IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

TAM CHI NGUYEN,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondent.

Civil Action No. 6:25-CV-00057-H

RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION AND HABEAS PETITION

Petitioner seeks a preliminary injunction and habeas relief to require his immediate release from immigration detention. *See* ECF No. 1. As explained herein, Petitioner shows no entitlement to a preliminary injunction, nor habeas relief, and he is not entitled to immediate release. The Court should deny the request for a preliminary injunction and habeas relief.

I. Background

Petitioner is a native and citizen of Vietnam. ECF No. 1, ¶ 6. He later was granted lawful permanent resident status on or about July 24, 1982. App. p. 6. On September 15, 2006, Petitioner was issued a Notice to Appear and removal proceedings were commenced in immigration court. *Id.* On December 3, 2009, Petitioner was ordered removed by an immigration judge. App. p. 22. That decision became a final order of removal on March 17, 2011. App. pp. 27-28. Thereafter, Petitioner was placed on an Order of Supervision because Enforcement and Removal Operations (ERO) was unable to remove Petitioner at that time. App. p. 3, ¶ 8. On April 16, 2025, Petitioner was taken into custody because ERO now believes they can remove Petitioner to Vietnam. *Id.* At ¶ 9.

On July 5, 2025, Petitioner filed a combined petition for a habeas corpus and request for preliminary injunction. ECF No. 1. In connection with his habeas corpus claim seeking release, Petitioner alleges that there is no evidence of changed circumstance specific to him that makes his removal reasonably foreseeable and therefore his detention is impermissible. ECF No. 1, ¶ 60. He additionally asserts that ICE did not follow its own regulations when re-detaining him and that he is therefore entitled to immediate release from custody. ECF No. 1, ¶62.

In his motion for a preliminary injunction, Petitioner seeks relief in connection with his habeas claims, by arguing that he is likely to succeed in establishing that his re-detention is in violation of ICE regulations and Supreme Court precedence. *See* ECF No. 3 at 6-8. Petitioner's motion for a preliminary injunction and habeas petition are both improper and should be denied.

II. Legal Standard

A preliminary injunction is an "extraordinary and drastic remedy." *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is "not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). "The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest." *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has "clearly" carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

III. Argument and Authorities

Petitioner is not entitled to habeas relief or a preliminary injunction.

Petitioner's preliminary injunction motion is premised on his habeas claim that his re-detention is unlawful and that he cannot be removed to Vietnam. ICE has authority to re-detain noncitizens such as Petitioner when there are changed circumstances such that there is a significant likelihood that the noncitizen may be removed in the reasonable future. Circumstances have changed in Petitioner's case—travel documents were issued on July 25, 2025—therefore there is a significant likelihood that Petitioner will be removed to Vietnam soon. Petitioner's re-detention is proper, and his detention is not unconstitutional. Petitioner, therefore, is not entitled to habeas relief and cannot meet the requirements to obtain a preliminary injunction.

1. No likelihood of success on the merits is shown.

DHS ICE has authority to re-detain Petitioner. The authority of ICE to detain noncitizens under federal law derives from 8 U.S.C. § 1231, which directs the Attorney General of the United States to affect the removal of any noncitizen from this country within 90 days of any order of removal. 8 U.S.C. § 1231(a) (1). However, once that time passes and after "removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute" and the noncitizen must be released. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). under 8 C.F.R. § 241.13(f).

Upon release, a noncitizen subject to a final order of removal must comply with certain conditions of release. 8 U.S.C. § 1231(a)(3), (6). The revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. Specifically, a noncitizen's release may be revoked "if, on account of changed circumstances," it is determined that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

Petitioner requests this Court enjoin ICE from re-detaining him claiming that there has been no change in circumstances and no individual assessment specific to Petitioner that would make his removal reasonably foreseeable. Petitioner is incorrect on both points. First, Petitioner has a final order of removal, and he was subsequently released pending removal on an order of supervision. *See* 8 U.S.C. § 1231(a)(3). However, due to a change in circumstances, including an updated executive branch assessment indicating likelihood of removal as well as travel documents issued for Petitioner, there is now a high probability Petitioner will be removed in the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2).[1] *Accord* 8 C.F.R. § 241.13(f) (allowing re-detention for

[1] Under 8 C.F.R. § 241.13(i), the government, DHS ICE, may revoke an alien's release and return the alien to custody if the government determines a change of circumstances. *See also* 8 C.F.R. §

changed circumstances). App. p. 4, ¶ 18. Thus, Petitioner was properly re-detained and his detention is not unconstitutional.

Second, Petitioner does not dispute that his re-detention is lawful for changed circumstances. As Petitioner conceded, after the removal period under § 1231(a)(2), following § 1231(a)(6), Petitioner may be returned to detention pending removal. *Zadvydas v. Davis,* 533 U.S. 678, 682 (2001). *See* ECF 3, at 6. Specifically, § 1231 (a)(6) broadly authorizes the executive branch of government, through its Attorney General and agencies, including DHS ICE, the discretion to detain and re-detain certain categories of aliens.

> An alien ordered removed [1] who is inadmissible ... [2] [or] removable [as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy] or [3] who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision ....

Zadvydas, 533 U.S. at 682 (quoting 8 U.S.C. § 1231(a)(6)). By its plain language, the statute does not impose any limitation on the length of an alien's detention. *See id.* Significantly, the Supreme Court in *Zadvydas* addressed § 1231(a)(6) constitutional concern with indefinite detention by clearly holding an alien could be detained "until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. This limitation is linked to the statute's "basic purpose," which is to "assur[e] the alien's presence at the moment of removal." *Id.* at 699.

Here, following *Zadvydas,* Petitioner is plainly wrong in his claim that his re-

241.13(i)(2). Thus, the government has discretion to re-detain when the government, as here, identified changed circumstances (*e.g.,* the updated removal assessment).

detention is unconstitutional because it is indefinite. ECF 1, at 7. Petitioner's § 1231(a)(6) re-detention has been less than 100-days (since April 16, 2025) with a specific reason, *i.e.,* executive branch assessment indicating high probability for removal including a recent flight to Vietnam from the United States removing other pre-1995 Vietnamese citizens and the receipt of travel documents for Petitioner. App. pp. 3-4, ¶ ¶ 9, 10, 11, 15, 18. Since Petitioner is without jurisdiction to challenge the final order of removal and now that his travel document has been issued, once the travel document arrives in Dallas, he will no longer be detained but removed. App. p. 4, ¶ ¶ 17-18. Also, Petitioner's speculation that he cannot be deported to Vietnam is simply false. *Id.* There is no legal bar to removal to Vietnam, indeed, as can be seen from travel documents being processed and issued for removal.[2] Travel documents were submitted for Petitioner on June 9, 2025, and were issued on July 25, 2025. App. p. 3, ¶ ¶ 11, 17. Approximately 20 Vietnamese individuals were removed to Vietnam on July 15, 2025. App. p. 4, ¶ 15. Removals to Vietnam are occurring and there is no impediment to removing Petitioner now that his travel documents have been issued. App. p. 4, ¶ ¶ 17, 18.

Further, Petitioner's characterization of the period of his detention as unreasonable or indefinite is false. *Gomez v. Chestnut,* Slip Op, 2025 WL 1695359 (June 17, 2025, D.

[2] The only basis identified by Petitioner to support his contention that his removal is not substantially likely to occur in the reasonably foreseeable future is a supposed treaty provision that he alleges precludes the removal of Vietnamese citizens who entered the United States before 1995. However, even if such a treaty provision existed at one time, such agreements are commonly modified. Indeed, in the case of Vietnam, certain treaty provisions have been superseded by the provisions in a 2020 treaty memorandum of understanding, whereby removal and repatriation of Vietnamese citizens who arrived in the United States before July 1995, such as Petitioner, are indeed possible and occurring. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020).

Nevada) (denying § 2241 non-citizen's claim that his detention beyond the 90-day removal period was unconstitutional because travel documents have not yet been secured for a third country). Moreover, the Supreme Court in *Zadvydas* recognized 6-months detention is a presumptively reasonable period when, as here, removal is reasonably foreseeable due to the issuance of travel documents. *See Atkinson v. DHS,* Slip Op, 2025 WL 1737017 (June 6, 2025, W.D. Wash.), adopted 2025 WL 1736596 (June 23, 2025, W.D. Wash.) (stating that, though § 2241 petitioner's detention has extended past the removal period, his continued detention remains presumptively reasonable unless and until more than 6-months have passed (citing *Zadvydas*, 533 U.S. at 701)).

Petitioner cannot establish success on the merits: travel documents have been issued for Petitioner to be removed to Vietnam. There are no impediments to removing Petitioner to Vietnam.

2. The remaining preliminary-injunction factors do not favor relief.

With respect to the remaining equitable factors, Petitioner has not met his burden of establishing he is entitled to relief. This court may not grant injunctive relief on the sweeping and speculative 'irreparable harm' claims, *see generally* ECF 3, supposed by Petitioner. *See Mathews v. Diaz,* 426 U.S. 67, 80 (1976) (recognizing it is well established that detention is a constitutionally valid aspect of the deportation process and that in the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens).

Moreover, Petitioner has no due process right to never-ending supervision-pending-removal. From onset, the supervision period here inherently and plainly was limited to the date of foreseeable removal. In other words, the supervision duration period is conditional (and was always conditional) – and may be revoked (and was always subject to revocation) -- on operative removal which, based on the updated assessment by the executive branch, here is reasonably foreseeable and even appears immediate. *See Ahmad v. Whitaker,* 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), adopted, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). In *Ahmad,* which is factually like this case, the district court upheld supervision revocation for change of circumstances. The *Ahmad* revocation was upheld even though it came without notice or an opportunity to be heard. The *Ahmad* court, in denying continued supervision relief, recognized that the applicable supervision regulations only provide for an informal interview and further recognized that a change of circumstances (related to efforts to obtain travel documents) occurred. *Id.* (*citing Doe v. Smith*, 2018 WL 4696748, at *9-*10 (D. Mass. Oct. 1, 2018) (denial of informal interview upon revocation does not entitle habeas petitioner to release). In this case, as in *Ahmad,* there is no evidence that the government assured Petitioner that he had due process safeguards beyond those provided to a non-citizen whose removal was foreseeable. *Id.*

Finally, with respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is properly the subject of a final order or removal and the government is entitled to detain aliens in the post-removal period to bring about removal, and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws and the removal of aliens who are unlawfully present in the United States. Petitioner's own voluntary actions, in which the government had no involvement, resulted in the current state of affairs: Petitioner was convicted of possession of marijuana and was ordered removed by an immigration judge. Under these circumstances, equity does not support Petitioner's claims for relief from this Court.

IV. Conclusion

Petitioner's motion for preliminary injunction and petition for habeas should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 28, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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