA. He has been detained in excess of three months and nothing has changed in his case to effectuate removal. "Petitioner has also shown it is likely that there is no change in

circumstances such that Petitioner will be removed to Vietnam in the reasonably foreseeable future as required by § 241.13(i)(2)." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025).

3. Petitioner is Likely to Succeed on the Merits of His Due Process Claim

Next, Petitioner is likely to prevail on his claim that his detention violates Due Process. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [due process clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Therefore, individuals conditionally released from detention have a protected interest in their "continued liberty." *See Young v. Harper*, 520 U.S. 143, 147, 149, 152–53, 117 S.Ct. 1148, 137 L.Ed.2d 270 (1997) (holding that a pre-parolee released to "reduce prison overcrowding" enjoy a protected liberty interest). It is well-established that the liberty interest that arises upon release is "inherent in the Due Process Clause." *Pruitt v. Heimgartner*, 620 F. App'x 653, 657 (10th Cir. 2015) (quoting *Boutwell v. Keating*, 399 F.3d 1203, 1212 (10th Cir. 2005)) (emphasis in *Pruitt*).

"Petitioner has a liberty interest in his continued release on bond." *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025). Petitioner's detention has exceeded the presumptively reasonable six-month period, and there is no significant likelihood of his removal in the reasonably foreseeable future. As such, Petitioner is clearly likely to prevail on his claim that his detention

B. PETITIONER WILL SUFFER IRREPARABLE HARM AND THE EQUITIES TIP IN PETITIONER'S FAVOR

The Ninth Circuit has recognized the "irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in

ICE detention facilities" and "the economic burdens imposed on detainees and their families as a result of detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Moreover, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' " *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, & Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has also noted that "unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." *Hernandez*, 872 F.3d at 999.

The balance of the equities and public interest analyses merge when the government is the opposing party, as is the case in this action. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that Petitioner seeks to protect constitutionally protected liberty. *See Meza v. Bonnar,* No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) ("Given the low risk of Petitioner's causing harm to others or fleeing, such expenditure in her case would not benefit the public absent a material change in circumstances."). "Just as the public has an interest in the orderly and efficient administration of this country's immigration laws, [ ] the public has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020). On the other hand, "the burden on Respondents in releasing Petitioner from detention is minimal, especially considering Petitioner's compliance with the requirements of the Order of Supervision…" *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL

1993771, at *6 (E.D. Cal. July 16, 2025). Further, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,' " and that "[s]upervised release programs cost much less by comparison...." *Hernandez*, 872 F.3d at 996. Therefore, the *Winter* factors weigh in favor of a grant of a temporary restraining order and preliminary injunction.

C. NO BOND IS NECESSARY

The Court has discretion to set the amount of security required for a temporary restraining order or preliminary injunction under Rule 65(c), if any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) Indeed, "'[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.'" *Id.* (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003)). Here, it is unlikely any harm will come to Respondents as a result of a grant of temporary relief and Respondents will incur negligible or zero financial costs. Petitioner asks the Court to exercise its discretion to waive the bond requirement.

II. CONCLUSION

Petitioner respectfully requests that this Court grant his request for a temporary restraining order and order that he be immediately released from ICE custody.

Dated: August 5, 2025

Respectfully Submitted,

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