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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION-RIVERSIDE

HEN KY TON,

Petitioner,

v.

KRISTI NOEM, et. al.,

Respondents.

Case No.: 5:25-cv-03348-DMG-DSR

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

Honorable Dolly M. Gee

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I. INTRODUCTION

Although he was at the time subject to a final order of removal, Hen Ky Ton was released from immigration custody under supervision in July of 1999. For the next 25 years, he abided by the law and his conditions of supervision while building a life with his wife and two children, all of whom are U.S. citizens. This, contrary to Respondent's assertions, was the status quo. (*See* Dkt. 8 at 6.) It was upended when Ton was unlawfully detained on November 14, 2025, and this Court should now restore it by granting a preliminary injunction and ordering Ton's immediate release.

II. ARGUMENT

A. Petitioner is likely to succeed on the merits.

As a threshold issue, this Court has clear jurisdiction over this matter. Respondent argues the Court has no jurisdiction and quotes 8 U.S.C. § 1252(g), (Dkt. 8 at 6-7), but the Supreme Court explicitly stated that this code section does not apply in cases such as these in holding that courts have jurisdiction to hear a noncitizen's challenge to his unlawful post-removal-period detention through 28 U.S.C. § 2241. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *see also Marquez v. I.N.S.*, 346 F.3d 892, 896 (9th Cir. 2003) (holding the district court has jurisdiction over a habeas claim where the petitioner claims detention violates substantive and procedural due process rights). Ton filed a petition under 28 U.S.C. § 2241 alleging he is unlawfully detained, and this Court therefore has jurisdiction.

1. Respondent fails to demonstrate a significant likelihood that Ton will be removed in the reasonably foreseeable future.

Respondent attempts to reverse the burden of proof here, arguing that Ton cannot show there is no significant likelihood of his removal in the reasonably foreseeable future. (Dkt. 8 at 1-2). That is not the law. Under *Zadvydas*, once a noncitizen has been detained for more than six months and provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence to rebut that showing. 533 U.S. at 701. Here, Ton was in

custody for more than double the six month presumptive detention period that *Zadvydas* prescribes, from June 1998 to July 1999, and has now been detained again for more than a month. He was released under supervision at the end of his first period of detention—a concession by the Government that he made the required showing and it could not be rebutted. It is therefore the Government that must now show there is a significant likelihood of Ton's removal in the reasonably foreseeable future, and that showing becomes more difficult with each passing day. *Id.* ("[F]or 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."); *see also Luu v. Bowen*, No. 5:25-cv-03145, 2025 WL 3552298, at *3 (C.D. Cal. Dec. 11, 2025).[1]

Indeed, Respondent's position is inconsistent with the Government's own regulations, which "codif[y] how *Zadvydas* should apply." *Luu*, 2025 WL 3552298, at *6. Under 8 C.F.R. § 241.13(i)(2), supervised release may be revoked "if, on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." This section applies to "those [noncitizens] who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the removal period, where the [noncitizen] has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Section 241.14(a) shows that § 241.14(i)(2) "only applies where the noncitizen has made the showing of 'good reason to believe,'" mirroring *Zadvydas*. *Luu*, 2025 WL 3552298, at *6. The Supreme Court and the Federal Code thus both agree that the burden lies with the government here.

[1] To the extent Respondent may be arguing that Ton's redetention restarts the *Zadvydas* clock, courts have consistently rejected this interpretation. *See* Dkt. 1 at 3 (citing numerous cases); *see also Luu*, 2025 WL 3552298, at *6.

Respondent fails to make the required showing. First, Respondent claims that removal to Vietnam for pre-1995 immigrants is "now readily accomplished" because Vietnam will consider requests for travel documents for such immigrants on a case-by-case basis. (Dkt. 8 at 2-3) (quoting *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020). But the fact that a judge refused to certify a class action on the basis that Vietnam issues travel documents for pre-1995 immigrants "in a non-negligible portion of cases" falls far short of a showing that Ton, specifically, is significantly likely to be deported in the reasonably foreseeable future. *Trinh*, 466 F. Supp. 3d at 1090; *see also Kong v. United States*, 62 F.4th 608, 619 (1st Cir. 2023) (redetention by ICE requires an "individualized determination" that changed circumstances render removal likely).

In reality, while Vietnam has agreed to consider accepting some pre-1995 deportees, it has accepted only a small number, including just four between September 2021 and September 2023. Order at 2, *Nguyen Tai Tran v. Noem*, No. 5:25-cv-02881-DOC-KS (C.D. Cal. Nov. 7, 2025), ECF No. 8 (citing Asian Law Caucus, *Resources on Deportation of Vietnamese Immigrants Who Entered the U.S. Before 1995* (Jul. 15, 2025)). It has been five years since Vietnam formally agreed to issue travel documents to pre-1995 immigrants in a Memorandum of Understanding, yet the Government has been unable to obtain such documents for Ton. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 714 (W.D. Wash. 2025) (discussing the 2020 Memorandum of Understanding between the United States and Vietnam). There is no reason to believe that has changed, and the pace of deportations following the signing of the memorandum shows Respondent's claim that removal is "readily accomplished" is false.

Second, Respondent alleges that DHS submitted a request for travel documents for Ton to the Vietnamese Embassy on December 1, 2025, and includes a declaration from an ICE officer estimating the time for production of travel documents at between 30 and 60 days. (Dkt. 8 at 4-5, Dkt. 8-1 at 3.) No basis for this estimate is given, and it is contradicted by recent cases involving pre-1995 Vietnamese immigrants in this district. *See, e.g.*, *Luu*, 2025 WL 3552298 at *7 (documents requested September 18,

2025, not issued as of December 11, 2025); Opp'n to Pet'r's Appl. for TRO at 3, *Khoanh Lam v. Noem*, No. 5:25-cv-03344-CV-RAO (C.D. Cal. Dec. 12, 2025), ECF No. 7 (documents requested September 18, 2025, not issued as of December 12, 2025). The fact that the Government has requested travel documents from Vietnam is insufficient on its own to meet Respondent's burden, especially where, as here, the request was allegedly submitted more than two weeks after Ton was detained. Furthermore, the Vietnamese Embassy has given no indication that it intends to issue documents to Ton or even acknowledged receipt of the Government's request. *See* Order at 5 & n.3, *Hien Quang Vo v. Bowen,* No. 5:25-cv-02880-KK-SSC (C.D. Cal. Nov. 12, 2025), ECF No. 10. And Ton has had no contact with the Vietnamese Consulate since he was detained, despite the fact that an official from the Consulate was present at his facility on December 1, 2025, apparently interviewing detainees relating to the possibility of removal. (Ex. 2, Suppl. Decl. of Hen Ky Ton)[2]; Opp'n to TRO at 3, *Dung Duc Luu v. Kristi Noam et al.*, 5:25-cv-03145, (Dec. 11, 2025), ECF No. 11 (Asserting that another petitioner had been interviewed at Adelanto by a Vietnamese consular representative on December 1, 2025). Vietnam has refused to issue travel documents to Ton for more than 25 years, and the Government fails to produce anything to show it will now.

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[2] Counsel for Petitioner has diligently worked to obtain declarations and a request to proceed in forma pauperis personally signed by Petitioner, as per the Court's order. (Dkt. 6 at 2 & n.1). But due to the difficulty of visiting Petitioner at his place of detention and inconsistencies with outgoing mail from the detention center, counsel has been unable to secure the declarations and forms as of the filing of this Reply. The declarations of Petitioner submitted as exhibits here have been read by Petitioner personally or recited to Petitioner verbatim over the phone, and Petitioner verified their accuracy and authorized counsel to sign on his behalf. This Court may accept this evidence as the basis for a preliminary injunction. *See Univ. of Texis v. Camenisch*, 451 U.S. 390, 395 (1981) ("[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.").

Finally, Respondent points to *Huynh v. Semaia*, 2:24-cv-10901-MRA-DFM, in which a petitioner was removed to Vietnam.[3] But *Huynh* simply highlights how threadbare Respondent's evidence of a substantial likelihood of removal is—there, the Government demonstrated that the petitioner's removal was being actively scheduled and flights to Vietnam were being purchased. The Government has demonstrated nothing similar here. Other cases Respondent cites to, including *Muthalib v. Kelly*, 2017 WL 11696616 (C.D. Cal. Apr. 19, 2017), and *Diouf v. Mukasey*, 542 F.3d 1222 (9th Cir. 2008), do not apply. Unlike Ton, the petitioner in *Muthalib* had never been released on supervision. 2017 WL 11696616, at *1. The same is true of the petitioner in *Diouf*, where the petitioner additionally refused to cooperate with ICE after it had successfully completed arrangements for his removal—there is no allegation here that Ton's removal has been arranged or that he has failed to cooperate in any way. 542 F.3d at 1227, 1233.

2. Ton was not provided with adequate notice or a chance to be heard.

Respondent makes little effort to address Ton's claim that his detention violated INA regulations and his constitutional right to due process. The Notice of Revocation of Release submitted by Respondent contains nothing but generic language stating that the decision to re-detain Ton was made "based on a review of your file and/or your personal interview on account of changed circumstances in your case" and citing to 8 C.F.R. §§ 241.4(l) and 241.13(i). (Dkt. 8-2.) There is no reference to any violation of supervised release conditions, description of what the changed circumstances are, or any other specific reason given for Ton's detention. These vague, generic statements are insufficient to satisfy due process or meet statutory requirements. *See Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Mullane v. Central Hanover Bank & Trust*

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[3] It is unclear from Respondent's briefing whether the petitioner in *Huynh* was a pre-1995 immigrant, and Respondent offers no information to explain why Huynh was successfully deported where many other Vietnamese immigrants have not been. Petitioner is unable to access the documents in the case because it is sealed.

Co., 339 U.S. 306, 313 (1950); 8 C.F.R. § 241.13(i)(3); *see also Luu*, 2025 WL 3552298 at *8; *Esmail v. Noem*, No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030590, at *5 (C.D. Cal., Sept. 12, 2025).

Respondent also submits a document purporting that an informal interview was conducted with Ton on November 14, 2025, the day of his detention. (Dkt. 8-4.) Even if this interview occurred, Ton had no ability to meaningfully respond because he was not given adequate notice of the grounds for his detention. *Esmail*, 2025 WL 3030590, at *6.

Respondent now claims that Ton violated his conditions of release by "by failing to secure his travel documents to Vietnam, and by engaging in employment without valid work authorization." (Dkt. 8 at 4.) But even if these are in fact the reasons Ton was detained, they were not contained in the notice the Government says he was given, and he had no knowledge of them at the time of the purported interview. Furthermore, Ton's conditions of release did not require him to secure travel documents or obtain employment authorization. (Ex. 3, Order of Supervision.) The conditions do require him to assist the Government in obtaining any necessary travel documents, (Ex. 3), which according to Respondent's own evidence he did—an ICE officer declares the agency notified the Vietnamese Embassy on Ton's behalf, conducted a travel interview, and submitted a travel document request with no indication that Ton was anything less than fully cooperative. (Dkt. 8-1 at 3.) They also require him to furnish written notice of any change in employment, but he did not change jobs between his last check-in with ICE in 2024 and his detention. (Ex. 2, Suppl. Decl. of Hen Ky Ton.) Because any notice and opportunity to be heard Ton received was wholly insufficient, and because the violations of his conditions of release Respondent alleges were not violations at all, he is likely to prevail on this claim too.

3. Ton is also likely to succeed on his claim regarding third-country removal.

The ICE officer's declaration states that "DHS intends to remove TON to Vietnam. Hence a request for removal to a third country has not been made." (Dkt. 8-1 at 4.) It does not say that DHS will not make such a request in the future, nor that DHS does not intend to remove Ton to a third country if it cannot remove him to Vietnam. Respondent makes no further attempt to address the issue. There is evidence that pre-1995 Vietnamese immigrants have been deported to Eswatini, South Sudan, and El Salvador, and the government has enacted written policies aimed at continuing these deportations with no regard for due process. *Nguyen*, 796 F. Supp. 3d at 716-36. Ton is likely to succeed on this claim as well.

B. Petitioner shows irreparable harm due to his unlawful detention.

Ton has "established a likelihood of irreparable harm by virtue of the fact that [he is] likely to be unconstitutionally detained for an indeterminate period of time." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). As discussed above and in his petition, Ton's detention is unlawful and in violation of his constitutional rights. "[T]he deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, F.3d 990, 1002 (9th Cir. 2012). Respondent seems to believe Ton is challenging the conditions of his confinement, (Dkt. 8 at 9), but the challenge here is to the confinement itself. Respondent makes no further arguments, and this factor is therefore satisfied.

C. The balance of equities weighs in favor of granting a preliminary injunction.

Respondent claims a preliminary injunction would "interfere with Respondents' enforcement of immigration laws without sufficient justification," (Dkt. 8 at 10), but in fact Petitioner asks this Court to order that the Government comply with its own regulations and the Constitution. It is "always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002. And, while

Respondent cites the Government's strong interest in the enforcement of immigration law, it "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). There is no real harm to the Government here if this Court grants a preliminary injunction, so the balance of equities and public interest is in Ton's favor.

III. CONCLUSION

For the reasons stated above, in his petition, and in his application for a temporary restraining order and preliminary injunction, this Court should grant Ton relief and order his immediate release.

Respectfully submitted,

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Federal Public Defender

DATED: December 19, 2025

By */s/ Daniel Lemer*
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner Hen Ky Ton, certifies that this brief contains 2,578words, which complies with the word limit of L.R. 11-6.1.

DATED: December 19, 2025

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