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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BAT A. UNG,

Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security, *et al.*,

Respondents.

No. 5:25-cv-03349-SVW-ADS

**RESPONDENTS' OPPOSITION TO PETITIONER'S APPLICATION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

[Declaration of Jorge Preciado filed concurrently]

Hon. Stephen V. Wilson
United States District Judge

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1 **I. INTRODUCTION**

2 Petitioner Bat Ung, a native and citizen of Vietnam—currently a detainee in
3 immigration custody since October 16, 2025, who has a final removal order against him—
4 filed a petition for writ of habeas corpus asking the Court to order his release. *See* Pet. for
5 a Writ of Habeas Corpus ("Petition"), Docket No. 1. He claims mainly that there is no
6 good reason to believe he will be deported to Vietnam in the reasonably foreseeable future.
7 *See, e.g.*, *id.* at 9 (citing *Zadvydas v. Davis*, 533 U.S. 678 (2001)). He further claims that
8 the government revoked his Order of Supervision (OSUP) without notice and an
9 opportunity to be heard. *Id.* at 10-11. He then filed an application seeking essentially the
10 same relief. *See* Application for Preliminary Injunction & Temporary Restraining Order
11 ("Application"), Docket No. 5. The Court should deny the Application.

12 Petitioner is currently detained for purposes of enforcing his final removal order.
13 On October 16, 2025, Petitioner was taken into ICE custody for removal, as DHS revoked
14 his OSUP that same day. Petitioner now falsely claims that no process was afforded to
15 him. That is incorrect. On or around the day of his re-arrest, Petitioner was afforded
16 sufficient process due to him under the applicable regulations and the U.S. Constitution,
17 including the Notice of Revocation signed by the Acting Field Office Director. And in any
18 event, DHS has applied to Vietnam for a travel document. That application remains under
19 active consideration.[1]

20 Tellingly, Petitioner relies on an outdated Vietnamese policy pursuant to which
21 years ago it did not accept back its immigrants who left the country before 1995. *See, e.g.*,
22 Petition at 9. That policy has since been dismantled. As such, pre-1995 Vietnamese
23 immigrants such as Petitioner are now routinely removed to Vietnam. *See, e.g.*, *Huynh v.*
24 *Semaia*, 2:24-cv-10901-MRA-DFM (C.D. Cal.).[2] Simply put, circumstances for Vietnam

25

26 [1] Due to this reason, DHS has not made any request for removal to a third country.

27 [2] There, the petition was held in abeyance to see if the government could remove the detained Vietnamese petitioner. *See Huynh*, Docket No. 11 (C.D. Cal. Mar. 19, 2025).
28 He was indeed promptly removed to Vietnam, mooting his petition, which was then dismissed. *See id.*, Docket No. 12 (C.D. Cal. Apr. 9, 2025).

removals have changed dramatically since Petitioner's OSUP release decades ago.

## II. BACKGROUND

Petitioner is a native and citizen of Vietnam. Decl. of Jorge Preciado ("Preciado Decl.") ¶ 5. In 1975, Petitioner was admitted into the United States. *Id.*, ¶ 6. In 1978, Petitioner's status was adjusted to Lawful Permanent Status, retroactive to September 8, 1975. *Id.*, ¶ 7.

In May 1989, Petitioner was convicted of robbery, in violation of California Penal Code section 211, for which he was sentenced to 16 months. *Id.*, ¶ 8. The same month, he was convicted of PC 12025(B), a misdemeanor related to carrying a concealed firearm, for which he was sentenced to 365 days. *Id.*, ¶ 9.

In January 1991, Petitioner was convicted of felony extortion, in violation of California Penal Code section 518, for which he was sentenced to 3 years. *Id.*, ¶ 10.

In May 1992, Petitioner was apprehended by immigration authorities and placed into removal proceedings. *Id.*, ¶ 11. On or about August 19, 1992, Petitioner was ordered deported to Vietnam by an Immigration Judge. *Id.*, ¶ 12. In September 1992, Petitioner was released on an OSUP. *Id.*, ¶ 13.

In July 1993, Petitioner was convicted of the crime of burglary, in violation of California Penal Code section 459, for which he was sentenced to 4 years. *Id.*, ¶ 14.

In February 1996, Petitioner was convicted of first-degree robbery in violation of California Penal Code section 212.5(b), for which he was sentenced to 23 years with the possibility of parole. *Id.*, ¶ 15.

Petitioner states that he [redacted] *Id.*, ¶ 18. Petitioner states that [redacted] *Id.*

On or about June 22, 2023, Enforcement and Removal Operations ("ERO") picked up Petitioner after he was released from California State Prison. *Id.*, ¶ 19. The same day, Petitioner was released on OSUP. *Id.*, ¶ 20.

On or about September 26, 2025, Petitioner was enrolled in Alternatives to Detention ("ATD"). *Id.*, ¶ 21.

1 On October 16, 2025, Petitioner was personally served with a Notice of Revocation
2 of Release (attached hereto as Exhibit A). *Id.*, ¶ 22. The same day, Petitioner's enrollment
3 in ATD was terminated, and Petitioner was arrested for removal. *Id.*, ¶ 23.
4 On October 16, Petitioner was provided an opportunity to respond to the reasons for
5 the revocation of OSUP (attached hereto as Exhibit B). *Id.*, ¶ 24. Petitioner provided
6 neither a comment nor a written statement on his behalf. *Id.* On the same day, Petitioner
7 was transferred to the Adelanto ICE processing center. *Id.*, ¶ 25.
8 Currently, Petitioner has been in custody for 67 days. *Id.*, ¶ 26.
9 On or about October 17, 2025, the Vietnamese consulate was notified of Petitioner's
10 detention. *Id.*, ¶ 27. On or about October 31, Petitioner's travel documents were requested.
11 *Id.* ICE is currently waiting issuance of Petitioner's travel documents to Vietnam. *Id.*
12 Hence a request for removal to a third country has not been made.
13 **III. LEGAL STANDARD**
14 A temporary restraining order ("TRO") is an "extraordinary remedy that may only
15 be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat.*
16 *Res. Def. Council*, 555 U.S. 7, 22 (2008); *see also Lum v. Mercedes-Benz USA, LLC*, 2012
17 WL 13012454, at *1 (C.D. Cal. Jan. 5, 2012) ("The opportunities for legitimate *ex parte*
18 applications are extremely limited."). The standard for issuing a TRO is "substantially
19 identical" to that for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D.*
20 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A court may grant preliminary
21 injunctive relief to prevent "immediate and irreparable injury." Fed. R. Civ. P. 65(b). To
22 obtain this relief, a plaintiff must establish the "*Winter*" factors: (1) the plaintiff "is likely
23 to succeed on the merits"; (2) the plaintiff "is likely to suffer irreparable harm in the
24 absence of preliminary relief"; (3) "the balance of equities tips in [the plaintiff's] favor";
25 and (4) "an injunction is in the public interest." *Am. Trucking Ass'ns, Inc. v. City of Los*
26 *Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). "Because
27 it is a threshold inquiry, when a plaintiff has failed to show the likelihood of success on
28 the merits, [a court] need not consider the remaining three *Winter* elements." *Garcia v.*

*Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) (cleaned up).

## IV. ARGUMENT

### A. Petitioner Fails to Meet the High Bar for Injunctive Relief.

#### 1. Petitioner Cannot Show a Likelihood of Success on the Merits

##### *a. Petitioner cannot show that "there is no significant likelihood of removal in the reasonably foreseeable future"*

Petitioner cannot succeed on his claim that he cannot be removed to Vietnam in the reasonably foreseeable future. As an initial matter, he has not yet been detained over the six-months of presumptively reasonable removal order detention period that is required to shift the burden to the government to show that removal is likely in the reasonably foreseeable future: His order of removal became final on August 19, 1992. Preciado Decl. ¶ 12. Petitioner was subsequently released on OSUP on September 15, 1992. *Id.* ¶ 13. That is a total of around 1 month. Petitioner was then taken into ICE custody on June 22, 2023, and released on OSUP the same day. *Id.*, ¶¶ 19-20. His OSUP release was revoked on or around October 16, 2025, and he has since been in DHS's custody. *Id.* ¶ 23. That is another 67 days or so. That means, including Petitioner's initial detention in 1992, Petitioner has been in custody for a little over 3 months total so far. Having such a short total detention time, he cannot prove "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701; *accord Nghia Giang Nguyen v. Mark Bowen*, No. 5:25-cv-03109-MCS-ADS, Dkt. No. 12 at 6 (C.D. Cal. Dec. 1, 2025) (denying TRO, finding "five months of detention" as "presumptively reasonable under *Zadvydas*").

In any event, the government's authority to detain an alien for removal purposes pursuant to a final removal order does not end at six months under *Zadvydas*, but rather continues so long as it is "reasonable":

> 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

1 to remain reasonable, as the period of prior postremoval
2 confinement grows, what counts as the "reasonably foreseeable
3 future" conversely would have to shrink. This 6–month
4 presumption, of course, does not mean that every alien not
5 removed must be released after six months. To the contrary, an
6 alien may be held in confinement until it has been determined
7 that there is no significant likelihood of removal in the
8 reasonably foreseeable future.

9 *Id.* at 701. Thus, the noncitizen "may be held in confinement until it has been determined
10 that there is ***no significant likelihood of removal in the reasonably foreseeable future.***"
11 *Id.* (bold italic emphasis added). The Ninth Circuit has explained that the *Zadvydas*
12 language requires an alien to show that "he is stuck in a 'removable-but-unremovable
13 limbo,' as the petitioners in *Zadvydas* were[;]" that is, the alien must show he "is
14 unremovable because the destination country will not accept him or his removal is barred
15 by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). Petitioner
16 cannot carry his burden to show so here.

17 Petitioner merely complains that his current detention under 8 U.S.C. § 1231(a)(6)
18 for purposes of enforcing his final removal order is "unreasonable" because the
19 government cannot remove him to Vietnam in the foreseeable future: Petitioner's main
20 idea is that over two decades ago, the government released him when he could not be
21 removed to Vietnam, so he cannot now be removed in 2025. *See, e.g.*, Petition at 6-7. That
22 idea is a nonstarter. Courts properly deny *Zadvydas* claims under such circumstances and
23 find that a "habeas petitioner's assertion as to the unforeseeability of removal, supported
24 only by the mere passage of time, [is] insufficient to meet the petitioner's burden to
25 demonstrate no significant likelihood of removal under the Supreme Court's holding in
26 *Zadvydas*." *Muthalib v. Kelly*, No. 16-02186-KS, 2017 WL 11696616, at *3 (C.D. Cal.
27
28

1 Apr. 19, 2017) (collecting cases).[3]

2 "This is particularly so where the only impediment to removal is the issuance of the
3 appropriate travel document." *Id. (citing Nasr v. Larocca*, 2016 WL 3710200 (C.D. Cal.
4 June 1, 2016), *report and recommendation adopted,* 2016 WL 3704675 (C.D. Cal. July
5 11, 2016)). That Petitioner does not yet have a specific date of anticipated removal does
6 not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir.
7 2008); *Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (denying
8 *Zadvydas* petition where petitioner had been detained more than 14 months postfinal
9 order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013)
10 (holding petitioner "failed to satisfy his burden of showing that there is no significant
11 likelihood of his removal in the reasonably foreseeable future" where he had been detained
12 more than seven months post-order).

13 *Zadvydas* does not require Respondents to pre-arrange a noncitizen's removal travel
14 before arresting them, which would often be extremely difficult if not impossible. The
15 constitutional standard is whether there is "a significant likelihood of removal" in the
16 "reasonably foreseeable future"—not whether a removal will occur "imminently"—
17 indeed, the law does not require that "every [noncitizen] not removed must be released
18 after six months." *Id.* Instead, the Supreme Court was clear that the Constitution prevents

19

20 [3] Historically, there were political barriers to removing citizens of Vietnam as well as other Southeast Asian nations. Those barriers generated litigation, and many otherwise
21 removable noncitizens—like Petitioner—were released because they could not be removed. Not so anymore: Those barriers were eventually dismantled. Vietnamese
22 citizens and citizens of similar regional nations are now readily removed. Not long ago, Judge Carney observed so in his ruling in the putative class action *Trinh v. Homan*, 466
23 F.3d 1077 (C.D. Cal. 2020), aptly stating as follows:

24 > The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. Instead,
25 > Vietnam now considers each request from ICE on a case-by-case basis. ICE frequently requests travel documents from Vietnam
26 > for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. Petitioners do not appear to dispute
27 > that once Vietnam issues a travel document, removal becomes significantly likely, rendering class members unable to meet their initial burden under *Zadvydas*.

28 *Id.* at 1090.

only "indefinite" or "potentially permanent" detention. *Zadvydas*, 533 U.S. at 689-91. Courts therefore properly deny *Zadvydas* claims under such circumstances. *See, e.g., Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (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) (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*, 542 F. 3d at 1233. In any case, DHS intends to remove Petitioner to Vietnam, and to that end, his travel documents remain pending for active consideration by Vietnam.[4] Preciado Decl. ¶ 27.

To that end, effectuating Petitioner's removal is now affirmatively likely. Indeed, 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*, 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 (Aug. 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*. *See Huynh*, Docket No. 11 (C.D. Cal. Mar. 19, 2025). He was indeed promptly removed to Vietnam, mooting his petition, which was then dismissed. *See id.*, Docket No. 12 (C.D. Cal. Apr. 9, 2025); *accord Nguyen*, No. 5:25-cv-03109-MCS-ADS,

[4] Due to this reason, DHS has not made any request for removal to a third country.

1 Docket No. 12 at 6 (C.D. Cal. Dec. 1, 2025) (denying TRO where, as here, "Respondents
2 cite[d] other instances in recent months in which the United States has effected the removal
3 of pre-1995 Vietnamese immigrants to Vietnam," noting that "the Court cannot determine
4 on this record 'that there is no significant likelihood' that Petitioner will be removed from
5 the United States in the reasonably foreseeable future").

6 Accordingly, Petitioner cannot succeed in establishing that his current detention is
7 unreasonable pursuant to the Due Process standard delineated by the Supreme Court in
8 *Zadvydas* for noncitizens detained pursuant to a final removal order.

9 *b. Petitioner cannot show that DHS improperly revoked his*
10 *OSUP and detained him*

11 Petitioner also asks that the Court order that he be released from immigration
12 detention, on the ostensible grounds that the government improperly revoked his OSUP.
13 But Petitioner submits no evidence of that putative violation. *Cf. Winter*, 555 U.S. at 20
14 (requiring applicant to show—not merely allege—likelihood of success on the merits). If
15 he were released while the government is seeking to arrange his travel to Vietnam pursuant
16 to a final removal order, that would severely impair—if not outright prevent—the
17 government's ability to timely remove him.

18 Petitioner suggests that revocation procedure was not followed properly. Petition at
19 10-11. But he submits no evidence of that. Nor can he—after all, he was *immediately*
20 issued a Notice of Revocation of Release upon his detention, *see* Preciado Decl., Ex. A.
21 Expectedly, his Notice of Revocation of Release notified him of changed circumstances
22 in his case, including that there: "is no pending action with the court that will impede the
23 execution of your removal order at this time". *Id.* The foregoing process is more than
24 sufficient under the relevant regulations and the U.S. Constitution—and no more process
25 is due to him. *See, e.g.*, 8 C.F.R § 241.13(i)(3).

26 To be sure, the government has very broad authority to revoke supervised release
27 that it has granted. *Cf. Moran v. U.S. Dep't of Homeland Sec.*, No. 20-00696, 2020 WL
28 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l)

1 [revocation of release] was a violation of their procedural due process rights and noting,
2 "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to
3 support their contention that they have a protected interest in remaining at liberty in the
4 United States while they have valid removal orders."). "While the regulation provides the
5 detainee some opportunity to respond to the reasons for revocation, it provides no other
6 procedural and no meaningful substantive limit on this exercise of discretion as it allows
7 revocation "when, in the opinion of the revoking official . . . [t]he purposes of release have
8 been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that
9 release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th
10 Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010) (citing §
11 241.4(l)(2)(i), (iv)) (emphasis in original). Indeed, the relevant statute under the INA does
12 not contemplate a pre-detention hearing. *See, e.g.*, 8 U.S.C. § 1231.

13 The Hon. Judge Blumenfeld denied an injunction in a case alleging insufficient re-
14 detention process, noting that the evidentiary burden was not met, and also that it was
15 unclear that release would be the appropriate remedy for any violations of revocation
16 procedure. *See Ton v. Noem*, No. 5:25-CV-02033-SB-AGR, 2025 WL 2995068, at *4-5
17 (C.D. Cal. Sept. 3, 2025) (denying application for preliminary injunction, noting that
18 "Petitioner has not shown that release is the appropriate remedy for any APA violation").
19 The burden is on the moving party to show that ordering release via a TRO would be
20 narrowly tailored to rectifying a deficiency that was proven under the heavy standard for
21 preliminary injunctive relief. Speculating that the revocation of release was not fully
22 satisfactory in all possible respects is insufficient to carry that burden. The Hon. Judge
23 Birotte likewise recently denied an application seeking a TRO based on allegedly defective
24 revocation of supervised release for a noncitizen detained pursuant to a final removal
25 order, explaining why it did not meet the governing legal standard. *See Sanchez v. Bondi*,
26 No. 5:25-CV-02530-AB-DTB, 2025 WL 3190816, at *3 (C.D. Cal. Oct. 3, 2025) ("While
27 the regulations cited by Petitioner, 8 C.F.R. §§ 241.13(i)(1)–(2) and 241.4, establish
28 procedural safeguards—including the requirements that revocation be based on a

condition of release violation or on a significant likelihood of removal, and that the noncitizen receive notice and an informal interview—they do not create independent substantive rights that override the statutory grant of detention authority.").

Finally, 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. Injunctive relief must be *narrowly tailored* to the wrong. *See, e.g.*, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). Other District Courts have correctly applied this point of remedy law. 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 the 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.*

So too here. Even if procedural deficiencies had hypothetically occurred—which they did not—they would not warrant Petitioner's release and indeed could be cured by means well short of release. At a minimum, any relief for any past procedural irregularity is now unwarranted.

1 2. The Balance of Interests Favors Respondents.

2 It is well settled that the public interest in enforcement of the United States's
3 immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543,
4 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
5 1981) ("The Supreme Court has recognized that the public interest in enforcement of the
6 immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418,
7 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]").
8 This public interest outweighs Petitioner's private interest here.

9 **V. CONCLUSION**

10 Respondents respectfully request that the Court deny the Application.

11

12 Respectfully submitted,

13 Dated: December 22, 2025

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23 *Counsel of record for Respondents certifies that the memorandum of points and
24 authorities contains 3,741 words, which complies with the word limit of L.R. 11-6.1.

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