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8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 KHA NGUYEN TRAN,  
12  
13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary of the  
Department of Homeland Security, et al.  
16 Respondents.

Case No.: 25cv2391-BTM(BLM)

**RESPONDENTS' RESPONSE IN  
OPPOSITION TO PETITIONERS'  
APPLICATION FOR  
PRELIMINARY INJUNCTION  
AND RETURN TO HABEAS  
PETITION**

**I. Introduction**

Petitioner has filed a habeas petition under 28 U.S.C. § 2241 arguing that there is no significant likelihood of his removal from the United States to Vietnam in the reasonably foreseeable future. Petitioner seeks a preliminary injunction releasing him from immigration custody. For the reasons set forth below, namely that Petitioner is expected to be removed from the United States to Vietnam within the reasonably foreseeable future, the Court should deny Petitioner's request for injunctive relief and dismiss the petition.

**II. Factual and Procedural Background**

Petitioner is a citizen and national of Vietnam. On April 26, 2003, Petitioner was admitted into the United States as a lawful permanent resident. On March 15, 2006, Petitioner was convicted in the San Diego County Superior Court of forcible assault with a deadly weapon. On January 23, 2007, an immigration judge ordered Petitioner removed to Vietnam. On January 13, 2010, Petitioner was released from immigration custody on an Order of Supervision.

On June 18, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Vietnam. Exhibit 1, I-213 dated June 18, 2025. On September 18, 2025, ICE forwarded a travel document (TD) request to the Vietnam embassy. The Vietnamese government has thirty days within which to issue the TD. Declaration of Daniel Negrin (Negrin Decl.), ¶ 9. ICE has been routinely obtaining TDs for Vietnamese citizens, including those who, like Petitioner, entered the United States before 1995. *Id.*, ¶ 11. In fact, since February of 2025, the Government of Vietnam has not denied any ICE requests for TDs. *Id.* Compared to fiscal year 2024, where ICE removed 58 Vietnamese citizens, ICE has removed 587 Vietnamese citizens to Vietnam in fiscal year 2025 (through September 18, 2025). *Id.*, ¶ 12. ICE has flights to Vietnam scheduled every month, including one in the month of October. *Id.*, ¶ 13. Once a TD is issued for Petitioner, his removal can be effected promptly. *Id.*, ¶ 14. ICE is not seeking

1 to remove Petitioner to a third country and is aware of this Court's September 18, 2025  
2 Order enjoining removal to a country other than Vietnam. *Id.* at ¶ 7.

### 3 III. Argument

#### 4 A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

5 Petitioner bears the burden of establishing that this Court has subject matter  
6 jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770,  
7 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a  
8 threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C.  
9 § 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any  
10 decision to commence or adjudicate removal proceedings or execute removal orders.  
11 *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any*  
12 *other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or*  
13 *any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court  
14 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising  
15 from the decision or action by the Attorney General to commence proceedings,  
16 adjudicate cases, or *execute removal orders* against any alien under this chapter.")  
17 (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483  
18 (1999) ("There was good reason for Congress to focus special attention upon, and make  
19 special provision for, judicial review of the Attorney General's discrete acts of  
20 "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—  
21 which represent the initiation or prosecution of various stages in the deportation  
22 process."). In other words, § 1252(g) removes district court jurisdiction over "three  
23 discrete actions that the Attorney may take: [his] 'decision or action' to 'commence  
24 proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482  
25 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action  
26 by the Attorney General to . . . execute removal orders," over which Congress has  
27 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should  
28

1 deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C.  
2 § 1252.

3 **B. Petitioner Fails to Establish Entitlement to Injunctive Relief**

4 Alternatively, Petitioner’s motion for preliminary injunction and for relief on the  
5 petition should be denied because he has not established that he is entitled to such relief.  
6 Petitioner cannot establish that he is likely to succeed on the underlying merits, there is  
7 no showing of irreparable harm, and the equities do not weigh in his favor. To prevail  
8 on a motion for a preliminary injunction, a plaintiff must “establish that he is likely to  
9 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
10 preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
11 in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see*  
12 *Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a “substantial  
13 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir.  
14 2011). When “a plaintiff has failed to show the likelihood of success on the merits, we  
15 need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786  
16 F.3d 733, 740 (9th Cir. 2015).

17 The final two factors required for preliminary injunctive relief—balancing of the  
18 harm to the opposing party and the public interest—merge when the Government is the  
19 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically  
20 acknowledged that “[f]ew interests can be more compelling than a nation’s need to  
21 ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also*  
22 *United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd.*  
23 *v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v.*  
24 *Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963,  
25 966 (9th Cir. 2002) (movant seeking injunctive relief “must show either (1) a probability  
26 of success on the merits and the possibility of irreparable harm, or (2) that serious legal  
27 questions are raised and the balance of hardships tips sharply in the moving party’s  
28 favor.”) (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

1           **1. No Likelihood of Success on the Merits**

2           Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at  
3 740. Petitioner cannot establish that he is likely to succeed on the underlying merits of  
4 his claims because he is properly detained under 8 U.S.C. § 1231(a) and he is expected  
5 to be removed from the United States to Vietnam in the reasonably foreseeable future.

6           ICE's authority to detain, release, and re-detain noncitizens who are subject to a  
7 final order of removal is governed by 8 U.S.C. § 1231(a), which provides that "the  
8 Attorney General shall remove the alien from the United States within a period of 90  
9 days," and "[i]f the alien does not leave or is not removed within the removal period,  
10 the alien, pending removal, shall be subject to supervision under regulations prescribed  
11 by the Attorney General." 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.  
12 § 1231(a)(6). An Order of Supervision may be issued under 8 C.F.R. § 241.4, and the  
13 order may be revoked under section 241.4(l)(2)(iii) where "appropriate to enforce a  
14 removal order or to commence removal proceedings against an alien." *See also* 8 C.F.R.  
15 § 241.5 (Conditions of release after removal period). It is also provided in 8 C.F.R.  
16 § 241.13(i)(2) that the Order of Supervision may be revoked to effect a removal due to  
17 changed circumstances, particularly where ICE has determined that there is a significant  
18 likelihood of removal in the reasonably foreseeable future.

19           Here, ICE revoked Petitioner's Order of Supervision on June 18, 2025, just over  
20 three months ago, for the purpose of executing his final order of removal. *See* Exhibit  
21 1; Negrin Decl., ¶ 5. Respondents have worked expeditiously to acquire the necessary  
22 travel document in order to effectuate Petitioner's removal to Vietnam. A travel  
23 document request was submitted to the Vietnam embassy on September 18, 2025, and  
24 the Vietnamese government has thirty days to issue the travel document. ICE is aware  
25 of no barrier to the consulate's issuance of the travel document for Petitioner and ICE  
26 has been routinely obtaining those travel documents for Vietnamese citizens. Decl., ¶¶  
27 10 and 11. In fact, since mid-February 2025, the Government of Vietnam has not denied  
28

1 any ICE requests for travel documents. Petitioner has not met his burden of rebutting  
2 the presumptively reasonable period of detention.

3 An alien ordered removed must be detained for 90 days pending the  
4 government's efforts to secure the alien's removal through negotiations with foreign  
5 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien  
6 during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683  
7 (2001). The statute "limits an alien's post-removal detention to a period reasonably  
8 necessary to bring about the alien's removal from the United States" and does not permit  
9 "indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a  
10 six-month period of post-removal detention constitutes a "presumptively reasonable  
11 period of detention." *Id.* at 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005)  
12 ("[T]he presumptive period during which the detention of an alien is reasonably  
13 necessary to effectuate his removal is six months..."); *Lema v. INS*, 341 F.3d 853, 856  
14 (9th Cir. 2003). Release is not mandated after the expiration of the six-month period  
15 unless "there is no significant likelihood of removal in the reasonably foreseeable  
16 future." *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

17 In *Zadvydas*, the Supreme Court held that "the habeas court must ask whether the  
18 detention in question exceeds a period reasonably necessary to secure removal. It should  
19 measure reasonableness primarily in terms of the statute's basic purpose, namely,  
20 *assuring the alien's presence at the moment of removal.*" *Zadvydas v. Davis*, 533 U.S.  
21 at 699 (emphasis added). The Court in *Zadvydas* therefore recognized that detention is  
22 presumptively reasonable pending efforts to obtain travel documents, because the  
23 noncitizen's assistance is needed to obtain the travel documents, and a noncitizen who  
24 is subject to an imminent, executable warrant of removal becomes a significant flight  
25 risk, especially if he or she is aware that it is imminent.

26 In recent cases involving re-detention to effect removal, courts have recognized  
27 that ICE has a presumptively reasonable period of six months to obtain travel  
28 documents. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at \*4 (D.

1 Md. July 22, 2025) (“The government is entitled to its six-month presumptive period  
2 before Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue”);  
3 *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at \*4 (S.D.  
4 Fla. July 17, 2025) (“The Court finds that the Petition is premature because Petitioner  
5 has not been detained for more than six months. Petitioner has been in detention since  
6 May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.”);  
7 *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at \*8 (S.D. Fla. July  
8 8, 2025) (“Because Grigorian has been in custody for fifteen days, his detention does  
9 not violate the implicit six-month period read into the post-removal-period detention  
10 statute under *Zadvydas*.”). *Cf. Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL  
11 2437268, at \*2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV  
12 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) (“Nhean’s 90-day  
13 removal period began to run on October 12, 2010, when his removal order became final,  
14 and he was released after 91 days of custody to supervised release on January 11, 2011.  
15 Nhean was transferred back into ICE custody on August 26, 2016. Nhean’s detention  
16 was presumptively reasonable for an additional 90 days (six months in total)”), *cited in*  
17 *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19,  
18 2018); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at \*5 (D. Minn.  
19 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes  
20 the release based on changed circumstances, “the revocation would merely restart the  
21 90-day removal period, not necessarily the presumptively reasonable six-month  
22 detention period under *Zadvydas*”).

23 On this record, Petitioner cannot sustain his burden, and it would be premature  
24 to reach that conclusion before permitting ICE an opportunity to complete its diligent  
25 efforts to effect his removal. “[E]vidence of progress, albeit slow progress, in  
26 negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s  
27 detention grows unreasonably lengthy.” *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB)  
28 slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner’s one-year and four-month

1 detention does not violate *Zadvydas* given respondent's production of evidence showing  
2 governments' negotiations are in progress and there is reason to believe that removal is  
3 likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No.  
4 19cv1250 WQH AGS, ECF No. 5 at \*5 (S.D. Cal. Aug. 15, 2019) ("the record at this  
5 stage in the litigation does not support a finding that there is no significant likelihood  
6 of Petitioner's removal in the reasonably foreseeable future.") [Exs. 35-39.]; *Marquez*  
7 *v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at \*3 (denying petition  
8 because "Respondents have set forth evidence that demonstrates progress and the  
9 reasons for the delay in Petitioner's removal").

10 Accordingly, Petitioner cannot show entitlement to either preliminary injunctive  
11 relief or to relief as set forth in his petition.

## 12 **2. Irreparable Harm Has Not Been Shown**

13 To prevail on his request for interim injunctive relief, Petitioner must demonstrate  
14 "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844  
15 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v.*  
16 *National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a  
17 "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And  
18 detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021  
19 WL 662659, at \*3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*,  
20 No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, "[i]ssuing a  
21 preliminary injunction based only on a possibility of irreparable harm is inconsistent  
22 with [the Supreme Court's] characterization of injunctive relief as an extraordinary  
23 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to  
24 such relief." *Winter*, 555 U.S. at 22. Here, because Petitioner's alleged harm "is  
25 essentially inherent in detention, the Court cannot weigh this strongly in favor of"  
26 Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at \*10 (N.D.  
27 Cal. Dec. 24, 2018).

1           **3. Balance of Equities Does Not Tip in Petitioners' Favor**

2           It is well settled that the public interest in enforcement of the United States'  
3 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S.  
4 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court  
5 has recognized that the public interest in enforcement of the immigration laws is  
6 significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public  
7 interest in prompt execution of removal orders: The continued presence of an alien  
8 lawfully deemed removable undermines the streamlined removal proceedings IIRIRA  
9 established, and permits and prolongs a continuing violation of United States law.")  
10 (internal quotation omitted). Moreover, "[u]ltimately the balance of the relative equities  
11 'may depend to a large extent upon the determination of the [movant's] prospects of  
12 success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL  
13 12882387, at \* 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770,  
14 778 (1987)). Here, as explained above, Petitioner cannot succeed on the merits of his  
15 claims. The balancing of equities and the public interest weigh heavily against granting  
16 Petitioner equitable relief.

17                                   **V. CONCLUSION**

18           For the foregoing reasons, Respondents respectfully request that the Court deny  
19 the motion for preliminary injunction and deny this habeas petition.

20           DATED: October 2, 2025

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