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BAO QUOC VU

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BAO QUOC VU,

Petitioner,

vs.

WARDEN, ET AL.,

Respondents.

Case No. 1:25-cv-01631-WBS-JDP

**PETITIONER'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM OF
POINTS AND AUTHORITIES**

Judge: Hon. William B. Shubb
Date: To Be Determined
Time: To Be Determined

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on a date, time and place to be determined, Petitioner Bao Quoc Vu, through counsel, does and will move for a preliminary injunction requiring that:

1. Respondents SHALL IMMEDIATELY RELEASE Petitioner under appropriate conditions of supervision set forth in 8 C.F.R. § 241.5;

2. Respondents are PERMANENTLY ENJOINED AND RESTRAINED from effectuating Petitioner's third country removal unless Respondents adhere to the following procedures:

a. Provide Petitioner and a minimum of ten (10) days to raise a fear-based claim for protection prior to removal;

1 b. If Petitioner demonstrates reasonable fear of removal to the third country, Respondents
2 must move to reopen Petitioner's removal proceedings;

3 c. If Petitioner is not found to have demonstrated a reasonable fear of removal to the third
4 country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15)
5 days for Petitioner to seek reopening of his immigration proceedings.

6 Mr. Vu's removal order became final on July 10, 2003.¹ At some point in 2004, Mr. Vu
7 was released under an Order of Supervision by ICE. ECF 1, p. 2. Mr. Vu was cooperating with
8 ICE and following rules, and ICE was unable to deport him for more than two decades. ECF 1,
9 p. 2. ICE then arrested Mr. Vu on July 25, 2025. ECF 1 p. 3. Mr. Vu has remained in ICE
10 custody since that date.

11 As Mr. Vu claimed in his habeas corpus petition, his detention is impermissible under
12 *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he has already been detained for more than six
13 months following his removal order and he is not likely to be deported in the reasonably
14 foreseeable future. ECF 1, pp. 8, 13-14. In addition, his detention is impermissible because
15 Respondents failed to comply with regulations governing re-detention of persons subject to
16 removal orders. ECF 1, pp. 8-9, 14-15. Further, removal of Mr. Vu to a third country without
17 adequate notice and an opportunity to be heard would violate Mr. Vu's rights under the Fifth
18 Amendment to the United States Constitution, the Convention Against Torture, and the
19 Immigration and Nationality Act. ECF 1, pp. 9-12, 14-15. In addition, punitive banishment to a
20 third country would violate the Fifth, Sixth and Eighth Amendments. ECF 1, pp. 12-3, 15-16.

21 Respectfully submitted,

22 HEATHER E. WILLIAMS
23 Federal Defender

24 Date: December 19, 2025

25 /s/ Carolyn M. Wiggin
26 CAROLYN M. WIGGIN
27 Assistant Federal Defender
28 Attorney for Petitioner
BAO QUOC VU

¹ As reported on the Executive Office of Immigration Review Automated Case Information Website,
<https://acis.eoir.justice.gov/en/caseInformation>.

**Memorandum of Points and Authorities
In Support of Motion for Preliminary Injunction**

I. Introduction

Mr. Vu has been ordered removed to Vietnam and has been detained by ICE for a total of more than six months since that removal order became final. For the reasons set forth in Mr. Vu's petition and below, this Court should grant Mr. Vu's petition or, at the very least, grant him a preliminary injunction (1) requiring Respondents to immediately release him under the same conditions he was released previously; (2) enjoining Respondents from re-detaining Mr. Vu unless they obtain a travel document for his removal and unless and until they follow all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures; and (3) enjoining Respondents from removing Mr. Vu to a third country without adequate notice and an opportunity to be heard.

II. Statement of Facts

On July 10, 2003, an Immigration Judge ordered Mr. Vu removed to Vietnam and Mr. Vu did not appeal that decision.² At some point in 2004, so after at least 5 months and 22 days, Mr. Vu was released under an Order of Supervision by ICE. ECF 1, p. 2. Mr. Vu cooperated was cooperating with ICE and following rules, and ICE was unable to deport him for more than two decades. ECF 1, p. 2. ICE then arrested Mr. Vu on July 25, 2025. ECF 1 p. 3. Mr. Vu has remained in ICE custody since that date, or for 4 months and 24 days as of December 19, 2025.

III. Argument

A. Legal Standard

To obtain preliminary injunctive relief, Petitioner must show (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The final two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

² As reported on the Executive Office of Immigration Review Automated Case Information Website, <https://acis.eoir.justice.gov/en/caseInformation>.

B. Mr. Vu Is Likely to Succeed on the Merits.

Through his habeas petition, Mr. Vu showed that he is likely to succeed on the merits of his petition. ICE has been unable to remove Mr. Vu in the more than two decades since his removal order became final. Mr. Vu has been detained for than 10 months in total since his removal order became final.

As Mr. Vu claimed in his habeas corpus petition, his detention is impermissible under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he has already been detained for more than six months following his removal order and he is not likely to be deported in the reasonably foreseeable future. ECF 1, pp. 8, 13-14. In addition, his detention is impermissible because Respondents failed to comply with regulations governing re-detention of persons subject to removal orders. ECF 1, pp. 8-9, 14-15. Further, removal of Mr. Vu to a third country without adequate notice and an opportunity to be heard would violate Mr. Vu's rights under the Fifth Amendment to the United States Constitution, the Convention Against Torture, and the Immigration and Nationality Act. ECF 1, pp. 9-12, 14-15. In addition, punitive banishment to a third country would violate the Fifth, Sixth and Eighth Amendments. ECF 1, pp. 12-3, 15-16.

1. Mr. Vu Will Likely Succeed On His Claim That His Current Detention Violates *Zadvydas*.

Where the government has not shown a significant likelihood that a petitioner who has been detained for over six months following their final order of removal will be removed in the reasonably foreseeable future, the petitioner is likely to succeed on claim that he is entitled to relief under *Zadvydas*. *Tran v. Noem*, No. 1:25-CV-01523-TLN-CKD, 2025 WL 3268491, at *2 n. 1 (E.D. Cal. Nov. 24, 2025).

Evidence that "there is at least some possibility that Vietnam will accept Petitioner at some point . . . is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen v. Scott*, 2025 WL 2419288, at *16 (W.D. Wash. Aug. 21, 2025); *see also Tran v. Scott*, 2025 WL 2898638, at *4 (W.D. Wash. Oct. 12, 2025) (government failed to show significant likelihood of removal in reasonably foreseeable future where it provided no data on the number of requests they have recently submitted to Vietnam,

1 how many requests Vietnam has granted, or how many in either category have concerned pre-
2 1995 Vietnamese immigrants like petitioner); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP,
3 2025 WL 1993771, at *4–5 (E.D. Cal. July 16, 2025) (neither 2020 Memorandum of
4 Understanding between Vietnam and the United States, which gives Vietnam discretion whether
5 to issue a travel document, nor fact that another person was deported to Vietnam, establish
6 significant likelihood petitioner will be deported to Vietnam in the reasonably foreseeable
7 future); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 151 (D. Mass. 2025) (neither 2020 Memorandum
8 of Understanding between Vietnam and United States nor evidence that some Vietnamese
9 nationals were deported in fiscal years 2024 and 2025, sufficient to show a significant likelihood
10 petitioner would be removed to Vietnam in the reasonably foreseeable future).

11 Even if Respondents have requested travel documents for Mr. Vu, many courts have
12 agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.,*
13 *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that
14 the petitioner’s case was “still under review and pending a decision” did not meet respondents’
15 burden); *Islam v. Kane*, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and*
16 *recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) (“Repeated statements
17 from the Bangladesh Consulate that the travel document request is pending does not provide any
18 insight as to when, or if, that request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d 1202,
19 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where “[t]he
20 government offers nothing to suggest when an answer might be forthcoming or why there is
21 reason to believe that he will not be denied travel documents”); *Mohamed v. Ashcroft*, 2002 WL
22 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document
23 request).

24 The time that Mr. Vu was initially detained following his removal order in 2003 and the
25 period of his more recent detention in 2025 count cumulatively toward the six months in which it
26 is presumptively reasonable for ICE to detain and individual it seeks to deport. The six-month
27 presumptively reasonable period to carry out a removal order “does not reset when the
28 government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-

1 detains him again.” *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (citing
 2 authorities); *Nguyen v. Warden*, 2025 WL 2971654, at *2 (S.D. Cal. Oct. 21, 2025) (same);
 3 *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) (“Most courts to consider
 4 the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern
 5 that the federal government could otherwise detain noncitizens indefinitely by continuously
 6 releasing and re-detaining them.”) (collecting cases).

7 **2. Mr. Vu Will Likely Succeed On His Claim that Respondent Violated**
 8 **Governing Regulations in Revoking His Release.**

9 Mr. Vu is likely to succeed in his claim that ICE violated its own regulations in re-
 10 detaining him.

11 When a non-citizen has been released from immigration detention, certain ICE
 12 regulations govern how and when the agency may revoke that release and re-detain the non-
 13 citizen. See 8 C.F.R. §§ 241.13(i), 241.4(l). *Nguyen v. Charles*, No. 1:25-CV-01592-TLN-CSK,
 14 2025 WL 3492117, at *2 (E.D. Cal. Dec. 4, 2025). “These procedures protect important due
 15 process rights owed to non-citizens.” *Id.* For those, like Mr. Vu, whose revocation of release is
 16 governed by 8 C.F.R. § 241.13(i), ICE must show that there are “changed circumstances” that
 17 make removal significantly more likely than it has been in the past. *Id.*

18 It is unlikely respondents have evidence that despite Vietnam’s refusal to issue a travel
 19 document to Mr. Vu for over 22 years, it is now willing to do so in the reasonably foreseeable
 20 future. *Cf. Tran*, 2025 WL 3268491, at *3 (Petitioner likely to succeed on merits of claim that
 21 Respondent violated 8 C.F.R. § 241.13(i) in re-detaining petitioner where Respondents “have not
 22 stated whether they have an indication from Vietnam that it is likely to issue such a travel
 23 document.”).

24 This Court should therefore grant a preliminary injunction, on Ground Four of Mr. Vu’s
 25 petition. Numerous courts have granted habeas petitions and/or ordered an immigration
 26 detainee’s release where ICE has failed to follow its own regulations in re-detaining the
 27 petitioner. *See, e.g., Nguyen*, 2025 WL 3492117, at *7 (E.D. Cal. Dec. 4, 2025) (enjoining
 28 respondents to release petitioner from custody where respondents could not show significant

likelihood of removal under 8 C.F.R. § 241.13(i)(2) and had not given petitioner a required interview under 8 C.F.R. § 241.13(i)(3), *Phan v. Noem*, 2025 WL 2898977, at *4 (S.D. Cal. Oct. 10, 2025) (granting petition and ordering release of person with final order of removal to Vietnam where “ICE’s failure to provide an interview and opportunity to respond” and failure to show a determination “that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future” fell short of requirements of 8 C.F.R. § 241.13(i)); *Yee S. v. Bondi*, 2025 WL 2879479, at *6 (D. Minn. Oct. 9, 2025) (partially granting petition and ordering petitioner released where “Petitioner has shown that ICE’s re-detention of him on June 6, 2025 violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)”; *Hoac*, 2025 WL 1993771, at *4.³

3. Mr. Vu Will Likely Succeed on His Claim That ICE’s Third-Country Removal Policy Violates Due Process.

As Mr. Vu argued in his petition, this Court should bar the government from removing Mr. Vu to a third country without complying with procedures mandated by Ninth Circuit precedent. *G.A.A. v. Chestnut*, No. 1:25-CV-01102-EPG-HC, 2025 WL 3251316, at *7 (E.D. Cal. Nov. 21, 2025) (enjoining respondent from removing petitioner to third country without providing process required by Ninth Circuit precedent); *see also Nguyen v. Scott*, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21, 2025) (“Petitioner is likely to succeed on his claim that

³ *See also Bui v. Warden, Otay Mesa Detention Facility, et al.*, 2025 WL 2988356, at *5 (S.D. Cal. Oct. 23, 2025) (granting petition and ordering release where respondent failed to follow its own regulations in revoking release); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025) (same); *Sun v. Noem*, 2025 WL 2800037 (S.D. Cal. Sept. 30, 2025) (granting TRO for release where respondent failed to follow its own regulations in revoking release); *Van Tran v. Noem*, 2025 WL 2770623 (S.D. Cal. Sept. 29, 2025) (same); *Zhu v. Genalo*, 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025) (partially granting petition and ordering release where respondent did not follow regulations before revoking release); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) (“because ICE did not follow its own regulations in deciding to re-detain Ceesay, his due process rights were violated, and he is entitled to release.”); *M.S.L. v. Bostock*, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025) (granting petition and ordering release where respondent violated regulations in revoking release); *Escalante v. Noem*, 2025 WL 2206113, at *4 (E.D. Tex. Aug. 2, 2025) (same); *Liu v. Carter*, 2025 WL 1696526, at *3 (D. Kan. June 17, 2025) (same); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (ordering ICE to release petitioner where ICE failed to follow its own regulations in detaining petitioner).

1 removal to a third country under ICE's current policy, without meaningful notice and reopening
2 of his removal proceedings for a hearing would violate due process.").

3 **C. Mr. Vu Suffers Irreparable Harm Every Day He is Illegally**
4 **Detained.**

5 The Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to
6 immigration detention." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025)
7 (citing *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017)) ("For example ... subpar
8 medical and psychiatric care in ICE detention facilities, the economic burdens imposed on
9 detainees and their families as a result of detention, and the collateral harms to children of
10 detainees whose parents are detained."). "In the absence of an injunction, harms such as these
11 will continue to occur needlessly on a daily basis." *Hernandez*, 872 F.3d at 995.

12 **D. The Balance of Equities Favor Grant of a Temporary**
13 **Restraining Order and Preliminary Injunction.**

14 The consideration of the balance of equities and the public interest in an injunction merge
15 when the government is a party. *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL
16 2791778, at *10 (E.D. Cal. Aug. 20, 2025) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d
17 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009))).

18 "It is always in the public interest to prevent the violation of a party's constitutional
19 rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Furthermore, "[j]ust as the
20 public has an interest in the orderly and efficient administration of this country's immigration
21 laws, the public has a strong interest in upholding procedural protections against unlawful
22 detention." *Hoac*, 2025 WL 1993771, at *6 (internal quotation marks omitted). Here, where Mr.
23 Vu's current detention violates his constitutional right to due process, the balance of equities
24 favor issuance of a preliminary injunction (1) reinstating Mr. Vu's release on supervision, and (2)
25 prohibiting the government from removing him to a third country without an opportunity to file a
26 motion to reopen with an Immigration Judge.

27 **IV. Conclusion**

28 For the foregoing reasons, and the reasons set forth in Mr. Vu's petition, this Court
should grant Mr. Vu's petition, or at the very least grant a preliminary injunction, providing that:

1 1. Petitioner's motion for injunctive relief is GRANTED.

2 2. To return to the status quo ante, Respondents must IMMEDIATELY RELEASE
3 Petitioner under the same conditions he was released previously on his 2004 order of
4 supervision. *See Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC, 2025 WL 2791778, at *11 (E.D.
5 Cal. Aug. 20, 2025) (status quo ante is "the last uncontested status which preceded the pending
6 controversy.").

7 3. Respondents are ENJOINED AND RESTRAINED from re-detaining Petitioner unless
8 they obtain a travel document for his removal to Vietnam and until they follow all procedures set
9 forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory
10 procedures.

11 4. Respondents are ENJOINED AND RESTRAINED from removing Petitioner to any
12 country other than Vietnam, unless they provide the following process:

13 a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can
14 understand;

15 b. following the notice, Petitioner must be provided a meaningful opportunity, and a
16 minimum of ten days, to raise a fear-based claim for protection under the Convention Against
17 Torture prior to removal;

18 c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the
19 designated country, Respondents must move to reopen Petitioner's immigration proceedings;

20 d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the
21 country, Respondents must afford Petitioner a meaningful opportunity, and a minimum of fifteen
22 days, to seek to reopen his immigration proceedings.

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1 5. The bond requirement of Federal Rule of Civil Procedure 65(c) is waived. *See Diaz v.*
2 *Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011). Courts regularly waive security in cases like this
3 one. *See, e.g., Nguyen v. Charles*, No. 1:25-CV-01592-TLN-CSK, 2025 WL 3492117, at *8
4 (E.D. Cal. Dec. 4, 2025).

5
6 Respectfully submitted,

7 HEATHER E. WILLIAMS
8 Federal Defender

9 Date: December 19, 2025

10 /s/ Carolyn M. Wigg
11 CAROLYN M. WIGGIN
12 Assistant Federal Defender
13 Attorney for Petitioner
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