

1 TIMOTHY COURCHAINED
2 United States Attorney
3 District of Arizona
4 THEO NICKERSON
5 Assistant United States Attorney
6 Connecticut State Bar No. 429356
7 Two Renaissance Square
8 40 North Central Avenue, Suite 1800
9 Phoenix, Arizona 85004-4449
10 Telephone: (602) 514-7500
11 Facsimile: (602) 514-7760
12 Email: Theo.Nickerson2@usdoj.gov
13 *Attorneys for Respondents*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Long Phi Do,

13 Petitioner,

14 v.
15

16 David R. Rivas, Warden, San Luis
17 Regional Detention Center, *et al.*,

18 Respondents.

No. 2:25-cv-01885-KML-ASB

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS,
MOTION FOR PRELIMINARY
INJUNCTION, AND MOTION FOR
LIMITED DISCOVERY**

19 **INTRODUCTION**

20 Respondents David R. Rivas, Warden, San Luis Regional Detention Center,
21 Gregory J. Archambeault, San Diego Field Office Director, U.S. Immigration and Customs
22 Enforcement (“ICE”), Kristi Noem, Secretary of the Department of Homeland Security,
23 and Pamela J. Bondi, Attorney General of the United States, and by and through counsel,
24 respond to the Petition for Writ of Habeas Corpus (Doc. 1), the Motion for Preliminary
25 Injunction (Doc. 3), and the Motion for Limited Discovery (Doc. 4), and request that the
26 Court deny the requested relief. Petitioner, a convicted criminal who is subject to a final
27 order of removal, has been detained since February 11, 2025, and seeks a Court order
28 directing ICE to immediately release him from immigration detention on an order of

1 supervision. However, because of his criminal convictions and because his removal is
2 likely to occur in the reasonably foreseeable future, the Court should deny his habeas
3 petition and request for preliminary injunction. Finally, because discovery is generally not
4 permitted in habeas cases, and because Petitioner has failed to establish good cause exists
5 to permit discovery, the Court should deny the request for limited discovery. This Response
6 is supported by the following Memorandum of Points and Authorities.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. BACKGROUND.**

9 Petitioner Long Phi Do (“Do”) is a native and citizen of Vietnam. Exhibit A
10 (Declaration of Supervisory Detention and Deportation Officer Marielle Ceja) ¶ 5.
11 According to his Immigrant Visa and Alien Registration, Do was born on December 27,
12 1967, in Bien Hoa, Vietnam. *Id.* at ¶ 6. Do has applied in immigration court for
13 cancellation of removal, asylum, and withholding of removal. *Id.* at ¶¶ 7-8. In all his
14 applications for relief from removal, Do has indicated that he was born in Bien Hoa,
15 Vietnam on December 27, 1967. *Id.* On September 21, 1989, Do was admitted to the
16 United States on an immigrant visa indicating that his place of birth is Vietnam. *Id.* at ¶¶
17 10-11.

18 On March 22, 2006, Do was convicted in the Superior Court of California in Orange
19 County for possession of a controlled substance (methamphetamine). *Ex. A.* ¶ 12. For this
20 offense, Do was sentenced to confinement for one year and four months. *Id.* at 13. On
21 November 27, 2006, Do was issued a Notice to Appear in removal proceedings and charged
22 with removability from the United States under Immigration and Nationality Act (“INA”)
23 section 237(a)(2)(B)(i)—for conviction of a controlled substance offense. *Id.* at ¶ 14. On
24 February 6, 2007, an immigration judge (IJ) ordered that Do be removed to Vietnam. *Id.*
25 at ¶ 15. On February 8, 2007, Do filed an appeal of the IJ’s decision with the Board of
26 Immigration Appeals (“BIA”). *Id.* at ¶ 16. On February 13, 2007, Do withdrew his right
27 to appeal of the IJ’s removal order. *Id.* at ¶ 17. Accordingly, the IJ’s removal order became
28 administratively final on that date. *Id.* On February 22, 2007, Do officially withdrew his

1 appeal with the BIA and on March 8, 2007, the BIA returned the record to the immigration
2 court. *Id.* at ¶¶ 18-19.

3 On March 29, 2007, ICE formally requested travel documents to facilitate Do's
4 return to Vietnam. Ex. A ¶ 20. Three months later, on June 26, 2007, ICE released Do
5 from immigration custody on an order of supervision. *Id.* at ¶ 21. Under an order of
6 supervision an alien is to "obey reasonable written restrictions on the alien's conduct or
7 activities. *Id.* ¶ 22 (citing INA § 241(a)(3)(D); 8 C.F.R. § 241.5(a)). On December 16,
8 2024 Do failed to report to his scheduled check in pursuant to his order of supervision. *Id.*
9 ¶ 23. On February 11, 2025, ICE determined there was a significant likelihood of removal
10 to Vietnam if a complete travel document request was submitted, as the Government of
11 Vietnam had been issuing travel documents. *Id.* at ¶ 24. Therefore on February 11, 2025,
12 ICE took Do back into immigration custody to pursue his removal in the reasonably
13 foreseeable future. *Id.* at ¶ 25.

14 On March 24, 2025, ICE requested Do's assistance with completing the travel
15 document request by asking him to complete Form I-217 updating the family information
16 statement and a declaration form to support timely acceptance of the travel document
17 request packet. Ex. A at ¶ 26. On April 29, 2025, the updated travel document request
18 packet was sent to ICE's Removal and International Operations (RIO). *Id.* at ¶ 27. On
19 the same day, RIO returned the travel document request package for corrections. *Id.* at ¶
20 28. On May 14, 2025, Enforcement and Removal Operations ("ERO") facilitated an
21 interview with Do in support of an updated travel document request. *Id.* at ¶ 29. On May
22 19, 2025, Do had an additional interview for assistance with correcting and completing his
23 travel document request packet. *Id.* at ¶ 30. On May 21, 2025, ERO submitted a corrected
24 travel document request packet to RIO. *Id.* at ¶ 31. On June 5, 2025, RIO sent the correct
25 travel document request packet to the Government of Vietnam. *Id.* at ¶ 32. At current
26 time, the Government of Vietnam is issuing travel documents within approximately thirty
27 days from receipt of a travel document request packet. *Id.* at ¶ 33. Accordingly, ICE ERO
28 expects to receive travel documents soon to facilitate Do's removal to Vietnam. *Id.* at ¶ 34.

1 **II. ARGUMENT.**

2 **A. Standard Governing Detention of Aliens with Final Removal Orders.**

3 The detention, release, and removal of aliens subject to a final order of removal is
4 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.
5 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the
6 United States after an order of removal becomes final. During this “removal period,”
7 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been
8 removed and remains in the United States, his detention may be continued, or he may be
9 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. § 1231(a)(3)
10 and (a)(6). ICE may detain an alien for a “reasonable time” necessary to effectuate the
11 alien’s removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not
12 authorized by the statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

13 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable
14 period of detention for aliens, like Petitioner, who are detained under section 1231(a). *See*
15 *Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a
16 detention period of six months, that there is “good reason to believe that there is no
17 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If the
18 alien makes that showing, the Government must then introduce evidence to refute that
19 assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40
20 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a period
21 reasonably necessary to secure removal. It should measure reasonableness primarily in
22 terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment
23 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued
24 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

25 **B. The Attorney General Properly Revoked Petitioner’s Order of**
26 **Supervised Release.**

27 In the habeas petition, Petitioner states that he is challenging the decision ICE’s
28 decision to revoke the prior release order issued on June 26, 2007. Doc. 1 at ¶ 2. This
challenge must fail.

1 In *Zadvydas*, the Supreme Court specifically held that release after the removal
2 period where removal is not likely in the reasonably foreseeable future “should be
3 conditioned on any of the various forms of supervised release that are appropriate in the
4 circumstances, and the alien may ***no doubt*** be returned to custody upon a violation of those
5 conditions. *Zadvydas*, 533 U.S. at 700 (emphasis added) (citing 8 U.S.C. § 1231(a)(3)(D);
6 8 C.F.R. § 241.5). And that if an alien is returned to custody, the habeas court should
7 consider the risk of the alien committing further crimes as a factor potentially justifying
8 confinement within the reasonable removal period. *Id.*

9 The plain language of the statute at 8 U.S.C. § 1231(a)(3)(D) allows the Attorney
10 General to set conditions for supervised release from immigration detention such as “to
11 obey reasonable written restrictions on the alien’s conduct or activities that the Attorney
12 prescribes for the alien.” *Id.* In this regard, the statute gives the Attorney General wide
13 discretion to set restrictions on an alien’s behavior once granted supervised release. *See*
14 *Zavala v. Prendes*, No. 3-10-CV-1601-K-BD, 2010 WL 4454055, at *1 (N.D. Tex. Oct. 5,
15 2010), *report and recommendation adopted*, No. 3:10-CV-1601-K, 2010 WL 4627736
16 (N.D. Tex. Nov. 1, 2010) (“[t]he few courts that have considered habeas challenges to post-
17 removal orders of supervision have given administrative authorities wide latitude to impose
18 such orders.”); *see also Kalombo v. Shanahan*, No. 07 CIV. 11350 (PKC), 2009 WL
19 1788589, at *5 (S.D.N.Y. June 23, 2009) (“Since *Zadvydas*, those few courts that have
20 considered habeas challenges to an order of supervision in the post-removal-period context
21 have concluded that *Zadvydas* supports an expansive reading of administrative authority to
22 impose such orders.”); *see also Neuyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1115 (D. Or.
23 2006) (“While a statute permitting indefinite detention of an alien would raise a serious
24 constitutional problem, Congress may remove aliens, subject them to supervision with
25 conditions when released from detention and incarcerate them where appropriate for
26 violations of those conditions.” (citing *Zadvydas*, 533 U.S. at 695) (alterations omitted)).

27 Here, the Attorney General’s order of supervision reasonably imposed a condition
28 on Petitioner’s release that he report in person at scheduled check ins. Ex. A at ¶¶ 22-23.

1 Petitioner failed to meet this simple condition of his supervised release, when he failed to
2 report to his scheduled check-in on December 16, 2024. Under *Zadvydas*, there simply can
3 be “no doubt” that Petitioner may be re-detained for violating the conditions of his
4 supervised release. *Zadvydas*, 533 U.S. at 695. The Court should dismiss Petitioner’s
5 challenge to the Attorney General’s decision to revoke the order of supervision.

6 **C. Petitioner’s Detention is Lawful and Constitutionally Permitted.**

7 To be entitled to release from detention, Petitioner has the burden to show that his
8 removal is not likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
9 701. Only then does the burden shift to the Government to show that removal is
10 significantly likely to occur in the reasonably foreseeable future. *Id.* Petitioner has not
11 met his burden to show that his removal is unlikely in the reasonably foreseeable future
12 and, even if he could, the Government can overcome that with evidence showing that his
13 removal is likely.

14 In *Zadvydas*, the Supreme Court designated six months as a presumptively
15 reasonable period of time to allow the Government to remove an alien detained under
16 8 U.S.C. § 1231(a), but an alien is not automatically entitled to release after six months of
17 detention. *Id.* at 701 (“This 6-month presumption, of course, *does not mean that every alien*
18 *not removed must be released after six months.* To the contrary, an alien may be held in
19 confinement until it has been determined that there is no significant likelihood of removal
20 in the reasonably foreseeable future.”) (emphasis added). The passage of time alone is
21 insufficient to establish that no significant likelihood of removal exists in the reasonably
22 foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In
23 *Lema*, where the alien had been detained for more than a year, the district court held that
24 the passage of time was only the first step in the analysis, and that the alien must then
25 provide good reason to believe that no significant likelihood of removal exists in the
26 reasonably foreseeable future. *Id.*

27 Petitioner cannot establish that his removal is not likely to occur in the reasonably
28 foreseeable future. As an initial matter, Petitioner’s detention is not prolonged. Petitioner

1 has only been detained since February 11, 2025, a period of approximately four months—
2 two months less than the presumptively reasonable period under *Zadvydas*. Ex. A at ¶ 25.
3 Although he was previously detained and released in 2007, he was not in ICE custody for
4 almost eighteen years until he was re-detained by ICE on February 11, 2025, for violating
5 his supervised release order and because there was a significant likelihood of removal in
6 the reasonably foreseeable future. Even if his prior detention eighteen years ago were
7 counted toward the presumptively reasonable period under *Zadvydas*, which it should not
8 be, it would still be Petitioner’s burden to establish that his removal *at this time* is not
9 likely, *Zadvydas*, 533 U.S. at 701, which he cannot do.

10 In *Zadvydas*, the Court emphasized that the “basic purpose” of immigration
11 detention is “assuring the alien’s presence at the moment of removal” and concluded this
12 purpose was not served by the continued detention of aliens whose removal was not
13 “reasonably foreseeable.” *Id.* at 699. Removal was not reasonably foreseeable in *Zadvydas*
14 because no country would accept the deportees or because the United States lacked an
15 extradition treaty with their home countries. Similarly, in *Clark v. Martinez*, 543 U.S. 371,
16 386 (2005), an alien’s removal to Cuba was not reasonably foreseeable when the
17 Government conceded “that it is no longer even involved in repatriation negotiations with
18 Cuba.” *Id.* at 386. And in *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006), the
19 Court of Appeals relied on the apparent impossibility of removal in holding that an alien’s
20 continued detention was not authorized where the Board of Immigration Appeals had twice
21 awarded the alien asylum, as well as protection under the Convention Against Torture, yet
22 his detention continued for over five years while the Government appealed the decisions.
23 *Id.* at 1081. The Ninth Circuit held that Nadarajah had successfully demonstrated that, as
24 a result of the asylum and CAT determinations, there was a “powerful indication of the
25 improbability of his foreseeable removal.” *Id.* This case is distinguishable from *Zadvydas*,
26 *Clark*, and *Nadarajah* because Petitioner is an alien whom the Government lawfully can
27 remove and is in the process of removing.

1 Here, the Government has successfully worked with Petitioner and RIO to
2 successfully complete a travel document request packet that has been accepted by the
3 Government of Vietnam. Ex. A ¶¶ 27-32. The Government has been receiving travel
4 documents from Vietnam within approximately 30 days of a request for travel documents.
5 *Id.* at ¶ 33. The request for Do's travel documents was submitted on June 5, 2025, and
6 accordingly, the Government expect Do's travel documents from Vietnam to issue soon.
7 *Id.* at ¶ 34. Accordingly, there is a significant likelihood of removal in the reasonably
8 foreseeable future such that Do's detention is not constitutionally indefinite as
9 contemplated by *Zadvydas*. *Zadvydas*, 533 U.S. at 701. Indeed, uncertainty as to
10 Petitioner's exact removal date does not warrant his release. *Prieto-Romero v. Clark*, 534
11 F.3d 1053, 1064 (9th Cir. 2008). In this case, there is no reason to believe that Vietnam
12 will not issue a travel document for Petitioner, and no reason why Petitioner cannot be
13 removed to Vietnam once the travel document is received. Petitioner's detention is not
14 prolonged, is not indefinite, and is constitutional—his Petition should be denied.

15 **III. A PRELIMINARY INJUNCTION IS NOT WARRANTED.**

16 A “preliminary injunction is an extraordinary and drastic remedy.” *Munaf v. Geren*,
17 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only
18 “upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Natural*
19 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary
20 injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits
21 of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive
22 relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction
23 is in the public interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has
24 articulated, “[a] stay is not a matter of right, even if irreparable injury might otherwise
25 result” but is instead an exercise of judicial discretion that depends on the particular
26 circumstances of the case. *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian*
27 *R. Co. v. United States*, 272 U.S. 658, 672 (1926)).

1 **A. Plaintiff Cannot Establish a Likelihood of Success on the Merits.**

2 As argued above, Petitioner cannot establish a likelihood of success on the merits
3 for two reasons: 1) his order of supervision was properly revoked when he failed to comply
4 with its terms by not appearing at his scheduled check-in; and 2) he cannot meet his burden
5 to demonstrate that his removal is unlikely in the reasonably foreseeable future. In contrast,
6 the Government has established that it has completed a travel document request that has
7 not been rejected by Vietnam is currently issuing travel documents and the Government
8 reasonably expects travel documents to issue soon. Ex. A. ¶¶ at 33-34. Petitioner is unlikely
9 to succeed on his claim that his continued detention is unlawful.

10 **B. Plaintiff Cannot Establish Irreparable Harm.**

11 The only claim Petitioner makes with respect to irreparable harm is that his “illegal
12 confinement is quintessentially irreparable harm.” Doc. 3 at p. 2. But as established,
13 Petitioner’s four-month confinement is neither illegal nor unconstitutional. *Zadvydas*, 533
14 U.S. at 701. Rather, because his removal is significantly likely to occur in the reasonably
15 foreseeable future, habeas relief should not be granted as he has not established any
16 irreparable harm from his continued detention while the Government executes his removal
17 order.

18 **C. The Public Interest and Balance of the Equities Favors the Government.**

19 Where the Government is the opposing party, the balance of equities and public
20 interest factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing
21 party, courts “cannot simply assume that ordinarily, the balance of hardships will weigh
22 heavily in the applicant’s favor.” *Id.* at 436 (citation and internal quotation marks omitted).
23 Here, the public interest weighs in favor of denying the motion for a preliminary injunction.
24 “Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v.*
25 *Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest
26 lies in the Executive’s ability to enforce U.S. immigration laws and to keep aliens who
27 have violated the conditions of their supervised release detained pending execution of their
28 removal orders.

D. The Court Should Require a Bond.

If the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states “The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c) (emphasis added). Here, because Petitioner is subject to removal, the amount of any bond should be akin to an appearance bond.

IV. LIMITED DISCOVERY IS NOT WARRANTED.

A habeas petitioner is not entitled to discovery “as a matter of ordinary course.” *Bracy v. Gramley*, 520 U.S. 899, 904, (1997); *see Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th Cir. 1993). Indeed, there is no general right to discovery in habeas proceedings. *See Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th Cir.1993). Rather, Rule 6 of the Rules Governing Section 2254 Cases provides that “[a] judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery.” Rule 6(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

Whether a petitioner has established “good cause” for discovery requires a habeas court to determine the essential elements of the petitioner’s substantive claim and evaluate whether “specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is...entitled to relief.” *Bracy*, 520 U.S. at 908–09. Conversely, good cause “cannot arise from mere speculation” and “cannot be ordered on the basis of pure hypothesis[.]” *Arthur v. Allen*, 459 F.3d 1310, 1311 (11th Cir. 2006); *see also Farrow v. United States*, 580 F.2d 1339, 1360 (9th Cir. 1978) (denying further discovery because appellant failed to present more than conclusory allegations).

Here, Petitioner’s allegation that he is stateless is demonstrably false. *See generally* Ex. A. Nor is there any evidence his Vietnamese citizenship was revoked. Indeed, all of Do’s relevant immigration documentation including his visa indicate he is a native and citizen of Vietnam. *Id.* The Government of Vietnam has received and accepted the U.S.

1 Government's request for travel documents and has made no indication that Do is not a
2 citizen of Vietnam. *Id.* Accordingly, the Government expects travel documents from
3 Vietnam to issue soon. *Id.* Discovery is not likely to resolve Petitioner's purely speculative
4 assertions that he is not a citizen of Vietnam given the evidence that he is. Discovery is
5 also unnecessary given the United States documented successful attempts to secure travel
6 documents and the significant likelihood of removal in the near future. For these reasons,
7 there is no good cause for discovery to establish whether there is a significant likelihood
8 of removal on the basis of Plaintiff's purely speculative assertions.

9 **V. CONCLUSION.**

10 For the reasons set forth in this Response, the Petition for Writ of Habeas Corpus,
11 the Motion for Preliminary Injunction, and the Motion for Limited Discovery should all be
12 denied.

13 Respectfully submitted on June 16, 2025.

14 TIMOTHY COURCHINE
15 United States Attorney
16 District of Arizona

17 s/ Theo Nickerson
18 THEO NICKERSON
19 Assistant United States Attorney
20 *Attorneys for Respondents*
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Keith Hilzendeger
Federal Public Defender
250 N. 7th Ave., Ste. 600
Phoenix, AZ 85007
Keith_Hilzendeger@fd.org

s/Theo Nickerson
Assistant United States Attorney