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

BOA NHAT DOAN THAI,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No.

3:25 CV 2221-X

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

Petitioner Boa Nhat Doan Thai, by and through undersigned counsel, respectfully moves this Court for an emergency Temporary Restraining Order ("TRO") and/or a Preliminary Injunction. Mr. Thai, 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. Thai's Emergency Petition for a Writ of Habeas Corpus, the most relevant aspects of which are summarized below. Mr. Thai respectfully requests that this Court immediately order Respondents not to move Mr. Thai 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. Thai'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 2003.

On June 25, 2025, ICE unlawfully detained Mr. Thai during a routine, scheduled check-in, ending his twenty-two 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. Thai, a pre-1995 arrival from Vietnam, grew up in the United States. He was arrested in the early 2000s, and after his criminal case was disposed, he was taken into ICE custody for removal proceedings which resulted in a final order of removal on May 20, 2003.² After ICE determined Mr. Thai’s removal was not reasonably likely in the foreseeable future, he was released on an OSUP in November 2003. Since his release, Mr. Thai has complied with his OSUP without incident. His removal to Vietnam is no more likely today than it has been for the past two decades. For the reasons set forth below, Mr. Thai 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 Boa Nhat Doan Thai is a 47-year-old 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 twenty-two years, Mr. Thai 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 25, 2025, Mr. Thai 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. Thai has been held in deplorable and dangerous conditions. He is being held in ICE custody without having been given a reason or explanation for his re-detention. Holding Mr. Thai 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. Thai satisfies all four factors.

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

Mr. Thai'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. Thai. 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

The government cannot demonstrate that Mr. Thai'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")

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.

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. Thai'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. Thai 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. Thai 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. Thai is being held at the Prairieland Detention Center. 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

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).

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. Thai's Favor.

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

Conversely, the harm to Respondents is nonexistent. Mr. Thai 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 decades and reported to ICE on July 25, 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. Thai to his OSUP 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,

¹⁰ (Pet'r's App. Ex. 5.)

¹¹ *Zadvydas*, 533 U.S. at 691.

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 Boa Nhat Doan Thai respectfully requests that this 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. Thai and from removing to any third country (i.e. any country that is not Vietnam) without providing Mr. Thai, 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 I sent this document along with all the other filings in this case via email to counsel for the government AUSA Ann Haag on August 18, 2025. Additionally, hard copies of the foregoing and all attachments hereto was delivered by hand to the receptionist of the U.S. Attorney's Office located on the 3rd Floor of 1100 Commerce St., Dallas, TX.

/s/ Dan Gividen
DAN GIVIDEN
Attorney for Petitioner

Certificate of Conference

I hereby certify that I spoke with AUSA Ann Haag who indicated the government opposes the relief sought by this motion and the accompanying Habeas Petition. Accordingly, it is being presented as opposed.

/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 August 25, 2025, as to why Petitioner's motion for an injunction should not be granted;
 - B. Removing Mr. Thai from this Court's jurisdiction prior to the resolution of the emergency motion for a TRO or preliminary injunction; and
 - C. From removing Mr. Thai to any third country (i.e. any country that is not Vietnam) without providing Mr. Thai, 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. Thai, to appear for an evidentiary hearing on this matter on _____ day of August, 2025.

It is so ORDERED.

SIGNED this _____ day of August, 2025.

UNITED STATES DISTRICT JUDGE