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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LONG TON,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; et. al,

Respondents.

No. 5:25-cv-02033-SB-AGR

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

[*Declaration of Lourdes Palacios filed concurrently herewith*]

Honorable Stanley Blumenfeld Jr.
United States District Judge

**MEMORANDUM OF POINTS AND AUTHORITIES**

Respondents respectfully oppose Petitioner Long Ton's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction [Dkt. 4] (the "TRO App.").

## I. INTRODUCTION

Petitioner cannot meet his burden of showing that "there is no significant likelihood of [his] removal in the reasonably foreseeable future," and his TRO App should be denied accordingly. Petitioner contends he is a citizen of Vietnam who was born in a refugee camp in Hong Kong, and came to the United States 45 years ago. He was issued a removal order in 2007, but could not be removed at that time.

Years ago, it was not possible to remove certain Southeast Asian nationals from the United States because of the political relationship between the two nations. That changed in recent years, however, as Vietnam began accepting its removed citizens. *See Trinh v. Homan*, 466 F.3d 1077, 1090 (C.D. Cal. 2020). The same has been true of other Southeast Asian nations. Accordingly, individuals from such regions with final removal orders have been removed for years now.

Some such individuals, like Petitioner, have recently filed habeas petitions alleging that they nonetheless cannot be detained pursuant to the limitations imposed by *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, if a detained noncitizen is not removed within six months, the burden then shifts to the government to show it will remove them in a reasonably foreseeable time. Although that burden of persuasion shifts after six months, the noncitizen still "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*, 701. The standard is very high.

Here, Petitioner Long Ton complains that he has currently been detained since May 2, 2025, which is over 90 days, and that he was previously detained for almost six months back in 2007. *See* TRO App., p. 2.

While Petitioner contends he is a citizen of Vietnam, there does not appear to be

evidence that Vietnam agrees with that, and it is undisputed that he was actually born in Hong Kong. The Immigration Court thus did not order him removed to Vietnam alone, but rather to Vietnam or in the alternative to China. *See* Declaration of Lourdes Palacio, ¶ 10. Petitioner was originally admitted to the United States as a refugee and lawful permanent resident in December of 1980. *Id.* ¶ 5. He was convicted of voluntary manslaughter, and served six years of incarceration for that, leading to his final removal order to Vietnam or to China, which he did not contest. *Id.* ¶ 10.

Petitioner was then arrested on May 2, 2025, and ICE submitted a request to China for his travel documents on June 3, 2025. *Id.* ¶ 12.

Accordingly, Petitioner's *Ex Parte* TRO Application fails to carry his high burden for a TRO release. He does not want to be detained, understandably, and articulates harms that detention causes him. But Petitioner is subject to a final order of removal, and the government is taking steps to remove him. He has not established that "there is no significant likelihood of removal in the reasonably foreseeable future," as required to establish a claim of indefinite detention. Accordingly, Petitioner's request for a TRO should be denied. *See, e.g. Phonc Thanh Nguyen v. Bruce Scott*, 2025 WL 2165995 (W.D. Wash. July 30, 2025).

## II. PROCEDURAL BACKGROUND

As Petitioner Long Ton's *ex parte* application states, he was convicted on April 8, 2002 of voluntary manslaughter, and he served his six year sentence before being transferred to immigration detention. TRO App., p. 2. On July 19, 2007, he was issued a final removal order, *see* Dkt. 4-1, Exh. J, p. 49 (removal order), but he was released "just prior to six months later because he could not be removed." TRO App., p. 2. Petitioner asserts that his manslaughter conviction was later found invalid, but the basis for this contention appears to be a new plea bargain he entered into as of May 28, 2025—*after* he was detained for removal, and many years after completing his criminal sentence—in which he pled guilty to an assault with deadly weapon charge in exchange for a motion to vacate. *See* Dkt. 4-1, Exh. H, pp. 29-42. It does not affect his extant removal order,

which remains in effect.

## III. REMOVAL OF PRE-1995 VIETNAMESE IMMIGRANTS

Historically, there were political barriers to removing citizens of Vietnam, as well as other Southeast Asian nations. Those barriers generated litigation, and many otherwise removable noncitizens—like Petitioner—were released because they could not be removed. But those barriers were eventually dismantled. Vietnamese citizens and citizens of similar regional nations are now readily removed. A few years ago, Judge Carney discussed the salient points in his summary judgment ruling in the putative class action case of *Trinh v. Homan*, 466 F.3d 1077 (C.D. Cal. 2020). As Judge Carney found:

> The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. … Instead, Vietnam now considers each request from ICE on a case-by-case basis. (*Id.*) ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. ….. Petitioners do not appear to dispute that once Vietnam issues a travel document, removal becomes significantly likely, rendering class member unable to meet their initial burden under *Zadvydas*.

*Trinh*, 466 F. Supp. 3d at 1090. Judge Carney thus refused to certify a class because he found that while some pre-1995 Vietnamese immigrants might not likely be removed, other pre-1995 Vietnamese immigrants might likely be removed. *Id.* at 1090-92.

Removing to Vietnam is thus now readily accomplished. For example, in another unreasonably prolonged detention habeas petition recently filed in this District, the government demonstrated that the petitioner's removal to Vietnam was being scheduled and flights to Vietnam purchased. *See Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM. The petition was thus held in abeyance. *See* Dkt. 11. The detained petitioner was then indeed promptly removed to Vietnam, thereby mooting his habeas petition, which was dismissed accordingly on April 9, 2025. *See* Dkt. 12. *See also Dabona Tang v. Kristi Noem*, 2:25-cv-04638-MRA-PD.

## IV. STATEMENT OF FACTS

Petitioner is a native and citizen of Hong Kong, although his ancestry is

Vietnamese. *See* Palacios Decl., ¶ 5.

On or about June 16, 1998, Petitioner was convicted for vandalism. *Id.*, ¶ 6.

On or about April 18, 2002, Petitioner was convicted of Voluntary Manslaughter and also Street Terrorism, for which he was sentenced to 80 months in California State Prison. *Id.*, ¶ 7.

After Petitioner served his sentence in California State Prison, ICE took him into custody on April 10, 2007 in Ventura, California. *Id.*, ¶ 8

On July 19, 2007, an Immigration Judge ordered Petitioner removed to Vietnam on in the alternative to China. *Id.*, ¶ 10. Petitioner waived appeal of that decision. *Id.*

On May 2, 2025, ICE officers took Petitioner into custody in Los Angeles. *Id.*, ¶ 11.

On June 3, 2025, ICE requested travel documents from China for Petitioner, and that request was delivered on June 4, 2025. *Id.*, ¶ 12.

ICE expects that a travel document will soon be issued for Petitioner, and that ICE will be able to effectuate his removal to China in the reasonably foreseeable future. *Id.*, ¶ 14.

## V. LEGAL STANDARD FOR TRO

"[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 citation omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21–22 (2008). To meet that showing, the moving party must make "a clear showing" that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 21–22. Where the government is a party, the balance of equities and the public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"A preliminary injunction can take two forms." *Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.'" *Id.* (quoting *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir. 1988)). In contrast, a "mandatory injunction 'orders a responsible party to take action.'" *Id.* at 879 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)). "A mandatory injunction 'goes well beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.'" *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)). To this end, where "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. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984); *Comm. of Cent. Am. Refugees v. Immigr. & Naturalization Serv.*, 795 F.2d 1434, 1441 (9th Cir. 1986) (same). For mandatory preliminary relief to be granted, Plaintiffs "must establish that the law and facts *clearly favor* [thei]r position …." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (*en banc*) (emphasis in original); *see also Marlyn Nutraceuticals*, 571 F.3d at 879 ("In general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued in doubtful cases ….'") (quoting *Anderson*, 612 F.2d at 1115).

Here, the status quo is that Petitioner is detained, and a TRO would disrupt it.

Finally, it is improper to seek the ultimate relief for a lawsuit in the form of a mandatory preliminary injunction. A TRO or PI is intended to preserve the status quo until the case can be judged on the merits. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

## VI. PETITIONER'S *EX PARTE* TRO APPLICATION SHOULD BE DENIED

### A. Petitioner Fails to Establish a Likelihood of Success on the Merits of His Habeas Petition.

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 [elements].'" *Garcia*, 786 F.3d at 740 (*en banc*) (quoting *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)).

Here, with a valid final order of removal, ICE may re-detain under 8 U.S.C. § 1231(a)(6), for post-removal-period detention, as well as under 8 U.S.C. §1357 (a), general immigration enforcement authority.

As an initial matter, there is no jurisdiction to contest the government's decision to detain Petitioner pending his removal pursuant to a final removal order. 8 U.S.C. § 1252(g) provides that for "Judicial review of orders of removal":

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Even if the detention decision were reviewable in District Court, the INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). 8 U.S.C. § 1231(a)(6) provides that an alien ordered removed who is inadmissible under section 1182, removable under 1227(a)(1)(C), (a)(2), or (a)(4), or who has been determined to be a risk to the community or unlikely to comply with the order of removal "may be detained beyond the removal period."

Here, Petitioner does not identify any basis for contesting his removal from the

United States. And as discussed above, claims contesting removal in District Court are generally barred by 8 U.S.C. § 1252(g), which permits the government to enforce final removal orders without judicial review except in certain narrowly delimited circumstances not present here. To the extent a non-citizen wishes to contest such final removal orders, they have other legal process available—not a District Court lawsuit.

Petitioner contends that his detention is improper, however, because it is too prolonged, asserting that he previously spent almost six months in post-removal order detention back in 2007, and has now been detained since May 2, 2025—an additional 90 days of detention, placing him over the total six-month presumptive limit of *Zadvydas*.

It is important to emphasize how the Supreme Court ruled in *Zadvydas* and what the exact constitutional standard is:

> 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. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, 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.

*Zadvydas*, 533 U.S. at 701. Thus the noncitizen "may be held in confinement until it has been determined that there *is no significant likelihood of removal in the reasonably foreseeable future.*" *Id.* (italic emphasis added).

The Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that "he is stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were[;]" that is, the alien must show he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Here, there is certainly a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. After being released in 2007, he was recently taken

into detention—on May 2, 2025. The government then submitted his travel document request to China in June of 2025. *See* Palacios Decl., ¶ 12. There is no evident bar against Petitioner's removal to China, and the government is arranging for that removal.

Courts therefore properly deny *Zadvydas* claims under such circumstances and find that a "habeas petitioner's assertion as to the unforeseeability of removal, supported only by the mere passage of time, [is] insufficient to meet the petitioner's burden to demonstrate no significant likelihood of removal under the Supreme Court's holding in *Zadvydas." Muthalib v. Kelly*, 2017 WL 11696616, at *3 (C.D. Cal. Apr. 19, 2017) (collecting cases). "This is particularly so where the only impediment to removal is the issuance of the appropriate travel document." *Id. (citing Nasr v. Larocca*, 2016 WL 3710200 (C.D. Cal. June 1, 2016), *report and recommendation adopted,* 2016 WL 3704675 (C.D. Cal. July 11, 2016)). That Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).

Petitioner's moving papers cite *Nguyen v. Hyde*, 2025 WL 1725791 (D. Mass. June 20, 2025). *Nguyen*, however, confuses the *Zadvydas* constitutional standard with ICE regulations for re-detention.[1] *Nguyen* also explained that its District Court was not aware of information that the government's ability to remove pre-1995 Vietnamese immigrants had significantly changed. Yet numerous cases have recognized that change, including (as noted above) precedent in this District, discussing the general principles and changed circumstances at length. *See Trinh v. Homan*, 466 F.3d 1077 (C.D. Cal. 2020). Finally, in *Nguyen* only the petitioner had requested travel documents—and not

[1] Asserting violations of such ICE regulations. moreover, is not a valid basis for injunctive relief against detention. *See Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019); *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). As the *Smith* court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

the government. Here, the government affirmatively requested travel documents for Petitioner via request submitted and delivered to China on June 4, 2025. *See* Palacios Decl., ¶ 12. The government expects that travel documents will be issued, and Petitioner will be removed in the reasonably foreseeable future. *Id.* ¶ 14.

This case is thus much closer to *Phonc Thanh Nguyen v. Bruce Scott*, 2025 WL 2165995 (W.D. Wash. July 30, 2025), where a TRO was denied, but the case was not dismissed outright, but was rather referred to preliminary injunction stage. It is also akin to the recent case in this District of *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM. The *Huynh* petition was held in abeyance, given the government's submission of evidence that it was working to timely remove the petitioner. *See* Dkt. 11. The detained petitioner was then removed to Vietnam, and the petition (being moot) was dismissed on April 9, 2025. *See* Dkt. 12.

The government acknowledges that Petitioner should be timely removed in the reasonably foreseeable future, consistent with the principles articulated in *Zadvydas*, and it has been taking steps to do so. Issuing a TRO, however, as mandatory injunctive relief to disrupt the status quo on an *ex parte* basis, is not appropriate.

**B. Petitioner Fails to Establish That He Will Likely Suffer Irreparable Harm Absent the Issuance of a TRO**

To satisfy this factor, a noncitizen must demonstrate "a particularized, irreparable harm beyond mere removal." *Nken v. Holder*, 556 U.S. 418, 438 (2009) (Kennedy, J., concurring) (emphasis added). A "possibility" of irreparable harm is insufficient; irreparable harm must be likely absent a preliminary injunction. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Here, Petitioner has not submitted establishing that irreparable injury is likely to occur if he remains in his current state of detention. Petitioner bears a heavy burden to prove the likelihood of future irreparable injury *apart* from his future removal, and the evidence proffered does not satisfy it. *See, e.g., Winter*, 555 U.S. at 22; *see also Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

Furthermore, complaints about conditions of confinement do not fall within habeas jurisdiction. *See Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) (no habeas jurisdiction based on complaints about conditions of confinement).

Accordingly, Petitioner has not met his heavy burden to show that he will likely suffer irreparable harm unless a TRO is issued.

**C. The Balance of Equities and Public Interest Supports Denial of a TRO**

The final two factors required for a preliminary injunction or TRO—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See, e.g., Nken, supra*, at 435. Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). In the instant case, the balance of equities and the public interest tip strongly in favor of the Respondents.

The public interest in enforcement of United States immigration laws is significant. *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."). Moreover, any order that grants "particularly disfavored" relief by enjoining the governmental entity from administering the statute it is charged with enforcing, constitutes irreparable injury to the Defendants and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Here, Petitioner's requested relief would interfere with Respondents' enforcement of immigration laws without sufficient justification. Congress granted the government authority to detain noncitizens when—like Petitioner—they commit serious crimes. Accordingly, the balance of equities and the public interest tip in favor of Respondents.

## VII. CONCLUSION

For all the above reasons, the Respondents respectfully request that Petitioner's *Ex Parte* TRO Application be denied.

Respectfully submitted,

Dated: August 7, 2025

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**CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2**

The undersigned, counsel of record for the Respondents, certifies that the memorandum of points and authorities contains 3,390 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 7, 2025

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