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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DUNG PHAM,
11
12 Petitioner,
13 v.
14 KRISTI NOEM, et al.,
15 Respondents.

Case No.: 5:25-cv-03373-MEMF-PD

**PETITIONER'S REPLY TO OPPOSITION
TO TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

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DISCUSSION

Petitioner Dung Pham submits this reply in further support of her application for a temporary restraining order and preliminary injunction. (Dkt. No. 3.)

I. ARGUMENT

A. Pham has demonstrated that there is no significant likelihood of removal in the reasonably foreseeable future.

The government argues Pham “cannot show that there is no significant likelihood of removal in the reasonably foreseeable future,” Opp’n at 7, and provides three reasons in support of this claim. Each is wrong.

First, the government says that Pham “has not yet been detained over the six-months of presumptively reasonable removal order detention” and, “[h]aving such a short total detention time, she cannot prove ‘there is no significant likelihood of removal in the reasonably foreseeable future.’” *Id.* at 7-8 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). As set forth in Pham’s petition, multiple courts have reached the same conclusion: The six-month presumption is rebuttable. *See e.g. Munoz-Saucedo v. Pittman*, 789 F.Supp.3d 387, 396-98 (D.N.J. June 24, 2025) (collecting cases); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) (“The Supreme Court in *Zadvydas* outlined a ‘guide’ for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months.”). Pham demonstrated that there is no significant likelihood of her removal in the reasonably foreseeable future, so she has rebutted the six-month presumption.

Second, the government argues that Pham relies on an “outdated Vietnamese policy pursuant to which it did not accept back its immigrants who left the country before 1995.” Opp’n at 2. Not true. Pham’s petition cites to the 2020 Memorandum of Understanding because it is the most recent formal policy governing Vietnamese repatriation and thus Pham’s potential removal:

On November 21, 2020, the United States and Vietnam entered into a Memorandum of Understanding (“MOU”) regarding pre-1995 immigrants. The purpose of the MOU is to “establish a process of review and issuance of travel documents for

1 Vietnamese citizens ordered removed from the United States
2 and to facilitate the acceptance of all such Vietnamese
3 citizens[.] ... The scope of this MOU is intended to apply to
4 individuals who arrived in the United States before July 12,
5 1995.” Section 4 of the MOU is titled “Eligibility for
6 Acceptance of Return.” Section 4 states that Vietnam intends
7 to accept the removal of individuals who meet four conditions.
8 The individual must (1) have Vietnamese citizenship and not
9 the citizenship of any other country; (2) have been ordered
10 removed by the United States and finished serving any U.S.
11 prison sentence; and (3) have resided in Vietnam before
12 arriving in the United States and not have the right to reside in
13 any other country. The fourth mandatory condition is redacted
14 in the publicly disclosed version of the MOU[.]

9 *Nguyen v. Scott*, 796 F. Supp. 3d 703, 714 (W.D. Wash. 2025) (cleaned up). The
10 government says Pham’s “main idea is that nearly a decade ago, the government
11 released her when she could not be removed to Vietnam, so she cannot now be
12 removed in 2025.” Opp’n at 9. That is not Pham’s main idea, nor is it even an argument
13 presented in her petition. “The process for requesting travel documents is highly
14 dependent on the individualized facts of each case, including whether the individual has
15 any family remaining in Vietnam, whether their Vietnamese identity can be verified,
16 their criminal records, and the manner in which they left Vietnam and came to the
17 United States, among many other factors.” *Nguyen*, 796 F. Supp at 723. Pham provides
18 particularized evidence that her removal is not reasonably foreseeable in 2025
19 responsive to the present day criteria discussed in *Nguyen*. See Pet. at 9-10.

20 Indeed, as this Court recognized just last week—and as the government
21 ignores—there remains a current “paucity of removals to Vietnam.” See *Dung Duc Luu*
22 *v. Mark Bowen, et al*, Case No.: 5:25-CV-03145-MEMF-SP (C.D. Cal. Dec. 11, 2025),
23 Dkt. No. 16 at 10. And here, as in *Luu*, there exists “an absence of any indication that
24 the Government is seeking to meet the conditions of the current arrangement in
25 Vietnam.” *Id.* The government offers no affirmative evidence beyond the fact that (1)
26 “On or about November 13, 2025, ICE completed and sent a travel document request to
27 Vietnam for Pham to its headquarters for review and submission to the Vietnamese
28 consulate.” and (2) in Officer Palacios’ recent experience, “the government of Vietnam

1 is issuing travel documents when ICE has made such requests for Vietnamese
2 nationals, including those who arrived in the United States prior to 1995.” Palacios
3 Decl. ¶¶ 17-18.

4 In *Luu*, this Court found that there did not exist a significant likelihood of
5 removal where the government asserted: (1) “travel documents were requested from the
6 Vietnamese embassy on September 18, 2025, and Luu was then interviewed on
7 December 1, 2025 by consular officials for the purpose of obtaining his travel
8 documents.”; (2) “three individuals were removed to Vietnam in the past year”; and (3)
9 “there is no bar to removal to Vietnam.” Dkt. No. 16 at 10-11. The government offers
10 less here. Pham has not been interviewed by consular officials despite the fact that such
11 officials were at Adelanto just weeks ago. The government makes no representations
12 that such an interview is scheduled.

13 Further, Officer Palacios’ personal (and highly generalized) belief regarding the
14 likelihood of Pham’s removal is worth very little. As one Court explained, “the
15 declarant offers no context for or explanation of how a Deportation Officer in a facility
16 thousands of miles away from Washington D.C., would be privy to negotiations or
17 agreements between sovereign nations or would otherwise have personal knowledge of
18 what Vietnam has committed to . . . or what the government of Vietnam will do.”
19 *Thach Wana v. Bondi, et al.*, Case No. 2:25-cv-02321-RSL, Dkt. No. 13 at 7.

20 Finally, the government argues that “DHS admonished Petitioner numerous
21 times to cooperate in obtaining her travel documents to Vietnam.” Opp’n at 10. It says
22 that “after her OSUP was revoked . . . she was advised that she must show that she is
23 making reasonable efforts to comply with the order of removal and that she is
24 cooperating with ICE’s efforts to remove her by taking whatever actions ICE requests
25 to effectuate her removal.” *Id.* The government concludes that “where, as here, an alien
26 refuses to cooperate in obtaining travel documents . . . such attempts to block their own
27 removal do nothing to establish that their continuing detention is unreasonable.” *Id.*
28 (citing *Lema v. I.N.S.*, 341 F.3d 853 (9th Cir. 2003)).

1 First, as set forth in more detail below, the initial revocation of Pham's OSUP
2 was based upon the false premise that she failed to cooperate with her removal. *See*
3 Gov't Ex. A (Dkt. No. 9-2). Pham could not have failed to assist ICE with her removal
4 before she was asked to do so. And she cannot be faulted for failing to assist the
5 government with her removal *after* the government detained her based upon the false
6 premise that she had *already* failed to cooperate.

7 Second, DHS did not admonish Pham numerous times regarding her failure to
8 cooperate and *the consequences of that decision*. To the contrary, rather than explain
9 the actual consequences of non-cooperation, the government instead threatened Pham
10 with removal to a "third-world" country. *See* Ex. B ¶6. Pham did not engage in
11 "intentionally obstructionist, bad faith tactics . . . designed to frustrate the government's
12 attempts to effectuate a removal order. . ." *Diouf v. Mukasey*, 542 F.3d 1222, 1232 (9th
13 Cir. 2008). Instead, Pham understood the travel documents to represent a statement of
14 her *desire* to return to Vietnam. Because she does not wish to be deported to Vietnam, a
15 country to which she has no ties, she did not sign the documents. *See, e.g. Seretse-*
16 *Khama v. Ashcroft*, 215 F. Supp 2d 37, 53 (D.D.C. 2002) ("[P]etitioner's simple and
17 honest explanation that he did not want to return to a country to which he had no ties,
18 without any accompanying affirmative lack of cooperation, is not a refusal to cooperate
19 that supports an extension of detention.")

20 Due process reflects the vital recognition that an individual detained must be
21 afforded the opportunity to understand her situation, her choices, and the consequences
22 of each potential choice. Because Pham did not receive due process, that did not happen
23 here. If the government had explained to Pham her obligation to cooperate in her
24 removal proceedings and the consequences of non-compliance, Pham would have
25 signed her travel documents. She is willing to do so today. Ex. B ¶¶ 4-6.

1 **B. Pham has demonstrated that DHS improperly revoked her OSUP and**
2 **detained her without notice and an opportunity to be heard.**

3 In *Phu Van Ta v. Noem*, Case No. 5:25-cv-02902-MEMF-JDE (C.D. Cal. Nov.
4 10, 2025), “[t]his Court decline[d] to take the extraordinary position that . . . individuals
5 are not entitled to notice and an opportunity to be heard. . .” Dkt. No. 14 at 10. The
6 government advances the same extraordinary position here.

7 Respondents argue that Pham “was *immediately* issued a Notice of Revocation of
8 Release upon her detention” and represent that this notice “notified [Pham] of changed
9 circumstances in her case[.]” Opp’n at 13. This “foregoing process,” the government
10 insists, “is more than sufficient under the relevant regulations and the U.S.
11 Constitution—and no more process is due to her.” *Id.* That is wrong. As this Court
12 explained in *Ta*, “[t]he Fifth Amendment entitles [noncitizens] to due process of law’
13 in the context of removal proceedings.” *Ta*, Dkt. No. 14 at 10 (quoting *Reno v. Flores*,
14 507 U.S. 292, 306 (1993)). This means “immigration detainees pending removal are
15 ‘entitled to notice and opportunity to be heard ‘appropriate to the nature of the case.’”
16 *Id.* (quoting *Flores*, 507 U.S. at 306). Pham received neither.

17 The government does not refute that Pham was denied an opportunity to be
18 heard. *See* Opp’n at 13-15 (documenting a process absent of any opportunity for Pham
19 to be heard.) That ends the inquiry. As this Court observed in *Ta*, even where a
20 petitioner was sent “a notice of the reasons for revocation of his release”—and in
21 effect, Pham was not—“because there was no opportunity following that notice, the
22 Court found that the procedural deficiencies rose to the level of procedural due process
23 violations.” *Ta*, Dkt. No. 14 at 11 (citing *McSweeney v. Warden of Otay Mesa Det.*
24 *Facil.*, No. 3:25-CV-02488-RBM-DEB, at *6, 2025 WL 2998376 (S.D. Cal. Oct. 24,
25 2025). That’s what happened here.

26 Further, Pham has not, in any meaningful sense, received notice of the actual
27 reasons for revocation of release. The government says that its notice informed Pham of
28 changed circumstances, “including that she: ‘[has] no pending action with the court that

1 would impede enforcement action”; and “failed to assist ICE with obtaining a travel
2 document.” Opp’n at 13 (quoting Gov’t Ex A, Notice of Revocation of Release). The
3 government’s use of the word “including” is somewhat puzzling—these are the only
4 two reasons. Neither make sense. Most notably, and as set forth *infra* Section A, it
5 cannot be that Pham “failed to assist ICE with obtaining a travel document” *before* she
6 was detained and asked to do so. *See* Ex. B ¶4. And Officer Palacios’ declaration is
7 clear that Pham was not asked to do so until November 6, 2025, a week after her OSUP
8 was revoked. *See* Palacios Decl. ¶15. The notice Pham received relies upon a premise
9 that is clearly false. This makes the lack of opportunity to respond still more prejudicial
10 because Pham was denied the chance to explain this. *See* 8 C.F.R. § 241.13(i)(3)
11 (providing that a noncitizen must receive “an initial interview promptly” after being
12 detained where, *inter alia*, they “may submit any evidence or information that he or she
13 believes shows . . . that he or she has not violated the order of supervision.”)

14 The second reason the government offers—that Pham has “no pending action
15 with the court that would impede enforcement action”—is simply not a changed
16 circumstance. There has been no pending action that would impede enforcement action
17 since Pham was placed on OSUP.

18 It is beyond dispute that Pham has not been provided an opportunity to be heard.
19 This violated Pham’s due process rights. *See Ta*, Dkt. No. 14 at 11. And the “notice”
20 she received is animated by reasons that are clearly false. Had Pham been provided an
21 opportunity to be heard, she would have explained this. Therefore, Pham is likely to
22 succeed on the merits “of [her] claim that detention is only permitted upon notice and
23 an opportunity to be heard.” *Ta*, Dkt. No. 14 at 10.

24 **C. Pham’s third country removal claim is not speculative and she is likely to**
25 **succeed on it.**

26 Respondent represents that because “DHS has not made any request for removal
27 to a third country,” this is not a third country removal case. Opp’n at 2 n.1; *see also*
28 Opp’n at 6 n.3. As an initial matter, this is belied by the government’s threat to Pham

1 that should she not be removed to Vietnam, she will instead be deported to a “third-
2 world country.” Ex. B at ¶6. Further, as the government’s actions demonstrate, a case is
3 often not a third country removal case until the moment that it is. By that point, any
4 judicial intervention—likely by design—comes too late. And though the government
5 rests on its assertion that Vietnamese nationals are removed to Vietnam, such that third
6 country removals are neither necessary nor possible, this is simply not always true. The
7 district court in *Nguyen v. Scott* noted evidence of pre-1995 Vietnamese nationals
8 deported to Eswatini, South Sudan, and El Salvador, 796 F. Supp. 3d 703, 716-17, 734
9 (W.D. Wash. Aug. 21, 2025). There exists no evidence that the government provided
10 prior notice of its intent to the individuals removed to those countries: “[I]t is uncertain
11 whether ICE provided any notice to [the Vietnamese national], either in writing or
12 orally, prior to being deported to Eswatini . . . [the individual removed] remains
13 incommunicado since his deportation to Eswatini.” *Id.* at 717. In one instance, the
14 district court found that *the deportation officer himself* did not appear to know that a
15 third country removal was about to take place: “The text messages [from the
16 deportation officer] also indicate that neither the deportation officer nor his supervisors
17 knew that Mr. Phan was about to be deported to South Sudan until it happened.” *Id.* at
18 716.

19 It gets worse. Courts across the country have taken note of what is obvious: The
20 government’s third country removal scheme is intended to inflict punitive harm on the
21 individual being removed. *See id.* at 734 (collecting cases). This is not an inference. We
22 know it is true because the government has said it is true—over and over again. *See id.*
23 at 733-34 (collecting admissions from the government that “third country deportation is
24 occurring as punishment”). And the lack of notice prior to third country removals is
25 traceable—not incidental—to the government’s desire to inflict punishment on
26 detainees like Pham. *See id.* (observing President Trump’s statement that: “Illegal
27 aliens face . . . sudden deportation in a place and manner solely of our discretion.”)
28 (emphasis added).

1 Here and elsewhere, the government seeks to have it both ways. It brags about
2 third country removals that take place suddenly and without notice. But then it insists
3 that claims regarding third party removals are improperly speculative. The government
4 wishes to inflict fear: first, with threats that it will punish individuals by deporting them
5 to countries to which they have no connection (where they will be imprisoned and
6 tortured) and then with actions—where it has done precisely that. But when petitioners
7 like Pham seek protection from what the government has said it will do (and then
8 done), the government shrinks under a cursory, unsupported declaration that this is not
9 a third party removal case. The government's actions demonstrate that Pham's claim is
10 not speculative and she is likely to succeed on it.

11 **D. Pham requires urgent medical attention.**

12 The government acknowledges that “access to medication for detainees is indeed
13 important.” Opp’n at 3. It explains that “[d]etention centers are able to provide
14 extensive medical services to detainees . . . including outpatient services for particularly
15 extraordinary needs if that is warranted.” *Id.* Pham has particularly extraordinary needs
16 that the government knows about. But she has not received the medical services she
17 needs.

18 Pham informed the government of her cancer diagnosis upon her detention. And
19 her petition explained that she has an urgent medical appointment related to that
20 diagnosis. The government does not need a court order to respond to medical needs it
21 claims to view as important. But it makes no representations that it has taken or will
22 take any steps to ensure that Pham attend an oncology appointment where missing the
23 appointment (she did) would “put her health at risk.” Pet. at 5.

24 Undersigned counsel spoke with Dr. LeBerthon on Monday December 15, 2025.
25 See Ex. A ¶5. Dr. LeBerthon reiterated that Ms. Pham is in urgent need of medical
26 attention and represented that he would make room to see her at the first available time
27 should she be released. See Ex. C (Letter from Dr. LeBerthon). The government says
28 that “the remedy for any such deficiency would be to provide the treatment, not to order

1 release.” Opp’n at 3. Nothing has prevented the government from taking steps to
2 provide the treatment, but it appears to have taken no steps towards doing so. This
3 Court should order Pham’s release.

4 Respectfully submitted,
5 CUAUHTEMOC ORTEGA
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7 DATED: December 17, 2025

8 By */s/ Jonah Rosenbaum*

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner Dung Pham, certifies that this reply brief contains 2,928 words, which complies with the word limit of Local Rule 11-6.1.

Dated: December 17, 2025

/s/ Jonah Rosenbaum
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