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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 KONG MENG VUE,

11 Petitioner,

12 v.

13 WARDEN OF THE GOLDEN STATE
ANNEX, *et al.*,

14 Respondents.
15

CASE NO. 1:25-CV-1713-JDP

**OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER**

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17 **I. INTRODUCTION**

18 The Court should deny Petitioner Kong Meng Vue's motion for a temporary restraining (ECF
19 15) because it is untimely under Local Rule 231(b). If the Court reaches the merits, it should deny the
20 motion for the reasons set forth in Respondents' motion to dismiss and opposition to Petitioner's habeas
21 petition (ECF 14) and set forth below in response to the new arguments made in the TRO motion.

22 **II. ARGUMENT**

23 **A. The TRO Motion is untimely.**

24 Local Rule 231(b) provides that a TRO movant must promptly file his motion in order for the
25 court to consider granting relief on an emergency basis, and that any undue delay warrants denying the
26 motion "solely" on that basis:

27 In considering a motion for a temporary restraining order, the Court will
28 consider whether the applicant could have sought relief by motion for
preliminary injunction at an earlier date without the necessity for seeking

last-minute relief by motion for temporary restraining order. Should the Court find that the applicant unduly delayed in seeking injunctive relief, the Court may conclude that the delay constitutes laches or contradicts the applicant's allegations of irreparable injury and may deny the motion solely on either ground.

L.R. 231(b).

This Court has strictly enforced this requirement in other similar cases. For example, on the same day Petitioner filed his consolidated opposition to Respondents' motion to dismiss and motion for temporary restraining order, the petitioner in another case filed a motion for temporary restraining order in another case in an identical procedural posture—where the habeas petition and the respondents' motion to dismiss are both fully briefed and pending before the Court. *See Nersisyan v. Lyons, et al.*, 1:25-cv-01728-JLT-SAB, ECF 12 (motion for temporary restraining order). In that case, later that same day, Judge Thurston issued a minute order denying the TRO motion as untimely under L.R. 231(b):

MINUTE ORDER (Text Entry Only) The Court has reviewed the Petition filed under 28 U.S.C. § 2241 (Doc. 1) and the related request for emergency injunctive relief (Doc. 12). Petitioner asserts that he has been detained since October 30, 2025. Despite that his detention began more than 3 months ago and that his petition was filed 2 months ago, he fails to explain his delay in seeking his request for a temporary restraining order or why this delay should cause this Court to treat the situation as an emergency. Thus, the TRO request is untimely, and it is DENIED. Local Rule 231(b) signed by District Judge Jennifer L. Thurston on February 4, 2026. (Deputy Clerk IM) (Entered: 02/04/2026)

Id., ECF 13 (minute order).

The Court should follow the same approach here since Petitioner, like the similarly situated petitioner in *Nersisyan*, “fails to explain his delay in seeking his request for a temporary restraining order or why this delay should cause this Court to treat the situation as an emergency.” *Id.*

B. On the merits, Petitioner has failed to meet the high bar for emergency injunctive relief.

1. Legal Standard

The legal standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). As most relevant for this case, the moving party must show a likelihood of success on the merits.

1 Under the *Winter* standard, a party must demonstrate (1) “that he is likely to succeed on the
2 merits,” (2) “that he is likely to suffer irreparable harm in the absence of preliminary relief,” (3) “that the
3 balance of equities tips in his favor,” and (4) “that an injunction is in the public interest.” *Winter v.*
4 *Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, a plaintiff can show “serious
5 questions going to the merits” and the “balance of hardships . . . tips sharply towards” it, as long as the
6 second and third factors are satisfied. *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir.
7 2017).

8 2. Argument

9 Petitioner does not dispute that he is subject to a final order of removal and therefore detained
10 under 8 U.S.C. § 1231. Nor does he dispute that he has been detained for (substantially) less than six
11 months, with the result that the length of his detention is well within the six-month period the Supreme
12 Court approved as presumptively reasonable in *Zadvydas v. Davis*, 533 U.S. 678, 690, 701 (2001). Nor
13 does he even attempt to make any showing that “there is no significant likelihood of removal in the
14 reasonably foreseeable future”—the burden he must carry to obtain release once the sixth-month
15 presumptively reasonable period has ended, if he still has not been removed. *Id.* at 701. Thus, under
16 binding Supreme Court precedent, Petitioner’s due process challenge to the lawfulness of his detention
17 fails and his TRO motion (and habeas petition) should be denied on that basis as well.

18 Petitioner emphasizes that, for twenty years, he has lived out of custody in the United States,
19 while subject to a final order of removal. ECF 14. But this fact has no constitutional or legal relevance,
20 and Petitioner cites no authority that suggests it does. Petitioner could have voluntarily removed himself
21 at any time during the past twenty years. He thus had ample opportunity to avoid immigration
22 detention, but chose not to take that opportunity. After failing to self-remove for twenty years, he
23 cannot now complain that Respondents are enforcing his order of removal. Regardless, his challenge to
24 the length of his detention is governed by *Zadvydas*, and under *Zadvydas*, his detention is lawful.

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III. CONCLUSION

The Court should deny Petitioner's motion for a temporary restraining order.

Dated: February 6, 2026

ERIC GRANT
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By: /s/ David Spencer

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