

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Xuan Ho v. Kristi Noem, et al.

Ho · No. 25-cv-02453-BAS-BLM · Decided October 20, 2025

OPINION

Ho

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 XUAN HO, Case No. 25-cv-02453-BAS-BLM 12 Petitioner, ORDER: 13 v.

(1) GRANTING MOTION FOR

14 KRISTI NOEM, et al.,

PRELIMINARY INJUNCTION

15 Respondents. (ECF No. 3); AND 16

(2) REQUESTING

17 SUPPLEMENTAL BRIEFING

FROM THE GOVERNMENT

18 19 20 Petitioner Xuan Ho filed a Petition for Writ of Habeas Corpus followed by an 21
Application for a Temporary Restraining Order (“TRO”) or Preliminary Injunction (“PI”). 22
(ECF Nos. 1, 3.) Although the Court ordered a response to the TRO Application, the 23
Government instead filed a Return to the Petition, and Petitioner filed a Traverse. (ECF
24 Nos. 6, 9.)

25 On October 3, 2025, the Court held a hearing on Petitioner’s Application for a TRO 26 or PI.
(ECF No. 7.) For the reasons below, the Court GRANTS Petitioner’s request for a 27 PI. (ECF
No. 3.) The Court ORDERS Mr. Ho released pending removal to Vietnam and 28 orders that he
not be removed to a third country without notice to him and his counsel and 1 an opportunity for
both to be heard. Finally, the Court ORDERS supplemental briefing 2 on whether the Petition
should be granted in its entirety.

3 I. BACKGROUND

4 On January 17, 1984, Petitioner Xuan Ho came to the United States as an 5 unaccompanied
minor and was given lawful permanent resident status. (Declaration of 6 Xuan Ho in Support of
Petition (“Ho Decl.”) ¶ 1, ECF No. 1, Ex. A.) In 1992, Ho was 7 convicted of robbery, gun
charges, and kidnapping. (Id. ¶ 2.) After serving his time in 8 custody, he was ordered removed to
Vietnam on February 28, 2018. (Id. ¶ 3; Declaration 9 of Jason Cole in Support of Respondents’

Response to TRO Application (“Cole Decl.”) 10 ¶ 4, ECF No. 6-1, Ex. A.) 11 However, “Vietnam has long refused to accept for deportation Vietnamese nationals 12 who came to the United States as refugees before 1995.” *Phong Thanh Nguyen v. Scott*, 13 No. 2:25-cv-01398, ___ F. Supp. 3d ___, 2025 WL 2419288, at *6 (W.D. Wash. Aug. 21, 14 2025) (citing *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020)). Therefore, 15 in 2018, Immigration and Customs Enforcement (“ICE”) detained Ho for over six months 16 but was unable to remove him to Vietnam. (Ho Decl. ¶ 3.) Pursuant to *Zadvydas v. Davis*, 17 533 U.S. 678 (2001), ICE then released Ho under certain conditions. (Id. ¶¶ 3–4.) One of 18 these conditions was that Ho report regularly to ICE. (Id. ¶ 4.) 19 For the past seven years, Ho has reported to ICE regularly and has not violated any 20 conditions of his release. (Ho Decl. ¶ 4.) He obtained a work permit and worked two jobs: 21 one during the day as a lab operator at a biochemical company and one at night at Target. 22 (Id. ¶ 7.)

23 In 2020, the United States reached a Memorandum of Understanding (“MOU”) with 24 Vietnam, which created a process for returning pre-1995 Vietnamese immigrants, but the 25 MOU limited such removals to persons meeting certain individualized criteria, some of 26 which have been shielded from public view and have not been shown to this Court. See 27 *Phong Thanh Nguyen*, 2025 WL 2419288, at *6. In a declaration submitted in support of 28 Petitioner’s TRO Application, an immigration attorney who specializes in representing 1 Vietnamese nationals explains, “the process is highly dependent on the individualized facts 2 of the case, including whether the individual has any family remaining in Vietnam, whether 3 their Vietnamese identity can be verified, [the individual’s] criminal record[] and the 4 manner in which [the individual] left Vietnam and came to the United States, among many 5 other factors.” (Declaration of Tin Thanh Nguyen in Support of TRO Application 6 (“Nguyen Dec.”) ¶ 7, ECF No. 3, Ex. A.) 7 Nevertheless, on July 3, 2025, ICE rearrested Mr. Ho and once again is holding him 8 for removal to Vietnam. (Ho Decl. ¶¶ 5–6; Cole Decl. ¶ 5.) It has now been three months 9 since Mr. Ho has been detained, and there is no immediate plan to remove him to Vietnam. 10 According to the Government, ICE completed a request to travel on August 8, 2025. (Cole 11 Decl. ¶ 8.) No copy of this travel request has been provided to the Court or to Mr. Ho. 12 The travel request was allegedly forwarded to the attaché in Vietnam on September 15, 13 2025. (Id. ¶ 9.) According to the Government, “[t]he Vietnamese embassy has 30 days 14 [from September 15, 2025] to issue the travel documents.” (Id. ¶ 9.) The Government 15 further claims that ICE has a flight scheduled to Vietnam on October 22, 2025. (Id. ¶ 13.) 16 The Government claims that “as of the date of this declaration, ICE has been able to issue 17 travel documents for 324 pre-1995 Vietnamese citizens, and currently has a 100% issuance 18 rate.” (Id. ¶ 11.) However, as of October 17, 2025, more than 30 days after the travel 19 request was sent to Vietnam, no notice of travel documents has been provided to Petitioner. 20 (ECF No. 10.) Nor has the Government provided an update to the Court.

21 II. LEGAL STANDARD

22 A preliminary injunction is an “extraordinary remedy that may only be awarded 23 upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. 24 Council, Inc.*, 555 U.S. 7, 22 (2008). Generally, a plaintiff seeking a preliminary injunction 25 must show: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to 26 suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips 27 in favor of the plaintiff; and (4) an injunction is in the public interest. *Id.* at 20. The Ninth 28 Circuit has also applied a “‘serious questions’ test—a ‘sliding scale’ variant of the *Winter* 1 test.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th 2 Cir. 2024) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 3 2011)). Under the serious questions test, plaintiffs may still prevail on a PI if they can 4 show that there are “‘serious questions going to the merits’—a lesser showing than 5 likelihood of success on the merits— . . . if the ‘balance of hardships tips sharply in the 6 plaintiff’s favor.’” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 7 2013) (emphasis in original) (quoting *All. for the Wild Rockies*, 632 F.3d at 1135). The 8 party moving for the PI has the burden of persuasion. *Hill v. McDonough*, 547 U.S. 573, 9 584 (2006).

10 III. ANALYSIS

11 Petitioner requests a PI on three grounds: (1) the Government failed to provide 12 procedural due process in revoking his release; (2) the Court should prevent the 13 Government from removing him to a country other than Vietnam without a hearing and 14 opportunity to be heard; and (3) Petitioner’s continued detention is unconstitutional due to 15 the duration of his prior detention and the unlikelihood of his actual removal to Vietnam in 16 the reasonably foreseeable future. 17 A. Jurisdiction 18 As an initial matter, the Court finds that it has jurisdiction to hear the underlying 19 Petition for Writ of Habeas Corpus and the Application for a TRO or PI. The Government 20 argues that Petitioner’s claims are barred by 8 U.S.C. § 1252. (ECF No. 6, at 2–3.) Section 21 1252(g) grants the Attorney General the power to “commence proceedings, adjudicate 22 cases, or execute removal orders” against noncitizens, and forbids judicial review of “any 23 cause or claim by or on behalf of any [non-citizen] arising from” such decisions. 8 U.S.C. 24 § 1252(g). In interpreting “arising from,” the Supreme Court has cautioned against an 25 “expansive interpretation” that would cause “staggering results” like rendering prolonged 26 detention claims unreviewable. *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018); see also 27 *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482–83 (1999). 28 1 Here, Petitioner’s claims challenge the constitutionality of his detention, not the core 2 proceedings involved in his removal. The Government argues the Court does not have 3 jurisdiction to hear these claims because they stem from the Attorney General’s decision 4 to execute a removal order against him. The Court finds this interpretation of § 1252(g) 5 inconsistent with *Jennings v. Rodriguez* and the history of judicial review of the detention 6 of noncitizens under 28 U.S.C. § 2241. See also *Zadvydas*, 533 U.S. at 699 (finding the 7 duration of immigration detention reviewable under § 2241); *Rodriguez Diaz v. Garland*, 8 53 F.4th 1189, 1209 (9th Cir. 2022) (finding that the court

has jurisdiction under § 2241 to consider errors of law in immigration detention, including due process violations); 10 *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (finding that the court had 11 jurisdiction to hear constitutional claims about immigration detention under § 2241 despite 12 the Government characterizing the challenge as unreviewable). As other courts in this 13 District have found in similar matters, the Court has jurisdiction to hear Petitioner's claims 14 that his detention is unlawful under 28 U.S.C. § 2241 and to rule on this application for a 15 PI. See *Alegria Palma v. LaRose*, No. 25-cv-1942-BJC-MMP, ECF No. 14 (S.D. Cal. Aug. 16, 2025); *Mendez Los Santos v. LaRose*, No. 25-cv-2216-TWR-MSB, ECF No. 14 (S.D. Cal. Sept. 4, 2025) (via Minute Order); *Rokhfirooz v. LaRose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Tran v. Noem*, No. 25-cv-2334-JES-MSB, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025). 20 B. Likelihood of Success on the Merits 21 1. Failure to Provide Due Process 22 ICE regulations provide that a non-citizen previously detained and released may be 23 returned to custody "if, on account of changed circumstances, the Service determines that 24 there is a significant likelihood that the [non-citizen] may be removed in the reasonably 25 foreseeable future." 8 C.F.R. § 241.13(i)(2). However, the regulations require that the 26 non-citizen be notified of the reasons for revocation of his release and that there be "an 27 initial informal interview promptly after his . . . return to Service custody to afford the 28 [non-citizen] an opportunity to respond to the reasons for revocation stated in the 1 notification." *Id.* § 241.13(i)(3). "Government agencies are required to follow their own 2 regulations." *Rokhfirooz*, 2025 WL 2646165, at *4 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 483, 485 (9th Cir. 2003)). "Courts have determined that where ICE fails to follow its own 5 regulations in revoking release, the detention is unlawful and petitioner's release must be 6 ordered." *Id.* (citing cases). This Court reaches the same conclusion. 7 Mr. Ho says he was never notified of the reasons for revocation of his release and 8 never received an informal interview affording him the opportunity to respond. (Ho Decl. 9 ¶ 6.) At oral argument, the Government did not make any claims to the contrary. In fact, 10 the Government's Return makes no argument about this first ground of the TRO 11 Application at all. Given the lack of response, the Court finds Mr. Ho is likely to succeed 12 on the merits of his claim that his re-detention failed to comply with due process. 13 2. Reasonable Likelihood of Removal in the Reasonably Foreseeable 14 Future 15 In *Zadvydas v. Davis*, the Supreme Court held that indefinite detention of a non- 16 citizen in immigration custody raises "a serious constitutional problem." 533 U.S. at 690. 17 Under the structure laid out in *Zadvydas*, it is "presumptively reasonable" to detain an 18 individual following a removal order for six months. *Id.* at 701. After six months, 19 *Zadvydas* "places the burden on the [non-citizen] to show . . . that there is 'good reason to 20 believe that there is no significant likelihood of removal in the reasonably foreseeable 21 future.'" *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. 22 at 701). "If the noncitizen meets this burden, then ICE must 'introduce evidence to refute 23 that assertion.'" *Phong Thanh Nguyen*, 2025 WL 2419288, at *13 (quoting

Pelich, 329 24 F.3d at 1059). 25 Relying on *Zadvydas*, the Government in this case released Mr. Ho after over six 26 months of detention, presumably agreeing that there was no significant likelihood of 27 removal to Vietnam in the reasonably foreseeable future in 2018. The Government argues 28 that circumstances have changed because Vietnam is now accepting Vietnamese 1 immigrants who immigrated before 1995, and that the Government has had a 100% success 2 rate in achieving removal. 3 The Government further argues that Vietnam has 30 days to respond to its request 4 for travel documents. Thus, a response was expected on October 15, 2025, and a flight to 5 Vietnam is scheduled for October 22, 2025. However, as of October 17, 2025, Petitioner 6 has received no notice of any travel documents being issued. If travel documents have, in 7 fact, been issued, then Petitioner has failed to meet his burden on this prong. If no travel 8 documents have, in fact, been issued, then Petitioner has met his burden, and the Court will 9 grant the Petition. Hence, before ruling on the Petition and making the Court's injunctive 10 relief permanent, the Court orders supplemental briefing on whether Vietnam has 11 responded to the travel request and whether Mr. Ho is scheduled to be removed or deported 12 to Vietnam. 13 3. Removal to a Third Country 14 Under ICE regulations, the Immigration Judge must give non-citizens an opportunity 15 to designate a country to be removed to. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). 16 If that country will not accept the non-citizen, the Immigration Judge may designate a 17 country of which the non-citizen is a subject, national, or citizen. 8 U.S.C. § 1231(b)(2)(D). 18 If no country satisfies these requirements, the Immigration Judge must designate a country 19 in which the non-citizen has a lesser connection. *Id.* § 1231(b)(2)(E)(i)–(vi). Finally, if 20 removal under the above steps is “impracticable, inadvisable or impossible,” the 21 Immigration Judge must designate “another country whose government will accept the 22 [non-citizen] into that country.” *Id.* § 1231(b)(2)(E)(vii). Petitioner presents some 23 evidence that at least two pre-1995 arrival Vietnamese immigrants have been deported to 24 unrelated African third countries this year: one to Eswatini, the other to South Sudan. 25 (Nguyen Decl. ¶¶ 6–7.) 26 However, “ICE may not remove a noncitizen to a country if the noncitizen’s life or 27 freedom would be threatened in that country because of the noncitizen’s race, religion, 28 nationality, membership in a particular social group, or political opinion.” See *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1007 (W.D. Wash. 2019) (citing 8 U.S.C. § 1231(b)(3)). “If 2 the noncitizen expresses fear of persecution or harm upon return to any of the countries 3 designated by the [Immigration Judge], the [Immigration Judge] must inform the 4 noncitizen that he or she may apply for asylum, withholding of removal, or relief under the 5 Convention Against Torture.” *Id.* (citing 8 C.F.R. § 1240.11(c)(1)). “Failing to notify 6 individuals who are subject to deportation that they have a right to apply . . . for withholding 7 of deportation to the country to which they will be deported violates both INS regulations 8 and the constitutional right to due process.” *Id.* (quoting *Andriasian v. INS*, 180 F.3d 9 1033, 1041 (9th Cir. 1999)). 10 And yet, on July 9, 2025, ICE issued new guidance indicating it may remove any 11 immigrant to a third country “without the need for further procedures” as long as the United 12 States has received “credible” “assurances”

from that country that deportees will not be 13 persecuted or tortured. (Pet., Ex. B.) This procedure does not inform an individual subject 14 to removal of his right to apply for withholding of deportation or of the opportunity to 15 present any fear of persecution or harm upon return to the designated country. As such, 16 this new guidance, if implemented without further procedures, would violate the 17 immigrant's due process rights under *Andriasian*, 180 F.3d 1033. 18 The Government argues that it has no intention of removing Mr. Ho to an alternative 19 country, so the issue is moot and not ripe for review. ICE's new guidance says otherwise. 20 Hence, at the very least, Mr. Ho raises serious questions as to whether he will be deported 21 to a third country other than Vietnam and that such deportation would violate his 22 constitutional right to due process. 23 C. Irreparable Harm 24 "It is well established that the deprivation of constitutional rights unquestionably 25 constitutes irreparable injury." *Hernandez*, 872 F.3d at 994 (quoting *Melendres v. Arpaio*, 26 695 F.3d 990, 1002 (9th Cir. 2012)). In this case, Mr. Ho establishes a strong likelihood 27 of success on the merits, showing that his constitutional rights were violated in failing to 28 provide due process to give him notice and an opportunity to respond after his re-detention. 1 In addition, his constitutional rights would be similarly violated if he were deported to a 2 third country without notice and an opportunity to be heard. Finally, continued detention 3 creates economic burdens on Mr. Ho and his family. See *id.* at 995. Hence, Mr. Ho has 4 established that continued detention or removal to a third country without notice and an 5 opportunity to be heard would create irreparable harm to him. 6 D. Public Interest and Balance of the Equities 7 Failing to comply with due process in violation of the U.S. Constitution is against 8 the public interest and supports the conclusion that the balance of equities favors a PI. See 9 *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) ("[P]ublic 10 interest and the balance of the equities favor 'prevent[ing] the violation of a party's 11 constitutional rights.'" (alteration in original) (quoting *Melendres*, 695 F.3d at 1002)). 12 Although the public does have an interest in promptly removing a criminally convicted 13 non-citizen, see *Nken v. Holder*, 556 U.S. 418, 436 (2009), the balance of equities tips 14 sharply in favor of issuing a PI on Mr. Ho's behalf because he was detained without due 15 process. Any removal to a third country without notice and an opportunity to be heard 16 would put Mr. Ho beyond the reach of the United States' jurisdiction, and any court order 17 would be provided too late to benefit Mr. Ho. Therefore, the Court finds the public interest 18 and balance of equities support granting the PI.1

19 IV. CONCLUSION

20 For the foregoing reasons, the Court GRANTS Petitioner's Request for a 21 Preliminary Injunction. (ECF No. 3.) The Government is ORDERED to release Mr. Xuan 22 Ho, A027-295-888, on the same bond and conditions under which he was previously 23 1 Under Rule 65(c), "[t]he court may issue a preliminary injunction . . . only if the movant gives 24 security in an amount that the court considers proper to pay the costs and damages sustained by any party 25 found to have been wrongfully enjoined." Fed. R. Civ. P. 65(c). "Despite the seemingly mandatory

language,” this rule grants the court discretion to determine “the amount of security required, if any.” 26 Johnson v. Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 2003)); see also Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills, 321 F.3d 878, 882 27 (9th Cir. 2003) (“The district court is afforded wide discretion in setting the amount of the bond.”). Here, the Court finds setting the bond at zero is appropriate because Mr. Ho is already subject to conditions of 28 1 |}released. The Government is further ordered not to remove Mr. Ho to any country other 2 ||than Vietnam without notice and an opportunity to be heard. 3 The Government is ordered to file supplemental briefing no later than November 3, 4 2025, detailing whether travel documents have been received from Vietnam for Mr. Ho 5 whether he is scheduled to be removed. 6 IT IS SO ORDERED. 7 8 || DATED: October 20, 2025 yatta Bahar be 9 Hon. Cynthia Bashant, Chief Judge 10 United States District Court 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 “an.