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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

HIEN QUANG VO, Petitioner, v. MARK BOWEN, Warden of the Adelanto Detention Facility, et al., Respondents.	No. 5:25-cv-02880-KK-SSC **RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. 5]** **Declaration of Lourdes Palacios filed herewith]** Honorable Kenly Kiya Kato United States District Judge

I. INTRODUCTION AND SUMMARY

Petitioner Hien Quang Vo, a Vietnamese national who is subject to a final removal order, was detained on September 5, 2025. *See* Petitioner's application for a temporary restraining order (TRO Application); Declaration of Lourdes Palacios ("Palacios Decl.") ¶ 8. The TRO Application is entitled "Temporary Order Prohibiting Third Country Removal and Preserving Jurisdiction."

As suggested by that title, Petitioner primarily complains that he does not want to be removed to a third country without sufficient advance notice. But it is undisputed that the government has requested his travel documents to Vietnam, not a third country. TRO Application at 3. Palacios Decl. ¶ 20. Beyond generally citing the government's policies regarding third country removal, Petitioner presented no evidence that he in fact faces removal to a third country. *See* TRO Application at 4. The undisputed evidence is to the contrary, as ICE has asked Petitioner to seek a Vietnamese passport, sign the necessary forms to seek repatriation to Vietnam, and submitted a request for travel documents from the Vietnamese Embassy. *See id*; Palacios Decl. ¶ 20.

Petitioner also claims he cannot be removed and his detention is indefinite because Vietnam's acceptance rate and repatriation of pre-1995 immigrants remains relatively low. *See* TRO Application at 5. That contention lacks merit. Although many otherwise removable pre-1995 Vietnamese nationals like Petitioner were previously released under an order of supervision (OSUP) because Vietnam would not accept them due to that country's political relationship with the United States at the time, that Vietnamese policy has since been dismantled. As a result, and contrary to Petitioner's suggestion, pre-1995 Vietnamese immigrants such as Petitioner are now routinely removed to Vietnam. *See, e.g.*, *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM.[1] Simply put, circumstances have changed markedly since Petitioner's placement on supervised release years ago.

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[1] In *Huynh*, the petition was held in abeyance to see if the government could remove the Vietnamese petitioner. The detained petitioner was then indeed promptly removed to Vietnam, thereby mooting his habeas petition, which was dismissed on April 9, 2025.

Finally, Petitioner argues that the government previously released him, and that the government did not comply with the procedural requirements of 8 C.F.R. § 241.13(i) in revoking his release and re-detaining him. TRO Application at 4. That is factually inaccurate, however. Petitioner fails to make any evidentiary showing of a putative re-detention violation. Furthermore, even if he had, it would not justify immediate habeas release. To the contrary, other courts have recognized that complaining that the reasons for revocation of supervised release are insufficient is not nearly enough to establish entitlement to the extraordinary remedy of a TRO. Moreover, such courts have recognized that while regulations such as 8 C.F.R. § 214.13(i) create procedural safeguards, they do not create independent substantive rights that override the statutory grant of detention authority.

Accordingly, the TRO Application should be denied.

II. FACTUAL BACKGROUND

A. Underlying Facts

Petitioner is a Vietnamese national who entered the United States on or about April 18, 1990. TRO Application at 2; Palacio Decl. ¶ 4. In May 2009, Petitioner was convicted in the Superior Court of Illinois, County of Saint Clair, of Penal Code 720 manufacturing/delivery of Cannabis 5,000 grams and sentenced to eight years in prison. Palacios Decl. ¶ 6. On June 11, 2009, Petitioner was issued a Notice to Appear. Palacios Decl. ¶ 7. Petitioner was thereafter placed in removal proceedings and charged with a violation of INA section 237(a)(2)(A)(iii).[2] *Id.*

In July 2013, an Immigration Judge issued a final order of removal directing Petitioner's removal to Vietnam. *See* TRO Application at 2; Palacios Decl. ¶ 8. Petitioner withdrew his appeal with the BIA on August 22, 2013. Palacios Decl. ¶ 10. In 2013, Petitioner was placed on an Order of Supervision and released from immigration custody. *See* TRO Application at 2.

[2] 8 U.S.C. § 1227(a)(2)(iii) provides that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable."

On September 4, 2025, Petitioner reported to the ERO Santa Ana sub-office. *See* Palacios Decl. ¶ 14. A check of the database indicated Petitioner was convicted by the Criminal Court in Carter County, Oklahoma for trafficking illegal drugs and sentenced to ten years with eight years suspended. *Id.,* ¶ 16. Petitioner was personally served with a Notice of Revocation of Release. *See* Palacios Decl., Exh. B. Petitioner was taken to the Adelanto ICE Processing Center. *See* Palacios Decl., ¶17. ERO has submitted a request for travel documents from the Embassy of Vietnam. *Id.* at ¶ 20.

III. STANDARD OF REVIEW

Courts have recognized very few circumstances justifying the issuance of an ex parte temporary restraining order. *See Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). A TRO is "an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where a litigant seeks their ultimate relief by preliminary injunctive means, that is improper since "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

IV. ARGUMENT

A. Petitioner's Request for a TRO against Third Country Removal is Irrelevant and Unsupported by Any Evidence

Petitioner complains that he might face third country removal without notice. As discussed above, however, the government has taken steps to effectuate his removal to Vietnam, which is his home country, and the country of removal specified in his final (and unchallenged) order of removal. *See* TRO Application at 4; Palacio Decl. ¶ 20. And to the extent he speculates that the government must nonetheless actually be intending instead to remove him to a third country, because Vietnam supposedly does not accept any pre-1995 Vietnamese immigrants, as explained above, Petitioner's claim on that point is entirely erroneous. *See Trinh v. Homan*, 466 F.3d 1077 (C.D. Cal. 2020). Issuing a TRO should not be based on counterfactual scenarios.

ICE normally provides advance notice of third country removals. While Petitioner argues that ICE memoranda nonetheless suggest it would not technically *need* to provide prior notice in some cases, if it receives sufficient assurances from the receiving nation, he fails to demonstrate that this possibility actually applies in any way to his own case.

B. Petitioner has not shown a likelihood of success on the merits because he has not established that "there is no significant likelihood of removal in the reasonably foreseeable future."

Showing a likelihood of success on the merits is a requisite threshold issue. Indeed, "when a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (cleaned up). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. Petitioner he has not shown, and indeed cannot show, that his current custody is unlawful.

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Under *Zadvydas v. Davis*, detention for six months following a final removal order is presumptively valid. 533 U.S. 678, 701 (2001). After that time, a noncitizen may request release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention.

Id. at 689–91.

Here, Petitioner does not challenge the validity of his final removal order or that 8 U.S.C. § 1231(a)(6) governs his detention. Indeed, Petitioner chose to withdraw the appeal of his final order of removal. *See* Palacio Decl. ¶ 10. However, Petitioner speculatively argues, without evidentiary support, that he should be released from his current detention because "removal to Vietnam is not reasonably foreseeable." TRO Application at 15. That contention is both factually incorrect and misapprehends the *Zadvydas* standard.

In *Zadvydas*, the Supreme Court instructed that detention for six months following a final removal order is presumptively valid.

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, 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.

Zadvydas, 533 U.S. at 701. Thus, according to *Zadvydas*, the noncitizen "may be held in confinement until it has been determined that there is ***no significant likelihood of removal in the reasonably foreseeable future.***" *Id.* (bold italic emphasis added).

Here, there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future. He was re-detained two months ago, on September 4, 2025, and the government requested his travel documents for removal to Vietnam.[3] *See* Palacios Decl. ¶ 20. ICE estimates the production time for a travel document varies

[3] Although Petitioner contends that Respondent did not request travel documents from Vietnam *before* detaining him, TRO Application at 14, *Zadvydas* does not require the government to pre-arrange a noncitizen's travel before arresting them. That would be extremely difficult, if not impossible (particularly if the noncitizen refuses to cooperate or tries to obstruct obtaining travel documents).

from thirty to sixty days. *Id.*, ¶20. This demonstrates a significant likelihood of removability in the foreseeable future. There is no bar against Petitioner's removal to his home country of Vietnam, and the government is arranging for that removal. Id.

Effectuating his removal is thus affirmatively likely, just as the Vietnamese petitioner's removal was likely in *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM, recently filed in this district, where the Vietnamese citizen was efficiently and timely removed, mooting the case.[4]

It is true that that *historically* there were barriers to removing Petitioners and similarly situated Vietnamese immigrants who had final removal orders. That issue was exhaustively addressed in more recent litigation, as the political relationship between the United States and Vietnam changed. In 2020, Judge Carney explained the then-current state of affairs:

> The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. … Instead, Vietnam now considers each request from ICE on a case-by-case basis. (*Id.*) ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. …... Petitioners do not appear to dispute that once Vietnam issues a travel document, removal becomes significantly likely, rendering class members unable to meet their initial burden under *Zadvydas*.

Trinh, *supra*, 466 F. Supp. 3d at 1090.

Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order). That Petitioner does not yet have

[4] In *Huynh*, the court stayed then petition pending the removal, with updates on the status of removal, and then ultimately dismissed the petition. *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM.

a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (where there is no evidence that the country of removal would refuse to accept the petitioner or that removal is barred by the laws of the United Sates, that the detention did not have a certain end date did not demonstrate that detention was "indefinite").

Because Petitioner has failed to establish a likelihood of success on his claims that his detention is unlawful, the petition should be denied.

C. Petitioner's Vague Complaints about Procedural Deficiencies in His Re-detention Do Not Establish a Basis for a TRO

Petitioner next vaguely complains that ICE has not followed the procedures applicable to ICE's revocation of supervised release. TRO Application at 4 (alleging that ICE did not notify Petitioner of the reasons for his revocation). However, and contrary to Petitioner's suggestions, upon his re-detention, he was personally served with a notice of Revocation of Release. *See* Palacio Decl. ¶ 15.

The government's authority to re-detain individuals who ICE had previously released is discretionary. Indeed, the government is allowed to revoke for nearly any reason, and the process for objections is very limited. As the Ninth Circuit recognized, "[w]hile the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'" *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original).

The government is thus broadly authorized to exercise its discretion to revoke such release pursuant to 8 CFR § 241.1(l)(1), and 8 CFR § 241.4(l)(2). *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.").

While a small number of District Court decisions have found that a supervised release was not properly revoked, such decisions generally (1) involve a non-citizen's detention *during* their removal proceedings (i.e. before the non-citizen has yet been found removable by an Immigration Court), rather than their detention after an administratively final removal order is issued; (2) typically involve no revocation documentation at all—which is not the case here—and (3) involve some *genuine* structural impediment to removal, *e.g.*, an appellate stay, which also is not the case here.

Perhaps even more importantly, the appropriate remedy for any such procedural deficiency would *not* be automatic release from custody, but rather to remedy the specific procedural deficiency that might be established. That is consistent with the well-established principle that injunctive relief must be *narrowly tailored* to the specific wrong at issue. *See e.g. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022).

Other District Courts have correctly applied this point. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued that revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

The Hon. Judge Blumenfeld recently denied a preliminary injunction motion in a somewhat similar case alleging a lack of sufficient re-detention process, noting that the evidentiary burden had not been met, and also that it was unclear that release would be the appropriate remedy for any violations of revocation procedure. *See Long Ton v. Kristi Noem, et al.*, 5:25-cv-02033-SB-AGR [Dkt. no. 17] (September 3, 2025) (Order Denying Application for Preliminary Injunction) (Exhibit C hereto).

The Hon. Judge Birotte Jr. likewise recently denied a TRO seeking to assert such a re-detention procedure challenge. *See Jose Angel Morales Sanchez v. Pam Bondi, et al.*, 5:25-cv-02530-AB-DTB [Dkt. no. 12] (October 3, 2025 order denying TRO) (Exhibit D hereto).

Petitioner's TRO Application fails to establish any violations of release revocation procedure. But even if it had, it would not warrant a TRO barring detention.

D. The Balance of Interests Favors the Government

It is well settled that the public interest in enforcement of the United States's 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 Petitioner's private interest here. Petitioner asks the Court to declare his detention unlawful, despite the government's valid reasons and statutory bases for detaining him to effectuate his removal pursuant to valid final removal order that he does not challenge.

V. CONCLUSION

Petitioner's TRO Application should be denied.

Respectfully submitted,

Dated: November 7, 2025

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Respondent, certifies that the memorandum of points and authorities contains 3,007 words, which complies with the word limit of L.R. 11-6.1.

Dated: November 7, 2025

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