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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

TRUNG DANG MAI Petitioner, v. MARK BOWEN, et al., Respondents.	No. 5:25-cv-02707-PA-DSR **RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER [<u>DKT. 5</u>]** **Declaration of Christopher Jenson filed herewith]** Honorable Percy Anderson United States District Judge

I. INTRODUCTION

Petitioner Trung Dang Mai, a Vietnamese citizen (and a native of the Philippines), who is subject to a final removal order, was detained on September 24, 2025. *See* (the "Application") [Dkt 5]; Declaration of Christopher Jenson ("Jenson Decl.") ¶ 9.

Petitioner first claims he cannot be removed and his detention is indefinite because Vietnam's acceptance rate and repatriation of pre-1995 immigrants remains relatively low. [Dkt. No 5]. Although many otherwise removable pre-1995 Vietnamese nationals like Petitioner were previously released under an order of supervision (OSUP) because Vietnam would not accept them due to that country's political relationship with the United States at the time, that Vietnamese policy has since been dismantled. As a result, and contrary to Petitioner's suggestion, pre-1995 Vietnamese immigrants such as Petitioner are now routinely removed to Vietnam. *See, e.g.*, *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM.[1] Simply put, circumstances for Vietnam removals have changed dramatically since Petitioner's placement on supervised release many years ago.

Second, Petitioner argues that the government previously released him, and that the government did not comply with the procedural requirements of 8 C.F.R. § 241.13(i) in revoking his release and re-detaining him. [Dkt. No. 5]. To the contrary, however, Petitioner, upon his re-detention, was served with a notice of Revocation of Release. Jenson Decl. ¶ 10. Had this not occurred, it would still not justify immediate habeas release. To the contrary, other courts have recognized that complaining that the reasons for revocation of supervised release are insufficient is not enough to establish entitlement to the extraordinary remedy of a TRO. Moreover, such courts have recognized that while regulations such as 8 C.F.R. § 214.13(i) create procedural safeguards, they do not create independent substantive rights that override the statutory grant of detention authority.

Finally, Petitioner complains that he does not want to be removed to a third

[1] In *Huynh*, the petition was held in abeyance to see if the government could remove the Vietnamese petitioner. The detained petitioner was then indeed promptly removed to Vietnam, thereby mooting his habeas petition, which was dismissed on April 9, 2025.

country without sufficient advance notice. Beyond generally citing the government's policies regarding third country removal, Petitioner presented no evidence that he in fact faces removal to a third country (other than Vietnam which is a country designated for removal in Petitioner's order of removal). Jenson Decl. ¶ 11. In fact, ICE has submitted a request for Petitioner's travel documents from Vietnam (Jenson Decl. ¶12). By contrast, there is no evidence that he faces removal to a third country.

Accordingly, the TRO Application should be denied.

II. FACTUAL BACKGROUND

A. Underlying Facts

Petitioner is a Vietnamese citizen (and a native of the Philippines). *See* Jenson Decl. at ¶ 4. On or about [redacted] 1985, the Petitioner was admitted to the United States. *Id.* On or about May 21, 2004, Petitioner was convicted of Assault of a Person with a Semiautomatic Firearm, in violation of California Penal Code (CPC) section 245(B) and sentenced to 3 years in prison. *Id.* ¶ 5. On or about July 29, 2004, an Immigration Judge ordered Petitioner removed to Vietnam. *Id.* ¶ 6. Petitioner waived appeal and the order of removal became final. *Id.*

On or about March 5, 2007, Petitioner was convicted of Possession of a Controlled Substance for Sale, in violation of §11378 of the Cal. Health & Safety Code and for Participation in a Criminal Street Gang, in violation of CPC § 186.22(A) and sentenced to 2 years in prison. Jenson Decl. ¶ 7.

On or about March 19, 2025, Petitioner was arrested for Driving Under the Influence, in violation of § 23152(f) of the Cal. Vehicle Code. On or about September 24, 2025, Petitioner was taken into ICE custody for removal. *Id.* ¶ 9. On the same date, Petitioner was served with a Notice of Revocation of Release. *See* Exhibit A.

On October 23, 2025, ICE completed and sent a travel document request for Petitioner's removal to Vietnam to its headquarters for review and submission. Jenson Decl. ¶ 12.

III. STANDARD OF REVIEW

Courts have recognized very few circumstances justifying the issuance of an *ex parte* temporary restraining order. *See Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). A TRO is "an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where a litigant seeks their ultimate relief by preliminary injunctive means, that is improper since "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).

IV. ARGUMENT

A. Petitioner has not shown a likelihood of success on the merits because he has not established that "there is no significant likelihood of removal in the reasonably foreseeable future."

Showing a likelihood of success on the merits is a requisite threshold issue. Indeed, "when a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (cleaned up). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. Petitioner he has not shown, and indeed cannot show, that his current custody is unlawful.

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). Under *Zadvydas v. Davis*, detention for six months following a final removal order is presumptively valid. 533 U.S. 678, 701 (2001). After that time, a noncitizen may request release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Here, Petitioner does not challenge the validity of his final removal order or that 8 U.S.C. § 1231(a)(6) governs his detention. However, Petitioner speculatively argues, without evidentiary support, that he should be released from his current detention because "removal to Vietnam is not reasonably foreseeable." [Dkt. 5]. That contention is both factually incorrect and misapprehends the *Zadvydas* standard.

In *Zadvydas*, the Supreme Court instructed that detention for six months following a final removal order is presumptively valid.

> 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 post removal 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, according to *Zadvydas*, 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.* (bold italic emphasis added).

Here, there is certainly a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future. He was re-detained more than 69 days ago, on September 24, 2025, and the government requested review and submission of his travel documents from ICE headquarters for removal to Vietnam. Jenson Decl. ¶ 12. There is no bar against Petitioner's removal to his home country of Vietnam, and the government is currently arranging for that removal. *Id.* ¶¶ 11-12.

Effectuating his removal is thus affirmatively likely. Pre-1995 Vietnamese immigrants are now routinely removed to Vietnam. When petitions have been filed in this District claiming that Vietnam does not accept such removals, they have been proven incorrect and mooted by the government's prompt removal of the petitioner to Vietnam. *See, e.g., Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM (petition by Vietnamese national asserting *Zadvydas* claim mooted by removal to Vietnam); *Le Van Minh v. DHS, et al.*, 5:25-cv-02245-HDV-JDE (August 18, 2025 petition by Vietnamese national mooted by September 2, 2025 removal of petitioner to Vietnam); *Tan Minh Vo v. DHS et al.*, 5:25-cv-02791-SVW-MBK (petition by Vietnamese national asserting *Zadvydas* claim mooted by November 5, 2025 removal of petitioner to Vietnam). In *Huynh*, for example, the petition was held in abeyance to see if the government could timely remove the Vietnamese petitioner—consistent with the Supreme Court's directives in *Zadvydas*. The detained petitioner was then indeed promptly removed to Vietnam, thereby mooting his habeas petition, which was dismissed.

It is true that that *historically* there were barriers years ago to removing Petitioners and similarly situated Vietnamese immigrants who had final removal orders. That issue was exhaustively addressed in more recent litigation, as the political relationship between the United States and Vietnam changed. In 2020, Judge Carney explained the then-current state of affairs:

> 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 members unable to meet their initial burden under *Zadvydas*.

Trinh, *supra*, 466 F. Supp. 3d at 1090.

Courts therefore properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order). 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) (where there is no evidence that the country of removal would refuse to accept the petitioner or that removal is barred by the laws of the United Sates, that the detention did not have a certain end date did not demonstrate that detention was "indefinite").

Because Petitioner has failed to establish a likelihood of success on his claims that his detention is unlawful, the petition should be denied.

B. Petitioner's Complaints about Procedural Deficiencies in His Re-detention Do Not Establish a Basis for a TRO

Petitioner next complains that ICE has not followed the procedures applicable to ICE's revocation of supervised release. [Dkt. No. 5] (alleging that ICE did not notify Petitioner of the reasons for his revocation). However, and contrary to Petitioner's suggestions, upon his re-detention, he was served with a Notice of Revocation of Release. Jenson Decl. ¶ 10; *see* Exhibit A.

The government's authority to re-detain individuals who ICE had previously released is discretionary. Indeed, the government is allowed to revoke for nearly any reason, and the process for objections is very limited. As the Ninth Circuit recognized, "[w]hile the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'" *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original).

The government is thus broadly authorized to exercise its discretion to revoke such release pursuant to 8 CFR § 241.1(l)(1), and 8 CFR § 241.4(l)(2). *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.").

While a small number of District Court decisions have found that a supervised release was not properly revoked, such decisions generally (1) involve a non-citizen's detention *during* their removal proceedings (i.e. before the non-citizen has yet been found removable by an Immigration Court, such that they are not being detained for purposes of enforcing a removal order), rather than their detention being after an administratively final removal order is issued; (2) typically involve no revocation documentation at all—which is not the case here; and (3) involve some sort of *genuine* structural impediment to removal, *e.g.*, an appellate stay, which also is not the case here.

Furthermore, the appropriate remedy for any such procedural deficiency would *not* be automatic release from custody, but rather to remedy the specific procedural deficiency that might be established. That is consistent with the well-established principle that injunctive relief must be *narrowly tailored* to the specific wrong at issue. *See e.g. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022).

Other District Courts have correctly applied this point. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *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). The petitioner argued that revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The 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 Hon. Judge Blumenfeld similarly denied a preliminary injunction motion in a somewhat similar case alleging a lack of sufficient re-detention process, noting that the evidentiary burden had not been met, and also that it was unclear that release would be the appropriate remedy for any violations of revocation procedure. *See Long Ton v. Kristi Noem, et al.*, 5:25-cv-02033-SB-AGR [Dkt. no. 17] (September 3, 2025) (Order Denying Application for Preliminary Injunction).

Petitioner's TRO Application fails to establish any violations of release revocation procedure. *See* Jenson Decl. ¶ 10. But even if it had, it would not warrant a TRO barring detention.

C. Petitioner's Request for a TRO against Third Country Removal is Irrelevant and Unsupported by Any Evidence

Petitioner next complains that he might face third country removal without notice. As discussed above, however, the government has taken steps to effectuate his removal to Vietnam, the Petitioner's country of citizenship. *Id.* ¶ 4. And to the extent he speculates that the government must nonetheless actually be intending instead to remove him to a third country, because Vietnam supposedly does not accept any pre-1995 Vietnamese immigrants, as explained above, Petitioner's claim on that point is entirely erroneous. *See Trinh v. Homan*, 466 F.3d 1077 (C.D. Cal. 2020). Further still, issuing a TRO should not be done for speculative purposes based on counterfactual scenarios. Due to the speculative nature of Petitioner's potential removal to an as of yet unidentified third country, granting Petitioner injunctive relief on this issue would be premature. *See Morales Sanchez v. Bondi*, No. 5:25-cv-02530-AB-DTB, 2025 WL 3190816, at *4 (C.D. Cal. Oct. 3, 2025) (denying temporary restraining order where "Petitioner's fear of being removed to [an unidentified] third country" was "speculative" and therefore failed to "establish[] a likelihood of success on the merits"); *Cabrera-Trillo v. Noem*, No. 3:25-cv-02865-CAB-MSB, 2025 WL 3215338, at *3 (S.D. Cal. Nov. 18, 2025) (denying as premature temporary restraining order where possible third country of removal was unidentified).

Finally, ICE normally provides advance notice of third country removals. While Petitioner argues that ICE memoranda nonetheless suggest it would not technically *need* to provide prior notice in some cases, if it receives sufficient assurances from the receiving nation, he fails to demonstrate that this possibility applies to his own case, much less in a way that requires a TRO to be issued.

D. The Balance of Interests Favors the Government

It is well settled that the public interest in enforcement of the United States's immigration laws is significant, particularly when it involves the enforcement of a final removal order (as here). *See, e.g.*, *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.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]"). This public interest outweighs Petitioner's private interest here.

V. CONCLUSION

Petitioner's TRO Application should be denied.

Dated: December 15, 2025

Respectfully submitted,

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* The undersigned, counsel of record for the Federal Respondents certifies that this brief contains 3,098 words, which complies with the word limit of L.R. 11-6.1.