

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

My Anh NGUYEN,

Petitioner,

v.

Polly KAISER, Acting Field Office Director  
of San Francisco Office of Detention and  
Removal, U.S. Immigrations and Customs  
Enforcement; U.S. Department of Homeland  
Security; Todd M. LYONS, Acting Director,  
Immigration and Customs Enforcement, U.S.  
Department of Homeland  
Security; Kristi NOEM, in her Official  
Capacity, Secretary, U.S. Department of  
Homeland Security; and Pam BONDI, in her  
Official Capacity, Attorney General of the  
United States;

Respondents.

Case No. \_\_\_\_\_

**EX PARTE MOTION FOR TRO AND  
MOTION FOR PRELIMINARY  
INJUNCTION: HEARING REQUESTED  
MEMORANDUM OF SUPPORT OF EX  
PARTE MOTION FOR TRO**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES

NOTICE OF MOTION

Memorandum In Support of TRO and Emergency Preliminary Injunction

I. INTRODUCTION

II. STATEMENT OF FACTS

III. LEGAL STANDARD FOR EX PARTE TRO AND PRELIMINARY INJUNCTION

IV. ARGUMENT

A. Mr. Nguyen Is Likely to Succeed on the Merits

1. Due Process Requires a Showing that Removal is Foreseeable Prior to Re-Detention

C. The Balance of Equities and Public Interest Favor Relief

ATTORNEY CERTIFICATION UNDER FRCP 65(b)(1)(B)

14

## TABLE OF AUTHORITIES

Page(s)

## Cases

Aden v. Nielsen, 409 F. Supp. 3d 998 (W.D. Wash. 2019)	12
Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053 (9th Cir. 2014)	14
Golden Gate Rest. Ass'n v. City & Cty. of San Francisco, 512 F.3d 1112 (9th Cir. 2008)	14
<i>Hernandez v. Sessions</i> , 872 F.3d 976 (9th Cir. 2017)	13
Himri v. Ashcroft, 78 F.3d 932 (9th Cir. 2004)	12
Lopez v. Heckler, 713 F.2d 1432 (9th Cir. 1983)	13
<i>Nguyen v. INS</i> , 533 U.S. 53 (2001)	8
Nken v. Holder, 556 U.S. 418 (2009)	13
<i>Stuhlbarg Int'l Sales Co. v. John D. Brush &amp; Co.</i> , 240 F.3d 832 (9th Cir. 2001)	4
Valle del Sol Inc. v. Whiting, 732 F.3d 1006 (9th Cir. 2013)	14
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	4, 10
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001)	10, 12

## Statutes

8 U.S.C. 1231(a)(6)	12
8 U.S.C. § 1231	12
8 U.S.C. § 1231(b)(2)(E)	12
8 U.S.C. § 1231(b)(3)(A)	12
Pub. L. No. 105-277	12
Public Law 100-202	5

**NOTICE OF MOTION**

Pursuant to Local Civil Rules 7-1 and 7-10, Petitioner hereby moves this Court for a temporary restraining order to be issued ex parte. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner hereby moves this Court for an order enjoining Respondents Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”), Polly Kaiser, and Pam Bondi in her official capacity as U.S. Attorney General, from re-arresting Petitioner Mr. My Anh Nguyen until and unless the Respondents can provide proof that his removal to Vietnam is reasonably foreseeable and that re-detention is necessary to effectuate a government interest in preventing flight risk or danger to the community.

This Motion is accompanied by a concurrently filed Declaration by R. Linus Chan with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. The accompanying memorandum provides legal authority on why Mr. Nguyen is likely to succeed on the merits, on how he would suffer irreparable harm in the absence of preliminary relief, and why the balance of equities favor him and why it is in the public interest to grant the injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Undersigned counsel hereby declares and certifies that on June 23, 2025, immediately after filing this motion with the Court, he emailed Civil Division Chief Pamela Johann at the U.S. Attorney’s Office for the Northern District of California to advise her that Petitioner- Plaintiff is filing this motion for a temporary restraining order. That email also contained copies of (1) the Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief, (2) Motion for Temporary Restraining Order, (3) Exhibits in Support of Complaint/Petition and



1 Motion for Temporary Restraining Order, (4) Proposed Order on Motion for TRO, (4) Declination  
2 of Magistrate Judge Jurisdiction, and (7) Proposed Summons.

3 Dated August 21, 2025

4 /s/ R. Linus Chan<sup>1</sup>

5 Attorney for the Petitioner

6 **MEMORANDUM IN SUPPORT OF TRO AND EMERGENCY**

7 **PRELIMINARY INJUNCTION**

8 **I. INTRODUCTION**

9 In May of 1973 in Nha Trang a city about 300 miles outside of Saigon John Hendricks  
10 was targeted by the Viet Cong and severely injured. He was evacuated back to the United States  
11 for medical treatment. What he didn't know at the time was that he would be leaving behind a  
12 son, My Anh Nguyen, a boy born on August 31, 1973.

13 Life for My Anh Nguyen after the fall of the South Vietnamese government was harsh  
14 and unforgiving. The plight of Amerasians, especially the children of former U.S. servicemen,  
15 was well documented, even back in the early 1980s. The stories of how the children of U.S.  
16 servicemen were treated in Vietnam created a domestic upswelling of support to protect these  
17 children. See THOMAS, SABRINA, and ROBERT J. MRAZEK. "Blood Politics." *Scars of War: The Politics of Paternity and Responsibility for the Amerasians of Vietnam*, University of  
18 Nebraska Press, 2021, pp. 119–52. Ronald Reagan and Congress eventually answered such a  
19 call and passed a pair of bills known as the Amerasian Homecoming Act, one in 1982 and  
20  
21

22  
23 <sup>1</sup> Undersigned counsel expresses its sincere apologies to the Court for issues related to the  
24 formatting of these filings. Undersigned counsel has worked diligently to complete these filings  
25 on an expedited basis and are having issues with both Word and Adobe. Given the emergency relief sought here, undersigned counsel is filing the documents as is, and appreciates the Court's understanding.

1 another in 1987. *See* Amerasian Homecoming Act Public Law 100-202 (101 Stat. 1329-39), “S.  
2 1698 — 97th Congress: An act to amend the Immigration and Nationality Act to provide  
3 preferential treatment in the ....” www.GovTrack.us. 1981. August 21, 2025  
4 <<https://www.govtrack.us/congress/bills/97/s1698>>.

5 Mr. Nguyen was eventually able to utilize the provisions of the Amerasian Homecoming  
6 Act to sponsor his mother and his four younger siblings for lawful permanent residence in the  
7 United States. M.Nguyen Decl. However, after pleading guilty to the sole criminal offense of his  
8 entire life in December of 2002- a Minnesota misdemeanor- Mr. Nguyen was placed into  
9 removal proceedings that would last for four years before he would lose his green card and have  
10 an order of removal entered against him on March 10, 2010. Chan Decl. Exhs. E, G, BB After a  
11 year of post-removal detention, Mr. Nguyen would finally be released on an Order of  
12 Supervision. Chan Decl. Ex.E. For the next fourteen years, Mr. Nguyen has complied with all of  
13 the conditions of his release, never missing a check-in. Chan Decl. Ex. F. After his release, Mr.  
14 Nguyen found new love, got married to Linh Nguyen a naturalized U.S. citizen, had a daughter,  
15 built a business with his wife, helped raise her son Alexander Nguyen as his own, and provided  
16 care for his in-laws as well as his entire family. M.Nguyen Decl, L.Nguyen Decl. This hard  
17 fought life that Mr. Nguyen built for the last 14 years may be at risk because of an arbitrary and  
18 capricious decision to maximize detention. Respondents must be enjoined from taking away  
19 Petitioner’s liberty interest in this manner and must be forced to provide clear evidence of  
20 removability to Vietnam, a country that had denied him travel documents fifteen years ago. Chan  
21 Decl. Ex. I.

23 Given the irreparable harm that Mr. Nguyen faces from his lost liberty interest, he more  
24 than meets the first legal requirement for an issuance of a TRO. As explained below, he also  
25

meets the requirements of showing that he would be likely successful on the merits and that any burdens on the government are negligible given the grave interests at stake for Mr. Nguyen.

Ever since the Respondents announced new quotas for immigration arrests, there has been a dramatic increase in detentions for those with Orders of Supervision.<sup>2</sup> These detentions are unrelated to whether or not there is any foreseeability to the original countries of removal, but unfortunately have been used to effectuate third country removal without notice or opportunity to claim a protection from persecution or torture in those countries.<sup>3</sup>

<sup>2</sup> See, e.g., “Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight,” CBS News (June 7, 2025), <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; “They followed the government’s rules. ICE held them anyway,” LAist (June 11, 2025), <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>. See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025), <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> (“At the end of May 2025, ‘Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”)

<sup>3</sup> Rachel Uranga, *L.A. Vietnamese man came for annual ICE Check in, then nearly got deported to Libya*, Los Angeles Times, May 15, 2025, <https://www.latimes.com/california/story/2025-05-15/a-vietnamese-immigrant-among-those-told-he-would-be-deported-to-libya-lawyer>. Castano, Danielle, *The U.S.’s Illegal Migrant Deportations to Panama*, Human Rights Research Center, June 5, 2025 found at <https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama#:~:text=In%20February%202025%2C%20the%20Trump,U.S.%20to%20deport%20to%20directly.,see%20also,Megan%20Janetsky,Alma%20Solis%20and%20Matias%20Delacroix,Panama%20releases%20dozens%20of%20detained%20deportees%20from%20US%20into%20limbo%20following%20human%20rights%20criticism,AP%20March%209,%202025%20at%20https%3A%2F%2Fapnews.com%2Farticle%2Ftrump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5>.



## II. STATEMENT OF FACTS

Mr. Nguyen is a 51-year-old Amerasian, the son of John Francis Hendricks Jr., a former U.S. Serviceman, and Cuc Nguyen, a Vietnamese native. M.Nguyen Decl. After the United States passed the Amerasian Homecoming Act in 1987, Mr. Nguyen immigrated to the United States as a lawful permanent resident on January 19, 1996, bringing with him his mother and four younger half-siblings. *Id.* All of his relatives would later naturalize and become U.S. citizens.

Mr. Nguyen's experiences as an Amerasian in Vietnam were marked by severe discrimination and hardship. Amerasians were not eligible for food rations, could not complete education beyond sixth grade, and faced systematic rejection and humiliation. Mr. Nguyen describes nearly dying of starvation as a child and being abandoned by his mother, who only returned when the Amerasian Homecoming Act presented an opportunity to come to the United States. M.Nguyen Decl.



In 2006, when returning from a trip to Vietnam, Mr. Nguyen was placed in Deferred Inspection by CBP because of a conviction in 2003 for a Minnesota Misdemeanor. While initially allowed entry under a "petty offense" exception, he was later served with a Notice to Appear. Chan Decl. Ex. G, K.

Mr. Nguyen endured a nearly four-year removal process. His N-600 citizenship application was denied because his U.S. citizen father could not legitimize him before his 18th birthday—a requirement the Supreme Court upheld in *Nguyen v. INS*, 533 U.S. 53 (2001). He was ultimately ordered removed to Vietnam on March 10, 2010.

Mr. Nguyen spent over a year in immigration detention following his removal order. After the Vietnamese embassy denied issuing a travel document, he was released on March 8,



1 2011, with an Order of Supervision (Form I-220B). Chan Decl. Ex. I, E. His belief that Vietnam  
2 would not accept an Amerasian was well-founded, as these individuals were systematically  
3 rejected by their birth country.

4 During his fourteen-plus years of supervised release, Mr. Nguyen has fully complied with  
5 all requirements. Chan Decl. Ex. F. He has never committed another crime and has built a  
6 thriving family life. He married Linh Nguyen, a naturalized U.S. citizen, in 2017. Their daughter  
7  was born in 2013, and the family includes his stepson  Chan Decl. Ex. M, N,  
8 O, M.Nguyen Decl, L.Nguyen Decl. The family resides in San Jose, California, where Mr.  
9 Nguyen has worked as a skilled carpenter and caretaker for his wife, who suffers from chronic  
10 health issues. M.Nguyen Decl, L.Nguyen Decl.

11 Mr. Nguyen has consistently appeared for ICE check-ins, which were reduced to annual  
12 appointments by February 2019, demonstrating his reliability and lack of flight risk. Chan Decl.  
13 Ex. F.

14 On February 21, 2025, after his routine annual check-in, Mr. Nguyen was ordered to  
15 report for a check-in on August 22, 2025, at 9:00 a.m.—the first time during his supervision that  
16 listed a specific time. Chan Decl. Ex. F. This change occurs amid credible reports of ICE re-  
17 incarcerating individuals at routine check-ins despite no changes in their removal prospects or  
18 risk profiles.

19 Moreover, Mr. Nguyen's attorney emailed the field office asking to move the check-in  
20 date as Mr. Nguyen was served with a witness subpoena by the Santa Clara District Attorney as  
21 he possessed security camera footage of a vehicle accident that was being charged as a  
22 manslaughter case and the District Attorney asked that he be available until September 12, 2025.  
23 Despite two email attempts, the office has not responded to the request. Chan Decl. at para.5.  
24  
25

Recent court cases demonstrate this pattern: Chan Decl. Ex. CC, *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP (E.D.C.A. July 16, 2025) and Ex. DD *Phan v. Becerra*, 2:25-CV-01757-DC-JDP (E.D.C.A. July 16, 2025) both involved Vietnamese individuals with final removal orders who were unlawfully re-detained at routine check-ins after years of compliance with supervision orders.

### III. LEGAL STANDARD FOR EX PARTE TRO AND PRELIMINARY INJUNCTION

For a preliminary injunction under Rule 65(a), the moving party must demonstrate: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in favor of the moving party; and (4) an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

### IV. ARGUMENT

#### A. Mr. Nguyen Is Likely to Succeed on the Merits

##### 1. Due Process Requires a Showing that Removal is Foreseeable Prior to Re-Detention

Mr. Nguyen has a substantial liberty interest in his continued supervised release that has existed for over fourteen years. The Supreme Court has recognized that "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 (2001).

Mr. Nguyen's liberty interest is substantial and has only grown over the last fourteen years. The only time Mr. Nguyen has lost his right to liberty for any appreciable amount of time has been when he was placed in civil immigration detention. He was arrested for his misdemeanor in 2002, but only spent three days in jail and after his conviction he was given

1 work release for ninety days and two years of probation. It wasn't until he was placed in removal  
2 proceedings that he would find himself restrained and unable to exercise his liberty interest.

3 While an Immigration Judge decided that after seven weeks, he should be allowed to be  
4 released because of his claim to U.S. citizenship, he found himself detained in the fall of 2009,  
5 despite complying with court hearings and keeping out of any criminal trial. He would not be  
6 released from detention for more than 18 months. Chan Decl. Exh. E, L. The disproportionate  
7 period of time of lost liberty between his punitive sanction and presumably civil process was  
8 enormous.

9 Since his release in March of 2011, Mr. Nguyen has exercised and enjoyed as much of a  
10 liberty interest as he was afforded. He started a business, got married, had a child, and raised  
11 another child. This prolonged period of time without having to be detained and without any  
12 indication that removal would be foreseeable, helped create a serious and important reliance  
13 interest. Moreover the harms caused by his re-detention are not limited to himself. As described  
14 by his wife, Linh, "Through it all, my husband has been by my side. He accompanies me to  
15 every medical appointment, stays with me during long hours of pain, and provides constant  
16 emotional and physical support. He takes care of the household when I am unable to, manages  
17 responsibilities with the children and my parents, and never complains—he just keeps going for  
18 the sake of our family." L.Nguyen Decl. As his ex-wife explains, "'My is a devoted husband and  
19 father. His daughter, now twelve, deserves the stability of a united family and the presence of a  
20 loving father. His wife deserves the peace of knowing their life together is not under constant  
21 threat. And My deserves the chance to live without fear, to continue building a life rooted in  
22 responsibility, love, and redemption.'" Chan Decl. Ex. A.

24 Given that Mr. Nguyen has already spent considerably more time in detention that the  
25



1 period authorized under 8 U.S.C. 1231(a)(6) and contemplated by *Zadyvdas v. Davis*, 533, U.S.  
2 at 699, “Thus if removal is not reasonably foreseeable...continued detention [is] unreasonable  
3 and no longer authorized by statute.” *Id.* at 699-700. Absent clear evidence that his removal to  
4 Vietnam has become foreseeable after fourteen years, any detention now would clearly violate  
5 the period of time authorized by statute and much less allowed by due process. Here, given the  
6 due process clause, the INA, the Foreign Affairs Reform and Restructuring Act of 1998  
7 (FARRA), Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998)  
8 (codified as Note to 8 U.S.C. § 1231), and the implementing regulations, Mr. Nguyen’s removal  
9 is not reasonably foreseeable. See 8 U.S.C. § 1231(b)(2)(E); 8 U.S.C. § 1231(b)(3)(A); *Himri v.*  
10 *Ashcroft*, 78 F.3d 932, 939 (9th Cir. 2004); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D.  
11 Wash. 2019). Mr. Nguyen’s removal proceedings concluded more than fifteen years ago and  
12 there is no reason to believe that Vietnam would issue a travel document to an Amerasian who  
13 came to the United States to join his father and claim a birthright.

14  
15 He poses no flight risk or danger after fourteen years of compliance. The government's  
16 interest in detention is minimal compared to the severe harm to Mr. Nguyen and his family. Mr.  
17 Nguyen’s entire life has been compliance with the law even as the law has treated him poorly. In  
18 Vietnam he was treated as an outcast. In the United States despite a conviction that was based  
19 only on public urination, he was forced to endure more than 18 months of detention, and lost his  
20 ability to keep his green card. Nonetheless, Mr. Nguyen has done nothing to warrant any trouble  
21 with any law enforcement entity. With the single exception of receiving ticket for out of date  
22 license plates, Mr. Nguyen has not been fined, ticketed or interacted with law enforcement at all.  
23 When he was given release back in March of 2011, ICE did not pursue or claim that Mr. Nguyen  
24 posed a danger to the community, nor could such a finding be justified. The fourteen years since  
25

1 that release only had increased the accuracy of that determination.

2 Loss of liberty constitutes irreparable harm per se. *See Hernandez v. Sessions*, 872 F.3d  
3 976, 996 (9th Cir. 2017). Mr. Nguyen faces immediate separation from his 12-year-old daughter,  
4 his wife, and stepson. Given ICE's practice of transferring detainees far from family, this  
5 separation would be particularly devastating. The harm is imminent—Mr. Nguyen must report to  
6 ICE tomorrow morning. Once detained, he will have lost the hard fought liberty forged over 14  
7 years.

### 8 **C. The Balance of Equities and Public Interest Favor Relief**

9 The balance of equities strongly favors Mr. Nguyen. Where the government is the  
10 opposing party, balancing the equities and the public interest merge. *See Nken v. Holder*, 556  
11 U.S. 418, 435 (2009). Here, the balance of equities tip strongly in Mr. Nguyen's favor. Absent  
12 injunctive relief, Mr. Nguyen faces separation from his wife and daughter, detention in violation  
13 of the immigration statute and due process and severe economic hardship, as Ms. Nguyen  
14 explains that her health condition has made working nearly impossible. L.Nguyen Decl. Faced  
15 with "preventable human suffering, [the Ninth Circuit has] little difficulty concluding that the  
16 balance of hardships tips decidedly in plaintiffs' favor." *Hernandez*, 872 F.3d at 996 (quoting  
17 *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

18 The public likewise has a strong interest in ensuring that Mr. Nguyen is not re-detained as  
19 "it would not be equitable or in the public's interest to allow [a party] . . . to violate the  
20 requirements of federal law, especially when there are no adequate remedies available." *Ariz.*  
21 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v.*  
22 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)).

23 Moreover, a TRO serves the public interest by avoiding "indirect hardship to [Mr.  
24  
25

1 Nguyen's] family members," which here would be substantial. *See also* Golden Gate Rest. Ass'n  
 2 v. City & Cty. of San Francisco, 512 F.3d 1112, 1126 (9th Cir. 2008) (finding that courts may  
 3 consider hardship to families when determining public interest). While Mr. Nguyen has decided  
 4 to spare the current anxiety of letting his daughter know that he may be in danger of being  
 5 detained, the impact of his actual detention could not be hidden from his daughter. M.Nguyen  
 6 Decl.

7 The government on the other hand suffers no harm from continuing to allow Mr.  
 8 Nguyen's release. The public interest favors preventing arbitrary detention and ensuring  
 9 constitutional protections are observed.

#### 10 **V. CONCLUSION AND PRAYER FOR RELIEF**

11 Mr. Nguyen respectfully requests that this Court immediately issue an ex parte temporary  
 12 restraining order **enjoining Respondents from re-arresting Petitioner or modifying the**  
 13 **conditions of his release** unless and until Respondents can establish that his removal is  
 14 reasonably foreseeable and that detention or a modification of his release conditions is necessary  
 15 to effectuate removal.  
 16