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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

Son Hoang Vu, Petitioner, vs. Warden, Anchorage Correctional Complex; Director, U.S. Immigration Custom and Enforcement, Respondents.	Case No. 3:26-cv-00027-SLG

FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner Son Hoang Vu, a Vietnamese citizen who is subject to a final removal order, has been lawfully detained by U.S. Immigration and Customs Enforcement ("ICE") in order to facilitate his removal to Vietnam. Seeking to forestall his removal, Vu has

sought a temporary restraining order ("TRO") barring such removal until ICE affords him further process. The issue before this Court is, at this stage, is whether ICE has the authority to hold Vu while in the process of securing his ultimate removal to Vietnam.

Vu has not demonstrated that the law and facts favor the grant of emergency mandatory injunctive relief here and the balance of the equities and public interest tilt against granting a TRO. Indeed, the injunction sought by Vu would inappropriately have this Court, on a time-compressed basis, grant him the ultimate relief that he seeks in his habeas petition without the requisite showing of facts that clearly favor his position. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits").

II. FACTUAL BACKGROUND

Vu entered the United States on a Public Interest Parole ("PIP") on September 17, 1992. Hayes Decl. ¶ 3. On January 20, 1999, Vu was convicted of felony home invasion in Cook County, Illinois. Hayes Decl. ¶ 4. In 2007, he was convicted of driving under the influence while in California. Hayes Decl. ¶ 4. On March 30, 1999, the Petitioner was issued a Notice of Intent to Issue a Final Administrative Removal Order under the Immigration and National Act without a hearing before an immigration judge based upon his conviction of home invasion. Hayes Decl. ¶ 5. Vu is charged, in the Notice of Intent, to be deportable for being convicted of an aggravated felony as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43). Hayes Decl. ¶ 5. On April 28, 1999, Vu was ordered removed from the United States to Vietnam. Hayes Decl. ¶ 6. About two years later, Vu was released on an Order of Supervision ("OSUP") due to the inability to obtain travel

documents to Vietnam. Hayes Decl. ¶ 7.

On December 02, 2025, immigration officials determined that there was now a significant likelihood of removal in the foreseeable future ("SLRFF") due to cooperation between the United States and Vietnam. Hayes Decl. ¶ 8. Accordingly, OSUP was revoked, and Petitioner was arrested pursuant 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. On January 12, 2025, the Petitioner was arrested and then served with his OSUP revocation notice. Hayes Decl. ¶ 9. On the same day, an informal interview was conducted in presence of his then attorney, Nicholas Olano. Hayes Decl. ¶ 9. In relation to the OSUP revocation, the Petitioner did not offer any challenges to his Vietnamese citizenship or the government's ability to remove him. Hayes Decl. ¶ 9. Vu indicated he has pending relief with U.S. Citizenship and Immigration Services, but his application has been denied. Hayes Decl. ¶ 9.

Since February 2025, cooperation between the United States and Vietnam has improved and Vietnam generally issues travel documents within 30 days of a request being made. Hayes Decl. ¶¶ 11-12. Since the same time, *every travel document requested* by the Department of Homeland Security ("DHS") *has been issued.* Hayes Decl. ¶ 13. Given the foregoing, DHS has every reason to believe Vietnam will issue travel documents for Vu and thus, there is now a significant likelihood of his removal in the reasonably foreseeable future. Hayes Decl. ¶ 16. Currently, ICE is preparing the forms, declarations, and documents needed to submit the request to Vietnam for travel documents. Hayes Decl. ¶ 10.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing,* carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). For mandatory preliminary relief to be granted, Vu "must establish that the law and facts *clearly favor* [his] position." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original). And "[w]here a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo pendente lite, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 674-75 (9th Cir. 1984) (citation omitted).

A plaintiff seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest." *Winter,* 555 U.S. at 20. (citations omitted). Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (citation omitted). "A mandatory injunction orders a responsible party to take action." *Id.* at 879 (internal quotation and citation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* (internal quotation and citation omitted). "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* (internal quotation omitted). Where a plaintiff seeks mandatory injunctive relief, "courts should be extremely cautious." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation and citation omitted). Thus, in a mandatory injunction request, the moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia,* 786 F.3d at 740 (emphasis original).

Here, in addition to asking the Court to preserve the status quo by prohibiting his transfer, Vu seeks mandatory injunctive relief in the form of an order requiring his immediate release.

IV. ARGUMENT

The Court should deny Vu's request for a TRO and preliminary injunction as he has

failed to clearly establish a likelihood of success on the merits or irreparable harm. In addition, Vu has not established that the public interest weights decidedly in his favor.

A. Vu does not satisfy the requirements for preliminary relief.

1. Vu is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation and citation omitted). To succeed on a habeas petition, Vu must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241. Vu claims that his detention is not reasonably related to removal and challenges whether there is a significant likelihood of removal in the reasonably foreseeable. Dkt. 1 at 5-8. These claims lack merit. Vu has abandoned his claim that he did not receive an informal interview after the revocation of his OSUP. Dkt. 8.

i. Federal Respondent has shown that there is a significant likelihood of removal in the reasonably foreseeable future.

In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

The *Zadvydas* Court recognized that as the length of post-order detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* at 701 (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). Nonetheless, the Supreme Court determined that it is "presumptively reasonable" for the government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court implicitly recognized that six months is the earliest point at which a noncitizen's detention could raise constitutional issues. *Id.* Moreover, as the Supreme Court has noted, the six-month presumption "does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

The burden is on the Vu to show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (citing *Zadvydas*). If a petitioner meets his evidentiary burden, the government must then introduce evidence to refute the petitioner's assertion. *Id.*

Vu attempts to shift the burden to the government by commencing his argument not with evidence, but with a conclusion, i.e., that because travel documents could not be obtained in the past that it remains the case today. Dkt. 1 at 5-8.

Notwithstanding Vu's attempt to burden-shift, as set forth in the Hayes declaration,

DHS has every reason to believe that Vietnam will issue travel documents for Vu. Hayes Decl. § 15. And they are typically being issued in less than thirty days. Hayes Decl. § 11. Accordingly, Vu's detention has not become "indefinite," and this Court should not order that he be released.

B. Vu has not shown irreparable harm.

Vu has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). "The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on a [preliminary injunction]." *Juarez v. Asher*, 556 F. Supp.3d 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674 (9th Cir. 1988)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter,* 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22 (citation omitted).

The only immediate irreparable injury asserted in Vu's Petition is the possibility of being detained in Seattle while pending removal. Vu claims, without elaboration, that his

detention in Seattle will make it more difficult for him to communicate with his already out of state attorney. If Vu can communicate with his attorney for purposes of the filing of his petition, it stands to reason he can do so while in detention in Seattle and the Court should not presume that he will be unable to communicate with counsel.

Vu appears to assert that his detention constitutes irreparable injury. But this irreparable harm argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, additional time in immigration detention pending removal does not constitute immediate irreparable injury. *See Resendiz v. Holder*, 12-cv-4850, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012) ("loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations").

Vu has failed to make a clear showing he will be subjected to immediate, irreparable injury without the request injunctive relief.

C. The balance of equities and public interests favors the Government.

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

CONCLUSION

Since February 2025, Vietnam has improved their cooperation with the government is and timely issuing traveling documents. As such, there is a significant likelihood of his removal in the reasonably foreseeable future. Accordingly, this Court should deny his request for a preliminary injunction.

RESPECTFULLY SUBMITTED this January 20, 2026, in Anchorage, Alaska.

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/s/ Joshua A. Traini
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CERTIFICATE OF SERVICE
I hereby certify that on January 20, 2026,
a true and correct copy of the foregoing
was served electronically on the following:

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