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**United States District Court
Central District of California
Eastern Division**

Phu Van Ta
Petitioner,
v.
Kristi Noem, et al.
Respondents.

No. 5:25-cv-02902

**Reply re:
Motion for a Preliminary
Injunction (ECF No. 3);
Declaration; Exhibit**

**Hon. Maame Ewusi-Mensah
Frimpong**

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26

1
2 **DISCUSSION**

3 **The Court should issue the preliminary injunction.**

4 Ta seeks emergency relief from the Cour to obtain his release from
5 immigration detention and prevent his deportation to an unknown third
6 country. (Mot., ECF No. 3.)

7 In support of his constitutional claims, Ta alleges that his release
8 pending removal was revoked in September (Pet., ECF No. 1, at 9)
9 despite a decade of compliance (*id.* at 8), without prior notice (*id.* at 9),
10 without any new circumstances to justify it (*id.*), and without an informal
11 interview or opportunity to be heard (*id.* at 15).

12 In opposing (ECF No. 9), the government disputes none of Ta's
13 allegations, ignores the binding and persuasive authorities law that Ta
14 brings to bear in his petition and motion as support, and cites instead a
15 welter of inapposite decisions, most of them decided before the growing
16 consensus of decisions granting relief to petitioners like Ta in the face of
17 the current administration's lawless removal actions and policies—and
18 none of them having any real bearing on Ta's individual circumstances.

19 The government otherwise raises technical objections to Ta's filings
20 that even if they were valid could have caused no prejudice.

21 Because the government has failed to rebut Ta's showing, his
22 motion for a preliminary hearing should be granted.

23 **A. Ta has shown he'll likely succeed on the merits.**

24 **1. The government fails to legally justify Ta's revocation
25 and re-detention, as alleged in ground one.**

26 In response to ground one, the government asserts that Ta
"provides no facts that the government is *not* arranging for [his] removal"

1 to Vietnam. (Opp. at 7.) But “arranging for” removal does not make for a
2 significant likelihood of it in the reasonably foreseeable future—as
3 “[c]ourts in this circuit have regularly held.” *See Nguyen v. Scott*, ___ F.
4 Supp. 3d, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug.
5 21, 2025). These courts have rejected general assertions by the
6 government that, for instance, it had “followed up” in one case on request
7 for travel documents; and that in another, such documents would “likely”
8 be issued soon; and that in another there was a “pending updated travel
9 document request” some amid “recent[]” removals. *Id.* (quoting cases)

10 Yet here the government doesn’t provide even that much.

11 This suggests that the government’s underlying premise is that the
12 burden to show the significant likelihood is Ta’s rather than the
13 government’s. If so, the government has it backward. The burden-shifting
14 described in *Zadvydas v. Davis*, 533 U.S. 678 (2001), applies to a person
15 seeking release for the first time from prolonged detention. *Vu v. Noem*,
16 ___ F. Supp. 3d ___, No. 1:25-CV-01366-KES-SKO (HC), 2025 WL
17 3114341, at *5 (E.D. Cal. Nov. 6, 2025) (“This case is not about ICE’s
18 authority to detain in the first place upon an issuance of a final order of
19 removal as in *Zadvydas*.... [It] is about ICE’s authority to *re-detain*.”
20 (cleaned up) (quoting *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass.
21 2025))).

22 Here, Ta was already released from custody under *Zadvydas*. To
23 return him to custody following release, then, it is the government who
24 must demonstrate “a significant likelihood that [he] may be removed in
25 the reasonably foreseeable future” to revoke Petitioner’s release under
26 the regulation and demands of due process. 8 C.F.R. § 241.13(i)(2);

1 *Nguyen v. Hyde*, 788 F. Supp. 3d at 150 n.2. This, again, the government
2 has not even tried to do.

3 **2. On ground two, the government does not dispute that**
4 **it failed to follow its own regulations, and ignores the**
5 **emerging consensus among district courts that the**
6 **failure violates due process.**

7 The government likewise makes no effort to explain how their re-
8 detention of Ta satisfies the requirements of procedural due process.
9 Again, it does not dispute Ta’s regulations. And its assertion that they
10 are “vague” is difficult to fathom, since (1) the government correctly
11 recites them (Opp. at 8), and (2) Ta cited the relevant regulations along
12 with ample case law explaining how the government’s failures to “follow
13 [these] regulations in deciding to re-detain” a petitioner violates the
14 petitioner’s due process rights and “entitle[s] [him] to release.” *Delkash v.*
15 *Noem*, ___ F. Supp. 3d ___, No. 5:25-CV-01675-HDV-AGR, 2025 WL
16 2683988, at *5 (C.D. Cal. Aug. 28, 2025). (See Pet. at 15 (citing *Delkash*
17 and several other cases.)

18 We can now add to that list similar cases more recently decided. See
19 *Vu*, 2025 WL 3114341, at *7–8 (ordering immediate release for ICE’s
20 failure to comply with the requirements of § 241.4 and § 241.13); *Nguyen*
21 *v. Hyde*, 788 F. Supp. 3d at 152 (same); *Rasakhamde v. Noem*, ___ F.
22 Supp. 3d ___, No. 3:25-CV-02816-RBM-DEB, 2025 WL 3102037, at *5
23 (S.D. Cal. Nov. 6, 2025) (same); *Ghafouri v. Noem*, ___ F. Supp. 3d ___,
24 No. 3:25-CV-02675-RBM-BLM, 2025 WL 3085726, at *6 (S.D. Cal. Nov. 4,
25 2025) (same); *Truong v. Noem*, ___ F. Supp. 3d ___, No. 25-CV-2597-JES-
26 MMP, 2025 WL 2988357, at *6 (S.D. Cal. Oct. 22, 2025) (same);

1 *McSweeney v. Warden, Otay Mesa Det. Facility*, ___ F. Supp. 3d ___, No.
2 3:25-CV-02488-RBM-DEB, 2025 WL 2998376, at *7 (S.D. Cal. Oct. 24,
3 2025) (granting habeas relief);.

4 Indeed, the *McSweeney* court’s research “indicates that every
5 district court, except two, to consider the issue has “determined that
6 where ICE fails to follow its own regulations in revoking release, the
7 detention is unlawful and the petitioner’s release must be ordered.” 2025
8 WL 2998376, at *7 (footnote call number omitted). And those two were
9 cases in which the petitioner, unlike Ta, failed to cite authority that
10 release was an appropriate remedy. *Id.* n.3.

11 The government simply ignores these cases, except to wave them
12 away, without naming any, as a “small number” of decisions. (Opp. at 9.)
13 Meanwhile, in support of its assertion that the “appropriate remedy ...
14 would *not* be automatic release from custody” (Opp. at 9), the government
15 cites only nondispositive general principles—invoking, for example, the
16 “well-established principle that injunctive relief must be *narrowly*
17 *tailored*.” (*Id.*)

18 As for the government’s proffered cases that it says have “correctly
19 applied this point” (*id.*), the four of them readily accessible on Westlaw¹
20 are readily distinguished. In *Ahmad v. Whitaker*, No. C18-287-JLR-BAT,
21 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018) (Opp. at 9), “ICE had
22 [already] obtained a travel document and scheduled [the petitioner]’s
23

24 ¹ The other two (Opp. at 10 (citing docketed decisions of Judges
25 Birotte and Carter)) appear not to be available on Westlaw, and the
26 government provides no facts or reasoning from which to gauge their
persuasive value.

1 removal.” *Id.* at *5. In *Doe v. Smith*, 2018 WL 4696748 (D. Mass. Oct. 1,
2 2018) (Opp. at 10), the petitioner *had* been afforded an informal interview
3 as required. *Id.* at *7. And the petitioner in *Ton v. Noem*, No. 5:25-CV-
4 02033-SB-AGR, 2025 WL 2995068, at *5 (C.D. Cal. Sept. 3, 2025) (Opp. at
5 10), “d[id] not state whether he was provided a reason for the revocation
6 of his release, whether he made a request for release, whether he was
7 interviewed, or whether the agency rendered a written decision.” *Id.* at
8 *5. Ta did.

9 **3. On grounds three and four, the government does not**
10 **dispute that removing Ta to a third country would**
11 **violate due process, and ignores the concrete risk that**
12 **such removals pose to immigrants like Ta.**

13 In ground three, Ta alleges that his removal to any third country
14 would violate due process because ICE has given him neither notice of the
15 proposed third country nor an opportunity to request deferral or
16 withholding of removal. (Pet. at 16.)

17 The government offers no substantive response, arguing only that
18 the policy is irrelevant because there is “no evidence that the government
19 has not taken steps to effectuate his removal to Vietnam” (Opp. at 11),
20 and because Vietnam no longer has a “blanket policy of refusing to
21 repatriate pre-1995 immigrants” like Ta (Opp. at 7, 11).

22 But, again, “taking steps” to remove him does not make for a
23 *significant likelihood*. See *Nguyen v. Scott*, 2025 WL 2419288, at *17.
24 Meanwhile, the administration’s current policy on third country removals
25 poses grave risks to immigrants even in Ta’s pre-1995 cohort. In *Nguyen*,
26 for instance, the court found that at least two Vietnamese immigrants in

1 that cohort had been deported to third countries without notice. *Id.* at *8.
2 The government does not dispute that these actions violate due process.
3 Indeed, the government does not dispute that the policy violates due
4 process on its face. (Pet. at 17 (citing *Y.T.D. v. Andrews*, ___ F. Supp. 3d
5 ___, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *10 (E.D. Cal.
6 Sept. 18, 2025)).

7 Ta thus need not, and does not, argue that Vietnam “does not accept
8 any pre-1995 Vietnamese immigrants.” (*Cf.* Opp. at 11.) He argues only
9 that even “a meaningful increase in the total number of removals
10 compared to historical practice” would “still fail to rebut” Ta’s showing
11 that “his individual circumstances make removal [to Vietnam] unlikely.”
12 *Nguyen v. Scott*, 2025 WL 2419288, at *17.

13 And the government’s rebuttal falls even short of that.

14 ...

15 In sum, Ta is almost certain to succeed on the merits of his claims—
16 “the most important factor” in the analysis. *Chamber of Commerce of the*
17 *United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023) (quoting
18 *California by & through Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir.
19 2020) (en banc)).

20 **B. The government’s analysis of irreparable harm ignores**
21 **controlling precedent.**

22 As Ta noted in his motion (Mot. at 2), illegal confinement is
23 quintessentially irreparable harm, because “the deprivation of
24 constitutional rights unquestionably constitutes irreparable injury.”
25 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Indeed, the
26 Ninth Circuit has recognized “the irreparable harms imposed on anyone

1 subject to immigration detention,” *Hernandez v. Sessions*, 872 F.3d 976,
2 995 (9th Cir. 2017).

3 These harms are manifest here: Ta is the family’s main caregiver to
4 his 85 year old mother, who relies on him financially as well. As he
5 alleges, his “continued detention” will “therefore add to [his family’s]
6 already substantial financial burdens, and frustrate [their] efforts to
7 ensure his mother’s care, as he is the only family member able to provide
8 housing and commit the time needed to adequately look after her.” (Pet.
9 at 7.)

10 The government disputes none of these facts. At the same time, it
11 avoids any mention of *Melendres*, stating only that Ta “suggests” that
12 unjustified detention itself constitutes irreparable injury (Opp. at 11)—as
13 if Ta hadn’t just cited the binding Ninth Circuit precedent that says
14 exactly that.

15 Nor is it any response to say that Ta suffers “the same alleged
16 irreparable harm as “any habeas corpus petitioner” held “in immigration
17 custody.” (Cf. Opp. at 12.) For the question is whether his custody is
18 lawful. It isn’t.

19 As for removal to a third country, it is “beyond dispute that [Ta]
20 would face irreparable harm” in that situation. *Nguyen v. Scott*, 2025 WL
21 2419288, at *26.

22 Hence, the government’s analysis of this factor too is fatally flawed.
23
24
25
26

1 **C. The government’s consideration of the equities and the**
2 **public interest is similarly flawed.**

3 As for these final two factors,² the government again ducks the core
4 issues and begs all the questions, invoking only the general principle,
5 undisputed, that the public has a significant interest in the *legal*
6 enforcement of federal immigration laws. (Opp. 12.) This of course just
7 ignores that it is also “always in the public interest to prevent the
8 violation of a party's constitutional rights.” *Riley’s Am. Heritage Farms v.*
9 *Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022). And since Ta has shown a
10 likelihood of succeeding on the merits, *see supra* Part A, the public
11 interest tips sharply in his favor. *Nguyen v. Scott*, 2025 WL 2419288, at
12 *28.

13 ...

14 For all these reasons, a preliminary injunction should issue.

15 **D. The government’s technical objections miss the mark, and**
16 **the prejudice claimed does not owe to the way the case was**
17 **filed.**

18 The government also objects to Ta’s motion on technical grounds,
19 asserting violations of Local Rules 7-3 and 7-19. (Opp. at 4–5.)

20 These objections are not well-taken. L.R. 7-19 applies to ex parte
21 relief, which Ta did not seek. And Rule 7-3 excludes “cases ... listed as
22 exempt in L.R. 16-12.” Among those listed: “Petitions filed under 28
23 U.S.C. §§ 2241 et seq.” L.R. 16-12(a).

24
25 ² Which, again, “merge” when the government is a party. (Mot. at 2
26 (quoting *Pimentel-Estrada v. Barr*, 464 F. Supp. 3d 1225, 1237 (W.D. Wash.
2020).)

1 Nor can any prejudice the government complains of otherwise fairly
2 be traced to the way the case was filed. The government notes that the
3 drafting attorney was first assigned to the matter just after noon on the
4 day the opposition was due (Opp. at 4.) But the government received
5 electronic notice a week before that—about an hour and a half after the
6 case was first filed. (See Ex. 1 (ECF email notice to recipients that include
7 “Assistant 2241-194 US Attorney LA-CV”).) The government’s own
8 administrative delays in assigning the case have little to do with the fact
9 that our office filed the case electronically on Ta’s behalf—which if
10 anything resulted in faster, more efficient notice to the government than
11 a paper filing sent through the mails would have.

12 Finally, it’s probably worth noting that the approach our office took
13 in filing the case—as proposed counsel, “acting in [Ta’s] behalf,” 28 U.S.C.
14 § 2244, pending a ruling on his request for appointed counsel—wouldn’t
15 have been needed had the government simply not re-detained Ta in
16 violation of due process. When it comes to violations of technical rules,
17 then, the government is in a particularly weak moral position to
18 complain.

19 In any event, the government’s technical objections here should be
20 overruled.

1 **CONCLUSION**

2 For all these reasons, the Court should grant the preliminary
3 injunction, order Ta's immediate release from custody, and order that the
4 government neither remove him from the country nor take him from the
5 Central District of California until the resolution of this case.

6
7 Respectfully submitted,
8 CUAUHTEMOC ORTEGA
9 Federal Public Defender

10 DATED: November 8, 2025

11 *s/ Michael T. Drake*
12 MICHAEL T. DRAKE
13 Deputy Federal Public Defender
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15 *Proposed Counsel for Petitioner*
16 PHU VAN TA
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CERTIFICATE OF COMPLIANCE

The undersigned, proposed counsel for the petitioner, certifies that this brief contains 2,320 words, which complies with the word limit of L.R. 11-6.1.

DECLARATION OF MICHAEL T. DRAKE

1. I am an attorney with the Office of the Federal Public Defender for the Central District of California, licensed to practice law in California, and admitted to practice in this Court.
2. On November 7, 2025, I spoke to petitioner Phu Van Ta by phone, and he authorized me to make and file the foregoing reply on his behalf because he is currently detained in immigration custody.
3. Attached Exhibit 1 is a PDF copy of the ECF notice I received by email regarding ECF No. 5.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, this day of November 8, 2025, in Los Angeles, California.

s/ Michael T. Drake

MICHAEL T. DRAKE

Deputy Federal Public Defender