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Attorneys for Respondents

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THOTH SUN,

Petitioner,

v.

Kristi NOEM, Secretary, Department of
Homeland Security; Pam BONDI, Attorney
General; Todd LYONS,
Executive Associate Director of ICE
Enforcement and Removal
Operations (ERO); Gregory J.
ARCHAMBEAULT, Director, San Diego
Filed Office, Immigration and Customs
Enforcement; Christopher J. LAROSE,
Warden, Otay Mesa Detention Center,

Respondents.

Case No.: 25-cv-2433-CAB-MMP

**RESPONDENTS' RESPONSE
IN OPPOSITION TO
PETITIONER'S FIRST
AMENDED HABEAS
PETITION AND
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

I. Introduction

Petitioner has filed an amended habeas petition and an emergency motion for temporary restraining order. For the reasons set forth below, the Court should deny Petitioner's request for interim relief and dismiss the amended petition.

II. Factual and Procedural Background

Petitioner is a citizen and national of Cambodia. Petitioner's status was adjusted to that of a lawful permanent resident retroactive to May 29, 1979. On May 3, 2004, an immigration judge ordered Petitioner removed to Cambodia due to his conviction for the offense of voluntary manslaughter in the San Diego Superior Court. Petitioner was subsequently released from immigration custody on an Order of Supervision. In 2007, Immigration and Naturalization Services re-detained Petitioner to effect his removal, but subsequently released Petitioner from immigration custody on an Order of Supervision. On September 13, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Cambodia. *See* Exhibit 1.¹ On September 17, 2025, ICE released Petitioner from custody and provided notice that he will be taken into custody for the purpose of removal on October 1, 2025. *See* Exhibit 2; *see also* Declaration of Jason Cole (Cole Decl.) at ¶ 7. ICE is currently preparing a travel document (TD) request in order to effectuate Petitioner's removal to Cambodia. *Id.* at ¶ 10. ICE is routinely obtaining TDs from Cambodia and is able to arrange travel itineraries to execute final orders of removal for Cambodian citizens. *Id.* at ¶ 11. Once Petitioner's TD is obtained, ICE will arrange for his removal to Cambodia. *Id.* at ¶ 14. ICE is not seeking to remove Petitioner to a third country and he is presently released from custody. *Id.* at ¶¶ 7-8.

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¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

III. Argument

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

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

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B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief

Alternatively, Petitioner's motion should be denied because he has not established that he is entitled to interim injunctive relief. Petitioner cannot establish that he is likely to succeed on the underlying merits, there is no showing of irreparable harm, and the equities do not weigh in his favor. In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a temporary restraining order, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party's 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 has been properly detained and is subject to re-detention under 8
5 U.S.C. § 1231(a).

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).

13 *i. Compliance with 8 C.F.R. §§ 241.4(l), 241.13(i)(2)*

14 An Order of Supervision may be issued under 8 C.F.R. § 241.4, and the order
15 may be revoked under section 241.4(l)(2)(iii) where "appropriate to enforce a removal
16 order or to commence removal proceedings against an alien." *See also* 8 C.F.R. § 241.5
17 (conditions of release after removal period). It is also provided in 8 C.F.R. § 241.13(i)(2)
18 that the Order of Supervision may be revoked to effect a removal due to changed
19 circumstances, particularly where ICE has determined that there is a significant
20 likelihood of removal in the reasonably foreseeable future.

21 Here, ICE revoked Petitioner's Order of Supervision for the purpose of executing
22 his final order of removal. *See* Exhibit 1; Cole Decl. at ¶¶ 6-7. Moreover, Respondents
23 are working expeditiously to acquire the necessary travel document in order to
24 effectuate Petitioner's removal to Cambodia. Petitioner has not met his burden of
25 rebutting the presumptively reasonable period of detention. Petitioner claims that the
26 revocation of his Order of Supervision was unlawful under 8 C.F.R. §§ 241.13(i)(2) and
27 241.4(1), because ICE did not notify Petitioner of the reason for his revocation of
28 release and provide "evidence of changed circumstances that Petitioner's removal is

1 reasonably foreseeable.” ECF No. 6 at pp. 6-7. Those allegations are not accurate and,
2 regardless, the appropriate remedy would not be an indefinite release from custody.

3 *ii. Detention Has Been Presumptively Reasonable under Zadvydas*

4 Petitioner’s detention and upcoming re-detention on October 1, 2025 are
5 reasonable.

6 An alien ordered removed must be detained for 90 days pending the
7 government’s efforts to secure the alien’s removal through negotiations with foreign
8 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien
9 during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683
10 (2001). The statute “limits an alien’s post-removal detention to a period reasonably
11 necessary to bring about the alien’s removal from the United States” and does not permit
12 “indefinite detention.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a
13 six-month period of post-removal detention constitutes a “presumptively reasonable
14 period of detention.” *Id.* at 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005)
15 (“[T]he presumptive period during which the detention of an alien is reasonably
16 necessary to effectuate his removal is six months...”); *Lema v. INS*, 341 F.3d 853, 856
17 (9th Cir. 2003). Release is not mandated after the expiration of the six-month period
18 unless “there is no significant likelihood of removal in the reasonably foreseeable
19 future.” *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

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

1 The Court in *Zadvydas* also held that the detention could exceed six months:
2 “This 6-month presumption, of course, does not mean that every alien not removed must
3 be released after six months. To the contrary, an alien may be held in confinement until
4 it has been determined that there is no significant likelihood of removal in the
5 reasonably foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien
6 provides good reason to believe that there is no significant likelihood of removal in the
7 reasonably foreseeable future, the Government must respond with evidence sufficient
8 to rebut that showing” and that the noncitizen has the initial burden of proving that
9 removal is not significantly likely. *Id.*

10 In recent cases involving re-detention to effect removal, courts have recognized
11 that ICE has a presumptively reasonable period of six months to obtain travel
12 documents. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D.
13 Md. July 22, 2025) (“The government is entitled to its six-month presumptive period
14 before Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue”);
15 *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D.
16 Fla. July 17, 2025) (“The Court finds that the Petition is premature because Petitioner
17 has not been detained for more than six months. Petitioner has been in detention since
18 May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.”);
19 *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July
20 8, 2025) (“Because Grigorian has been in custody for fifteen days, his detention does
21 not violate the implicit six-month period read into the post-removal-period detention
22 statute under *Zadvydas*.”). *Cf. Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL
23 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV
24 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) (“Nhean’s 90-day
25 removal period began to run on October 12, 2010, when his removal order became final,
26 and he was released after 91 days of custody to supervised release on January 11, 2011.
27 Nhean was transferred back into ICE custody on August 26, 2016. Nhean’s detention
28 was presumptively reasonable for an additional 90 days (six months in total)”), *cited in*

1 *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19,
2 2018); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn.
3 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
4 the release based on changed circumstances, “the revocation would merely restart the
5 90-day removal period, not necessarily the presumptively reasonable six-month
6 detention period under *Zadvydas*”).

7 Here, Petitioner cannot show that there is no significant likelihood of removal in
8 the reasonably foreseeable future. ICE is preparing Petitioner’s TD request to send to
9 the Cambodian embassy, and Petitioner will be provided with documentation to
10 complete in order for ERO to request a travel document from Cambodia. Cole Decl. at
11 ¶ 10. Once ICE receives the TD, it will begin efforts to secure a flight itinerary for
12 Petitioner. *Id.* at ¶ 9. ICE’s confidence in effecting Petitioner’s removal to Cambodia is
13 based on their current ability to do so. Cole Decl. at ¶ 13; *see also ICE Fiscal Year 2024*
14 *Annual Report*, at 97 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>
15 (ICE removed 20 Cambodian citizens in FY 2024). As recently as this month, ICE
16 removed Cambodian citizens to Cambodia. Cole Decl. at ¶ 13.

17 Further, Petitioner’s case does not implicate the impossibility of repatriation in
18 *Zadvydas*. *Zadvydas* was stateless, and both countries to which he potentially could
19 have been deported (the country where he was born and the country of which his parents
20 were citizens) refused to accept him because he was not a citizen. *See Zadyvas*, 533
21 U.S. at 684. The deportation of the other petitioner in *Zadvydas*, Ma, was prevented,
22 because there was no repatriation agreement at that time between the United States and
23 Cambodia. *Id.* at 685. Here, Petitioner is a Cambodian citizen, ICE is able to obtain
24 travel documents from Cambodia and is also able to remove Cambodian citizens to
25 Cambodia. ICE is actively working to effect Petitioner’s removal to Cambodia and his
26 continued detention is not unconstitutionally indefinite.

27 On this record, Petitioner cannot sustain his burden, and it would be premature
28 to reach that conclusion before permitting ICE an opportunity to complete its diligent

1 efforts to effect his removal. “[E]vidence of progress, albeit slow progress, in
2 negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
3 detention grows unreasonably lengthy.” *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB)
4 slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner’s one-year and four-month
5 detention does not violate *Zadvydas* given respondent’s production of evidence showing
6 governments’ negotiations are in progress and there is reason to believe that removal is
7 likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No.
8 19cv1250-WQH-AGS, ECF No. 5, at *5 (S.D. Cal. Aug. 15, 2019) (“the record at this
9 stage in the litigation does not support a finding that there is no significant likelihood
10 of Petitioner’s removal in the reasonably foreseeable future.”) [Exs. 35-39.]; *Marquez*
11 *v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (denying petition
12 because “Respondents have set forth evidence that demonstrates progress and the
13 reasons for the delay in Petitioner’s removal”).

14 Accordingly, Petitioner cannot show entitlement to relief.

15 **2. Irreparable Harm Has Not Been Shown**

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

Petitioner.” *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018).

3. Balance of Equities Does Not Tip in Petitioner’s Favor

It is well settled that the public interest in enforcement of the United States’ immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie’s House of Beef*, 659 F.2d at 1221 (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”) (citing cases); *see also Nken*, 556 U.S. at 436 (“There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.”) (internal quotation omitted). Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above, Petitioner cannot succeed on the merits of his claims. The balancing of equities and the public interest weigh heavily against granting Petitioner equitable relief.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the application for a temporary restraining order and dismiss this action for lack of a basis for the habeas claims.

DATED: September 24, 2025

Respectfully submitted,

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United States Attorney

s/ Mary Cile Glover-Rogers
MARY CILE GLOVER-ROGERS
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Attorney for Respondents

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22 Warden, Otay Mesa Detention Center,

23 Respondents.
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Case No.: 25-cv-2433-CAB-MMP

**DECLARATION OF JASON
COLE**

1 I, Jason Cole, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of
2 perjury that the following statements are true and correct, to the best of my knowledge,
3 information, and belief:

4 1. I am currently employed by the U.S. Department of Homeland Security
5 (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal
6 Operations (ERO), as a Deportation Officer (DO) assigned to the Otay Mesa suboffice
7 of the ICE ERO San Diego Field Office.

8 2. I have been employed by ICE as a law enforcement officer since
9 September 28, 2020, serving as a DO since September 28, 2020. I currently remain
10 serving in that position. As a DO, my responsibilities include case management of
11 individuals detained by ICE at the Otay Mesa Detention Center in Otay Mesa,
12 California. I have access to government databases and documentation relating to
13 Petitioner, Thoth Sun (Petitioner). This declaration is based upon my personal
14 knowledge and experience as a law enforcement officer and information provided to
15 me in my official capacity as a DO for the Otay Mesa suboffice of the ICE ERO San
16 Diego Field Office.

17 3. On May 3, 2004, Petitioner was ordered removed to Cambodia.

18 4. On August 8, 2004, Petitioner was released from immigration custody
19 under an order of supervision because Immigration and Naturalization Services (INS)
20 was unable to obtain a travel document.

21 5. In 2007, ICE re-detained Petitioner to effect his removal, but subsequently
22 released Petitioner from immigration custody on an order of supervision.

23 6. On September 13, 2025, ICE re-detained Petitioner to execute his removal
24 order to Cambodia.

25 7. On September 17, 2025, ICE released Petitioner from custody and
26 provided notice that he will be taken into custody for the purpose of removal on October
27 1, 2025.

28 8. ICE is not currently seeking to remove Petitioner to a third country.

1 9. To effectuate Petitioner's removal to Cambodia, ERO must acquire a travel
2 document and schedule a flight for Petitioner. Since Petitioner was re-detained on
3 September 13, 2025, and subsequently released on September 17, 2025, ERO has
4 worked expeditiously to effectuate Petitioner's removal to Cambodia. These removal
5 efforts remain ongoing.

6 10. ERO is currently putting together a travel document request to send to
7 Cambodian embassy. Petitioner will be provided with documentation to complete in
8 order for ERO to request a travel document from Cambodia.

9 11. ICE routinely obtains travel documents for Cambodian citizens.

10 12. I am aware of no barrier to the consulate's issuance of a travel document
11 for Petitioner.

12 13. ICE has removed several Cambodian citizens to Cambodia as recently as
13 September 2, 2025.

14 14. Once a travel document is issued for Petitioner, his removal can be affected
15 promptly.

16 I declare under penalty of perjury of the laws of the United States of America that
17 the foregoing is true and correct.

18 Executed this 23 day of September 2025.

JASON N
COLE

Digitally signed by
JASON N COLE
Date: 2025.09.24
16:10:00 -0700

19 _____
20 Jason Cole
21 Deportation Officer
22 San Diego Field Office
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**TABLE OF EXHIBITS IN
SUPPORT OF RESPONDENTS'
RESPONSE IN OPPOSITION
TO PETITIONER'S FIRST
AMENDED HABEAS
PETITION AND
APPLICATION FOR
TEMPORARY RESTRAINING
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Exhibits:

1. Warrant of Removal/Deportation
2. Notice of Removable Alien