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9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 Long TON,

14 Petitioner,

15 v.

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

25 Respondents.
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27
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No. 5:25-cv-02033-SB-AGR

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

Immigration Case

1 Petitioner files his reply to Respondents' August 7, 2025 Opposition to his
2 Ex Parte Application for a Temporary Restraining Order and Order to Show Cause
3 Re: Preliminary Injunction. Dkt # 6.

4 Petitioner has been detained by immigration authorities for **97 days**, after his
5 May 2, 2025 arrest. According to Deportation Officer Lourdes Palacios, he sat in
6 custody from May 2, 2025 until June 3, 2025, before Immigration and Customs
7 Enforcement (ICE) even requested travel documents for him to be removed. Dkt #
8 6-1 ¶ 12. There still has not been a travel document received, **65 days** after the
9 request. Id.

10 Petitioner is clearly likely to succeed on the merits of his claim. He never
11 should have been detained at all unless ICE had evidence that he may be removed
12 in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2) ("The Service may
13 revoke an alien's release under this section and return the alien to custody if, on
14 account of changed circumstances, the Service determines that there is a significant
15 likelihood that the alien may be removed in the reasonably foreseeable future.").
16 But even after his arrest, there is still not evidence that he faces removal in the
17 foreseeable future, given the two months that have already elapsed.
18 In Hoac v. Becerra, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
19 Cal. July 16, 2025), the District Court rejected a similar claim, where ICE informed
20 the court that it intended to request travel documents for the petitioner's removal to
21 Vietnam. The court stated that "[t]he fact that Respondents intend to complete a
22 travel document request for Petitioner does not make it significantly likely he will
23 be removed in the foreseeable future." In addition, the court rejected ICE's claim
24 that removal was reasonably foreseeable because removals to Vietnam are in fact
25 occurring." Id. at * 5. A similar claim is made in Petitioner's case about China
26 accepting him because he was born in Hong Kong, without any concrete or specific
27 information that China is willing to accept Petitioner. Dkt # 6-1 ¶ 13. Petitioner is
28 not a citizen of China and because although he was born in Hong Kong, he is not of

1 Chinese descent.¹ In fact, his refugee admission states that he is a citizen of
2 Vietnam, even though he was born in Hong Kong. Tolchin Dec. Exh. F.
3 Respondents have pointed to nothing to show that there is a significant likelihood
4 that he may be removed in the reasonably foreseeable future. Again, a travel
5 document was requested 65 days ago, and ICE still is not able to remove Petitioner.

6 Respondents rely on Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL
7 2165995, at *9 (W.D. Wash. July 30, 2025), a case in which the application for
8 temporary restraining order was denied. But the reason it was denied was in order to
9 afford the government “sufficient time and opportunity to respond to [the
10 petitioner’s] claims and provide the rebuttal evidence required by Zadvydas.” In
11 Nguyen, the petition was filed a petition for writ of habeas corpus only eight days
12 after Nguyen was detained when attending his order of supervision. Id. at *3. The
13 denial of the TRO was only 14 days after the petition was filed. It has been more
14 than two months since Petitioner was taken into custody. ICE has not produced
15 anything to show that China will accept Petitioner.

16 Next, Respondents argue that this case is not properly resolved in an
17 Application for a Temporary Restraining Order. Dkt # 6 at 9. However, such relief
18 is appropriate when Petitioner continues to face a restraint on his liberty in violation
19 of the statute and his constitutional rights, and when there is not significant
20 evidence that he is likely to be removed in the foreseeable future. For instance, in
21 Hoac v. Becerra, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal.
22 July 16, 2025), the court rejected similar arguments and found that restoring the
23 petitioner to the last uncontested status required an order of release and that he
24 report as he previously did on an order of supervision. Petitioner asks for that same
25

26 ¹ “General Information on Chinese Nationality,” *Immigration Department, The*
27 *Government of the Hong Kong Special Administrative Region of the People’s*
28 *Republic of China*,
https://www.immd.gov.hk/eng/services/chinese_nationality/general_info.html

1 relief here. The same was true in Doe v. Becerra, No. 2:25-CV-00647-DJC-DMC,
2 2025 WL 691664, at *3 (E.D. Cal. Mar. 3, 2025), where the District Court granted a
3 TRO after finding that “[a]n alleged violation of Petitioner's due process rights and
4 his continued unlawful detention in violation of those rights constitutes extreme or
5 very serious damage that will result in the absence of an injunction.” See also Phan
6 v. Beccerra, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July
7 16, 2025) (“[b]ecause Petitioner challenges his re-detainment, the last uncontested
8 status of Petitioner was before he was re-detained on June 3, 2025.”)

9 As to the remaining *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21–22
10 (2008), factors, Respondents argue that a TRO would interfere with Respondents’
11 enforcement of immigration laws. Dkt # 6 at 10. But Petitioner seeks release
12 precisely because ICE is not able to execute the removal order. An order of release
13 does nothing to stop ICE from removing Petitioner if in fact it is able to secure
14 removal documents to China. Further, “[j]ust as the public has an interest in the
15 orderly and efficient administration of this country's immigration laws, [] the
16 public has a strong interest in upholding procedural protections against unlawful
17 detention.” *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4
18 (N.D. Cal. Aug. 23, 2020). Upon balance, injunctive relief is warranted.

19 Finally, Petitioner does not contest his removal from the United States, and
20 therefore 8 U.S.C. § 1252(g) is not implicated. Dkt # 6 at 6-7. Rather, he challenges
21 his custody, precisely *because* ICE is unable to remove him. There is no question
22 that this Court has jurisdiction over his claim, as the Supreme Court explicitly
23 rejected the application of 8 U.S.C. § 1252(g) to a post-final order custody habeas.
24 Zadvydas v. Davis, 533 U.S. 678, 688, 121 S. Ct. 2491, 2497, 150 L. Ed. 2d 653
25 (2001) (discussing § 1252(g) and stating that “[t]he aliens here, however, do not
26 seek review of the Attorney General's exercise of discretion; rather, they challenge
27 the extent of the Attorney General's authority under the post-removal-period
28 detention statute. And the extent of that authority is not a matter of discretion.”).

1 See also Moussa v. Jenifer, 389 F.3d 550, 554 (6th Cir. 2004) (“citing Zadvydas
2 and stating “Petitioner rightly argues that there are instances where § 1252(g) does
3 not suspend habeas review, such as in challenges to INS authority to indefinitely
4 detain a non-citizen following the execution of a removal order.”).

5 As such, the Application for Temporary Restraining Order should be granted.

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7 Dated: August 7, 2025

Respectfully Submitted,

8 S/Stacy Tolchin

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for the Petitioner, certifies that the memorandum of points and authorities contains 1,129 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 7, 2025

S/ Stacy Tolchin

Stacy Tolchin
Counsel for Petitioner