

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Duong v. Kaiser

No. 25-cv-7598 (N.D. Cal. Aug. 6, 2025) · No. 25-cv-7598 · Decided September 6, 2025

OPINION

Duong v. Kaiser

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 Rachana Duong, Case No. 25-cv-7598 8 Plaintiff, ORDER GRANTING TEMPORARY
RESTRAINING ORDER

9 v. 10 Polly Kaiser et al. Dkt. 4 Defendants. 11 12 13 Pending before the Court is Petitioner-
Plaintiff Rachana Duong's Ex Parte Motion for 14 Temporary Restraining Order. ECF 2.
Petitioner-Plaintiff requests that the Court order 15 Respondents to immediately release Petitioner-
Plaintiff from custody. For the reasons stated 16 below, the Court GRANTS Petitioner-Plaintiff's
Ex Parte Motion for Temporary Restraining 17 Order.

18 I. BACKGROUND

19 According to the information available to the Court, Petitioner-Plaintiff is a long-time legal 20
permanent resident ("LPR") who was admitted to the United States as a refugee when he was five
21 years old. ECF 1 ¶ 19. Petitioner-Plaintiff and his family fled the Khmer Rouge genocide in 22
Cambodia and has been in the United States ever since. Id. ¶ 24. At the age of 19, Petitioner- 23
Plaintiff was convicted of first-degree murder and grand theft and, in March 2020, was granted 24
parole and released from criminal custody. Id. ¶¶ 25–26. Petitioner-Plaintiff was arrested by ICE
25 and spent three months in ICE custody. Id. ¶ 27. On June 20, 2020, Petitioner-Plaintiff was 26
ordered released from ICE custody pursuant to the bail application process. Id. ¶ 29. Since his 27
release, Petitioner-Plaintiff has complied with the terms of his bail order and ICE reporting 1 is
employed at multiple community organizations. Id. ¶¶ 31–32. Petitioner-Plaintiff suffers from 2
chronic respiratory issues. Id. ¶ 28. 3 On September 6, 2025, ICE arrested Petitioner-Plaintiff at
his home in Fremont, 4 California. Id. ¶ 36. At 9:10 AM, ICE officers knocked on Petiti9oner-
Plaintiff's door, told 5 Petitioner-Plaintiff that there was an issue with his submission of his photo,
that they had to re- 6 take the photo, and asked Petitioner-Plaintiff to step outside. Id. Once
Petitioner-Plaintiff 7 stepped outside, ICE officers detained Petitioner-Plaintiff. Id.

8 II. LEGAL STANDARD

9 The standard for issuing a temporary restraining order is identical to the standard for issuing a

10 preliminary injunction. See *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017) (“[T]he 11 legal standards applicable to TROs and preliminary injunctions are substantially identical.” (internal 12 quotation marks and citation omitted)). An injunction is a matter of equitable discretion and is “an 13 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to 14 such relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). And “a TRO 15 ‘should be restricted to . . . preserving the status quo and preventing irreparable harm just so long as is 16 necessary to hold a [preliminary injunction] hearing and no longer.’” *E. Bay Sanctuary Covenant v. 17 Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods, Inc. v. Brotherhood of 18 Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)). 19 A plaintiff seeking preliminary injunctive relief must establish “[1] that he is likely to succeed 20 on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] 21 that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter*, 22 555 U.S. at 20. “[I]f a plaintiff can only show that there are serious questions going to the merits—a 23 lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue 24 if the balance of hardships tips sharply in the plaintiff’s favor, and the other two *Winter* factors are 25 satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation 26 marks and citations omitted). “[W]hen the Government is the opposing party,” the final two factors 27 “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

III. DISCUSSION

1 As a preliminary matter, the Court finds that the requirements for issuing a temporary 2 restraining order without notice pursuant to Federal Rule of Civil Procedure 65(b) are met. 3 Petitioner-Plaintiff’s attorney has set out specific facts showing that immediate and irreparable 4 injury, loss, or damage may result before the adverse party can be heard in opposition and has 5 stated that counsel attempted to contact the Civil Division Chief at the U.S. Attorney’s Office for 6 the Northern District of California on September 6, 2025 date. 7 Having found that the requirements of Federal Rule of Civil Procedure 65(b) are met, the 8 Court also finds that Plaintiff-Petitioner (A) has demonstrated that he will likely succeed on the 9 merits of his claim; (B) will likely to suffer irreparable harm in the absence of preliminary relief; and 10 (C) the balance of equities and the public’s interest weigh in favor of granting relief. 11 A. Petitioner-Plaintiff will Likely Succeed on the Merits of his Claim 12 Petitioner-Plaintiff will likely succeed on the merits of his claim. The protections of the 13 Constitution apply to all persons within the jurisdiction of the United States, including citizens and 14 non-citizens alike, and including those persons who are present in the United States without 15 authorization. See *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (noting that “[a]liens, even aliens 16 whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed 17 due process of law by the Fifth and Fourteenth Amendments”). Under the Due Process Clause of 18 the Fifth Amendment to the United States Constitution, no person shall be “deprived of life, 19 liberty, or property, without

due process of law.” U.S. Const. amend. V. 20 Here, Petitioner-Plaintiff has a protected liberty-interest in remaining out of custody, which 21 would allow him to continue to serve his community and provide for his family. “Courts have 22 previously found that individuals released from immigration custody on bond have a protectable 23 liberty interest in remaining out of custody on bond.” *Toeibio Felipe Castanon Domingo v. 24 Kaiser*, 2025 WL 1940179, at *2 (N.D. Cal. July 14, 2025). The Court thus finds that the three 25 factors relevant under the *Mathews v. Eldridge* test, “the private interest that will be affected by the 26 official action,” “the risk of an erroneous deprivation ... and the probable value, if any, of 27 additional or substitute procedural safeguards,” and “the Government’s interest, including the 1 function involved and the fiscal and administrative burdens that the additional or substitute 2 procedural requirement would entail,” weigh in favor of Petitioner-Plaintiff being immediately 3 released from custody, and that he be given notice and a pre-detention hearing before a neutral 4 decisionmaker prior to being taken back into custody. Petitioner-Plaintiff has complied with the 5 conditions of his release and has been diligently pursuing his rights in immigration court. Compl. 6 ¶¶ 31–32 7 B. Petitioner-Plaintiff will Likely Suffer Irreparable Harm in the Absence of Temporary Relief 8 Petitioner-Plaintiff likely faces irreparable injury and harm to liberty absent relief. “It is 9 well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable 10 injury.’” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 11 695 F.3d 990, 1002 (9th Cir. 2012)). As discussed above, Petitioner-Plaintiff has a constitutional 12 liberty interest in his conditional release. “When an alleged deprivation of a constitutional right is 13 involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier 14 v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (cleaned up). 15 C. The Balance of Equities and the Public Interest Weigh in Favor of Granting 16 Relief 17 The final two Winter factors, the balance of the equities and public interest, merge and 18 weigh heavily in favor of granting temporary relief. “[T]he public has a strong interest in 19 upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized 20 that the costs to the public of immigration detention are staggering.” *Jorge M. F. v. Wilkinson*, 21 No. 21-CV-01434, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (cleaned up) (internal 22 quotations omitted). Petitioner-Plaintiff faces significant harm absent relief, while the harm to 23 Respondents is minimal. See *Domingo*, 2025 WL 1940179, at *4 (“[T]he comparative harm 24 potentially imposed on Respondents-Defendants is minimal—a mere short delay in detaining 25 Petitioner-Plaintiff, should the government ultimately show that detention is intended and 26 warranted.”). Respondents, at most, face a short delay in detaining Petitioner-Plaintiff and is not 27 “harmed in any legally cognizable sense by being enjoined from constitutional violations.”

IV. CONCLUSION

For the foregoing reasons, the GRANTS Petitioner-Plaintiff’s Ex Parte Motion for 2 Temporary Restraining Order to preserve the status quo pending further briefing and a hearing on 3 this matter. 4 Respondents are ORDERED to immediately release Petitioner-Plaintiff Rachana Duong

5 from custody and ENJOINED AND RESTRAINED from re-detaining Petitioner-Plaintiff
without 6 notice and a pre-deprivation hearing before a neutral decisionmaker, and from removing
him/her 4 from the United States. This Order shall remain in effect until September 20, 2025 at 5
p.m. 8 The Petition, Ex Parte Motion for Temporary Restraining Order, and this Order SHALL be
9 served on Respondents such that they receive actual notice as soon as practicable, and
Petitioner- 10 Plaintiff shall file proof of such service by no later than September 9, 2025 at 5 p.m.
Respondents 11 shall provide a status report confirming Petitioner-Plaintiff's release by
September 10, 2025 at 9 12 a.m. 13 & Respondents are ORDERED TO SHOW CAUSE in-person
at a hearing in the courtroom 14 of the assigned Judge, or as otherwise ordered by that Judge, on
September 19, 2025 at 1:00 p.m. 15 5 why a preliminary injunction should not issue. Respondents
shall file a response to Petitioner- 16 Plaintiff's motion by no later than September 12, 2025. Any
reply should be filed by September 17 15, 2025 Z 18 Petitioner-Plaintiff shall not be deported,
removed, or otherwise transferred outside the 19 United States until further Order of this Court. 20
IT IS SO ORDERED. 21 Dated: August 6, 2025 at 6:15 p.m. 22 WA}

TRINA L. THOMPSON

23 . =. United States District Judge 24 25 26 27 28