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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MINH NHAT PHAN, Petitioner, v. PAMELA BONDI; et al., Respondents.	Case No.: 25-cv-02422-RBM-MSB **RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONERS' HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER**

I. Introduction

Petitioner has filed a 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 petition.

II. Factual and Procedural Background

Petitioner is a citizen and national of Vietnam. On October 27, 1981, Petitioner was admitted into the United States as a lawful permanent resident. On September 19, 1996, an immigration judge ordered Petitioner removed to Vietnam. Petitioner was subsequently released from immigration custody on an Order of Supervision. On September 5, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to affect his removal to Vietnam. *See* Declaration of Jason Cole (Cole Decl.),

¶ 4; Exhibits 1, 2.[1] To effectuate Petitioner's removal to Vietnam, ICE must acquire a travel document and schedule a flight. Since Petitioner was re-detained, ICE Enforcement and Removal Operations (ERO) has worked expeditiously to effectuate Petitioner's removal. ICE is currently preparing a travel document (TD) request. Cole Decl., ¶¶ 8-9. ICE is routinely obtaining TDs from Vietnam and is able to arrange travel itineraries to execute final orders of removal for Vietnamese citizens. *Id*, ¶ 10. Once Petitioner's TD is obtained, his removal to Vietnam can be effected promptly. *Id*, ¶ 9. ICE is not seeking to remove Petitioner to a third country and has agreed to keep Petitioner in this district during the pendency of this habeas matter. *Id.*, ¶ 6.

III. Argument

A. Petitioner's Claims Regarding Third Countries Present No Case or Controversy

The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). "Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlow Env't Servs., Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury if certainly impending."). At the "irreducible constitutional minimum," standing requires that Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the

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

challenged action of the United States and (3) likely to be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Here, Respondents are not seeking to remove Petitioner to a third country. *See* Cole Decl., ¶ 6. As such, there is no controversy concerning third country resettlement for the Court to resolve. Federal courts do not have jurisdiction "to give opinion upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). "A claim is moot if it has lost its character as a present, live controversy." *Rosemere Neighborhood Ass'n v. U.S. Env't Prot. Agency*, 581 F.3d 1169, 1172-73 (9th Cir. 2009). The Court therefore lacks jurisdiction over Petitioner's claims concerning third country resettlement because there is no live case or controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

B. 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.

C. Conditions of Confinement Allegations are Not Proper Habeas Claims

To the extent Petitioner asserts claims regarding conditions of his confinement, ECF No. 1 at 4, lines 18-22; ECF No. 2 at 16, lines 9-11, the Court lacks jurisdiction over such claims because they do not challenge the lawfulness of his custody. An individual may seek habeas relief under 28 U.S.C. § 2241 if he is "in custody" under federal authority "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically "provide[s] a means of contesting the lawfulness of restraint and securing release."). The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: "[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested." *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the petitioner's claim would "necessarily lead to immediate or speedier release.").

Here, Petitioner's claims regarding the conditions of his confinement do not arise under § 2241. *See Nettles*, 830 F.3d at 933 ("We have long held that prisoners may not challenge mere conditions of confinement in habeas corpus."); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners' claims did not arise under § 2241 because they were not arguing they were unlawfully in custody and receiving the requested relief would not entitle them to release). Thus, Petitioner's claims regarding the conditions of his confinement do not arise under § 2241 and the petition should be dismissed.[2]

D. 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

[2] Even though the Court has no jurisdiction over Petitioner's claims regarding his health, the United States has explored Petitioners allegations. Based on a review of Petitioner's medical records, his intake revealed that he was taking 9 medications prior to his detention, not 11 as he claims. Petitioner continues to receive those medications, and receives continued care for his cardiac issues, and other medical issues. Petitioner's intake and continued treatment utilizes providers who are fluent in Vietnamese.

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. No Likelihood of Success on the Merits

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot establish that he is likely to succeed on the underlying merits of his claims because he is properly detained under 8 U.S.C. § 1231(a).

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

Here, ICE revoked Petitioner's Order of Supervision for the purpose of executing his final order of removal. *See* Cole Decl., ¶ 5;, Exhibit 1. Moreover, Respondents are working expeditiously to acquire the necessary travel document in order to effectuate Petitioner's removal to Vietnam. Cole Decl., ¶¶ 8-9. Petitioner has not met his burden of rebutting the presumptively reasonable period of detention.

Petitioner attempts to support his claims by directing this Court to Judge Judith N. Keep's Order from February 25, 2000, which granted a previous habeas petition. However, Judge Keep's Order was certainly not a permanent or indefinite stay on Petitioner's lawful removal from the United States. Petitioner is subject to a final order of removal, which ICE has the authority and duty to act upon.

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

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

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

In recent cases involving re-detention to effect removal, courts have recognized that ICE has a presumptively reasonable period of six months to obtain travel documents. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue"); *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D.

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

Accordingly, Petitioner cannot show entitlement to relief.

2. Irreparable Harm Has Not Been Shown

To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Here, because Petitioner's alleged harm "is 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 435 ("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)). Petitioner cannot succeed on the merits of his claims. The balancing of equities and the public interest weigh heavily against granting Petitioner equitable relief.

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IV. 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 23, 2025

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UNITED STATES DISTRICT COURT

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MINH NHAT PHAN,

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v.

KRISTI NOEM; et al,

Respondents.

Case No.: 25-cv-02422-RBM-MSB

DECLARATION OF Jason Cole

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

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

2. I have been employed by ICE as a law enforcement officer since September 28, 2020, serving as a Deportation Officer since September 28, 2020. I currently remain

serving in that position. As an DO, my responsibilities include case management of individuals detained by ICE at the Otay Mesa Detention Center in Otay Mesa, California. I have access to government databases and documentation relating to Petitioner Minh Phan (Petitioner). This declaration is based upon my personal knowledge and experience as a law enforcement officer and information provided to me in my official capacity as DO for the Otay Mesa suboffice of the ICE ERO San Diego Field Office.

3. On September 19, 1996, Petitioner was ordered deported to Vietnam.

4. On March 20, 2000, Petitioner was released under an Order of Supervision, pursuant to a court order issued in *Nguyen et al. v. Fasano*, No. 99-cv-1885-K (S.D. Cal. Feb. 28, 2000).

5. On September 5, 2025, ICE re-detained Petitioner to execute his removal order to Vietnam.

6. ICE is not seeking to remove Petitioner to a third country.

8. To effectuate Petitioner's removal to Vietnam, ERO must acquire a travel document and schedule a flight for Petitioner. Since Petitioner was re-detained, ERO has worked expeditiously to effectuate Petitioner's removal to Vietnam. These removal efforts remain ongoing.

9. ERO is currently putting together a travel document request to send to Vietnam embassy, which will require a Vietnam travel doc application in Vietnamese. Petitioner will be provided with documentation to complete in order for ERO to request a travel document from Vietnam.

10. ICE routinely obtains travel documents for Vietnamese citizens.

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

12. Once a travel document is issued for Petitioner, his removal can be effected promptly.

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

Executed this ---- day of September 2025.

JASON N COLE Digitally signed by JASON N COLE Date: 2025.09.22 15:27:10 -07'00'

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TABLE OF EXHIBITS

Exhibits:

1. Form I-213, Record of Deportable/Inadmissible Alien, dated September 7, 2025
2. Form I-200, Warrant for Arrest of Alien, dated September 5, 2025