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10 **United States District Court**
11 **Central District of California**

12 Cuong Tu Hong
13 Petitioner,
14 v.
15 Kristi Noem, et al.
16 Respondents.

No. 5:25-cv-03353

**Renewed Application for
Temporary Restraining Order
and Preliminary Injunction;
Declaration of Michael T. Drake**

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20 The Court yesterday afternoon denied Hong's application for a
21 temporary restraining order and preliminary injunction (ECF No. 3),
22 stating that he'd failed to meet the test for ex parte relief under *Mission*
23 *Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488 (C.D. Cal. 1995),
24 which requires a petitioner to show that he will be "irreparably
25 prejudiced if the underlying motion is heard according to regular noticed
26

1 motion procedures.” (ECF No. 9 at 2 (quoting *Mission Power*, 883 F.
2 Supp. at 492).)

3 Hong here renews that application to address the Court’s objection.
4 *See infra* pp. 3–6.

5 ...

6 Hong has filed a petition for a writ of habeas corpus under 28
7 U.S.C. § 2241. (ECF No. 2.) Because he is almost certain to prevail on at
8 least one of his claims for the reasons stated there, he respectfully asks
9 the Court to (1) issue a temporary restraining order ordering the
10 government to: (a) immediately release him from custody, (b) refrain from
11 removing him from the United States or taking him from the Central
12 District of California, (c) restore him to the status quo prior to his
13 detention by reinstating his prior order of supervision; and (d) show cause
14 why Petitioner’s application for a preliminary injunction should not be
15 granted; (2) grant him a preliminary injunction; and (3) waive bond.

16 ...

17 “A plaintiff seeking a preliminary injunction must establish that he
18 is likely to succeed on the merits, that he is likely to suffer irreparable
19 harm in the absence of preliminary relief, that the balance of equities tips
20 in his favor, and that an injunction is in the public interest.” *Planned*
21 *Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843-44 (9th Cir.
22 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
23 1131 (9th Cir. 2011)). “Alternatively, a preliminary injunction may issue
24 where serious questions going to the merits were raised and the balance
25 of hardships tips sharply in plaintiff’s favor if the plaintiff also shows
26 that there is a likelihood of irreparable injury and that the injunction is

1 in the public interest.” *Id.* at 844 (quoting *Alliance for the Wild Rockies*,
2 632 F.3d at 1135). The standards for granting a temporary restraining
3 order are the same as the standards for granting a preliminary
4 injunction. See *O.M. v. Nat’l Women’s Soccer League, LLC*, 541 F. Supp.
5 3d 1171, 1177 (D. Or. 2021).

6 First, for the reasons in his petition, Hong is almost certain to
7 succeed on the merits—“the most important factor.” *Chamber of*
8 *Commerce of the United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023)
9 (quoting *California ex. Rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir.
10 2020) en banc)).

11 Second, Hong’s unconstitutional confinement is irreparable harm:
12 He was the main provider for his family before re-detention, and now
13 cannot work, which imposes obvious economic burdens on him and his
14 family. His gratuitous detention also harms his children, who depend on
15 him not only as a provider but as a parent. “In the absence of [a TRO or]
16 an injunction, harms such as these will continue to occur needlessly on a
17 daily basis.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

18 Third, and finally, when, as here, the government is a party, “the
19 balance of equities and public interest factors merge.” *Pimentel-Estrada*
20 *v. Barr*, 464 F. Supp. 3d 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay*
21 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The risk of
22 harm to Hong thus far outweighs the government’s interest in illegally
23 detaining him, for it is “always in the public interest to prevent the
24 violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002.

25 He’s thus met the standard for a preliminary injunction.

26 ...

1 To justify ex parte relief in this district, must make two showings:
2 (1) “the evidence must show that the moving party's cause will be
3 irreparably prejudiced if the underlying motion is heard according to
4 regular noticed motion procedures”; and (2) “it must be established that
5 the moving party is without fault in creating the crisis that requires ex
6 parte relief, or that the crisis occurred as a result of excusable
7 neglect.” *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 49
8 2 (C.D. Cal. 1995). This application assumes that this standard for “ex
9 parte” relief applies. (*But see infra*, Drake Decl. ¶ 8.)

10 To take the second requirement first, there's little question who was
11 at fault in creating the crisis that requires expedited relief: the
12 government, who lawlessly re-detained Hong in violation of its own
13 regulations, despite Hong's decades of compliance with his supervised
14 release conditions, and despite the fact that an immigration judge
15 terminated his removal proceedings weeks ago. (Petition at tk.)

16 But it's every bit as clear for irreparable prejudice. This is no penny
17 ante squabble about spoiled tomatoes. *Cf. Mission Power*, 883 F. Supp. at
18 490. This is about the deprivation of a person's physical liberty by
19 detention. And “[d]eprivation of physical liberty by detention constitutes
20 irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018);
21 *accord Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well
22 established that the deprivation of constitutional rights “unquestionably
23 constitutes irreparable injury.”).

24 Consistent with that binding precedent, it appears that every judge
25 in this District applying *Mission Power* over the past six months with
26 consideration given to the prejudice inherent in detention has held

1 *Mission Power*'s standard met. See *Padilla v. Bowen*, No. 2:25-CV-10780-
2 CAS-SK, 2025 WL 3251368, at *4 (C.D. Cal. Nov. 21, 2025) ("Petitioner's
3 *ex parte* request for relief is appropriate [under *Mission Power*] because
4 Petitioner's allegation of unlawful detention constitutes irreparable
5 injury."); accord *Ruiz Yarleque v. Noem*, No. 5:25-CV-02836-MEMF-SP,
6 2025 WL 3043936, at *8 (C.D. Cal. Oct. 31, 2025) (granting TRO after
7 reciting *Mission Power* standard and holding that continued detention in
8 ICE custody without bond hearing constitutes irreparable harm); *Flores*
9 *v. Noem*, No. 5:25-CV-02490-AB-AJR, 2025 WL 3050062, at *5 (C.D. Cal.
10 Sept. 29, 2025) (same); *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
11 BFM, 2025 WL 2670875, at *5 (C.D. Cal. July 28, 2025) (same); *Ding v.*
12 *Janecka*, No. 5:25-CV-03184-DOC-JDE, 2025 WL 3453957, at *5 (C.D.
13 Cal. Nov. 28, 2025) (granting TRO after reciting *Mission Power* standard
14 and holding that continued detention creates high risk of erroneous
15 deprivation).

16 "Indeed, ... even the mere potential for ICE detention without a
17 hearing sufficiently irreparable" has been enough for some courts "to
18 justify the issuance of ... an *ex parte* TRO." *Salzar v. Robbins*, No. 2:25-
19 CV-05473-VBF-MAR, 2025 WL 2633128, at *4 (C.D. Cal. June 18, 2025)
20 (citing *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
21 *2 (N.D. Cal. May 12, 2025)) (granting TRO having recited *Mission Power*
22 standard).

23 Every single day that Cuong Tu Hong spends in actual custody is
24 another day depriving him of every liberty you and I take for granted.
25 Another day away from his wife. From his children. From his home. His
26 friends. Another day unable to earn a living and support his family.

1 Every day, a day of irreparable prejudice. Twenty-eight days more¹ would
2 be an intolerable injustice.

3 Hong has met the standard for ex parte relief under *Mission Power*.

4 ...

5 For all these reasons, the Court should:

- 6 (1) immediately grant Hong a temporary restraining order, and
7 order the government to:
8 a. immediately release Hong from custody;
9 b. refrain from removing Hong from the United States or
10 taking him from the Central District of California;
11 c. restore Hong to the status quo prior to his re-detention by
12 reinstating his prior order of supervision; and
13 d. show cause why Hong's application for a preliminary
14 injunction should not be granted;
15 (2) grant Hong a preliminary injunction; and
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25 ¹ That's the minimum number of days he'd have to wait on the regular
26 motions calendar. L.R. 6-1; see also L.R. 65-1 (providing that requests for
PIs be made by noticed motion).

1 (3) waive bond, since it is unlikely that the government will incur
2 any significant cost, and since imposing bond “would have a
3 negative impact” on the constitutional rights of both Hong and
4 other members of the public. *Baca v. Moreno Valley Unified*
5 *Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996) (citation
6 omitted); *cf.* Fed. R. Civ. Proc. 65(c) (setting out bond
7 requirement to temporary restraining orders and preliminary
8 injunctions)

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Respectfully submitted,
CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: December 13, 2025

s/ Michael T. Drake

MICHAEL T. DRAKE
Deputy Federal Public Defender

Proposed Counsel for Petitioner
CUONG TU HONG

DECLARATION OF MICHAEL T. DRAKE

1. I am an attorney with the Office of the Federal Public Defender for the Central District of California, licensed to practice law in California, and admitted to practice in this Court.
2. Cuong Tu Hong’s immigration lawyer Adrienne Pham contacted our office back in mid-November this year, and gave us his files and the basic information about his case—that he’d been re-detained, was being held at the Adelanto Detention Facility in Adelanto, California, and so forth.
3. Our office has received similar calls now from dozens of detainees. So it wasn’t until December 3, 2025 that we were able to assign Hong’s case to an attorney to consult with him about his case.
4. That attorney was me.
5. Two days later, on Friday, December 5, I began reviewing Hong’s files and gathering other information about his case. Because we had not been appointed to represent him, I was limited in the information I could quickly gather. For instance, formal discovery from the U.S. Attorney’s Office or immigration officials was no option.
6. Still, by early that afternoon I’d tentatively concluded that Hong’s case had the makings for a habeas petition raising challenges to his detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and under procedural due process for violations of regulations governing the postremoval re-detention of noncitizens out on supervised release. I therefore intended to

1 draft and file a petition and the related filings here the
2 following Monday.

- 3 7. Upon reaching that conclusion, I immediately emailed
4 Assistant United States Attorney Daniel Beck, who I
5 understand to be Chief of the Complex and Defensive
6 Litigation Section, the unit tasked with defending the
7 government in these matters. I told Beck about the nature of
8 the case—including the fact that Hong’s removal proceedings
9 had been terminated—described the two claims I intended to
10 raise, the possibility that I’d raise others, and informed him
11 that by the following Monday I intended to file the petition,
12 this application, and the other documents I’m filing today.
- 13 8. Though I don’t believe that this application is subject to Local
14 Rule 7-19 (I have not sought relief without notice or an
15 opportunity to respond), I also told Beck that it was my
16 understanding that my email to him resolved any concerns or
17 objections that his office would otherwise have under that rule,
18 and invited him to let me know if his understanding on that
19 differed from mine.
- 20 9. Beck promptly emailed back, thanked me for my email, and
21 said that he’d “check with the agency on whether this one can
22 be resolved.”
- 23 10. The following Monday morning, my legal assistant and I began
24 trying to set up a call with Hong so that I could review the
25 facts in the draft petition with him so that he could confirm or
26 correct the factual allegations that I drafted. Time was of the

1 essence, and the next available legal call wasn't until
2 December 17. So Having him call me on a monitored line was
3 the only practical option.

- 4 11. But it wasn't until yesterday afternoon, December 12, that
5 Hong was able to call me back, explaining that there'd been a
6 problem with the system at Adelanto and that he'd been
7 unable to access his account, access he needed to be able to
8 make the call. (He was unable to call collect.)
- 9 12. We spoke for about 30 minutes. I went over the factual
10 allegations in the petition point by point. He affirmed almost
11 all of them and corrected the few remaining. I revised to reflect
12 his corrections.
- 13 13. After the call with him, I called Pham, who confirmed that
14 she'd been with Hong when he was re-detained in September
15 this year, that ICE re-detained him even though she showed
16 them the motion to reopen she'd filed for him just the day
17 before, and that the only reason ICE officials gave for re-
18 detaining him was that he had a final removal order.
- 19 14. All other allegations in the habeas petition outside Hong's
20 knowledge are based on my review of records we received from
21 Pham, which I believe to be accurate, and from information I
22 gleaned from federal government websites, which jibes with
23 the information in the files from Pham.
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15. I have not heard back from Beck since his response last Friday, which I understand to mean that his office will oppose this application. His contact information:

Daniel A. Beck, Assistant United States Attorney,
Chief, Complex and Defensive Litigation Section,
United States Attorney's Office, Central District of California,
300 N. Los Angeles Street, Suite 7516, Los Angeles, CA 90012
T: (213) 894-2574; E-mail: daniel.beck@usdoj.gov.

16. Shortly after filing the preliminary documents in this case (ECF nos. 2-4), I sent copies to Beck by email. I haven't heard back, which I take to mean his position on the application is unchanged.

17. Had I learned of the Court's denial order earlier I would have prepared and filed this renewed application yesterday evening/ But I was out of the office and without access to my phone, which was stolen two nights ago. I therefore didn't learn of the court's ruling until just before 8 p.m. last night.

18. I had no reason to think Beck's position on the application would change. Still, at 11:31 p.m. last night, I emailed him to let him know I planned to file this renewed application "shortly" and would check my email again before I did in case

1 he wanted (or was able) to take a position on it. I attached a
2 draft.

3 19. By midnight I had not heard back from him and decided to file
4 the application.

5 I declare under penalty of perjury under the laws of the United
6 States of America that the foregoing is true and correct. Executed on
7 December 13, 2025, at Los Angeles, California.
8

9 *s/ Michael T. Drake*
10 MICHAEL T. DRAKE
11 Deputy Federal Public Defender
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