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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

HAI CHIEU DAM,

Petitioner-Plaintiff,

v.

Timothy ROBBINS, Acting Field Office Director of Los Angeles 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-Defendants.

No. 2:25-cv-08133-JWH-MAA

FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER; DECLARATION OF NELLY MCKENNA

Honorable John W. Holcomb
United States District Judge

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Hai Chieu Dam has filed a request for a temporary restraining order that Respondents refrain (1) from re-arresting and re-detaining Mr. Dam without a showing that he is a flight risk or danger to the public; (2) from requiring Mr. Dam to communicate with and seek and obtain identification and travel papers from the Vietnamese government as long as the 2004 order granting him a deferral of removal to Vietnam pursuant to the Convention Against Torture ("CAT") remains in effect; (3) from removing Mr. Dam to Vietnam in a speculative future violation of the 2004 IJ order and Ninth Circuit order staying removal until the Court's mandate issues regarding his petition for review; (4) from refouling or sending Mr. Dam to any third country without a hearing to establish he would be safe in that country; and (5) from placing Mr. Dam into current immigration detention conditions that allegedly violate the Fifth Amendment.

As a preliminary matter, Petitioner's 63-page "Motion for Ex Parte Temporary Restraining Order and Motion for Preliminary Injunction" (the "Motion") (Dkt # 2) fails to comply with the Central District of California's Local Rules. The Motion does not contain the word count certification required by Local Rule 11-62, nor could it, because the Motion is several times longer than the Local Rules permit. In addition, the Motion fails to contain the required Local Rule 7-19 statement.

The Motion also prematurely seeks to speculatively litigate a broad variety of possible grievances related to potential *future* immigration disputes. Petitioner also purports to invoke the Court's habeas jurisdiction even though he cannot establish the requirement that he is currently "in custody *in violation of* the Constitution and laws or treaties of the United States." 28 U.S.C. § 2241 (emphasis added). Indeed, by his own admission, Petitioner has "lived at liberty" since 2004. Motion at 2. Accordingly, Respondents request that the Motion be stricken or denied for Petitioner's failure to establish the Court's jurisdiction and for its failure to comply with the basic procedural

requirements of the Local Rules of this Court.

Moreover, as stated in the attached McKenna declaration at paragraph 12, ICE does not intend to detain the Petitioner. In addition, Petitioner is already protected from removal to Vietnam under the Immigration Court's grant of deferral of removal to that country, and from any removal pursuant to the Ninth Circuit's stay of removal in his pending petition for review in case number CA 24-7787. It is improper to request a duplicative order from a District Court. In addition, Petitioner's claims for meaningful notice and an opportunity to present a fear-based claim before removal to a third country are already subsumed in the class action *D.V.D. v. Dept. of Homeland Security*, 778 F.Supp.3d 355, 386 (D. Mass. 2025), of which he is or will become a member, if removal proceedings commence, and those claims should be litigated in that class action, not this Court. Finally, Petitioner's fifth request barring any future immigration detention against him on the grounds that all government detention facilities violate the Fifth Amendment is frivolous.

II. STATEMENT OF FACTS

Petitioner is a native and citizen of Vietnam and not a citizen of the United States. *See* Exhibit 1 to Motion (Petitioner's Notice to Appear). By his own admission, he was a member of a street gang. *See* Exhibit 9 to Motion at ¶ 7. Petitioner was convicted of several crimes including not one, but two, aggravated felonies, second degree burglary in violation of California Penal Code § 459 in 1994 (involving actual physical force against the victim), and assault by means to produce great bodily harm in violation of California Penal Code § 245(a)(1) in 2001 (kicking an individual in the head). *See* Exhibit 2 to Motion.

On December 2, 2004, the Immigration Judge denied Petitioner's requests for voluntary departure, cancellation of or removal, waiver of deportability, asylum and withholding of removal. *Id.* However, the Immigration Judge granted Petitioner deferral of removal to Vietnam under the CAT. *Id.* The Immigration Judge further ordered Petitioner removed from the United States to any country authorized under the

Immigration and Nationality Act, with the exception of the restrictions placed on his return to Vietnam under CAT. *Id.* The Board of Immigration Appeals ("BIA") affirmed the Immigration Judge's rulings on September 30, 2005. *See* Exhibit 3 to Motion.

On September 28, 2022, Petitioner filed an untimely motion to reopen his removal proceedings before the BIA. *See* Exhibit 4 to Motion. The BIA denied the motion on December 3, 2024. *Id.* On December 27, 2024, Petitioner filed a petition for review of the BIA's decision in the United States Court of Appeals for the Ninth Circuit. *See* Exhibit 5 to Motion. Petitioner has requested, and received, several extensions of time to file documents in his appeal, and on June 9, 2025, the Ninth Circuit granted Petitioner's request for a stay of removal which stay will remain in place until the Court's mandate is issued. *Id.*

III. STANDARD OF REVIEW

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). In order to obtain such extraordinary relief, Petitioner must establish, at minimum, 1) a likelihood of success on the merit; 2) a likelihood he will suffer irreparable injury absent an injunction; and 3) that the balance of equities tips in his favor. *Id.* 555 U.S. at 20. As the Supreme Court has articulated, "[a] stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (citation omitted). Instead, it is an exercise of judicial discretion that depends upon the circumstances of the particular case. *Id.*

To the extent Petitioner seeks *mandatory* injunctive relief here via TRO provisions providing certain procedures for any future re-detention (as opposed to just prohibitory relief) the already high standard for injunctive relief is "doubly demanding." *Garcia v. Google, Inc.*786 F.3d 733, 740 (9th Cir. 2015) (*en banc*). Thus, Petitioner must establish that the law and facts *clearly favor* his position, not simply that he is likely to succeed.

Id. Further, a mandatory preliminary injunction will not issue unless extreme or very serious damage will otherwise result. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022). As explained below, Petitioner cannot satisfy any of these requirements.

IV. ARGUMENT

A. Petitioner is Not Likely to Succeed on the Merits of His Claim.

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 (9th Cir. 2015) (quoting *Ass'n des Eleveurs de Canards et D'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)). Because the BIA has affirmed Petitioner's deferral of removal to Vietnam and the Ninth Circuit has recently issued an order staying Petitioner's removal, Petitioner's claims for redundant preliminary injunctive relief barring removal to Vietnam, or engaging with the government of Vietnam, is unnecessary and devoid of jurisdiction.

Stacking reiterative District Court injunctions on top of the existing ones is improper, nor does it do anything to meet Petitioner's very high burden to prove that he will likely suffer irreparable harm *unless* the Court issues the requested preliminary relief. *See EEOC v. Autozone*, 707 F.3d 824, 841 (7th Cir. 2013) ("An obey-the-law injunction departs from the traditional equitable principle that that injunctions should prohibit no more than the violation established in the litigation or similar conduct related to the violation").

Furthermore, to the extent that the immigration authorities may seek to remove Petitioner to a third country in the future, he would already be a member of the certified class in *D.V.D. supra*, which class includes:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a

country to which the individual would be removed. 778 F.Supp.3d 378. Thus, it would be contrary to comity and judicial economy principles for the Court to assert jurisdiction over virtually the same issues and parties. *See I.V.I. v. Baker*, 2025 WL 1519449, at * 2 (D. Md. May 27, 2025).

With respect to Petitioner's fear of re-detention, Judge Slaughter recently rejected an identical claim for preliminary injunctive relief in which the petitioner did not challenge the lawfulness of his *present* custody, but rather, challenged his *potential* confinement absent a pre-deprivation hearing before a neutral adjudicator. *See J.P. v. Ernesto Santacruz Jr., et al.,* case number 8:25-cv-01640-FWS- JC (Dkt # 20 August 27, 2025). The *Santacruz* court found that the petitioner did not adequately demonstrate a challenge to his custody. *Id.* Respondent requests that the same result attain here.

Moreover, 8 U.S.C. § 1226(b) provides that the government at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien. *See* 8 U.S.C. § 1226(b); *see also* 8 C.F.R. § 241.4(l)(2)(iii) (permitting revocation release in the discretion of immigration authorities in which event the alien may be taken into physical custody and detained.).

Petitioner relies on *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2025), for the proposition that "[o]nce a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings." Motion at 18. A close reading of *Saravia*, and the authority on which it is based, reveals that Petitioner's reliance thereon is misplaced.

In *Saravia*, 280 F.Supp.3d at 1197, a case involving a minor, the court cited the interim BIA decision in *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981). In *Sugay*, the BIA found no merit in counsel's argument that the government "was without authority to revoke bond once an alien has had a redetermination hearing" based on former regulation 8 C.F.R. § 242.2(c), now codified at 8 C.F.R. § 236.1(c)(9). *Id.* at 639. In *Sugay*, the BIA merely stated that it "*recognized the argument* that *where a previous*

bond determination was made by an immigration judge, no change should be made by a District Director absent a change of circumstance." *Id.* at 640 (emphasis added). The instant Petitioner himself is unsure if his prior release was ordered by an Immigration Judge or ICE. *See* Motion at 19. As explained in the attached McKenna declaration at paragraph seven, Petitioner's last release from custody as order was by ICE's enforcement and removal operations section. Thus, *Sugay* is also inapposite.

Moreover, even though the Ninth Circuit affirmed the *Saravia* decision granting a preliminary injunction, it was careful to note that it did so because, in a preliminary district court hearing in *Saravia,* an unnamed government lawyer explained that "DHS conduct[s] a "changed circumstances bond hearing before an immigration judge within seven to fourteen days after an arrest…," *Saravia for A.H.*, 905 F.3d at 1145 & n. 10. The Ninth Circuit also stressed that the *Saravia* court *never* held that *Sugay* requires the above hearings. *Id.* Therefore, neither *Saravia* nor *Sugay* support this Motion. *See United States v. Cisneros*, 2021 WL 5908407 at * 2 (N.D. Cal. Dec. 14, 2021) (finding the *Sugay* decision does not bind the federal judiciary); *Bermudez Paiz v. Decker*, 2018 WL 6928794 at * 16 & n. 19 (S.D.N.Y. Dec. 27, 2018) (same).

With respect to Petitioner's final request—for an order preventing his future placement in immigration detention conditions that violate the Fifth Amendment—Petitioner cites no legal authority for such a subjective and far-reaching injunction. Indeed, a habeas petition is not a vehicle for asserting unconstitutional conditions of confinement claims. *See Pinson v. Carvajal*, 69 F.4th 1059, 1065 (9th Cir. 2023); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Moreover, Petitioner relies on statements and reports by mostly biased sources such as immigration advocate agencies. *See* Motion at 43-53. The Department of Homeland Security's Office of Inspector General regularly conducts investigations of such detention facilities, from which a more objective overview can be considered. *See https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations*.

In fact, Petitioner appears to argue, in contravention of federal immigration law,

that all immigration detention centers are unsafe and inhumane as well as "entirely unnecessary." *Id.* at 43, 53. Under Petitioner's logic of rejecting federal immigration law, he could never be detained, nor could any other criminal non-citizen, no matter what crimes they committed. Petitioner's argument on this point can only be considered frivolous. Respondents respectfully submit that Petitioner's *ex parte* application entirely fails to show a likelihood of success on the merits of his claim. As a result, the Court's inquiry should end here.

B. Petitioner Fails to Carry his High Burden to Prove That He is Likely to Suffer Irreparable Harm Unless the Court Issues the Requested TRO.

To the extent it is necessary to discuss all the *Winter* factors, Respondents agree that Petitioner has a liberty interest at stake if he were to be re-detained in the future. But it should also be noted that the recognized liberty interests of U.S. citizens and aliens are not coextensive: Congress can, and has, made rules as to aliens that would be unacceptable if applied to citizens. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022). Indeed, "detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process." *Denmore v. Kim*, 538 U.S. 510, 523 (2003). Accordingly, in the event that Petitioner is re-detained in the future, his remedy should be, at most, a *post*-deprivation bond hearing, rather than the pre-deprivation hearing he seeks to mandate. *See Carballo v. Andrews*, 2025 WL 2381464, at * 8 (E.D. Cal. Aug. 15, 2025).

C. The Balance of Equities Weigh in Favor of Denying Petitioner's TRO Application.

The final two factors required for a 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 in favor of Respondents.

The public interest in enforcement of United States immigration laws is high. *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 Respondents 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).

Finally, if the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states "The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added).

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V. CONCLUSION

For all the above reasons, the Respondents respectfully request that Petitioner's application for a temporary restraining order be denied in its entirety.

Respectfully submitted,

Dated: September 15, 2025

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Certificate of Compliance under L.R. 11-6.2

Counsel of record for Federal Defendants-Respondents certifies this brief contains 2,668 words, which complies with the word limit of L.R. 11-6.1.