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

DIEN XUAN NGO

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No.

3-25CV1943-D

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

Petitioner Dien Xuan Ngo, by and through undersigned counsel, respectfully moves this Court for an emergency Temporary Restraining Order ("TRO") and/or a Preliminary Injunction. Mr. Ngo, 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. Ngo's Emergency Petition for a Writ of Habeas Corpus, the most relevant aspects of which are summarized below. Mr. Ngo respectfully requests that this Court immediately order Respondents not to move Mr. Ngo from this Court's jurisdiction, to respond to this motion within one business day, 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. Ngo'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 for the past two years since ICE determined his removal was not reasonably likely in the foreseeable future in 2023.

On June 22, 2025, ICE unlawfully detained Mr. Ngo during a routine, scheduled check-in, ending his 24 months 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. Ngo, a pre-1995 arrival from Vietnam, spent over four decades without issue, most on a green card, before getting arrested in 2023. After his criminal case was disposed, he was taken into ICE custody for removal proceedings which resulted in a final order of removal on March 20, 2023.² After ICE determined Mr. Ngo’s removal was not reasonably likely in the foreseeable future, he was released on an OSUP in mid-2023. Since his release, Mr. Ngo has complied with his OSUP without incident. His removal to Vietnam is no more likely today than it has been for the past 24 months. For the reasons set forth below, Mr. Ngo meets all the requirements for immediate injunctive relief.

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.)

RELEVANT BACKGROUND INFORMATION

Petitioner Dien Xuan Ngo is a 49-year-old devoted husband and loving father to his four U.S. citizen children, and a respected, hardworking member of his community. He has lived in the United States since 1980, when he arrived as a young refugee from Vietnam. For the past two years, Mr. Ngo 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.

His reward for this compliance was to be summarily arrested. On July 22, 2025, Mr. Ngo did exactly what he has done for the past two 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. Ngo 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. Ngo 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. Ngo satisfies all four factors.

I. Mr. Ngo is Likely to Succeed on the Merits.

Mr. Ngo'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. Ngo. Instead, they summarily detained him during a routine annual check-in. This exact conduct has been recently rejected by multiple federal courts under nearly identical facts.⁶

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).

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

The government cannot demonstrate that Mr. Ngo'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. Ngo'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. Ngo 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 liberty" protected by the Due Process Clause.⁹ Every day Mr. Ngo 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.

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.*

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

The harm is not merely abstract. Mr. Ngo 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. Ngo's Favor.

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

Conversely, the harm to Respondents is nonexistent. Mr. Ngo is not a danger to the community; he has lived peacefully and productively as an employed member of the community. He is not a flight risk; he has complied with his OSUP for the past two years and reported to ICE on July 22, 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 possibility."¹¹ Releasing Mr. Ngo to his OSUP poses no conceivable harm to the government.

IV. An Injunction Serves the Public Interest.

¹⁰ (Pet'r's App. Ex. 5.)

¹¹ *Zadvydas*, 533 U.S. at 691.

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 Dien Xuan Ngo 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. Ngo and from removing to any third country (i.e. any country that is not Vietnam) without providing Mr. Ngo, 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 that on July 25, 2025, 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 before filing given the urgency of this request. 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

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ORDER

The Court, having considered Petitioner's Emergency Motion for a TRO and/or Preliminary Injunction, and for an Emergency Hearing and all applicable law, finds that the reasons set forth in the motion support the request and the motion is GRANTED, and therefore it is ORDERED that all the relief requested in the motion is granted.

1. Respondents, their officers, agents, servants, employees, and all persons in active concert or participation with them, are immediately enjoined and restrained from:
 - A. Show cause by the end of the day on July 28, 2025, as to why Petitioner's motion for an injunction should not be granted;
 - B. Removing Mr. Ngo from this Court's jurisdiction prior to the resolution of the emergency motion for a TRO or preliminary injunction; and
 - C. From removing Mr. Ngo to any third country (i.e. any country that is not Vietnam) without providing Mr. Ngo, his counsel, and the Court with at least 72-hours' notice of its intent to do so.

2. If Respondents do not plan on immediately releasing Mr. Ngo, to appear for an evidentiary hearing on this matter on _____ day of July, 2025.

It is so ORDERED.

SIGNED this _____ day of July, 2025.

UNITED STATES DISTRICT JUDGE