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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 QUAN NGUYEN TRAN,

12 Petitioner,

13 v.

14 CHRISTOPHER CHESTNUT, *et al.*;

15 Respondents.
16

CASE NO. 1:25-cv-01816-DAD-JDP

**OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER**

17 **INTRODUCTION**

18 Respondents oppose Petitioner's motion for a temporary restraining order ("TRO") (ECF No. 8).
19 Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1226(c), and he provides insufficient
20 justification for intervention by this Court. Respondents, therefore, request that the Court deny
21 Petitioner's motion for a TRO.

22 **FACTUAL BACKGROUND**

23 Petitioner is a native and citizen of Vietnam who entered the United States in August of 1989.
24 Decl. of Deportation Officer Marbella Pano ("Pano Decl.") ¶ 7. In February of 1994, Petitioner was
25 convicted of the possession or purchase of cocaine for sale. *Id.* ¶ 8, Exs. 2-4. In December of 1995, an
26 immigration judge ordered Petitioner removed from the United States. *Id.* ¶ 11. In July of 1999, the U.S.
27 Department of Homeland Security ("DHS") released Petitioner on an Order of Supervision pending
28 removal. *Id.* ¶ 12. In November of 2006, Petitioner was convicted of voluntary manslaughter. *Id.* ¶ 9.

On October 2, 2025, U.S. Immigration and Customs Enforcement (“ICE”) revoked Petitioner’s Order of Supervision and took Petitioner into custody, having found Petitioner to be removable pursuant to 8 U.S.C. § 1227(a)(2)(A), *see id.* ¶ 12, exs. 1, 6, which provides for the deportability of noncitizens convicted of specified crimes. DHS is currently “in the process of obtaining travel documents for Petitioner from Vietnam.” *Id.* ¶ 14.

On December 11, 2025, Petitioner filed a petition for a writ of *habeas corpus* with this Court. (ECF No. 1.) On January 5, 2026, Petitioner filed a motion for a TRO, seeking immediate release from immigration detention and advance notice prior to re-detention. (ECF No. 8.) On January 6, 2026, the Court ordered Respondents to file an opposition to the motion. (ECF No. 9.)

LEGAL ARGUMENT

A. Standard for Temporary Restraining Order

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). A plaintiff’s burden is aptly described as “heavy.” *Id.* A preliminary injunction requires “substantial proof” and a “clear showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted). “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show “serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

As the purpose of preliminary injunctive relief is to preserve the status quo pending final adjudication on the merits, there is “heightened scrutiny” for mandatory preliminary injunctions, which

1 is what Petitioner seeks here.¹ *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). Where “a
 2 party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*,
 3 courts should be extremely cautious about issuing a preliminary injunction.” *Martin v. International*
 4 *Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Committee of Cent. American Refugees*
 5 *v. Immigration and Naturalization Serv.*, 795 F.2d 1434, 1442 (9th Cir. 1986).

6 **B. Petitioner’s TRO Motion Should be Denied**

7 The detention of a noncitizen pending removal proceedings is governed by 8 U.S.C. 1226. *See*
 8 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). Under section 1226(a), the “Attorney
 9 General may issue a warrant for the arrest and detention of an alien ‘pending a decision on whether the
 10 alien is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)
 11 (citation omitted). In general, “the Attorney General ‘may release’ an alien detained under section
 12 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.* (citation omitted).

13 However, “[s]ection 1226(c) ... carves out a statutory category of aliens who may *not* be
 14 released.” *Id.* at 289 (emphasis in original). Under this subsection, “the ‘Attorney General shall take into
 15 custody any alien’ who falls into one of several enumerated categories involving criminal offenses ...
 16 The Attorney General may release aliens in those categories ‘only if the Attorney General decides ...
 17 that release of the alien from custody is necessary’ for witness-protection purposes and ‘the alien
 18 satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of
 19 property and is likely to appear for any scheduled proceeding.’” *Id.* (citations omitted).

20 Consequently, the detention of noncitizens “within [the] scope” of section 1226(c) “*must*
 21 continue ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Id.*
 22 (citation omitted) (emphasis in original); *see also Avilez v. Garland*, 69 F.4th 525, 535 (9th Cir. 2023)
 23 (concluding that section 1226(c) “applies throughout the administrative and judicial phases of removal
 24 proceedings”). The subsection does not “limit the length of the detention it authorizes.” *Jennings*, 583
 25 U.S. at 303. In fact, “in *Demore v. Kim*, the Supreme Court rejected a due process challenge to
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27 ¹ “A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a
 28 party from taking action and preserves the status quo pending a determination of the action on the merits.” *Ariz.*
Dream Act Coal. v. Brewer, 757 F.3d 1053, 1060-61 (9th Cir. 2014) (internal quotation omitted).

1 mandatory detention under Subsection C on the ground that the detention authorized by Subsection C is
2 relatively short-lived.” *Avilez*, 69 F.4th at 536 (citing *Demore v. Kim*, 538 U.S. 510, 529 (2003)).

3 A person “who believes that he is not covered by § 1226(c) may ... ask for what is known as a
4 ‘Joseph hearing’” from the immigration court. *Jennings*, 583 U.S. at 289 n.1 (citing *Matter of Joseph*, 22
5 I. & N. Dec. 799 (BIA 1999)). At such a hearing, “the detainee may avoid mandatory detention by
6 demonstrating that he is not an alien, was not convicted of the predicate crime, or that the [government]
7 is otherwise substantially unlikely to establish that he is in fact subject to mandatory detention.”
8 *Demore*, 538 U.S. at 514 n.3 (2003).

9 In addition, the detention and removal of noncitizens ordered removed is governed by 8 U.S.C. §
10 1231. Under this section, the Attorney General must “affect the removal of any noncitizen from this
11 country within 90 days of any order of removal.” *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025
12 WL 1993735, at *3 (E.D. Cal. July 16, 2025). “[O]nce that time passes and after ‘removal is no longer
13 reasonably foreseeable, continued detention is no longer authorized by statute’, the noncitizen must be
14 released.” *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001)). “The revocation of that release is
15 governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen’s release for purposes of
16 removal ‘if, on account of changed circumstances,’ it is determined that ‘there is a significant
17 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.’” *Id.* (quoting 8
18 C.F.R. § 241.13(i)(2)).

19 Here, despite Petitioner’s assertion that he has had no “criminal encounters” since “August of
20 1999,” (ECF No 8 at 4), Petitioner’s criminal records show that he was charged with murder and
21 ultimately convicted of voluntary manslaughter in 2006. Pano Decl. ¶ 9. In addition, Petitioner was
22 ordered removed by an immigration judge in 1995, due to a criminal conviction for possession or
23 purchase of cocaine for sale. *Id.* ¶¶ 8, 11. Section 1226(c) expressly provides that the “Attorney General
24 shall take into custody any alien who ... is deportable by reason of having committed any offense
25 covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D),” which covers convictions of “two or
26 more crimes involving moral turpitude,” aggravated felonies, and violations of law “relating to a
27 controlled substance.” 8 U.S.C. § 1226(c)(1)(B); 8 U.S.C. §§ 1227(a)(2)(A)(ii), (a)(2)(B)(i). Section
28 1231 also explicitly provides that a noncitizen “ordered removed who is ... removable under section

1 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) ... or who has been determined by the Attorney General to be a
2 risk to the community ... may be detained beyond the [90-day] removal period.” 8 U.S.C. § 1231(a)(6);
3 *see also Vaskanyan v. Janecka*, No. 5:25-cv-01475-MRA-AS, 2025 WL 2014208, at *3 (C.D. Cal. June
4 25, 2025). As noted above, section 1227(a)(2) covers convictions of “two or more crimes involving
5 moral turpitude,” aggravated felonies, and violations of law “relating to a controlled substance.” 8
6 U.S.C. §§ 1227(a)(2)(A)(ii), (a)(2)(B)(i).

7 Petitioner has not requested a Joseph hearing from the immigration court, nor has he asserted that
8 he has not been convicted of a predicate crime under section 1226(c) or section 1231(a)(6). Pursuant to
9 statute, Petitioner is therefore subject to mandatory detention.

10 Petitioner argues that the government “has not been able to obtain a travel document for [him]
11 due to a 2008 repatriation agreement with Vietnam prohibiting the removal of Vietnamese citizens who
12 arrived to the U.S. [p]rior to July 12, 1995. (ECF No. 8 at 4.) Relatedly, in *N.D.N. v. Bondi*, No. 1:25-cv-
13 01587-DAD-CKD, 2025 WL 3251102 (E.D. Cal. Nov. 21, 2025), this Court found that there was “no
14 significant likelihood of removal in the reasonably foreseeable future” of a Vietnamese national who,
15 like Petitioner, entered the United States prior to 1995. *Id.* at *1, 4. However, a significant change of
16 circumstances between 1995, when Petitioner was first ordered removed, and the present is a
17 memorandum of understanding (“MOU”) from November of 2020 between the U.S. Department of
18 Homeland Security and the Vietnamese Ministry of Public Security. *See* Pano Decl. ¶ 13. The MOU
19 provides for the “acceptance of the return of Vietnamese citizens who arrived in the United States before
20 July 12, 1995, and who have been ordered removed from the United States.” *Id.*, Ex. 9. In other words,
21 unlike in 1999, when DHS previously released Petitioner on an Order of Supervision pending removal,
22 *id.* ¶ 12, DHS now has an agreement with the government of Vietnam to effectuate removal to that
23 country. As provided by regulation, ICE may revoke a noncitizen’s release “if, on account of changed
24 circumstances, [it] determines that there is a significant likelihood that the [noncitizen] may be removed
25 in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Such is the case here.

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CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Court deny Petitioner's motion.

Dated: January 8, 2026

ERIC GRANT
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/s/ Robert A. Fuentes
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