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7 **IN THE UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 Bounlay Phommavongsa,

10 Petitioner,

11 v.

12 Christopher Chestnut, Warden, California

13 City Correctional Facility; Moises

14 Becerra, Field Office Director, San

15 Francisco ICE; Kristi Noem, Secretary of

16 Homeland Security; Pamela Bondi, U.S.

17 Attorney General,

18 Respondents.

Case No:

**Petition for Writ of Habeas Corpus (28
U.S.C. § 2241)**

19 Petitioner, Bounlay Phommavongsa (A# , by and through
20 undersigned counsel, hereby petitions this Court for a writ of habeas corpus to remedy his
21 unlawful and prolonged detention by U.S. Immigration and Customs Enforcement (ICE).
22 Petitioner is currently detained at the California City Detention Center in California, despite
23 the fact that his prior order of removal to Laos has been reopened and stayed. He seeks
24 immediate release from custody on the grounds that his continued detention violates federal
25 law as interpreted by *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Due Process Clause
26 of the Fifth Amendment. In support of this petition, Petitioner states as follows:
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Introduction

Petitioner Bounlay Phommavongsa is a 50-year-old husband, father, and long-time U.S. resident who has been swept back into immigration detention despite having lived in the United States for over four decades. He entered the U.S. as a refugee child in 1979 and became a lawful permanent resident in 1980. In 2006, he was ordered removed to Laos based on past criminal convictions, but the U.S. government was unable to effectuate his removal. After spending time in ICE custody without being deported, Petitioner was released in 2007 under an Order of Supervision. For the next 18 years, he fully complied with all supervision requirements, living a law-abiding life and supporting his U.S. citizen family. Nonetheless, on June 12, 2025, ICE re-detained Mr. Phommavongsa, and he remains incarcerated indefinitely—even though Laos continues to refuse to issue travel documents and the Immigration Judge has since reopened his case and granted a stay of removal.

This petition asks the Court to end Petitioner's unlawful and prolonged imprisonment. There is no significant likelihood that Petitioner will be removed to Laos in the reasonably foreseeable future, given the absence of a repatriation agreement between the United States and Laos, and Laos's longstanding refusal to issue travel documents. Absent any realistic prospect of removal, Petitioner's continued detention serves no legitimate immigration purpose and violates both federal law and the Constitution. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that post-removal-order detention is limited to a presumptively reasonable period of six months, after which the government must establish a significant likelihood of removal in the reasonably foreseeable future. Yet he has now been detained for more than six months, beyond the presumptively reasonable period identified in *Zadvydas*, with no removal pathway in sight. Moreover, the Immigration

1 Judge has reopened his removal proceedings and issued a stay, further eliminating any basis
2 for detention under INA § 241. Accordingly, Petitioner's continued incarceration is
3 unreasonable, unlawful, and unconstitutional, and this Court should order his immediate
4 release under appropriate supervision.
5

6 **Jurisdiction and Venue**

7 1. Jurisdiction: This Court has jurisdiction under 28 U.S.C. § 2241 and Article I of the
8 Constitution to entertain this petition for habeas corpus. Petitioner is presently in
9 custody under color of authority of the United States, and he seeks relief from
10 detention in violation of the Constitution and laws of the United States. Section 2241
11 is the proper vehicle to challenge post-removal-order detention as unlawful or
12 unconstitutional. Petitioner is not challenging the underlying removal order, but
13 rather his indefinite detention, which remains subject to judicial review under
14 *Zadvydas* and its progeny.
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16 2. Venue: Venue is proper in the Eastern District of California because Petitioner is
17 detained at the California City Detention Center, which is located within this judicial
18 district. The immediate custodian of Petitioner (the warden of the detention center) is
19 within this Court's jurisdiction.
20

21 3. Exhaustion: to the extent that any administrative remedies are deemed to apply,
22 Petitioner has either exhausted them or exhaustion should be excused. ICE has
23 already conducted the initial 90-day post-order custody review and informed
24 Petitioner that his detention would continue. Because he remains detained with no
25 realistic prospect of removal and because further administrative review would not
26 alter the legal impossibility of his removal to Laos, any additional administrative
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1 remedies are either exhausted or futile. Further administrative delay would be futile
2 and would only prolong his unlawful detention. Petitioner has already been held well
3 beyond the presumptively reasonable six-month period established in *Zadvydas v.*
4 *Davis*, 533 U.S. 678 (2001), and thus seeks prompt judicial intervention to secure his
5 release.
6

7 **Parties**

- 8 • Petitioner Bounlay Phommavongsa: Petitioner is a Laotian-born immigrant who has
9 resided in the United States since 1979. He is currently in ICE custody at California
10 City Detention Center in Kern County, California. Petitioner is a former refugee and
11 lawful permanent resident of the U.S. He is a devoted family man to a U.S. citizen
12 wife and four U.S. citizen children (three biological children and one stepdaughter
13 serving in the U.S. Navy). Petitioner has significant ties to the community and an
14 exemplary record of compliance with ICE supervision for nearly two decades.
15
- 16 • Respondents: Respondents are the federal officials and custodians responsible for
17 Petitioner's detention. Respondent Christopher Chestnut, Warden of the California
18 City Detention Center, has immediate custody of Petitioner. Additional Respondents
19 include the Field Office Director of ICE overseeing the area of Petitioner's detention
20 and the Secretary of the U.S. Department of Homeland Security, who has ultimate
21 authority over ICE and immigration detention. All actions complained of have been
22 undertaken by agents of Respondents in their official capacities.
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26 **Factual Background**

27 Bounlay Phommavongsa lawfully entered the United States as a refugee from Laos in
28 1979, when he was approximately seven years old. He and his family were part of the

1 refugee exodus following the tumultuous events of the Vietnam War era and the “Secret
2 War” in Laos, in which the U.S. was heavily involved. Petitioner was granted lawful
3 permanent resident (LPR) status in 1980, and the United States has been his home for over
4 45 years. He grew up in this country and built his life here. Petitioner’s cultural and family
5 ties are firmly rooted in the U.S., as evidenced by his marriage to a U.S. citizen and the birth
6 of his three U.S. citizen children here. He also has a U.S. citizen stepdaughter who is
7 actively serving in the U.S. Navy. Petitioner speaks English fluently and considers the
8 United States his only home. He has not lived in Laos since early childhood and lacks any
9 meaningful connection to that country after four decades away.

12 In 2006, an immigration judge entered a final order of removal against Petitioner,
13 ordering him removed to Laos. This order arose after Petitioner had a criminal conviction
14 that made him removable (an offense dating from Petitioner’s youth, nearly 20 years ago).
15 Petitioner acknowledges the past mistake that led to his removal order. He served any
16 criminal sentence imposed and rehabilitated himself thereafter. By the time of his removal
17 proceedings, Petitioner had no ongoing criminal issues, yet he faced deportation because of
18 the old conviction. Following entry of the removal order, ICE took Petitioner into custody in
19 or about November 2006. When the government was unable to obtain travel documents
20 from Laos, ICE released him from custody on or about March 2, 2007, under an Order of
21 Supervision, where he remained for the next 18 years.

24 Despite having a final order, the U.S. government could not remove Petitioner to
25 Laos. Critical impediments prevented the execution of his removal: notably, the absence of
26 a repatriation agreement between Laos and the United States and Laos’s refusal to issue
27 travel documents for its nationals facing deportation. Laos historically has not cooperated
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1 readily with U.S. deportation efforts, especially for long-resettled refugees. In Petitioner's
2 case, ICE was unable to obtain travel papers from the Lao government. By 2007, Petitioner
3 had been detained for an extended period approaching or exceeding the *Zadvydas* 6-month
4 benchmark, with no progress in effectuating removal. ICE therefore released Petitioner in
5 2007 under an Order of Supervision, acknowledging that his continued detention had
6 become unreasonable and unjustified absent a realistic prospect of removal. Petitioner's
7 release came with conditions: he was required to check in with ICE periodically and comply
8 with any restrictions imposed.
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11 From 2007 until 2025, Petitioner diligently complied with all terms of his supervised
12 release. He reported to ICE at every scheduled check-in, promptly updated his address and
13 contact information, and obeyed all laws. For eighteen years, Petitioner proved that
14 supervision – not detention – was sufficient to ensure the government's interests. During
15 this time he rebuilt his life in the community. He has been continuously employed and has
16 paid taxes. He has been a caretaker for his family: his U.S. citizen wife relies on him, as do
17 his children. Petitioner's presence enabled his family to stay off public assistance and thrive.
18 He posed no danger to public safety and demonstrated zero risk of flight – despite living
19 under a removal order, he always cooperated with ICE, showing up for check-ins without
20 fail. In sum, for nearly two decades Petitioner was the model of a compliant, law-abiding
21 individual under an order of supervision.
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25 June 12, 2025, for reasons largely unexplained to Petitioner, ICE abruptly re-detained
26 him at his most recent check-in appointment. This action coincided with a nationwide push
27 to enforce old removal orders against long-settled Southeast Asian refugees. Petitioner was
28 taken into custody and transported to the California City Detention Center, where he

1 remains detained to this day. At the time of his re-detention, nothing material had changed
2 in Petitioner's situation to make removal to Laos more likely than it had been for the past 18
3 years. The government still lacks travel documents for Petitioner, and Laos still has no
4 repatriation treaty or established process to accept deportees like him. Petitioner's family
5 was devastated by his sudden incarceration. He was torn away from his wife and children
6 without even a chance to properly say goodbye, much like other refugee families impacted
7 by these enforcement actions. His U.S. citizen wife is now struggling to make ends meet and
8 care for their children alone, while one daughter serves overseas in the Navy, all of them
9 anxiously awaiting his return.
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12 Since Petitioner's re-detention in June 2025, over six months have passed. ICE has
13 not removed him, nor set any removal date, because Laos has not provided travel documents
14 or otherwise agreed to accept him. Petitioner remains in limbo. All indications are that his
15 removal to Laos is not attainable in the reasonably foreseeable future. The government of
16 Laos has a long record of delay and non-cooperation in such cases. For decades, Laos had
17 no formal repatriation agreement with the United States and was repeatedly designated a
18 'recalcitrant' country for failing to accept deportees. Although the U.S. and Laos later
19 entered into repatriation arrangements, congressional and advocacy reports emphasize that
20 cooperation remains limited and that thousands of Lao nationals with final orders still
21 cannot be removed in practice. Congress and ICE data indicate that between approximately
22 4,700 and 4,850 Lao nationals in the United States have final orders of removal, yet only a
23 tiny fraction are removed because Laos rarely consents to accept repatriation.¹ Recent
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28 ¹ See, e.g., Hmong and Lao Refugee Deportation Prohibition Act of 2020, H.R. 6034, 116th Cong. § 2(12) (finding that "over 4,700" persons have final orders of removal to Laos); MPR News, *Laos, U.S. Sign Deportation Agreement* (Nov.

1 reports confirm that, although the U.S. government has pushed for increased repatriations,
2 Laos's cooperation remains limited. Recent reporting indicates that, although over 4,000–
3 4,800 Lao nationals in the United States have final orders of removal, Laos historically has
4 accepted only a very small number of deportees each year. For many years, the United
5 States has not had a formal, comprehensive repatriation agreement with Laos for the return
6 of deportees. DHS and outside analysts have repeatedly described Laos as a “recalcitrant”
7 country that seldom issues travel documents for its nationals, which makes removals rare
8 and difficult. Public reporting indicates that roughly 4,700–4,850 Lao nationals in the
9 United States have final orders of removal but are not at immediate risk of deportation
10 because Laos rarely agrees to accept them. In this context, there is no realistic basis to
11 believe that Petitioner's removal will suddenly become feasible now, after decades of failed
12 efforts. This means thousands of others, like Petitioner, remain stranded in detention or
13 under supervision with no timeline for actual removal. Petitioner's own history underscores
14 this impasse: the government had nearly two decades to remove him and never could. Six
15 more months of detention have not changed that reality. There is no realistic prospect that
16 Laos will suddenly repatriate Petitioner after 45 years, particularly as he has no current ties
17 or identity documents from that country. Thus, Petitioner's continued detention has plainly
18 moved beyond any reasonable period and has become indefinite.
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26 13, 2020) (quoting ICE that 4,754 Lao nationals had final orders of removal—38 detained and 4,716 non-detained—as
27 of March 2020); SEARAC, *Resources for Southeast Asian Refugees Facing Deportation* (reporting that ICE counts
28 “over 4,800” nationals of Laos with removal orders living in the U.S.); Laotian Times, *Over 4,800 Lao Nationals Set to
Face Deportation from the United States* (Jan. 31, 2025) (summarizing ICE data); DHS, *DHS Announces
Implementation of Visa Sanctions* (July 10, 2018) (classifying Laos as a recalcitrant country that delays or refuses to
issue travel documents for its nationals).

1 On September 10, 2025, an Immigration Judge granted Petitioner's Motion to
2 Reopen and issued an Emergency Stay of Removal (Exhibit 1). As a result, Petitioner's
3 removal order is no longer administratively final, and detention under INA § 241 is
4 unlawful.
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6 Following the Immigration Judge's September 10, 2025 order granting the Motion to
7 Reopen and issuing a stay of removal, Petitioner's prior removal order is no longer final. As
8 a result, the statutory basis for his detention must shift from 8 U.S.C. § 1231 (INA § 241),
9 which applies only to individuals with administratively final removal orders, to 8 U.S.C. §
10 1226 (INA § 236), which governs pre-final order custody.
11

12 Courts have consistently held that once a case is reopened, ICE may not lawfully
13 continue to detain a person under § 241. In *Ortiz-Alfaro v. Holder*, 694 F.3d 955 (9th Cir.
14 2012), the Ninth Circuit held that the reopening of removal proceedings eliminates the
15 finality of the original order, thereby invalidating the use of § 241 detention authority.
16 Accordingly, Petitioner is now entitled to the procedures and protections afforded under
17 INA § 236, including a custody redetermination hearing before an Immigration Judge.
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19 ICE's continued detention of Petitioner under § 241 is therefore not only legally
20 erroneous but also deprives him of the statutory protections available under § 236. The
21 improper application of detention authority has resulted in ongoing unlawful incarceration,
22 further justifying the issuance of a writ of habeas corpus.
23

24 In a materially identical case, the U.S. District Court granted a habeas petition where
25 ICE continued to detain a petitioner under § 241 after the Immigration Judge granted a
26 motion to reopen. See Order Granting Habeas Corpus, *Quang Duong v. Marcos Charles, et.*
27 *al.*, 1:25-cv-01375-SKO. (Exhibit C).
28

Legal Framework: Post-Removal Detention and Due Process Limits

Zadvydas v. Davis and 8 U.S.C. § 1231: Once an alien has a final order of removal, the immigration statute (8 U.S.C. § 1231) provides for a 90-day “removal period” during which ICE should attempt to remove the individual. The statute allows continued detention beyond 90 days in certain cases, but in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court set critical constitutional limits on post-order detention. Reading the statute in light of the Fifth Amendment, the Court held that detention is implicitly limited to a period reasonably necessary to bring about the alien’s removal. Detention “does not permit indefinite” incarceration of a noncitizen who cannot be repatriated. To avoid serious due process problems, the Court established a presumptive limit: 6 months is generally considered a “reasonably necessary” period to effectuate most removals. Once a noncitizen has been detained for six months after the removal order becomes final, a reviewing court must determine whether there is a “significant likelihood of removal in the reasonably foreseeable future.” *Id.* If removal is not reasonably foreseeable, continued detention is unreasonable and no longer authorized by statute. In other words, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized.”

After the 6-month period, if the detainee can provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to rebut that showing with evidence. If the government cannot rebut it – i.e. cannot show that the individual’s removal is likely to happen soon – then the detainee must be released under supervision, as further detention would violate the law. This is the standard now commonly referred to as the *Zadvydas* rule or *Zadvydas*

1 custody review standard, and it has been incorporated into ICE's own regulations (*see* 8
2 C.F.R. § 241.13).

3
4 The constitutional foundation for the *Zadvydas* rule is the Due Process Clause of the
5 Fifth Amendment, which protects all persons within the United States – including
6 noncitizens – from arbitrary deprivation of liberty. Civil immigration detention is meant to
7 be administrative and non-punitive, justified only by the need to ensure the individual's
8 presence for removal and protect the community in the interim. When removal cannot be
9 effectuated, the rationale for confinement diminishes. The Supreme Court recognized that
10 “freedom from imprisonment lies at the heart of the liberty protected by the Due Process
11 Clause,” and government detention violates that Clause unless it is ordered in a criminal
12 proceeding with proper safeguards or in special, narrowly-defined nonpunitive
13 circumstances. In *Zadvydas*, the Court found no sufficiently strong special justification for
14 potentially permanent civil confinement of deportable aliens like Mr. Zadvydas or Mr. Ma.
15 Specifically, the Court noted that the usual justifications for immigration detention become
16 weak or nonexistent when removal is not practically attainable. The first justification –
17 preventing flight – “is weak or nonexistent where removal seems a remote possibility,”
18 because if there is little chance of repatriation, there is little incentive for the person to
19 abscond. The second justification – protecting the community – can warrant continued
20 detention only in special circumstances (such as cases of highly dangerous individuals with
21 mental illness under a separate statutory scheme), and even then with strong procedural
22 safeguards. Absent those extraordinary circumstances, prolonged civil detention with no end
23 in sight “raises serious constitutional concerns”. The Due Process Clause does not permit
24 indefinite deprivation of liberty just because an individual has a standing removal order.
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1 Thus, *Zadvydas* essentially constitutionalized a requirement of timely release when removal
2 is not likely, to avoid transforming a civil immigration hold into an indefinite imprisonment
3 forbidden by the Fifth Amendment.
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5 In sum, under the governing law: (1) After a presumptively reasonable 6-month
6 detention period, the government cannot continue to detain an individual unless removal is
7 reasonably foreseeable in the near future. (2) If removal is not likely to happen, detention
8 becomes unauthorized by statute and unconstitutional, and the person should be released
9 (under appropriate supervision conditions). (3) The detainee does not have to show that
10 removal is *impossible*, only that it is highly unlikely or indefinite; conversely, the
11 government must show concrete prospects of removal to justify continued detention. This
12 framework protects the core due process right to freedom from arbitrary imprisonment when
13 detention no longer serves its intended purpose.
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16 **Argument: Continued Detention of Petitioner is Unlawful and Unconstitutional**

17 **1. No Significant Likelihood of Petitioner's Removal in the Reasonably Foreseeable**
18 **Future**

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20 Petitioner meets the *Zadvydas* criteria for release because his removal to Laos is not
21 just unlikely in the next few months – it has been unattainable for nearly two decades and
22 remains so for the foreseeable future. All available evidence indicates there is no significant
23 likelihood that the Lao government will accept Petitioner in the reasonably foreseeable
24 future:
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- 26 • Repatriation Arrangements: For many years, the United States had no formal
27 repatriation treaty or written removal agreement with Laos, and Laos was repeatedly
28 treated as a “recalcitrant” country because it refused to routinely accept deportees.

1 Although the government has more recently negotiated limited arrangements and
2 occasionally secures travel documents in individual cases, there is still no reliable,
3 transparent framework that obligates Laos to issue travel documents or to accept
4 long-resident refugees like Mr. Phommavongsa. Only a very small fraction of the
5 thousands of Lao nationals with final orders are actually removed each year. In *Kim*
6 *Ho Ma v. Ashcroft*, one of the consolidated cases in *Zadvydas*, the Ninth Circuit
7 emphasized that the absence of an effective repatriation agreement with Cambodia
8 meant there was no realistic prospect of removal and affirmed habeas relief. The
9 practical barriers to removal to Laos are analogous here, and they weigh heavily in
10 favor of finding no significant likelihood of removal in the reasonably foreseeable
11 future.
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- 14 • Historical Non-Cooperation by Laos: For decades, Laos seldom issued travel
15 documents for individuals the U.S. sought to remove. Laos effectively refused
16 repatriation of most of its former refugees and emigrants. This history is exemplified
17 by countless Lao and Hmong refugees who, like Petitioner, were ordered removed
18 but could not actually be deported. In Petitioner's own case, from 2006 to 2007 ICE
19 tried and failed to secure travel papers for him. That failure was not an anomaly; it
20 was consistent with Laos's general pattern of non-cooperation. Historically, Laos has
21 rarely provided the necessary documents to permit deportation flights. A report on
22 Southeast Asian deportations notes that "deportations to [Laos] remain rare" even
23 after recent diplomatic efforts. Simply put, Laos has shown little willingness to take
24 back people in Petitioner's situation.
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- 1 • Limited Improvements, but Petitioner Left Out: The U.S. government has at times
2 tried to apply pressure on recalcitrant countries like Laos. For example, in 2018 the
3 State Department imposed visa sanctions on Laos to push for cooperation. In
4 response, Laos reportedly agreed to issue a limited number of travel documents each
5 year. However, these concessions have resulted in only a small trickle of removals.
6 Even with an uptick in 2025 due to renewed enforcement, the numbers are modest:
7 the Lao Embassy confirmed issuing only 145 travel papers since January 2025,
8 which is “a more than tenfold increase” from previous years but still only a tiny
9 fraction of those eligible for deportation. ICE managed to deport a handful of long-
10 time Lao residents on a few charter flights in 2025. Those removed were primarily
11 individuals who, unlike Petitioner, already had travel documents or Laos’s prior
12 clearance. By contrast, Petitioner has never obtained Lao identity papers, and the
13 government of Laos has never agreed to accept him. There is no indication that
14 Petitioner is slated for any upcoming flight or that Laos has changed its position
15 regarding his case. In fact, Petitioner’s re-detention did not come with any assurance
16 that travel documents were finally secured; to date, they have not been.
17
18 • Passage of Time and Unchanged Status: Petitioner’s removal order has been
19 outstanding for 18+ years with no movement. If Laos was unwilling or unable to
20 issue documents for Petitioner throughout that extensive period (including during
21 times of diplomatic pressure), it stands to reason that nothing has materially changed
22 now to suddenly make his removal likely. The government’s inability to deport
23 Petitioner from 2006 to 2025 is compelling evidence that removal will not occur in
24 the near term. Courts have held that when an individual’s deportation has not been
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1 accomplished after years of effort, and the foreign country's position has not
2 changed, continued detention is unjustified. Just as Mr. Zadvydas could not be
3 removed because no country would accept him, and Mr. Kim Ho Ma could not be
4 removed because Cambodia had no treaty and refused repatriation, Petitioner is
5 locked in limbo due to Laos's lack of cooperation. There is no realistic prospect that
6 Laos will issue Petitioner travel documents in the imminent future, especially as he
7 left that country as a small child and likely is not even recognized in their civil
8 records.
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11 • Government's Failure to Rebut Indefiniteness: Under *Zadvydas*, once a detainee
12 articulates reasons that removal is unlikely, the burden shifts to the government to
13 produce evidence that the individual *will* be removed in the reasonably foreseeable
14 future. Petitioner asserts that removal is highly unlikely for all the reasons above. The
15 government cannot rebut this assertion with any concrete evidence. They have not
16 provided Petitioner (or undersigned counsel) with any evidence of a planned removal
17 or newly obtained travel document. On information and belief, no travel permit or
18 laissez-passar has been issued for Petitioner by Lao authorities. There is no scheduled
19 deportation flight for him. The government's mere hope or "good faith efforts" to
20 negotiate with Laos, without more, are insufficient – as the Fifth Circuit learned in
21 *Zadvydas*, eventual deportation that is not plausible does not justify ongoing
22 detention. The Ninth Circuit similarly does not allow detention to continue on
23 speculation that perhaps diplomatic breakthroughs might occur at some undefined
24 point. Here, the government cannot point to any specific, likely future event that will
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1 make Petitioner's removal happen. In the absence of such evidence, Petitioner's
2 detention is presumptively unlawful.

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4 In sum, Petitioner's removal is not just unlikely – it is arguably impossible for the
5 foreseeable future, given the diplomatic reality. Laos's stance (or lack of agreement) has
6 effectively stranded Petitioner in the United States. Under these circumstances, *Zadvydas*
7 dictates that further detention is no longer serving its intended purpose and must be brought
8 to an end.

9
10 **2. Indefinite Detention Has No Reasonable Purpose and Violates Due Process**

11 Because removal in the near future is not likely, the justifications for civil detention
12 have evaporated in Petitioner's case. Holding him in ICE custody indefinitely is not just
13 unauthorized by statute – it undermines core constitutional values of due process and
14 fundamental fairness:
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- 16 • Detention No Longer Serves Removal Purpose: The only lawful purpose of post-
17 order immigration detention is to effectuate removal – i.e., to prevent the person from
18 absconding or committing harm before they can be deported. When deportation
19 cannot be effected, detention no longer bears a reasonable relation to its purpose. As
20 the Supreme Court stated, courts must measure the reasonableness of detention
21 “primarily in terms of the statute's purpose of assuring the alien's presence at the
22 moment of removal”. If that moment *cannot be secured* at all, keeping the person
23 locked up is patently unreasonable. Here, ICE is not detaining Petitioner to
24 imminently remove him (since no removal can be scheduled); they are detaining him
25 for detention's sake. Such purposeless confinement is arbitrary and unlawful.
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- 1 • No Flight Risk – Petitioner Has Proven Compliance: Petitioner’s 18-year track record
2 on release heavily underscores that he poses no risk of flight. The government cannot
3 credibly claim that he would abscond if released. On the contrary, Petitioner has
4 *always* met his obligations and would continue to do so. The Supreme Court
5 recognized in *Zadvydas* that when removal is unlikely, “preventing flight” is a weak
6 or nonexistent rationale. Petitioner has nowhere to “flee” to – he cannot depart to
7 Laos on his own, and he has every incentive to stay and comply, in hopes that
8 conditions might eventually allow for legal relief or a diplomatic solution. Indeed,
9 even during the many years he knew he had a removal order, Petitioner never went
10 into hiding or evaded supervision. Thus, detaining him now does not meaningfully
11 enhance the likelihood of removal; it only punishes compliance (as he was re-
12 detained precisely *because* he dutifully appeared for an ICE check-in, trusting the
13 process).
14
15 • No Danger to the Community: Nor can the government claim Petitioner’s detention
16 is necessary to protect public safety. Petitioner’s criminal conduct is distant in the
17 past (roughly two decades old). He has shown through long-term good behavior that
18 he is rehabilitated and poses no threat. He lived in the community from 2007 to 2025
19 without incident – no new arrests, no violence, nothing to suggest he cannot be
20 trusted in society. His family and community attest to his positive character. Under
21 *Zadvydas*, preventive detention for danger is only permissible in extraordinary cases
22 (such as terrorists or those with severe mental illness posing extreme danger) and
23 even then under different statutory authority with stringent procedures. Petitioner
24 falls into none of those categories. Treating him as if he were too dangerous to
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1 release is belied by the government's own decision to allow him at liberty for 18
2 years. It is also notable that if ICE truly believed Petitioner were presently dangerous,
3 they would not have waited 18 years to take him back into custody. The re-detention
4 appears driven not by any new danger he presents, but by a policy shift. Thus, there
5 is no legitimate public safety rationale to continue locking up Petitioner.
6

- 7 • Due Process Forbids Prolonged, Unreviewable Detention: The Fifth Amendment's
8 guarantee of due process requires that civil detention be both procedurally fair and
9 substantively reasonable relative to its purpose. Keeping Petitioner in jail indefinitely
10 fails both tests. Substantively, it is unreasonable to jail a person who cannot be
11 removed, effectively nullifying his liberty on an open-ended basis. Procedurally,
12 Petitioner has had no meaningful opportunity to challenge the necessity of his
13 detention. While ICE conducted cursory custody reviews, those are administrative
14 and non-adversarial. Petitioner has not been afforded a day in court to contest the
15 grounds for his continued confinement – which is why this habeas petition is
16 necessary. In *Zadvydas*, the Supreme Court warned that administrative custody
17 reviews with the burden on the detainee do not alone satisfy constitutional concerns.
18 That is precisely the situation here: ICE has maintained custody by essentially
19 deciding its own case, without a neutral decision-maker, all while Petitioner
20 languishes with no end date. This kind of arbitrary, potentially permanent detention
21 of a person who has significant ties to the U.S. and no realistic chance of removal
22 offends the Fifth Amendment. As the Ninth Circuit observed, to countenance such
23 detention would be to give the Executive unreviewable authority to imprison
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1 someone indefinitely based solely on their “removable” status – a power that “the
2 Constitution may well preclude”.

- 3
- 4 • Balance of Interests Favors Release: On one side of the scale, Petitioner’s liberty
5 interest in freedom from imprisonment after decades in this country is extraordinarily
6 weighty – “*strong enough to raise a serious constitutional problem with indefinite*
7 *detention*,” in the Supreme Court’s words. On the other side, the government’s
8 interest in effectuating Petitioner’s removal is currently negligible, because that
9 removal cannot be accomplished at this time. Any generalized interest in deterring
10 immigration violations or in keeping someone with an old criminal record locked up
11 cannot override the specific statutory and constitutional limits recognized in
12 *Zadvydas*. Petitioner is not an arriving alien at the border (he was legally admitted
13 long ago); he is physically and legally within the U.S., and thus fully protected by the
14 Constitution. The choice here is binary – either (a) continued imprisonment with no
15 end in sight, which would further devastate Petitioner and his U.S. citizen family and
16 violate his rights, or (b) release under supervision, which would restore Petitioner to
17 his family and community while still keeping ICE informed of his whereabouts.
18 Release imposes minimal risk and can include reasonable conditions (reporting,
19 travel restrictions, etc.) to address any government concerns. Given Petitioner’s
20 perfect compliance history, those conditions are more than sufficient. Therefore, both
21 law and fundamental fairness demand Petitioner’s immediate release from custody.

22 **3. Petitioner’s Equities and Lengthy Residence Support His Release**

23 Although the legal standard for release under *Zadvydas* does not require balancing
24 equities, Petitioner’s case is especially compelling on humanitarian and common-sense
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1 grounds. Granting the writ will not only uphold the law but also prevent grievous harm to an
2 American family and community:

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- 4 • Deep Family Ties in the U.S.: Petitioner is the pillar of his U.S.-citizen family. He
5 has been in a committed relationship with his now-wife, Buara Thongpheth, since
6 2007; she is a naturalized U.S. citizen. Together they are raising three U.S.-citizen
7 children — [REDACTED] — who
8 have never known any home other than the United States. Petitioner has also been a
9 daily father figure to his stepdaughter, [REDACTED] since
10 she was four years old; she now serves on active duty in the U.S. Navy. His detention
11 and threatened removal have torn this family apart, depriving a wife of her husband
12 and children of their father and stepfather. The hardship is extreme: they have lost
13 their primary breadwinner and a central source of emotional support. These citizen
14 family members have significant interests at stake, which only heighten the due-
15 process concerns raised by Petitioner's continued incarceration.
- 16
- 17 • Long-Term Lawful Residence and Rehabilitation: Petitioner is the emotional and
18 financial pillar of a family made up entirely of U.S. citizens. He and his U.S.-citizen
19 wife, Buara Thongpheth, have been in a committed relationship since 2007 and were
20 lawfully married on August 12, 2025. Together they are raising three U.S.-citizen
21 children — [REDACTED] — all
22 born in California and accustomed only to life in the United States. Petitioner has
23 also served as a father to Ms. Thongpheth's eldest daughter, [REDACTED]
24 [REDACTED] whom he has helped raise since she was four years old and
25 who now serves on active duty in the United States Navy. Petitioner's detention and
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1 threatened removal tear this family apart, depriving a wife of her husband and
2 children of the only father they have known. The hardship is severe: they lose not
3 only his daily emotional presence but also the financial stability he provided as the
4 primary breadwinner. These citizen family members have their own significant
5 interests at stake, which heightens the due process concerns and underscores that
6 continuing to confine Petitioner punishes the innocent while serving no legitimate
7 governmental purpose.

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10 • ICE's Prior Recognition of Petitioner's Suitability for Release: The government's
11 own actions show that releasing Petitioner is appropriate. ICE decided in 2007 that
12 Petitioner could be released on supervision – and that decision was vindicated by
13 Petitioner's flawless compliance and peaceful behavior for nearly two decades. In
14 essence, ICE has already judged Petitioner to be reliable in the community. If not for
15 a change in enforcement priorities, Petitioner would likely still be checking in
16 routinely and living at home. Thus, continuing to incarcerate him now is inconsistent
17 with ICE's prior assessment and the reality of who Petitioner is. The Court should
18 not defer to a sudden shift in ICE's posture that is untethered from Petitioner's
19 individual merits.
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22 • Community Support: Petitioner has support from his local community, including
23 extended family, neighbors, and faith leaders, who are ready to assist him upon
24 release. He has a home to return to and a job offer waiting. This community support
25 network further ensures that he will successfully reintegrate (as he did before) and
26 continue to observe the law. Petitioner's case has drawn attention from immigrant
27 advocacy groups, given its stark illustration of *Zadvydas* issues. However, Petitioner
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1 seeks relief not on policy grounds but on established legal grounds – yet it is telling
2 that his plight resonates with those who know him, underscoring that his continued
3 detention shocks the conscience and serves no rational purpose.
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5 In light of all these factors, releasing Petitioner is not only legally mandated but the
6 just and humane outcome. His detention has become a needless infliction of suffering on a
7 family and a waste of government resources, with no end or benefit in sight. The Due
8 Process Clause demands an end to such prolonged, arbitrary confinement.
9

10 **Prayer for Relief**

11 For the foregoing reasons, Petitioner Bounlay Phommavongsa respectfully requests
12 that this Honorable Court grant the writ of habeas corpus and order the following relief:
13

- 14 1. Immediate Release: Order Respondents to immediately release Petitioner from ICE
15 custody. Petitioner is willing to be placed under appropriate order of supervision
16 conditions, such as regular reporting, electronic monitoring if necessary, travel
17 restrictions, or any other reasonable condition the Court or ICE deems appropriate to
18 ensure public safety and compliance. Given Petitioner's proven history of
19 compliance and lack of danger, the least restrictive conditions should suffice.
20
- 21 2. Enjoin Further Unlawful Detention: Enjoin Respondents from re-detaining Petitioner
22 in the future unless there is a material change in his removal situation (for example, if
23 Laos issues travel documents and removal becomes imminent) or other
24 circumstances that would justify detention under the law. In the absence of such
25 changed circumstances, Petitioner should be allowed to remain at liberty while his
26 removal order is outstanding.
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1 3. Any Further Relief: Grant any further relief at law or in equity that the Court deems
2 just and proper to effectuate Petitioner's rights. This may include retaining
3 jurisdiction to monitor compliance or ordering periodic status reports on any efforts
4 to obtain travel documents, to ensure that Petitioner is not re-detained absent genuine
5 prospects of removal.
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7 Dated: December 14, 2025

Respectfully submitted,

8 /s/Daniel M Huynh
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10 Daniel M Huynh, Esq.
11 Counsel for Petitioner
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