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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PHU VAN TA, Petitioner, v. KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, et al., Respondents.	No. 5:25-cv-02902-MEMF-JDE **RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION [DKT. 3]** *[Declaration of Alexander L. Farrell filed concurrently herewith]* Hearing Date: November 10, 2025 Hearing Time: 3:00 p.m. Ctrm: 8B Hon. Maame Ewusi-Mensah Frimpong United States District Judge

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I. INTRODUCTION AND SUMMARY

Petitioner Phu Van Ta, a Vietnamese national who is subject to a final removal order, was detained on September 23, 2025. *See* Dkt. 1 at p. 9 ("Habeas Petition"). Petitioner filed a 3-page motion seeking extraordinary preliminary injunctive relief to be immediately released from immigration custody. Dkt. 3 (the "Motion") But this relief cannot be granted without the requisite procedural and evidentiary basis having been established by the moving party. That was not done here by any degree.

Procedurally, Petitioner and his attorneys never served either petition or the Motion onto the Respondents or the United States Attorney's Office. Although both were filed on October 31, 2025, the United States Attorney's Office *first* became aware of this lawsuit on November 7, 2025, at 10:42 a.m. based on a CM/ECF email notification received by its staff. *See* Declaration of Alexander L. Farrell ("Farrell Decl.") ¶¶ 4-6. The CM/ECF email was sent to the United States Attorney's Office after hours, and only after Court entered an order setting a response deadline. *Id.* ¶ 5. Counsel for Respondents was *first* assigned to represent the Respondents on November 7, 2025, 12:10 p.m. leaving few hours to prepare a comprehensive defense. *Id.* ¶ 6. The Motion was essentially filed on an *ex parte* basis and fails to comply with the notice requirements of Local Rule 7-19 and the Local Rule 7-3 conference of counsel. *See id.* ¶ 7.

Substantively, Petitioner claims he cannot be removed to Vietnam because, "ICE's revocation of his supervised release is unlawful and because his removal is not reasonably foreseeable." Petitioner basis this on Vietnam's "historic" acceptance rate and repatriation of pre-1995 immigrants. That speculative 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 in 2011.

Although Petitioner complains that he does not want to be removed to a third country, 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* Petition at p. 10. There is no evidence in the record that shows cognizable barriers to removal to Petitioner's home country.

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. Petition at p. 10. Aside from being factually not supported, Petitioner fails to make any evidentiary showing of a putative re-detention violation that would justify immediate habeas release. 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. *Sanchez v. Bondi et al.*, 5:25-cv-02530-AB-DTB, Dkt. 12.

For the reasons set forth below, Petitioner's Motion should be denied.

II. FACTUAL BACKGROUND

Petitioner is a Vietnamese national who entered the United States in 1984. Petition at p. 6. In 2010, Petitioner was convicted for violations of California Health & Safety Code § 11358, which appears to be related to the cultivation of marijuana. *Id*. Petitioner was thereafter placed in removal proceedings and charged with a violation of INA

[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.

section 237(a)(2)(A)(iii).[2] *Id.*

Ta was initially detained by ICE on February 15, 2011. Petition at p. 8. On June 6, 2011, an immigration judge found that his marijuana convictions were deemed aggravated felonies and ordered him to be removed to Vietnam. *Id.* Petitioner did not appeal that removal order. *Id.* In September 2011, Petitioner was placed on an Order of Supervision and released from immigration custody. *Id.*

Plaintiff purports that due to a change in intervening California law, he filed a motion to vacate his state court convictions due to a change in the law, a California superior court vacated his convictions on July 28, 2025.[3]

On September 23, 2025, Petitioner was taken into ICE custody and is currently detained at the Adelanto ICE Processing Center. *See* Petition at p. 9.

III. STANDARD OF REVIEW

The standard for issuing a TRO and a preliminary injunction are substantially identical. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Injunctive relief "is an extraordinary and drastic remedy," *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (internal quotation marks and citation omitted), that is "never awarded as of right," *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation marks and citation omitted). Thus, this relief "should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez*, 680 F.3d at 1072 (internal quotation marks and citation omitted; emphasis in original). This is a "difficult task." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010).

To prove their entitlement to such injunctive relief, Petitioner must establish that:

[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."

[3] Due to the lack of notice of this Motion and the Petition and a lack of supporting evidence attached thereto, Counsel for Respondents cannot verify at this time the information and status related to Petitioner's state court convictions.

(1) they are likely to succeed on the merits, (2) are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

IV. ARGUMENT

A. Petitioner and His Counsel Failed to Meet the Procedural Requirements for filing the Motion for a Preliminary Injunction

Petitioner and his counsel from the Federal Public Defenders Office have wholly failed and ignored basic procedural requirements for emergency motion practice that is designed to promote fairness and for all parties to have an opportunity to be hard in this District.

Local Rule 7-3 and this Court's Civil Standing Order requires Counsel for the parties *shall* meet and confer pursuant to the Local Rule, which requires "counsel contemplating filing of any motion" to "first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution." The Standing Order also warns parties that the Court may strike or outright deny a motion or other relief if counsel fails to meet and confer in good faith.

Here, both the Petition and the Motion were jointly filed on October 31, 2025. Dkt. 1, 3. But the Respondents through the United States Attorney's Office *first* became aware of this lawsuit on November 7, 2025, at 10:42 a.m. based on a CM/ECF email notification received by its staff. Farrell Decl. ¶¶ 4-6. The CM/ECF email was sent to the United States Attorney's Office after hours, and only after Court entered an order setting a response deadline. *Id.* ¶ 5. Counsel for Respondents was *first* assigned to represent the Respondents on November 7, 2025, 12:10 p.m. leaving few hours to prepare a comprehensive defense. *Id.* ¶ 6. The Petition, the Motion, and the Declaration of Michael Drake all fail to demonstrate the Local Rule 7-3 requirements have been satisfied —a cornerstone of motion practice in this District and a foundational requirement in the Court's Standing Order. *See generally* Motion; Farrell Decl. ¶ 7. For this reason, this

Court can and should strike the Motion in its entirety.

Further, the Motion was essentially filed on an *ex parte* basis, as there was no notice given before its filing, and the relief sought both a TRO and a preliminary injunction. *See* Motion at p. 3. Petitioner and Mr. Drake and failed to comply with the notice requirements of Local Rule 7-19.1. Even after filing a notice of appearance (Dkt. 7) Counsel for Respondents has yet to hear from Mr. Drake for him to provide proper notice or even to discuss the merits of this case. Farrell Decl. ¶ 7. The Motion lacks a statement on whether Respondents would oppose the Motion. *See generally* Motion; Farrell Decl. ¶ 7. Even further, the Court's Standing Order states, that *ex parte* applications that do not meet the requirements set forth in Local Rule 7-19 will *not* be considered.

For this additional reason, this Court can and should strike the Motion in its entirety.

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*, 786 F.3d at 740. 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. Although Petitioner is being detained in this district, 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. *Zadvydas v. Davis*, 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 admits he chose not to appeal his final order of removal. Petition at p. 8. However, Petitioner speculatively argues, without evidentiary support, that he should be released from his current detention because "removal to Vietnam is not reasonably foreseeable." Motion at p. 3; Petition at p. 11-12. 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, Petitioner was re-detained 45 days ago, on September 23, 2025.[4] Petition at p. 9. There is no bar against Petitioner's removal to his home country of Vietnam, and Petitioner provides no facts that the government is *not* arranging for that removal.

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.[5]

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 v. Homan, 466 F.3d 1077, 1090 (C.D. Cal. 2020).

Courts therefore 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,

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[4] *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).

[5] 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.

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 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 Motion should be denied.

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

Petitioner next vaguely complains that ICE has not followed the procedures applicable to ICE's revocation of supervised release. Petition at p. 14-15 16 (alleging that ICE did not notify Petitioner of the reasons for his revocation, conduct an interview, or allow him to submit evidence that he will not be removed in the reasonably foreseeable future).

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; and (3) involve some sort of *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).

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).

Finally, the Hon. Judge Carter likewise recently denied a TRO based on such a re-detention procedure challenge. *See Saul Panuelas Gutierrez v. Kristi Noem, et al.*, 5:25-cv-02668-DOC-RAO [Dkt. no. 8] (October 17, 2025 order denying TRO).

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

D. Petitioner's Request for a TRO or a Preliminary Injunction 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, there is no evidence that the government has not 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. Petition at p. 8. 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*, 466 F.3d at 1090. Issuing a TRO should not be done for such speculative prophylactic purposes based on counterfactual scenarios.

E. Petitioner has not shown he will suffer irreparable harm absent a TRO or a Preliminary Injunction

Finally, Petitioner has not demonstrated that he will suffer irreparable injury absent his release. To show irreparable harm, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury, and submits the declarations of his family members who will be impacted by his continued detention and ultimately his removal.[6] However, the fact remains that Petitioner is subject to a final order of removal, which order he declined to

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[6] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009)

challenge, and that the government has taken steps to effectuate his removal to his country of origin in the foreseeable future. Petitioner's re-detention is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting the emergency relief requested.

F. 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*, 556 U.S. at 435 ("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 Motion for a Preliminary Injunction (Dkt. 3) should be denied.

Dated: November 7, 2025

Respectfully submitted,

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Local Rule 11-6.2 Certificate of Compliance

The undersigned counsel of record certifies that this memorandum contains 3,911 words and 12 pages which complies with the word limit set by L.R. 11-6.1 and the Court's Standing Order.

Dated: November 7, 2025

/s/ *Alexander L. Farrell*

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