

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BAO PHONG HUU NGUYEN

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 3:25-cv-1913-L

**PETITIONER TAM NGUYEN'S EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Petitioner, Bao Nguyen, by and through undersigned counsel, respectfully moves this Court for an emergency Temporary Restraining Order ("TRO") and/or a Preliminary Injunction. Mr. Nguyen, a pre-1995 Vietnam immigrant, seeks an immediate order compelling Respondents to release him from the custody of U.S. Immigration and Customs Enforcement ("ICE"). This motion is filed contemporaneously with Mr. Nguyen's Emergency Petition for a Writ of Habeas Corpus, the most relevant aspects of which are summarized below. Mr. Nguyen respectfully requests that this Court immediately order Respondents not to move Mr. Nguyen from this Court's jurisdiction, to respond to this motion within 24-hours, and, if the Court deems appropriate, set this matter for an emergency evidentiary hearing.

INTRODUCTION

As detailed in the Habeas Petition accompanying this motion and discussed below, Mr. Nguyen's detention by ICE is unlawful and it has been since the moment they detained

him when he showed up for his annual check-in—just as he had every year for more than two decades since ICE determined his removal was not reasonably likely in the foreseeable future in 2001.

On June 23, 2025, ICE unlawfully detained Petitioner Bao Nguyen during a routine, scheduled check-in, ending nearly 24 years of liberty under an Order of Supervision (“OSUP”). This re-detention is a flagrant violation of federal regulations, specifically 8 C.F.R. § 241.13, which requires ICE to follow specific procedures and make an individualized finding of changed circumstances rendering removal significantly likely in the reasonably foreseeable future before it can revoke supervised release.¹ Respondents failed to follow this mandatory process.

Mr. Nguyen, a pre-1995 arrival from Vietnam, has no criminal history since being arrested on state charges of possession of a controlled substance in 1998—27 years ago. In 2001, he was taken into ICE custody for removal proceedings which resulted in a final order of removal on September 10, 2001.² After the former INS determined Mr. Nguyen’s removal was not reasonably likely in the foreseeable future, he was released on an OSUP in late 2001/early 2002. Since his release, Mr. Nguyen has complied with his OSUP without incident. His removal to Vietnam is no more likely today than it has been for the past 24

¹ See *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4–6 (E.D. Cal. July 16, 2025)(discussing the regulatory requirements for re-detention in the context of a habeas petition and request for a TRO seeking the immediate release of a “re-detained” pre-1995 Vietnam immigrant); see also *Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025)(same); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)(same).

² (Pet’r’s App. Ex. 8.)

years. For the reasons set forth below, Mr. Nguyen meets all the requirements for immediate injunctive relief.

RELEVANT BACKGROUND INFORMATION

Petitioner Bao Nguyen is a 49-year-old devoted husband to a U.S. citizen, a loving father to their three U.S. citizen children, and a respected, hardworking member of his community. He has lived in the United States since 1985, when he arrived as a refugee from Vietnam. For the past 24 years, Mr. Nguyen has lived a quiet, law-abiding life under an Order of Supervision (“OSUP”) with U.S. Immigration and Customs Enforcement (“ICE”). He has never violated his OSUP and has no criminal record for over a quarter of a century.

His reward for this decades-long compliance was to be summarily arrested. On July 23, 2025, Mr. Nguyen did exactly what he has done for years: he appeared at the ICE-ERO Dallas Field Office (“DFO”) for his scheduled annual check-in. Without warning, explanation, or any lawful basis, ICE agents detained him. Respondents did not identify any new criminal activity, any violation of his supervision, or any change in circumstances that would suddenly make his removal to Vietnam—a diplomatic improbability for pre-1995 arrivals like him—reasonably foreseeable.

Since his unlawful seizure, Mr. Nguyen has been held in deplorable and dangerous conditions. He is not in a detention facility equipped for human lodging. Instead, he and dozens of others are being warehoused in the DFO, an office building with a small processing area designed for temporary holding of no more than 12 hours. It lacks proper beds, sanitation, food, and drinking water necessary for extended detention. Holding Mr.

Nguyen under these inhumane conditions is not an administrative act to effectuate removal; it is an unconstitutional punishment that inflicts irreparable harm with each passing hour.

LEGAL STANDARD

A party seeking a TRO or a preliminary injunction must establish four elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and (4) that the injunction will not disserve the public interest.³ Mr. Nguyen satisfies all four factors.

I. Mr. Nguyen Is Likely to Succeed on the Merits.

Mr. Nguyen's re-detention is unlawful because ICE flagrantly disregarded its own mandatory regulations. The decision to re-detain a noncitizen on supervised release is governed by 8 C.F.R. § 241.13(i).⁴ This regulation requires ICE to conduct an individualized determination, based on changed circumstances, that the noncitizen's removal has become significantly likely in the reasonably foreseeable future.⁵

ICE failed to meet this standard. Respondents provided no notice, no evidence, and no finding of any changed circumstance specific to Mr. Nguyen. Instead, they summarily

³ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

⁴ See *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4–6 (E.D. Cal. July 16, 2025)(discussing the regulatory requirements for re-detention in the context of a habeas petition and request for a TRO seeking the immediate release of a “re-detained” pre-1995 Vietnam immigrant); see also *Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025)(same); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)(same).

⁵ *Id.*; see also *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

detained him during a routine annual check-in. This exact conduct has been recently rejected by multiple federal courts under nearly identical facts.⁶

The government cannot demonstrate that Mr. Nguyen's removal is reasonably foreseeable. He is a pre-1995 arrival from Vietnam, a class of individuals historically protected from repatriation. While a 2020 Memorandum of Understanding ("MOU") created a *process* to request removal, the data obtained from the *Trinh v. Homan* litigation shows this process is a facade.⁷ In a two-year period, ICE successfully removed only four pre-1995 individuals out of an estimated population of 8,000 to 10,000. This is a removal rate that is functionally zero.⁸

Because ICE violated its own binding regulations and because Mr. Nguyen's removal is not significantly likely in the reasonably foreseeable future, his detention is unlawful. He has a clear and substantial likelihood of succeeding on the merits of his habeas petition.

II. Mr. Nguyen Faces Immediate and Irreparable Harm.

Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that "[f]reedom from imprisonment...lies at the heart of the

⁶ See *Phan*, 2025 WL 1993735, at *4–6; *Hoac*, 2025 WL 1993771, at *3; *Nguyen*, 2025 WL 1725791, at *3.

⁷ See *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020) (providing a similar historical overview of removals to Vietnam and the issues surrounding repatriation from those who entered the U.S. prior to July 1995).

⁸ *Id.*

liberty” protected by the Due Process Clause.⁹ Every day Mr. Nguyen remains in custody, he is irreparably harmed by the loss of his fundamental liberty, his separation from his U.S. citizen wife and three children, and the loss of his ability to provide for his family.

The harm is not merely abstract. Mr. Nguyen is being held at the ICE-ERO Dallas Field Office, an office building not designed or equipped for overnight detention. This raises grave concerns for his health and safety, especially given the recent, tragic death of a 55-year-old Vietnamese detainee in ICE custody and the rising number of in-custody deaths in 2025.¹⁰ This risk constitutes a severe and irreparable harm that warrants immediate judicial intervention.

III. The Balance of Equities Tips Decisively in Mr. Nguyen’s Favor.

The balance of harms weighs overwhelmingly in Mr. Nguyen’s favor. The injury to Mr. Nguyen—unconstitutional detention, family separation, and risk to his well-being—is severe and immediate.

Conversely, the harm to Respondents is nonexistent. Mr. Nguyen is not a danger to the community; he has lived peacefully and productively for decades. He is not a flight risk; he has complied with his OSUP for 24 years and reported to ICE on July 23, 2025, fully aware that he would likely be detained. As the Supreme Court noted in *Zadvydas*, the flight risk justification is “weak or nonexistent where removal seems a remote

⁹ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

¹⁰ (Pet’r’s App. Ex. 5.)

possibility."¹¹ Releasing Mr. Nguyen to his OSUP, a status ICE itself deemed appropriate for over two decades, poses no conceivable harm to the government.

IV. An Injunction Serves the Public Interest.

The public has a profound interest in ensuring that government agencies abide by the Constitution and their own regulations. Granting this injunction upholds the rule of law and prevents the government from exercising unchecked power to deprive individuals of their liberty. Furthermore, the public interest is served by preserving family unity, especially where U.S. citizen children are involved, and by preventing the waste of taxpayer resources on unlawful and indefinite detention.

CONCLUSION

For the foregoing reasons, Petitioner Bao Nguyen respectfully requests that the Court grant this Emergency Motion and issue a Temporary Restraining Order and/or Preliminary Injunction ordering his immediate release from ICE custody under his previous Order of Supervision, pending a final resolution of his Petition for a Writ of Habeas Corpus

1. GRANT this Emergency Motion;
2. ISSUE a Temporary Restraining Order immediately ENJOINING and RESTRAINING Respondents, their officers, agents, servants, employees, and all persons in active concert or participation with them, from continuing to detain Mr. Nguyen and from removing to any third country (i.e. any country that is not

¹¹ *Zadvydas*, 533 U.S. at 691.

Vietnam) without providing Mr. Nguyen, his counsel, and the Court with at least 72-hours' notice of its intent to do so;

3. ORDER Respondents to appear and show cause immediately as to why a Preliminary Injunction should not issue;
4. Set an Emergency Hearing at the Court's Convenience; and
5. GRANT Petitioner such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

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Certificate of Conference

I hereby certify on July 24, 2025, at approximately 1:15 a.m. I emailed AUSA Brian Stoltz and AUSA Lisa Hasday the foregoing motion, along with the Emergency Habeas Petition, Appendix, and all other initiating documents. Additionally, though I do not believe required for this motion, I sought their position on it though do not expect a response given the time of day. Accordingly, this is being filed without the government's position, but after providing its counsel with all of the documents filed in this case.

/s/ Dan Gividen
DAN GIVIDEN
Attorney for Petitioner