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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OUSIN SAEPHANH,

Petitioner,

v.

TONYA ANDREWS, et al.,¹

Respondents.

CASE NO. 1:25-CV-1668-DAD-SCR

**MEMORANDUM OPPOSING PETITIONER'S
MOTION FOR PRELIMINARY INJUNCTION**

This case is different from the vast majority of immigration habeas petitions this Court has received over the last year. In most cases, the Department of Homeland Security (DHS) is working towards removing the petitioner but does not have the present means to effectuate a removal.

That is not true in this case. Here, DHS secured a final removal order and travel documents to remove Petitioner Ousin Saephanh to his native Laos. DHS could execute the removal order and have Saephanh on a plane to Laos within two weeks.

But DHS faces a barrier to executing its removal order. On November 26, 2025, Saephanh filed a habeas petition and TRO Motion asserting that his August 2025 detention violated due process. The Court issued a Minute Order that same day forbidding DHS from removing Saephanh at all (ECF 7)—relief that Saephanh did not request in his habeas petition. On December 3, 2025, the Court granted Saephanh's TRO Motion, ordered his immediate release, and forbade DHS from re-detaining him "for

¹ The Government moves to dismiss all respondents other than Tonya Andrews from this case. A habeas petitioner may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). Here, Petitioner's custodian is the facility administrator at the Golden State Annex located in McFarland, California, where Tonya Andrews serves as administrator. No other parties are proper respondents for a § 2241 habeas petition.

1 any purpose, absent exigent circumstances” without a bond hearing before an immigration judge. In his
2 Motion for Preliminary Injunction (ECF 21), Saephanh asks that this Court go further and not only
3 categorically prohibit re-detention for any purpose (with no “exigent circumstance” exception) but
4 require any bond hearing to be before this Court rather than an immigration judge. Notably, however,
5 Saephanh still does not ask that this Court stay his removal or assert that this Court’s minute order
6 should remain in effect—he only asks that the Court enjoin his removal to third countries.

7 8 U.S.C. § 1252(g) strips this Court of jurisdiction “to hear any cause or claim by or on behalf of
8 any alien arising from the decision or action by the [DHS Secretary] to . . . execute removal orders
9 against any alien.” Saephanh did not request this Court to prohibit his removal to Laos, and the Court
10 lacks jurisdiction to entertain such relief anyways. The Court should vacate its November 26, 2025
11 Minute Order. And since detaining Saephanh will be a necessary prerequisite to executing his removal
12 order, the Court should reject Saephanh’s request to categorically prohibit his re-detention without an
13 exceptional circumstances proviso and allow DHS to re-detain Saephanh without a prior bond hearing if
14 it is done in furtherance of imminently executing his removal order. Even if the Court believes that
15 Saephanh was wrongly detained in August 2025, nullifying that detention should not be transmogrified
16 into de facto barring his removal and neutering an undisputedly valid removal order.

17 But the Court should not grant *any* aspect of Saephanh’s Motion. Saephanh’s Motion is based
18 on alleged violations of 8 C.F.R. § 241.4. But § 241.4(l)(2) expressly permits revocation of an order of
19 supervision where “appropriate to enforce a removal order.” Further, any technical violations are
20 harmless because (1) DHS has the authority and means to imminently remove Saephanh, and (2) during
21 this litigation, Saephanh has been apprised of the basis for his OSUP revocation (to effectuate his
22 imminent removal) and has had an opportunity to contest his removal (which he has not done). Further,
23 this Court has correctly rejected Saephanh’s request to enjoin his removal to a third country as unripe
24 and should do so here as well.

25 **I. BACKGROUND**

26 **A. Removal of aliens and orders of supervision.**

27 The INA establishes procedures for removing aliens from the United States. Ordinarily, DHS
28 will initiate removal proceedings against the alien. The alien will be given a notice to appear, and an

Immigration Judge (IJ) will decide at a hearing whether the alien should be removed. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021); 8 U.S.C. §§ 1229(a)(1)(D), (G)(i). The alien may seek various forms of relief or protection from removal at that hearing. 8 U.S.C. § 1229a(c)(4), (6)-(7); *Johnson*, 594 U.S. at 528 (citing statutes). If the IJ issues an order of removal, the alien may appeal to the Board of Immigration Appeals (BIA) and then seek judicial review in the U.S. Court of Appeals. *Id.*; 8 U.S.C. §§ 1229a(c)(5)-(7), 1252(b); 8 C.F.R. § 1240.15. Once removal is administratively final, the government generally has 90 days to remove the alien.² 8 U.S.C. § 1231(a).

Aliens who are removable for certain criminal offenses, including aggravated felonies and drug offenses, may be detained beyond the removal period or released on an order of supervision (OSUP). 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. § 241.4(a). But even if an alien is under an OSUP, release may be revoked “in the exercise of discretion” where, “in the opinion of the revoking official,” revocation is appropriate to enforce a removal order or commence removal proceedings. 8 C.F.R. § 241.4(l)(2).

Regardless of whether DHS revokes an alien’s release under § 241.4(l)(1) or (l)(2), as long as the alien was not released after an (l)(1) informal interview, DHS commences an internal review process. 8 C.F.R. § 241.4(l)(3). The review process begins with notification to the alien of a records review and a scheduling of the interview. *Id.* The full records review “will ordinarily be expected to occur within approximately three months after release is revoked,” but the regulation provides no firm timeline. *Id.*

B. Saephanh’s federal criminal convictions and prior immigration proceedings.

Saephanh, a native and citizen of Laos, was admitted to the United States in 1987 as an adult. ECF 10-1, Declaration of Refugia Guerra ¶ 5; ECF 21-2, Chohan Decl. at 8. About three years after being admitted, he was convicted of possession within intent to distribute over 26 pounds of opium and unlawful importation of opium, in violation of 21 U.S.C. §§ 841(a)(1) and 952. *See* ECF 21-2 at 8; Guerra Decl. ¶ 6. He was sentenced to 63 months but was released after serving 53 months. ECF 21-2 at 8, 26; Guerra Decl. ¶ 6.

² If a court of appeals stays removal pending resolution of an alien’s appeal, then the 90-day period begins once the court of appeals vacates the stay. 8 U.S.C. § 1231(a). But “DHS need not wait for the alien to seek, and a court to complete, judicial review of the removal order before executing it. Rather, once the BIA has reviewed the order . . . , DHS is free to remove the alien *unless* a court issues a stay.” *Johnson*, 594 U.S. at 534-35.

Saephanh's convictions were aggravated felonies that subjected him to removal. *See* 8 U.S.C. §§ 1101(a)(43), 1227(a)(2)(A)(iii); 18 U.S.C. § 924(c)(2).³ Deportation proceedings were initiated in August 1994, and Saephanh was taken into custody in December 1994 under INA section 236(c) (8 U.S.C. § 1226(c)). Guerra Decl. ¶¶ 7-8.

Saephanh sought a waiver of deportation under the INA § 212(c), which was repealed in 1996. *See* Pub. L. 104-208 § 304(b), 110 Stat. 3009 (Sept. 30, 1996). That provision allowed the government to waive deportation if an alien was a lawful permanent resident, he was returning to an unrelinquished domicile of seven consecutive years, and his application merited favorable discretion. ECF 21-2 at 9. An Immigration Judge rejected his waiver request on March 27, 1995, finding that:

Respondent was convicted of a very serious drug trafficking charge, he came to the United States as an adult and his length of residence is just barely over the minimum required for section 212(c) relief. Respondent has been separated from his family for five years, and they do not depend upon him for financial support. Respondent does not have much of an employment history and no business or property ties in the country.

Id. at 9-10; Guerra Decl. ¶ 9. Saephanh's appeal to the Board of Immigration Appeals (BIA) was dismissed on September 28, 1995. Guerra Decl. ¶¶ 10-11. Saephanh then filed a Motion to Reopen with the BIA on October 3, 1996, which was denied in March 1997. Guerra Decl. ¶ 12.

However, the government encountered substantial difficulty removing Saephanh to Laos, and thus he was released from immigration custody with an OSUP. ECF 21-2 at 46-47; Guerra Decl. ¶ 13.

C. Saephanh is re-arrested and ICE obtains removal documents to Laos.

On August 6, 2025, DHS revoked Saephanh's OSUP to pursue a travel document to remove him pursuant to his 1995 removal order, and it detained him under 8 U.S.C. § 1231(a)(6). Guerra Decl. ¶ 14. DHS began the process of requesting travel documents from Laos for Saephanh on August 15, 2025. Guerra Decl. ¶ 15. DHS received those documents on November 28, 2025. Guerra Decl. ¶ 18 & Ex. 2. Saephanh could be placed on a flight to Laos within two weeks. Guerra Decl. ¶ 18. Notably, Saephanh declined to have an interview in connection with DHS's decision to continue detaining him on November 3, 2025. Guerra Decl. ¶ 17 & Ex. 1.

³ The version of the statutes in effect in 1994 are substantively similar to the current versions, at least for purposes of this case.

D. Saephanh's unsuccessful Motion to Reopen before the BIA.

In September 2025, Saephanh filed a Motion to Reopen with the BIA. Guerra Decl. ¶ 16. After the BIA denied it on January 16, 2026, Saephanh filed a petition for review and a motion to stay his removal in the Fifth Circuit. Ex. 1, 9/16/26 BIA decision; ECF 21-2 at 2; *Saephanh v. Bondi*, No. 26-60018, ECF 3 (5th Cir. Jan. 30, 2026). He voluntarily dismissed his petition and motion to stay removal on January 30, 2026. *See Saephanh v. Bondi*, No. 26-60018, ECF 14, 15 (5th Cir. Jan. 30, 2026). Thus, at present, Saephanh has no open legal requests to halt his removal from the United States.

E. Procedural history

Saephanh filed a habeas petition and TRO Motion on November 26, 2025. ECF 1, 5. In his TRO Motion, Saephanh requests that the Court order the following:

- (1) Release of Saephanh and a prohibition of continuing to detain him;
- (2) A prohibition on re-detaining Saephanh unless the government demonstrates, at a hearing before an unspecified neutral decisionmaker, that his removal is reasonably foreseeable *and* that he is a danger or a flight risk by clear and convincing evidence;
- (3) A prohibition on removing Saephanh to any third country (i.e., not Laos) without first being provided written notice of the third country at least 21 days before removal and a meaningful opportunity to raise a fear of return under the Convention Against Torture. (ECF 5 at 3-4.)

On that same day, the Court issued a minute order prohibiting Saephanh's removal from the United States or moving him outside the judicial district, and setting an accelerated briefing schedule. ECF 7.

The Court granted Saephanh's TRO Motion in part. The Court ordered Saephanh's release and forbade "re-detaining petitioner for any purpose, *absent exigent circumstances*, without providing petition notice and a pre-detention hearing before an immigration judge." ECF 11 at 5 (emphasis added). The Court denied as unripe Saephanh's request to enjoin his removal to a third country.

On February 10, 2026, pursuant to the parties stipulated briefing schedules, Saephanh filed his Motion for Preliminary Injunction. *See* ECF 13-17, 19-21.

II. LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786

F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show “serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third . . . factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiffs seeking a preliminary injunction bear a “heavy” burden and “difficult task in proving that they are entitled to this extraordinary relief. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). A preliminary injunction requires “substantial proof” and a “clear showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted).

A court must exercise “heightened scrutiny” where a party seeks a mandatory injunction.”⁴ *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). If “a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction.” *Martin v. Int’l Olympic Cmte.*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Cmte. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1442 (9th Cir. 1986).

III. LAW AND ANALYSIS

Saephanh asks that this Court (1) enjoin Respondents from detaining him for any purpose without a pre-detention hearing before a neutral adjudicator (no exceptions permitted), and (2) hold that any pre-detention hearing occur before the Court rather than an immigration judge. He relatedly asks that he not be removed to a third country without constitutionally proper notice.

Notably, Saephanh does *not* request that the Court prohibit his removal to Laos or otherwise interfere with execution of his removal order. And he cannot do so, as 8 U.S.C. § 1252(g) strips the Court’s jurisdiction to hear any claim relating to any decision or action to execute his removal order. The Court should therefore vacate its November 26, 2025 Minute Order prohibiting his removal. Section 1252(g) likewise prohibits the Court from enjoining any actions—including re-detention—that Respondents must take to execute Saephanh’s removal order, and the Court should state as much in its ruling on Saephanh’s Motion, regardless of whether the Court ultimately determines that his August

⁴ “A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014).

2025 detention was permissible.

But the Court should go further and deny Saephanh's Motion in its entirety. Regulations permit him to be detained and there are no due process concerns given that his deportation is reasonably foreseeable (indeed, imminent). This Court previously held that his third country removal claim is unripe, and that is still true—the government has only ever attempted to remove Saephanh to Laos. And Saephanh's demand that any bond hearing occur before this Court, rather than an immigration judge, lacks any legal foundation and has been rejected by this Court many previous times.

A. Saephanh is not likely to succeed on the merits of his claims.

1. This Court lacks jurisdiction to interfere with any decision or action to execute Saephanh's removal order.

The Court's November 26, 2025 Minute Order prohibits Respondents from "tak[ing] any action to remove petitioner from the United States." ECF 7. Irrespective of whether the Court could issue such an order at that particular time to "protect its own jurisdiction," the Court lacks authority to do so now.

Saephanh has never requested that the Court enjoin his removal to Laos. Nor could he have sought such relief, as 8 U.S.C. § 1252(g) divests the Court of "jurisdiction to hear any cause or claim . . . arising from the decision or action by the [DHS Secretary] to . . . execute removal orders against any alien." Section 1252(g) precludes review of an alien's claim to enjoin his removal pursuant to a valid removal order. *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022). "Courts across the country have thus found that they are barred from staying removal, even when the court might otherwise have jurisdiction over the [underlying] claims presented" in a habeas petition. *Bobbys v. Warden*, No. 2:26-cv-311, 2026 WL 439336, at *2 (M.D. Fla. Feb. 17, 2026) (citing authorities; holding that court lacked jurisdiction to enjoin removal pending resolution of habeas petition).⁵

⁵ See also *Tejada v. Cabral*, 424 F. Supp. 2d 296, 298 (D. Mass. 2006) (noting that "[o]ne thing the REAL ID Act certainly did do . . . was emphatically to declare that this Court was not in any way to impede orders of removal," and holding that the court lacked jurisdiction to issue stay of removal in aid of habeas jurisdiction); *De Oliveira Jimenez v. Searls*, No. 22-cv-960, 2023 WL 11156340, at *4 (W.D.N.Y. Feb. 28, 2023) ("To the extent that [petitioner] seeks to stay his removal pending resolution of . . . his underlying habeas petition, courts have reached the same conclusion—Section 1252 deprives district courts of jurisdiction to issue such relief."); *Lee v. U.S. Dep't of Justice*, No. 1:24-cv-984, 2024 WL 6081682, at *1-2 (N.D. Ga. Apr. 9, 2024), *adopted*, 2024 WL 6081841 (N.D. Ga. May 3, 2024) (habeas petition seeking a stay of removal exceeded the Court's jurisdiction and citing cases); *Nelson v. Hodgson*, No. 14-10234, 2014 WL 2207621, at *2 (D. Mass. May 27, 2014) ("The provisions of the Real ID Act preclude this Court from entering an order staying petitioner's removal.").

1 Indeed, the only proper means for Saephanh to stop his removal is a motion to reopen with the
 2 BIA, followed by a petition for review in the U.S. Court of Appeals. *See Hamama v. Adducci*, 912 F.3d
 3 869, 876 (6th Cir. 2018); *Garnica v. Chertoff*, No. 07-4953, 2007 WL 2827698, at *1 (N.D. Cal. Sept.
 4 27, 2007). Saephanh did that but was unsuccessful, and he voluntarily dismissed his petition for review
 5 and motion to stay removal in the Fifth Circuit on January 30, 2026. *See* Section II.C, *supra*.

6 Further, “the discretion to decide *whether* to execute a removal order includes the discretion to
 7 decide *when* to do it. Both are covered by [§ 1252(g)].” *Tazu v. Att’y Gen.*, 975 F.3d 292, 297 (3d Cir.
 8 2020). Just as the Court lacks jurisdiction to interfere with removing Saephanh, it also lacks jurisdiction
 9 to prevent any necessary “decisions or actions” relating to executing the removal order. 8 U.S.C. §
 10 1252(g). To remove Saephanh, DHS will need to detain him to put him on a flight to Laos. Thus, even
 11 assuming that the Court could prohibit Saephanh’s re-detention under 8 C.F.R. § 241.4—which was the
 12 basis of his habeas petition—it cannot prohibit or limit the detention inseparable from executing his
 13 removal order. *See, e.g., EIHL v. Warden*, No. 5:25-cv-3455, 2026 WL 325578, at *4 (C.D. Cal. Feb. 3,
 14 2026) (holding that § 1252(g) stripped the court of jurisdiction to review the government’s detention of a
 15 petitioner to execute her removal order because the detention was an action taken to execute a removal
 16 order); *Martinez-Avelar v. Mayorkas*, No. 21-543, 2021 WL 3524121, at *3 (C.D. Cal. Apr. 1, 2021) (§
 17 1252(g) stripped jurisdiction to issue “an order reversing [the government]’s decision to detain and
 18 remove” the alien petitioner); *Espinoza-Sorto v. Agudelo*, No. 1:25-cv-23201, 2025 WL 3012786, at *5
 19 (S.D. Fla. Oct. 8, 2025) (“ICE’s decision to revoke Petitioner’s OSUP, a necessary step to execute his
 20 removal order, . . . clearly fall[s] under the purview of § 1252(g).”); *compare Zadvydas v. Davis*, 533
 21 U.S. 678, 689 (2001) (§ 1231(a) permits post-removal-period detention “to a period reasonably
 22 necessary to bring about that alien’s removal from the United States”).

23 The Court previously ordered that Saephanh could not be re-detained “for any purpose, absent
 24 exigent circumstances” without a hearing before a neutral decisionmaker. ECF 11 at 5. Saephanh’s
 25 Motion seeks a continuation of the same but without the exigent circumstances proviso. *See* ECF 21-1
 26 at 2. Given § 1252(g), at minimum, the Court should expressly carve out an exception for the detention
 27 necessary to carry out Saephanh’s removal, including, if necessary, confirming that the detention
 28 required to put Saephanh on a plane to Laos constitutes an exigent circumstance.

2. **Saephanh cannot show a material violation of 8 C.F.R. § 241.4.**

a. **Saephanh did not violate 8 C.F.R. § 241.4.**

Saephanh argues that DHS violated 8 C.F.R. §§ 241.4 and 241.13. ECF 21-1 at 15-23. He is incorrect on both counts. Section 241.13 does not apply here. As that provision states, § 241.4 governs “unless [DHS] makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future.” 8 C.F.R. § 241.4(b)(1); *see also* 8 C.F.R. § 241.4(b)(4) (§ 241.4 does not apply where DHS has made a § 241.13 determination). DHS has made no such determination—to the contrary, it has arranged for Saephanh’s imminent removal.⁶ Further, § 241.13 only applies “where *the alien* has provided a good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future.” 8 C.F.R. § 241.13(a).

In short, § 241.4, not § 241.13, applies. And DHS has not violated § 241.4. Section 241.4 “permits the Government extraordinarily broad discretion to revoke an OSUP; and that discretion is expressly not limited to circumstances where a non-citizen violates the conditions of his OSUP.” *Tanha v. Warden*, No. 1:25-cv-2121, 2025 WL 2062181, at *5 (D. Md. July 22, 2025); *Tran v. Baker*, No. 1:25-cv-1598, 2025 WL 2085020, at *4 (D. Md. July 24, 2025). Section 241.4(l)(2) expressly permits DHS to revoke an alien’s OSUP if, among other things, “[t]he purposes of release have been served” or “[i]t is appropriate to enforce a removal order.” Both are true here. To the extent Saephanh’s release was justified by a difficulty in removing him (as Saephanh suggests is the case), that difficulty has been removed. Further, Saephanh’s detention is not only appropriate, but indispensable, to executing his removal order and returning him to Laos. *See Abedi v. Carter*, No. 25-3141, 2025 WL 3209009, at *1 (D. Kan. Oct. 6, 2025) (ICE could revoke OSUP nearly 23 years after release from custody because “the applicable regulations clearly provide for revocation of release”).

Saephanh argues that he was entitled to, but did not receive, notice and interview requirements under §§ 241.4(l)(1) and 241.13(i)(3). As noted above, § 241.13 does not apply. And the notice and

⁶ Even if DHS had made such a determination, once DHS “subsequently determines, because of a change in circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future . . . , the alien shall again be subject to the custody review procedure under [§ 241.4].” 8 C.F.R. § 241.4(b)(4).

interview requirements are only referenced in § 241.4(l)(1). Their absence from § 241.4(l)(2) indicates that they are not required for revocations under the latter subsection. *Barrios*, 2025 WL 2280485, at *6. Although several courts (including some judges from this Court) have held that the notice and interview requirements are implicit in § 241.4(l)(2), the Government respectfully maintains they were incorrect. Those cases could reach their conclusion only by grafting language onto § 241.4(l)(2) and ignoring the unambiguous separation between revocations under § 241.4(l)(1) and § 241.4(l)(2). But “[t]o interpret a regulation, [the Court] look[s] first to its plain language. . . . [W]e presume the drafters said what they meant and meant what they said. If the regulation is unambiguous, its plain meaning controls unless such reading would lead to absurd results.” *United States v. Bucher*, 375 F.3d 929, 932 (9th Cir. 2004); *Pardini v. Unilever U.S., Inc.*, 65 F.4th 1081, 1087 (9th Cir. 2023) (“We interpret regulations, like statutes, based on their plain language.”); *see also Kinney v. Yerusalim*, 9 F.3d 1067, 1072 n.4 (3d Cir. 1993) (the Court “cannot rewrite the plain language of the regulations”).

Further, although § 241.4 “prescribes in considerable detail a set of custody reviews, release procedures, and other processes,” there is “[n]o procedure in this regulation [that] creates a basis for [an alien] to challenge his current detention.” *Alam v. Nielsen*, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018) (upholding revocation of OSUP after petitioner had been released for 10 years). Section 241.4(l)(2) “does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding to revoke; nor does the regulation . . . require the Government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.” *Tran*, 2025 WL 2085020, at *4; *Tanha*, 2025 WL 2062181, at *5. In short, § 241.4(l)(2) does not require that DHS authorities make a formal determination as to why revocation is warranted. *See Doe v. Smith*, No. 18-11363, 2018 WL 4696748, at *11 (D. Mass. Oct. 1, 2018). So long as DHS authorities determine that revocation is necessary to initiate Saephanh’s removal, “[n]o further justification [i]s required.” *Doe*, 2018 WL 4696748, at *11.

b. Even if the government did not technically comply with § 241.4, that would not materially violate Saephanh’s due process rights under the circumstances of this case.

Even if the Court agreed with Saephanh that DHS did not follow 8 C.F.R. § 241.4(l), he still would not be entitled to relief. To establish a due process violation, Saephanh relies on cases where the

government had not yet secured travel documents and thus could not show a significant likelihood of removal in the foreseeable future. *See* ECF 21-1 at 21.⁷ Here, however, the government *has* obtained travel documents and can expeditiously remove Saephanh once the Court lifts its November 2025 Minute Order. This distinction is dispositive and obviates his habeas claim.

Louangmilith v. Noem is directly on point. There, the petitioner was issued a removal order following a burglary conviction in 2005, but he was released under an order of supervision after unsuccessful attempts to remove him to Laos. -- F. Supp. 3d --, 2025 WL 2881578, at *1 (S.D. Cal. Oct. 9, 2025). Seventeen years later, in July 2025, ICE detained the alien, and in September 2025 obtained travel documents to effectuate his removal to Laos. *Id.* The alien asserted that ICE violated its own regulations in re-detaining him, thereby violating due process. *Id.* at *3. The Court held that even if true, the government's obtaining travel documents and anticipating removal of the alien "in the imminent future . . . as a practical matter obviate[d]" his habeas claim for immediate release from detention. *Id.* at *4.⁸

Moreover, any technical violations of § 241.4 are harmless because, through this litigation, Saephanh has been made aware of the basis for his detention (to execute his removal order now that the government has Laos travel documents) and has had ample opportunity to argue why he cannot be removed (which he has not done). The Court previously questioned whether harmless error review could apply to ICE's failure to comply with notice regulations. ECF 11 at 4. But other courts have applied harmless error to alleged violations of 8 C.F.R. § 241.4 under similar circumstances. *See*

⁷ *Hoac v. Becerra*, No. 2:25-cv-1740, 2025 WL 1993771, at *1 (E.D. Cal. July 16, 2025) (noting that the "travel document request . . . is in the process of being completed" and as of the government's opposition brief "there is no travel documentation to Petitioner's country of origin"); *Sarail A v. Bondi*, 803 F. Supp. 3d 775, 779 (D. Minn. 2025) ("ICE received guidance that Jamaica is now cooperating with ICE to issue travel documents"); *Constantinovici v. Bondi*, 806 F. Supp. 3d 1155, 1160 (S.D. Cal. 2025) (noting that petitioner was told "your case is under current review for removal to Romania"); *Hashemi v. Noem*, -- F. Supp. 3d --, 2025 WL 3468694, at *3 (C.D. Cal. Nov. 19, 2025).

⁸ *See also Medina v. Noem*, No. 25-cv-1768, 2025 WL 2306274, at *12 (D. Md. Aug. 11, 2025) (denying habeas petition because the petitioner had "not pointed to any authority showing that the remedy for a violation of [§ 241.4] . . . is release from detention."); *Abedi*, 2025 WL 3209009, at *2 (holding that even if ICE did not properly find changed circumstances at the time of revocation, subsequent developments that "Iran has indicated to immigration officials that it is willing to issue a travel document for petitioner if needed, and that officials are actively investigating the possibility of removal to two alternative countries" could satisfy changed circumstances because "habeas relief is forward-looking," and "required change in circumstances may occur after the initial revocation").

Surovtsev v. Noem, No. 1:25-cv-160, 2025 WL 3264479, at *4 (N.D. Tex. Oct. 31, 2025); *Nguyen v. Noem*, 797 F. Supp. 3d 651, 663 (N.D. Tex. 2025); *Karki v. Raycraft*, No. 2:25-cv-13186, 2025 WL 3516782, at *6 (E.D. Mich. Dec. 8, 2025) (holding that through litigation in federal courts, the petitioner “has known that the Government revoked his release because it is and has been ready to remove him to Bhutan,” and he “has clearly been given notice because the respondents have fully explained through briefing and declarations the basis for their conclusions”).

3. Saephanh cannot show a violation of constitutional due process.

Relying on *Zadvydas*, Saephanh argues that he is entitled to a pre-detention hearing. *See* Mot. at 11-12. Although § 1231 does not limit how long ICE may detain an alien during a post-removal period, the Supreme Court has held that it permits post-removal period detention to that “reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689; *see also Johnson*, 594 U.S. at 529. *Zadvydas* created a presumption of constitutionality for § 1231 detentions up to six months. 533 U.S. at 701. After that six-month period, the *alien* must “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future” before the Government is obligated to justify continued detention. 533 U.S. at 701.

Saephanh employs the multi-factor balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), in arguing for entitlement to release under due process. Mot. at 12-14. The *Mathews* factors do not create the free-standing liberty interest that Saephanh seeks. *Mathews* considers three factors: (1) the private interest that will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures used and the value, if any, of additional or substitute safeguards; and (3) the government’s interest. *Id.* at 1207. In applying these factors, the Court “can and must account for the heightened governmental interest in the immigration detention context.” *Id.* at 1206; *see also Zadvydas*, 533 U.S. at 699-700 (courts “must defer to Executive and Legislative Branch decisionmaking” in immigration law and “take appropriate account of the greater immigration-related expertise of the Executive Branch”).

None of the factors supports habeas relief for Saephanh here. The first factor does not weigh strongly in his favor. “[D]etention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). That is especially true for executing removal

orders. And here, Saephanh's removal is not speculative—DHS has a final order of removal and travel documents and can remove Saephanh within two week. In any event, any future detention of Saephanh will be well below the presumptively-reasonable six months set by *Zadvydas*—his detention is not indefinite and will end as soon as he is removed. *Compare Zadvydas*, 533 U.S. at 690-91, 698 (concerned with “indefinite, perhaps permanent, detention”).

The second factor likewise does not assist Saephanh. Saephanh is subject to a valid underlying removal order, and he was only released years ago due to difficulty in removing him to Laos. But that difficulty has been resolved, and Saephanh can be removed imminently. Prohibiting any future re-detention of Saephanh, effectively stymying execution of his removal order, would be an overly drastic remedy. *See Tanha*, 2025 WL 2062181, at *6 (holding that ICE's failure to schedule a § 241.4(l)(1) informal interview did not require a release from detention, which was “an overreach and not the appropriate cure”); *Barrios*, 2025 WL 2280485, at *8 (alternatively holding that even if § 241.4(l)(1) procedures applied to § 214.4(l)(2) OSUP revocations, “a release from detention would be too drastic a remedy for a procedural violation. Instead, the Court could order Respondents to provide . . . a new Notice signed by the appropriate official and afford Petitioner a more robust interview”).

Finally, the Government has a significant interest in Saephanh's detention. Even if he specifically does not appear to be a danger or flight risk, the Government has a strong interest in effectuating the “system Congress devised.” *DHS v. Thuraissigiam*, 591 U.S. 103, 106 (2020). “The government's interest in efficient administration of the immigration laws” is “weighty,” and “it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). The system Congress devised requires Saephanh's removal, including all steps (such as a limited-period detention) required to effectuate that removal.

4. Saephanh's request to enjoin his removal to a third country should be denied as unripe.

Saephanh reiterates his request to enjoin his removal to a “third country” (i.e., a country other than Laos) without certain procedures and a hearing. ECF 21-1 at 23-24. The Court previously held that this claim is unripe (ECF 11 at 6), and that remains true today. The government has never

1 suggested that Saephanh will be removed to any country other than Laos, and it has sought travel
2 documents to Laos only. There is no basis, under these circumstances, to enjoin removal to a third
3 country. *See Nguyen v. Noem*, -- F. Supp. 3d --, 2025 WL 2737803, at *11 (N.D. Tex. 2025).

4 **5. If the Court orders a bond hearing, it should be before an IJ.**

5 Saephanh requests that any bond hearing occur before this Court rather than an IJ. *See* ECF 21-1
6 at 9-10. This Court has rejected similar requests in other cases, finding that “the appropriate remedy . . .
7 is a bond hearing, and . . . an IJ, not the Court, should conduct it.” *See, e.g., Eliazar GC v. Wofford*, No.
8 1:24-cv-1032, 2025 WL 711190, at *9 (E.D. Cal. Mar. 5, 2025); *Abdul-Samed v. Warden*, No. 1:25-cv-
9 98 2025 WL 2099343, at *8-9 (E.D. Cal. July 25, 2025). That is consistent with the framework
10 Congress has devised in an area firmly committed to its discretion, which is precisely why this Court has
11 consistently ordered bond hearings before IJs as neutral adjudicators in habeas cases. Aside from
12 speculation of bias, Saephanh offers no reason why that procedure is inadequate here.

13 **B. Saephanh has not met his heavy burden to show he will likely suffer irreparable**
14 **harm absent immediate injunctive relief.**

15 As shown above, Saephanh’s detention does not constitute a regulatory or a constitutional
16 violation. Immigration laws have long authorized immigration officials to charge aliens as removable
17 from the country, to arrest aliens subject to removal, and to detain aliens pending removal. *Demore*, 538
18 U.S. at 523-26. Through the INA, Congress created a multi-layered statutory scheme for aliens’
19 detention during removal. *See* 8 U.S.C. § 1231(a)(2), (a)(6); *Johnson*, 594 U.S. at 529-30. “Detention is
20 necessarily a part of [the] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952). And
21 removal proceedings “would be in vain if those accused could not be held in custody pending the
22 inquiry into their true character.” *Demore*, 538 U.S. at 523; *cf. Reno*, 507 U.S. at 306 (“Congress
23 eliminated any presumption of release pending deportation, committing that determination to the
24 discretion of the Attorney General.”).

25 **C. The balance of equities and the public interest do not favor Saephanh.⁹**

26 “The government’s interest in efficient administration of the immigration laws” is “weighty,”
27

28 ⁹ When the government is a party, the third and fourth preliminary injunction factors merge.
Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014).

1 and “it must weigh heavily in the balance that control over matters of immigration is a sovereign
2 prerogative, largely within the control of the executive and the legislature.” *Plasencia*, 459 U.S. at 34.
3 Further, the government’s interest in protecting the public and preventing deportable non-citizens from
4 fleeing are strong and compelling. *See e.g., Rodriguez Diaz*, 53 F.4th at 1208 (government’s interests in
5 “protecting the public from dangerous criminal aliens” and “increas[ing] the chance that, if ordered
6 removed, the aliens will be successfully removed” are “interests of the highest order”).

7 Those interests are especially compelling here. Saephanh is subject to a valid removal order,
8 reflecting Congress’s judgment as to what aliens should and should not be permitted to remain in the
9 United States. The government seeks to vindicate those interests here, whereas Saephanh seeks to
10 exempt himself from the unambiguous statutes. In fact, granting relief would undermine the
11 immigration statutory framework. Congress has removed this Court’s jurisdiction to entertain
12 challenges to executing removal orders. 8 U.S.C. § 1252(g). Preliminary relief would violate multiple
13 statutes, in a subject matter entrusted to Congress and the Executive Branch.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Saephanh’s Motion for Temporary Restraining Order should be denied.

16
17 Dated: February 24, 2026

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