

ERIC GRANT
United States Attorney
NICHOLAS M. FOGG
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2731

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

N.D.N.,

Petitioner,

v.

WARDEN OF GOLDEN STATE ANNEX, ET
AL.,

Respondents.

CASE NO. 1:25-cv-01587 DAD CKD HC

**RESPONDENTS' OPPOSITION TO
PETITIONER'S MOTION FOR A
TEMPORARY RESTRAINING ORDER**

Judge: Hon. Dale A. Drozd

I. INTRODUCTION

This Court should deny petitioner's motion for a Temporary Restraining Order (TRO) because he does not meet the heavy burden required to justify such relief. As discussed below, Immigration and Customs Enforcement (ICE) lawfully exercised its discretion to revoke his supervised release based on a significant likelihood that petitioner's removal will occur in the foreseeable future. ICE also provided petitioner with the required written notice on the same day ICE re-detained him, and ICE held the informal interview required by the regulations covering revocation of release. *See* 8 C.F.R. § 241.13(i). Moreover, petitioner's reasonably foreseeable removal is to Vietnam, not to a third country, and petitioner does not contest his removability to Vietnam. Accordingly, petitioner fails to meet his burden, and the request for a TRO should be denied.

II. BACKGROUND

Petitioner is a citizen of Vietnam. ECF No. 1-2 at 4. He was admitted into the United States in 1992. ECF No. 1-2 at 4. Petitioner was convicted of robbery in 1997 and sent to prison. ECF No. 1-2 at 4. In 2000, he was ordered removed from the United States. ECF No. 1-2 at 6, 10, 12. In 2001,

petitioner was placed on an order of supervision. ECF No. 1-2 at 12. While on the order of supervision, petitioner, according to his moving papers, reported regularly to ICE. ECF No. 1-2 at 14-29. On October 15, 2025, petitioner reported to ICE and was told to return with passport pictures and an application for a travel document. ECF No. 1-1 at 3-4; 1-2 at 16, 29. On October 22, 2025, ICE detained petitioner when he returned with the requested documents. ECF No. 1-1 at 4.

In a “Notice of Revocation of Release” dated October 22, 2025, ICE informed petitioner “that your order of supervision has been revoked, and you will be detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time.” ECF No. 1-2 at 31. The notice went on to say, “This decision has been made based on a review of your official alien file and a determination that there are changed circumstances in your case.” ECF No. 1-2 at 31. The notice noted that he had been placed on an order of supervision “pending the issuance of your travel document to Vietnam”, but that “Your case is currently under review by the Government of Vietnam for the issuance of a travel document and your removal is now imminent.” ECF No. 1-2 at 31. The notice went on to advise petitioner, “You will promptly be afforded an informal interview at which you will be given an opportunity to respond to the reasons for the revocation.” ECF No. 1-2 at 31.

In his moving papers, petitioner asserts “that at some point, after his repeated pleas to release him, [ICE] officers asked him to explain why he wanted to be released.” ECF No. 1-1 at 4. After petitioner listed reasons for release, ICE did not release him. ECF No. 1-1 at 4.

Petitioner filed a petition for habeas corpus and a motion for a temporary restraining order on November 18, 2025. ECF No. 1 (petition), 2 (motion).

III. LEGAL STANDARD

Temporary restraining orders and preliminary injunctions are governed by the same standard. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). A plaintiff seeking a TRO must show that: (1) he is “likely to succeed on the merits” of his claims, (2) he is “likely to suffer irreparable harm in the absence of a preliminary relief injunction”, (3) “the balance of equities tips in his favor”, and (4) “an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Because the government is the opposing party, the third and fourth factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). “A preliminary injunction is an

extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Hecox v. Little*, 104 F.4th 1061, 1073 (9th Cir. 2024) (internal quotations and emphasis omitted).

IV. DISCUSSION

A. The Petitioner is Not Likely to Succeed on the Merits

Petitioner cites four claims in his TRO on which he argues he is likely to succeed on the merits. ECF No. 2. Petitioner is unlikely to succeed on any of them.

First, petitioner claims his detention is indefinite and, thus, contrary to due process and the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). But *Zadvydas* said that six months of detention is presumptively constitutional and “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.” *Id.* at 701. Here, removal is imminent. As explained in the ICE Notice of Revocation of Release, petitioner’s “case is currently under review by the Government of Vietnam for the issuance of a travel document.” ECF No. 1-2 at 31. *But see Hoac v. Becerra*, 2025 WL 1993771, *4-*5 (E.D. Cal. 2025).

Second, petitioner claims that his detention violates ICE regulations. ECF No. 2 at 19. But ICE has complied with the re-detention regulations in 8 C.F.R. § 241.13(i). ICE determined that changed circumstances make removal more likely. 8 C.F.R. § 241.13(i)(2). Petitioner was notified of the reasons for revocation in the Notice of Revocation of Release. 8 C.F.R. § 241.13(i)(3); ECF No. 1-2 at 31. And he received “an initial informal interview” that afforded him “an opportunity to respond to the reasons for revocation stated in the notification” when ICE officers gave him an opportunity to explain why he should be released. 8 C.F.R. § 241.13(i)(3); ECF No. 1-1 at 4. *But see Duong v. Charles*, 2025 WL 3187313, *3-*5 (E.D. Cal. 2025).

Third, petitioner claims he is entitled to a hearing before a neutral adjudicator before he is detained. ECF No. 2 at 22. But neither the Immigration and Nationality Act nor the implementing regulations provide petitioner with such a right. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.13. A judicial ruling imposing such a requirement would be at odds with the plain language of 8 C.F.R. § 241.13. It would essentially deprive ICE of its operational discretion and regulatory authority to take such action, and ultimately improperly interfere with the Executive Branch’s operations. *Cf. Johnson v.*

1 *Arteaga-Martinez*, 596 U.S. 573, 576 (2022) (in the absence of any such requirement in the text of
2 section 1231(a)(6), detainee not entitled to a bond hearing before an immigration judge). *But see*
3 *J.L.R.P. v. Wofford*, 2025 WL 3190589, *9-*10 (E.D. Cal. 2025).

4 Fourth, petitioner claims that due process requires notice and opportunity to be heard before
5 removal to a third country. ECF No. 2 at 33. But petitioner has not presented evidence of ICE's
6 intention to remove him to a third country. Instead, the Notice of Revocation of Release provided by
7 ICE specifically cites removal to Vietnam. ECF No. 1-2 at 31.

8 **B. The Petitioner Has Not Met His Burden to Show Likely Irreparable Harm**

9 Immigration laws have long authorized immigration officials to charge aliens as removable from
10 the country, to arrest aliens subject to removal, and to detain aliens pending removal. *Demore v. Kim*,
11 538 U.S. 510, 523-26 (2003). "Detention is necessarily a part of [the] deportation procedure." *Carlson*
12 *v. Landon*, 342 U.S. 524, 538 (1952); *see also Freno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress
13 eliminated any presumption of release pending deportation, committing that determination to the
14 discretion of the Attorney General."); *but see Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1253
15 (W.D.Wash. 2025) ("The Ninth Circuit has recognized the irreparable harms imposed on anyone subject
16 to immigration detention") quoting *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Petitioner
17 cannot establish irreparable harm because he is being detained in order to effectuate his removal.

18 **C. The Balance of Equities and Public Interest**

19 "The government's interest in efficient administration of the immigration laws" is "weighty,"
20 and "it must weigh heavily in the balance that control over matters of immigration is a sovereign
21 prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459
22 U.S. 21, 34 (1982). Further, the government's interest in protecting the public and preventing
23 deportable non-citizens from fleeing are strong and compelling. *See e.g., Rodriguez Diaz v. Garland*, 53
24 F.4th 1189, 1208 (9th Cir. 2022) (the government's interests, including the "increas[ing] the chance that,
25 if ordered removed, the aliens will be successfully removed" are "interests of the highest order that only
26 increase with the passage of time"). "Of course there is a public interest in preventing aliens from being
27 wrongfully removed, particularly to countries where they are likely to face substantial harm", but
28 "[t]here is always a public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S.

1 418, 436 (2009).

2 **V. CONCLUSION**

3 For the foregoing reasons, the Court should deny the petitioner's motion for a TRO.

4 Dated: November 20, 2025

ERIC GRANT
United States Attorney

6 By: /s/ Nicholas M. Fogg
7 NICHOLAS M. FOGG
Assistant United States Attorney