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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

HEN KY TON,

Petitioner,

v.

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

Respondents.

No. 5:25-cv-3348-DMG (DSR)

FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

[Declaration of Jorge Suarez filed concurrently herewith]

Honorable Dolly M. Gee
United States District Judge

MEMORANDUM OF POINTS AND AUTHORITIES

Respondents respectfully oppose Petitioner Ton Hen Ky's *Ex Parte* Application for Temporary Restraining Order which was *sua sponte* converted into a Motion for Preliminary Injunction by Order of this Court. [Dkt. 3] (the "TRO App.") *See* Order dated December 11, 2025, issued by this Court (hereinafter referred to as Motion for PI) [Dkt. 6].

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 Motion for PI should be denied accordingly. Petitioner contends he is a citizen of Vietnam who was born in a refugee camp in 1990. [Dkt. 1, pg. 2] He was ordered removed from the country by an immigration court in September of 1997, but could not be removed at that time. *Id.*

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 Hen Ky Ton complains that he has currently been detained since

November 14, 2025, (which is just over 33 days) and that he was previously detained for "more than a year, from June 28, 1998, to July 21, 1999." [Dkt. 1, pg. 4]

Petitioner's Motion for a PI fails to carry his high burden for a PI 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, as set forth in the attached declaration of Jorge Suarez. He has not established that "there is no significant likelihood of removal [to Vietnam] in the reasonably foreseeable future," as required to establish a claim of indefinite detention. Accordingly, Petitioner's request for a PI should be denied. *See Nghia Giang Nguyen v. Mark Bowen, et al.*, 5:25-cv-03109-MCS-ADS, Dkt. no. 12 (Dec. 1, 2025 order denying Vietnamese detainee's application for TRO on *Zadvydas* grounds); *Hung Huu Anh Hoang v. Kristi Noem et al.*, 5:25-cv-03177-JLS-RAO, Dkt. no. 10 (Dec. 4, 2025 order denying Vietnamese detainee's application for TRO on *Zadyvdas* grounds).

II. PROCEDURAL BACKGROUND

Petitioner's *ex parte* application states, "In 1996, he sustained a conviction for Robbery," and he served the sentence. TRO App., pg. 2. On September 9, 1997, he was issued a final removal order to Vietnam, but he was released and placed on an OSUP on July 22, 1999. Suarez Decl. ¶ 11; *see* Exhibit A. Further, because the Board of Immigration Appeals (BIA) dismissed Petitioner's appeal on June 29, 1998, his removal order is final. *Id.* ¶ 10; Exhibit A (Removal Order).

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 admits he is a citizen of Vietnam. *See* Jorge Suarez Declaration (Suarez Decl.) ¶ 5. Petitioner immigrated to the United States as a refugee on January 24, 1990. *Id.* ¶ 5. On or about January 18, 1996, Petitioner was convicted in the Superior Court of California [of] the offense of First-Degree Burglary, in violation of Section 459 of the California Penal Code. He was sentenced to four (4) years in prison. *Id.* ¶ 7.

On or about August 14, 1997, the former Immigration and Naturalization Service (INS) served Petitioner with a Notice to Appear (NTA), commencing removal proceedings against him pursuant to Section 237 (a)(2)(A)(iii) of the Immigration and Nationality Act (INA) because he was convicted [of] an aggravated felony, as defined by INA Section 101(a)(43)(G). *Id.* ¶ 8.

On September 9, 1997, an IJ denied Petitioner's applications for relief and ordered him removed to Vietnam. *See Id.* ¶ 9; Exhibit A. The Petitioner appealed the decision; however the Board of Immigration Appeals dismissed his appeal, thus finalizing his removal order. *Id.* ¶ 10.

On or around July 22, 1999, Petitioner was released under an Order of Supervision (OSUP). *Id.* ¶ 11. The OSUP set forth specific conditions of his release, pertinent here includes that he "Assist DHS in obtaining any necessary travel documents, "Provide DHS with written copies of his requests to Embassies or Consulates requesting the issuance of a travel document." *Id.* ¶ 11. In Petitioner's OSUP, it is expressly provided that, "failure to comply with the OSUP requirements may result in a determination of his release conditions or his arrest as well as criminal prosecution. *Id.*

Because Petitioner failed to comply with the OSUP release terms by failing to secure his travel documents to Vietnam, and by engaging in employment without valid work authorization, the Petitioner was arrested. *Id.* ¶ 12.

On or about November 14, 2025, DHS took Petitioner into custody pursuant to INA § 241(a)(1)(A), 8 U.S.C. § 1231(a)(1)(A). *Id.* ¶ 13. On this same date, Petitioner was served with a Warrant of Removal/Deportation, notifying him that DHS intends to execute his final removal order and process him for removal to Vietnam. *Id.* On this same date, Petitioner was also served with a Notice of Revocation of Release. *Id.* ¶ 15; Exhibit B (Notice of Revocation of Release). An informal interview was also conducted as part of this process. *Id.* ¶ 16; Exhibit C (Informal Interview).

Following this, on or about November 17, 2025, DHS faxed the Embassy of Vietnam regarding Petitioner. *Id.* ¶ 18. On December 1, 2025, DHS submitted a travel document (TD) request to the Embassy of Vietnam (Consular Section) in Washington, DC, for Petitioner's TD. *Id.* ¶ 20. His TD remains pending for active consideration by Vietnam. *Id.*

Accordingly, Vietnam has been issuing TDs when DHS has made such requests for Vietnamese nationals, including pre-1995 immigrants. DHS has indeed recently been

able to timely obtain TDs and effectuate removals to Vietnam. *Id.* ¶ 21. In fact, the estimate time for production of a TD to Vietnam varies between 30 and 60 days. *Id.* Here, DHS expects that a TD for Petitioner will soon be issues, and that it will be able to effectuate his removal to Vietnam in the reasonably foreseeable future. *Id.*

V. LEGAL STANDARD

"[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 remains detained, and a PI being granted 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 MOTION FOR PRELIMINARY INJUNCTION 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 "more than a year" in post-removal order detention back in 1998, and has now been detained since November 14, 2025—an additional 33 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 a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. *See* Suarez Decl., ¶ 21. After being released in 1999, he was taken into detention—on November 14, 2025. *Id.* ¶13. DHS then submitted his TD request to Vietnam on December 1, 2025. *Id.* ¶ 20. There is no evident bar against Petitioner's removal to Vietnam, and the government is arranging for that removal. *Id.*

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).

The instant matter 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.

Indeed, 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. Suarez Decl. ¶ 20. Granting 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 evidence 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 PI is granted.

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 Motion for PI be denied.

Respectfully submitted,

Dated: December 16, 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 3,431 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 16, 2025

/s/ Erika S. Rojas
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