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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Bounlay Phommavongsa, Petitioner, v. Christopher Chestnut, et. al., Respondents.	Case No: 1:25-cv-01852-JLT-CDB (HC) **Motion for Preliminary Injunction**

Introduction

Petitioner Bounlay Phommavongsa, through undersigned counsel, hereby moves for a preliminary injunction ordering his immediate release from U.S. Immigration and Customs Enforcement ("ICE") custody and enjoining the Department of Homeland Security ("DHS") from removing him from the United States while his habeas corpus petition is pending. This relief is necessary to prevent ongoing irreparable harm from his unlawful and prolonged detention. Petitioner has been detained by ICE since June 12, 2025, despite the reopening and stay of his removal proceedings by an Immigration Judge. ICE continues to hold Petitioner under the post-removal-order detention statute, INA § 241 (8 U.S.C. § 1231), even though that provision no longer applies once the removal order was reopened and stayed. Petitioner's continued detention serves no legitimate purpose because there is no significant likelihood that he will be removed to Laos in the reasonably foreseeable future, given Laos's refusal to issue travel documents for his repatriation. Yet ICE has not provided Petitioner a bond hearing or other procedural safeguards that would apply under the pre-removal detention statute, INA § 236, which now governs his custody. As a result, Petitioner's detention – now over six months long – violates federal law and his Fifth Amendment due process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and related authority.

Petitioner easily meets the criteria for preliminary injunctive relief. He is likely to succeed on the merits of his habeas petition because ICE's authority to detain him under INA § 241 ceased once his removal order was stayed and reopened, and in any event his indefinite detention without a realistic prospect of removal violates the limits set by *Zadvydas* and its progeny. He is suffering irreparable harm each day he remains unjustifiably incarcerated, losing his liberty and separation from his family in violation of his constitutional rights – an injury that cannot be remedied absent immediate relief. The balance of equities strongly favors Petitioner, as the harm to him from continued detention greatly outweighs any interest the government has in his detention when removal cannot be effectuated in the near future. Finally, the public interest is served by upholding the rule of law and preventing unlawful detention, particularly here where Petitioner is a long-time lawful resident with deep community ties and a proven record of compliance on supervised release. Petitioner respectfully requests that the Court grant this motion, order his immediate release under appropriate conditions of supervision, and enjoin Respondents from taking any steps to remove him while this habeas action is pending. In light of the Court's indication that motions will be submitted on the papers unless oral argument is ordered

(Local Rule 230(g)), Petitioner does not request a hearing at this time but will readily appear for oral argument if the Court desires it.

Background

Detention and Reopened Removal Proceedings: Petitioner is a 50-year-old longtime U.S. resident who came to this country 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 government was unable to execute his removal because Laos refused to issue travel documents. Petitioner spent a period in ICE custody after his removal order, then was released in 2007 under an Order of Supervision when it became clear that his deportation could not be accomplished. For the next 18 years, Petitioner fully complied with all supervision conditions, lived a law-abiding life, and supported his U.S. citizen wife and children. Nevertheless, on June 12, 2025, ICE abruptly re-detained Petitioner at a routine check-in, and he has remained in ICE custody ever since.

Importantly, the Immigration Judge ("IJ") has reopened Petitioner's removal case and granted a stay of removal during the pendency of those proceedings. This means Petitioner's prior order of removal is no longer final, and he cannot lawfully be removed unless and until the immigration court enters a new final removal order. Despite this development, ICE has continued to treat Petitioner as if he were under a final order, detaining him under INA § 241 (which governs detention "during" and after the 90-day removal period following a final removal order). Petitioner has not been afforded the procedures applicable to pre-final-order detention under INA § 236, such as a bond hearing before an Immigration Judge to determine if his custody is warranted. In fact, ICE's failure to provide Petitioner any bond hearing or meaningful custody review is one of the due process violations at issue in this case.

No Likelihood of Removal in the Foreseeable Future: Petitioner's continued detention would be unlawful even if his removal order were still final, because there is no significant likelihood that he will be removed to Laos in the reasonably foreseeable future. Laos has long been classified by DHS as a "recalcitrant" country that lacks a repatriation agreement with the U.S. and routinely refuses to issue travel documents for its nationals facing deportation. Indeed, Petitioner's own experience bears this out: from 2006 to 2007, ICE could not remove him because Laos would not provide papers, and that situation has not materially changed. As the Petition alleges – and as the Court has noted – it remains "unlikely and 'arguably impossible' for the foreseeable future" that Petitioner will be removed to Laos, "given the diplomatic reality" and Laos's historical non-cooperation. ICE has presented no evidence that Laos is willing to accept Petitioner now or anytime soon. Petitioner has already been detained well over six months, far beyond the presumptively reasonable period defined by the Supreme Court in *Zadvydas*. Yet no travel document is in sight, and ICE has offered only vague, indefinite plans, if any, for effectuating removal. In sum, there is no realistic prospect that Petitioner will be repatriated in the near future.

Procedural History: On December 14, 2025, Petitioner filed the instant habeas corpus petition under 28 U.S.C. § 2241, challenging the legality of his detention and seeking immediate release. In that petition, Petitioner also requested injunctive relief to prevent his continued detention and potential re-detention absent changed circumstances. The Court conducted a preliminary screening and found the petition's claims cognizable, ordering an expedited briefing schedule given Petitioner's allegations of unlawful prolonged detention.

Notably, the Court observed in its December 17, 2025 Order that Petitioner's request for immediate release was not yet supported by a formal motion for a preliminary injunction and that the Court therefore lacked sufficient information to act on that request. The Court stated it was "mindful" of Petitioner's circumstances – specifically highlighting that Petitioner is subject to an unexecuted removal order that has been reopened and stayed, and that his continued detention despite an unlikely prospect of removal raises "due process concerns" and appears inconsistent with ICE's own regulations. The Court explicitly noted that 8 C.F.R. § 241.13 permits revocation of an alien's release (i.e. re-detention) pending removal only if, among other things, there is a significant likelihood of removal in the reasonably foreseeable future – a condition that seems absent here. In light of these concerns, the Court accelerated the briefing schedule and invited further evidence and argument on the propriety of injunctive relief. Petitioner now submits this Motion for Preliminary Injunction in response to the Court's order and to formally seek the immediate relief warranted by the facts and law.

Legal Standard

A preliminary injunction is an extraordinary remedy issued to preserve the status quo and prevent irreparable harm before a final adjudication on the merits. To obtain such relief, a petitioner must establish four elements: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the petitioner's favor; and (4) that an injunction is in the public interest. This is the standard set forth by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). In the Ninth Circuit, these factors are considered on a flexible sliding scale; for example, a strong showing on the merits can compensate for a lesser showing of harm, and vice versa, so long as all four criteria are met (*Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011)). Ultimately, however, the petitioner must demonstrate at least a "likelihood" of irreparable harm, not merely a possibility, and a likelihood of success on at least a serious question going to the merits, with the balance of hardships sharply favoring the petitioner (*Id.*; *Winter*, 555 U.S. at 22).

Where, as here, the Government is the opposing party, the "balance of equities" and "public interest" factors substantially overlap and are appropriately considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). To the extent Petitioner seeks provisional release pending resolution of this habeas petition, the Ninth Circuit has not definitively resolved the source of a district court's authority to grant "bail" or temporary release in habeas proceedings. *In re Roe*, 257 F.3d 1077, 1080 (9th Cir. 2001) (per curiam). Assuming such authority exists, the Ninth Circuit confines release pending habeas to extraordinary cases presenting special circumstances or a high probability of success on the merits. *Land v. Deeds*, 878 F.2d 318, 318 (9th Cir. 1989) (per curiam); *see* also *United States v. McCandless*, 841 F.3d 819 (9th Cir. 2016). Courts in other circuits have articulated a similar, exceptional-case framework. *See*, e.g., *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (per curiam) (persuasive authority). Applying these standards, Petitioner addresses each factor in turn, each of which supports the requested relief on this record.

Argument

I. Likelihood of Success on the Merits

A. Unlawful Detention Under INA § 241 Despite Reopened Proceedings

Petitioner was re-detained on June 12, 2025, before the Immigration Court granted reopening. During that pre-reopening period, DHS's regulation provides that an alien who has filed a motion to reopen "shall remain subject to the provisions of" the post-order custody regulation "unless the motion to reopen is granted." 8 C.F.R. § 241.4(b)(1). Accordingly, until reopening was granted, ICE's detention authority—and any required custody review or revocation procedures—were governed by Part 241.

Once the Immigration Judge granted reopening and stayed removal pending the reopened proceedings, Petitioner was no longer "subject to" § 241.4 under the regulation's plain terms. At that point, DHS was required to proceed—if at all—under the custody framework applicable while removal proceedings are pending, i.e., INA § 236 (8 U.S.C. § 1226) and 8 C.F.R. § 236.1. 8 C.F.R. § 241.4(b)(1).

Against that backdrop, Petitioner is likely to prevail on his claim that his continued detention is unlawful because ICE is detaining him under INA § 241(a), 8 U.S.C. § 1231, a regime predicated on an administratively final, executable removal order. Whatever ICE's authority may have been before reopening was granted, DHS's regulation makes clear that once reopening is granted, custody determinations are governed by § 236 and 8 C.F.R. § 236.1—not § 1231. 8 C.F.R. § 241.4(b)(1). Thus, as of the reopening grant (and resulting stay pending reopened proceedings), ICE may not continue to treat Petitioner as a § 1231 detainee; if the Government contends continued custody is warranted, it must justify detention under § 1226 and provide the process required in that posture.

Both DHS regulations and Ninth Circuit authority confirm this conclusion. DHS's regulation provides that a noncitizen who has filed a motion to reopen remains subject to Part 241 "unless and until" reopening is granted, and that upon a grant of reopening, "Section 236 of the Act and 8 C.F.R. § 236.1 govern custody determinations for aliens who are in pending immigration proceedings." 8 C.F.R. § 241.4(b)(1). Ninth Circuit decisions likewise recognize that when removal cannot be executed because a judicial stay pending review prevents the § 1231 removal period from commencing, detention proceeds under § 1226 rather than § 1231. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059–60 (9th Cir. 2008); *Casas-Castrillon v. DHS*, 535 F.3d 942, 947–48 (9th Cir. 2008) (abrogated on other grounds). Accordingly, as of the Immigration Judge's grant of reopening (and the stay pending reopened proceedings), Petitioner's detention is authorized, if at all, under § 1226, and ICE's continued reliance on § 1231 is contrary to DHS's own regulation and controlling Ninth Circuit principles.

ICE's continued treatment of Petitioner as a § 1231 detainee has also denied him the procedural protections that ordinarily accompany § 1226 detention. Under § 1226(a), most noncitizens are eligible for Immigration Judge review of custody and the setting of bond or conditions of release (absent a specific mandatory-detention provision). Petitioner has not been afforded such a bond hearing. If the Government contends Petitioner is subject to mandatory detention under § 1226(c) due to past convictions, that position raises substantial due process concerns given the prolonged duration of detention while proceedings remain pending.

In *Demore v. Kim*, the Supreme Court described mandatory detention under § 1226(c) as generally brief—approximately one and a half months in the majority of cases, and approximately five months in the minority of cases where the noncitizen appeals. 538 U.S. 510, 530 (2003). Petitioner's detention now exceeds six months with no clear end in sight, far beyond the timeframe *Demore* discussed. And *Demore* recognized the availability of habeas review of custody, id. at 517, which is precisely what Petitioner seeks here. Post-*Demore*, the Ninth Circuit has confirmed that even where a statute does not itself require a bond hearing, detainees may bring as-applied constitutional challenges when detention becomes unreasonably prolonged. *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). Other courts have likewise recognized that due process limits prolonged mandatory detention absent an individualized hearing. See *Diop v. ICE*, 656 F.3d 221, 233–35 (3d Cir. 2011).

Accordingly, this case presents a straightforward legal defect under either framework: either ICE is continuing to detain Petitioner under the wrong statute (treating him as a § 1231 detainee notwithstanding the reopening grant and § 241.4(b)(1)), or the Government's asserted § 1226 authority is being applied in an unconstitutional manner by maintaining prolonged detention without the process due in this posture. If DHS contends continued detention is authorized under § 1226, DHS must identify the specific statutory basis (e.g., § 1226(a) or § 1226(c)) and provide the custody process required under that framework; DHS cannot continue to detain Petitioner as a § 1231 detainee after reopening.

In sum, Petitioner is likely to succeed on his claim that Respondents are acting contrary to applicable regulations and due process by failing to align his custody status with the reopened proceedings and by continuing detention without the process required by law. This Court has authority in habeas to remedy unlawful executive detention, and the present record supports provisional relief.

B. ICE's Revocation of the Order of Supervision and Re-detention Violated DHS Regulations and Due Process.

Petitioner was released for many years under an Order of Supervision ("OSUP"), which is DHS's standard mechanism for post-order release and imposes specific reporting and cooperation conditions. 8 C.F.R. § 241.5(a) (OSUP issued on Form I-220B; conditions include periodic reporting, continued efforts to obtain travel documents, and notice of address changes). Petitioner was then re-detained after ICE revoked his supervised release, yet ICE did not provide the process DHS's own regulations require for revocation and return to custody. ICE's revocation of Petitioner's Order of Supervision and return to custody is lawful, if at all, only under the limited grounds specified by regulation. DHS must therefore identify whether it re-detained Petitioner based on (1) an alleged violation of supervision conditions, or (2) changed circumstances giving rise to a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(1)–(2). In either event, DHS was required to provide the procedural protections mandated by 8 C.F.R. § 241.13(i)(3).

1. Violation of supervision conditions. If DHS contends re-detention was based on a violation of supervision conditions, DHS must identify the specific OSUP condition(s) allegedly violated and provide Petitioner a prompt opportunity to respond. 8 C.F.R. § 241.13(i)(1), (i)(3); see also 8 C.F.R. § 241.5(a) (conditions of supervision). Here, ICE did not provide Petitioner a written notice stating the alleged violation(s), did not conduct the required prompt initial informal interview after return to custody, and did not provide a revocation custody review that evaluates contested facts as required by § 241.13(i)(3). Accordingly, re-detention cannot be sustained on a "violation" theory.
2. Revocation for removal based on changed circumstances / significant likelihood. DHS contends re-detention was premised on renewed feasibility of removal, the regulation requires DHS to determine—on account of changed circumstances—that there is a significant likelihood Petitioner may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). DHS must still provide written notice of

the reasons for revocation and a prompt initial informal interview after return to custody, and it must permit Petitioner to submit evidence disputing either the asserted likelihood of removal or any claimed violation; the "revocation custody review" must evaluate any contested facts material to revocation. 8 C.F.R. § 241.13(i)(3). Here, ICE has not identified any "changed circumstances," has not shown any concrete basis for a significant likelihood of removal in the reasonably foreseeable future, and did not provide the mandatory notice/interview/review procedures required by § 241.13(i)(3). Re-detention therefore cannot be sustained on a "changed circumstances" theory.

Indeed, when Petitioner inquired about his custody review, ICE Agent Martinez responded that counsel had filed an MTR and that "Headquarters" was handling the case—further confirming that ICE withheld required custody review based on the pendency of immigration proceedings rather than on any identified violation or changed circumstances demonstrating a significant likelihood of removal.

Critically, DHS's regulations also impose mandatory revocation procedures. Upon revocation, DHS must: (a) notify the alien of the reasons for revocation; (b) conduct an initial informal interview promptly after return to custody to allow the alien to respond; and (c) permit the alien to submit evidence either that removal is not significantly likely in the reasonably foreseeable future or that he did not violate the order of supervision; the "revocation custody review" must evaluate any contested facts relevant to the revocation and determine whether the facts warrant revocation and continued detention. 8 C.F.R. § 241.13(i)(3)

Here, ICE revoked Petitioner's supervised release and re-detained him, but DHS has not carried its burden to show lawful revocation under either permissible ground—and, in any event, DHS did not provide the required procedures.

First, if DHS contends re-detention was based on an alleged OSUP violation, DHS must identify the specific condition(s) allegedly violated (e.g., reporting, travel-document cooperation, travel restrictions, or address-notification conditions under § 241.5(a)) and then provide the required notice and prompt informal interview, as well as a revocation custody review that evaluates disputed facts (including Petitioner's evidence that he has not violated OSUP). 8 C.F.R. §§ 241.5(a), 241.13(i)(1), (i)(3).

Second, if DHS contends re-detention was a "revocation for removal," DHS must show changed circumstances and a significant likelihood of removal in the reasonably foreseeable future, and still must provide the same notice/interview/opportunity-to-respond protections required by § 241.13(i)(3). 8 C.F.R. § 241.13(i)(2)–(3).

On this record, ICE's revocation and re-detention appear to have occurred without the procedures DHS's own regulation mandates—no adequate written notice of reasons, no prompt initial informal interview affording Petitioner a meaningful opportunity to respond, and no revocation custody review evaluating contested facts as required by § 241.13(i)(3). This failure is independently unlawful.

Even where an agency possesses broad custody authority, it must comply with its own duly promulgated regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Likewise, when the Government elects to proceed under a defined regulatory procedure, it is bound to follow it. *Vitarelli v. Seaton*, 359 U.S. 535 (1959). DHS's noncompliance with the mandatory revocation procedures in 8 C.F.R. § 241.13(i)(3) therefore supports Petitioner's likelihood of success on the merits and reinforces the need for immediate provisional relief.

To the extent DHS argues the re-detention occurred while reopening was still pending, DHS's own regulation confirms that an alien who has filed a motion to reopen "shall remain subject" to § 241.4 "unless the motion to reopen is granted." 8 C.F.R. § 241.4(b)(1). Thus, the legality of the initial re-detention must be judged under DHS's Part 241 custody/revocation framework applicable at that time, including DHS's required revocation procedures.

C. Indefinite Detention in Violation of *Zadvydas*

Independently, Petitioner is likely to succeed on the merits because his prolonged detention violates the substantive due process limits articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001). In *Zadvydas*, the Supreme Court held that post-removal-order detention is implicitly limited to a "reasonable period," presumptively six months, after which continued custody is permissible only if removal is significantly likely in the reasonably foreseeable future. The Court construed INA § 241 to avoid serious constitutional problems, ruling that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized" under the statute. *Zadvydas* thus established a burden-shifting framework: after six months of detention, if the noncitizen can provide good reason to believe 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, the detainee is entitled to release. *Id.* at 701 (rejecting the government's view that detention could continue based on a mere theoretical possibility of removal someday).

Petitioner's situation fits squarely within the core of *Zadvydas*. He has been detained well beyond the six-month benchmark (detained since June 12, 2025, and it is now December 18, 2025). He has abundantly demonstrated "good reason to believe" that his removal will not occur in the foreseeable future: Laos has consistently refused to issue his travel documents, and there remains no repatriation agreement or established process by which ICE can effectuate his removal. In fact, Petitioner was already on supervised release in the community for 18 years precisely because his removal could not be accomplished. Nothing material has changed to alter that reality – if anything, Laos's stance remains one of intransigence toward accepting deportees. The government, for its part, cannot meet its burden under *Zadvydas*. Respondents have furnished no evidence that removal is imminent or likely. There is no indication that Laos has reversed its policy or that travel papers are forthcoming. Generalized diplomatic pressure (such as the visa sanctions imposed on Laos in 2018 for non-cooperation) has not yielded any concrete result for Petitioner's case. Thus, under *Zadvydas*, Petitioner's detention has become presumptively unreasonable and unlawful. As the Ninth Circuit noted in a similar context, "where there is no reasonable likelihood that a foreign government will accept an alien's return in the reasonably foreseeable future, the alien's detention violates § 241(a)(6)" (*Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003), summarizing *Zadvydas*). That is exactly the scenario here.

It is important to emphasize that *Zadvydas*'s holding is fundamentally about due process and the statutory interpretation compelled by constitutional avoidance. The Court recognized that indefinite civil detention without hope of effecting its purpose (removal) raises grave due process problems, because at that point detention no longer bears a reasonable relation to the government's interests in preventing flight or protecting the community. In Petitioner's case, any rationale of preventing flight is "weak or nonexistent" where removal is not reasonably attainable. Petitioner cannot be a flight risk when, paradoxically, there is nowhere to flee to – he is not being removed because no country will take him. Nor can he be deemed so dangerous as to justify open-ended confinement; he has lived peacefully in the community from 2007 until this detention, without incident, and has significant family support. Simply put, the justifications for continued detention evaporate when removal is not on the horizon, and due process does not countenance incarceration for incarceration's sake.

Respondents might attempt to argue that *Zadvydas* is distinguishable because Petitioner's removal order is currently stayed (and thus not administratively final for purposes of executing removal). But this is a distinction without a meaningful difference in terms of Petitioner's liberty interests. If anything, the case for release is stronger here: not only is removal practically unattainable, it is also legally prohibited at the moment due to the IJ's stay. Petitioner should not be detained indefinitely when he could not be deported even if a travel document magically appeared tomorrow – the reopened proceedings and stay forbid removal unless and until the case is resolved against him. In analogous circumstances, courts have granted habeas relief. For example, in *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095 (9th Cir. 2001), the Ninth Circuit affirmed habeas relief where removal was not reasonably foreseeable due to the absence of a repatriation agreement and the speculative nature of diplomatic negotiations; see also *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006) (ordering that a writ issue and that petitioner be released on appropriate conditions during the pendency of further proceedings); see also *Saengphet v. Noem*, No. 3:25-cv-02909-JES-BLM (S.D. Cal. Nov. 20, 2025) (ordering release after ICE's repeated inability to obtain a travel document from Laos, among other grounds). Likewise, the Ninth Circuit in *Thai v. Ashcroft*, 366 F.3d 790 (9th Cir. 2004), upheld release of a detainee who had been classified as "specially dangerous" but whose removal to Vietnam was not reasonably foreseeable, reaffirming that *Zadvydas* limits apply notwithstanding government claims of danger (the court held that indefinite detention could not be justified based on risk alone once the six-month reasonable period was exceeded). Here, Petitioner has far more favorable equities than the aliens in those cases – he poses minimal risk and has a family relying on him – and the barrier to removal (Laos's refusal) is well-documented and historically enduring.

Finally, ICE's own regulations reflect the *Zadvydas* rule and underscore why Petitioner's detention is unlawful. Under 8 C.F.R. § 241.13, ICE must conduct special reviews for detainees whose removal cannot be effected within the presumptive removal period. That regulation provides that if, after six months, there is "no significant likelihood that the alien will be removed in the reasonably foreseeable future," the agency should generally release the person under supervision, unless specific special circumstances apply (e.g. national security concerns). Moreover, if an alien had previously been released under an order of supervision due to lack of foreseeable removal, ICE may only revoke that release and re-detain the alien if "on account of changed circumstances" the government determines that removal has become significantly likely in the near future. In Petitioner's case, ICE did exactly what the regulations seek to prevent: it revoked Petitioner's release in June 2025 without any legitimate change in circumstances indicating a likelihood of removal. Laos had not agreed to accept him; no travel document was issued; nothing had materially shifted except the passage of time. Re-detaining Petitioner under those conditions appears to violate 8 C.F.R. § 241.13(i)(2), which forbids revocation of release absent a showing that removal is now foreseeable. The Court noted this conflict in its screening order, and it directly supports Petitioner's claim that his detention is not in accordance with law. ICE also failed to provide Petitioner with the required post-custody-review procedures such as an informal interview and explanation for the re-detention, further indicating a departure from due process and regulatory requirements.

For all these reasons, Petitioner has established a clear likelihood of success on the merits of his habeas petition. The undisputed facts and governing law show that his detention has no lawful basis and violates fundamental constitutional protections. At a minimum, Petitioner has raised serious questions going to the merits of his claims – questions substantial enough that he is likely to prevail after full review. This first and most important factor in the preliminary injunction analysis therefore weighs heavily in Petitioner's favor.

II. Irreparable Harm

Absent immediate injunctive relief, Petitioner will continue to suffer irreparable harm in the form of unlawful detention and the attendant injuries to his constitutional rights and well-being. Every additional day that Petitioner is held in custody without lawful justification is a day of freedom wrongfully denied, which constitutes quintessential irreparable harm. Courts have long recognized that the loss of liberty for even minimal periods of time, where unwarranted, cannot be compensated by money damages and thus constitutes irreparable injury. *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("[I]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.

2012)); *see* also *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Here, Petitioner alleges a violation of both statutory and constitutional rights – specifically the right to be free from arbitrary detention – which is the type of harm that is presumed irreparable in the preliminary injunction context.

The emotional and physical toll of prolonged detention further underscores the irreparable nature of the harm. Petitioner has already been jailed for over six months in an immigration detention facility, separated from his wife and children, and unable to live the productive, law-abiding life he had resumed for many years. His family has lost a breadwinner and loving caregiver, and they suffer grave emotional distress fearing his possible deportation and the continuation of his detention. These are injuries that cannot be undone if Petitioner ultimately prevails on his habeas petition after many more months – time with one's family and the basic experiences of life at liberty cannot be recovered once lost. The Supreme Court in *Winter* made clear that a mere possibility of harm is insufficient; rather, the harm must be likely in the absence of relief. Here, the harm to Petitioner is not just "likely" – it is certain and ongoing. Every indication is that, without a Court order, ICE will continue to detain Petitioner indefinitely, since ICE has maintained his custody through multiple custody reviews despite the patent futility of removal. Thus, the continuation of irreparable injury is effectively guaranteed absent an injunction.

It is also significant that the relief Petitioner seeks – release from detention – is precisely tailored to prevent the irreparable harm in question. Unlike cases where harms are speculative or could be redressed after the fact, in the context of unlawful detention the only meaningful remedy is release. *See, e.g.*, *Zadvydas*, 533 U.S. at 690 (habeas court has power to order release if detention violates the law). Without preliminary relief, Petitioner could remain locked up for the duration of this litigation, which could take weeks or months to resolve given briefing schedules and potential appeals. By that time, he might have spent a year or more unjustly in jail. The injury to his rights and interests would be irreversible. This factor therefore weighs strongly in favor of injunctive relief.

Finally, the Court itself has acknowledged the urgency of Petitioner's situation by expediting the habeas briefing schedule. This reflects a recognition that Petitioner's claims involve time-sensitive, ongoing harm – effectively, each day of unlawful detention is a concrete harm that cannot be ignored. The Court's swift scheduling underscores that Petitioner's alleged injury (prolonged detention contrary to law) is significant enough to warrant accelerated treatment, which dovetails with the conclusion that irreparable harm is at stake. In sum, Petitioner satisfies this prong of the test because his continued detention constitutes irreparable harm per se, and he will continue to suffer such harm absent the Court's intervention.

III. Balance of Equities

The balance of equities in this case tips sharply in Petitioner's favor. This factor requires the Court to weigh the harm that Petitioner would suffer if an injunction is denied against the harm the government would suffer if an injunction is granted. On Petitioner's side of the scale, the harm is severe: as explained, he faces the loss of his freedom and separation from his family for an indeterminate period, despite serious questions about the legality of his detention. On the government's side, granting the requested relief would impose minimal, if any, cognizable harm. An injunction here would simply require ICE to do what the law already appears to require: release Petitioner under appropriate supervision and refrain from removing him while the Court evaluates his claims. This essentially restores the status quo that existed for many years – Petitioner living in the community under supervision – and does not prejudice the government's ultimate position in the immigration case or this habeas case.

To the extent Respondents might claim an interest in detaining Petitioner to ensure his availability for removal or to protect public safety, such interests are either unfounded on these facts or can be accommodated without detention. Petitioner has demonstrated exemplary compliance with all ICE supervision conditions for nearly two decades. He dutifully attended check-ins (indeed it was at a check-in that ICE re-detained him). This record shows that he is not a flight risk – he has every incentive to continue appearing as required, as he has strong family ties and no viable place to flee given Laos will not admit him. If there were any concern about flight, ICE can impose conditions short of detention (electronic monitoring, travel restrictions, etc.), all of which Petitioner has already agreed to abide by.

As for danger to the community, Petitioner acknowledges he has past criminal convictions (from roughly 20 years ago), but since his release in 2007 he has lived a law-abiding life with no new offenses. His family and community attest to his rehabilitation and peaceful character. The government's interest in protecting the public is not meaningfully advanced by detaining someone who has demonstrably reformed and who poses, at most, a speculative risk based on old convictions. Moreover, if the Court had any residual concerns, it can fashion conditions of release tailored to mitigate any risk (for example, continued check-ins, or any condition the immigration judge or ICE deems necessary). Petitioner is willing to comply with any reasonable conditions set by the Court or ICE. Thus, the government's asserted interests can be satisfied without keeping Petitioner behind bars.

On the other side of the ledger, the equities strongly favor Petitioner. Continued detention inflicts profound hardship on him and his family. Each day in custody means missed moments with his children, inability to support his wife (who is battling health issues), and psychological trauma from confinement. These hardships are not speculative; they are concrete and compounding as time goes on. Petitioner's youngest child, for example, is suffering the absence of his father during formative years – an emotional harm that can have lasting impact. Petitioner's wife is struggling to maintain the household alone. These are significant human equities that weigh heavily in the balance and far outweigh any administrative inconvenience to the government of supervising Petitioner in the community.

It is also equitable to maintain the status quo ante while the legal issues are resolved. Petitioner is not asking for the Court to terminate the removal proceedings or grant him immigration status at this juncture. He seeks only to be free from detention that is likely unlawful, and to remain in the U.S. (where he has lived for 45+ years) during the pendency of this case. If Petitioner ultimately does not prevail in his habeas action or in immigration court, the government remains free to detain him at that time (consistent with the law) and execute the removal if it ever becomes possible. Temporarily releasing Petitioner now does not cause the government any irreparable injury; ICE supervised him for 18 years and can do so again. In contrast, continuing to detain Petitioner now may cause him irreparable injury, as discussed, and would defeat the purpose of his habeas petition even if he later wins (since he cannot get back lost time in detention). Equity favors avoiding that unjust result.

Finally, the Court should consider that denying relief could incentivize executive overreach in similar cases. If ICE faces no consequence for detaining individuals who are not actually removable, despite court stays or reopened cases, then other noncitizens could languish unnecessarily in jail. Granting the injunction here upholds equitable principles by ensuring the government does not reap an advantage from what appears to be its own legal error (detaining under the wrong statute and ignoring *Zadvydas* constraints). In short, the harms to Petitioner absent relief vastly outweigh any harms to Respondents from issuing an injunction. The balance of equities thus tips decidedly in Petitioner's favor.

IV. Public Interest

The public interest likewise supports the issuance of a preliminary injunction. In cases where the government is a party, the public interest factor often merges with the balance of equities, since the government's harms and the public's interests are intertwined. *Nken*, 556 U.S. at 435. Even viewed independently, several compelling public interests are served by granting relief here:

Upholding the Rule of Law and Constitutional Rights: It is always in the public interest to ensure that the government adheres to the law, and that individual rights – especially core liberty rights – are protected. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). Petitioner has raised serious claims that his ongoing detention violates federal statutes, regulations, and the Fifth Amendment. The public has a strong interest in having those claims adjudicated without Petitioner suffering ongoing deprivation of liberty in the interim. Granting the injunction affirms that our legal system does not permit indefinite or unlawful detention and that courts will intervene to check executive action when it oversteps legal bounds. This promotes public confidence in the fairness and integrity of the immigration system and the judiciary.

Preventing Unnecessary Detention and Fiscal Waste: The public interest is also served by avoiding needless prolonged detention, which carries significant societal and financial costs. Detaining someone like Petitioner, who poses little risk and cannot be removed anyway, expends taxpayer resources with no corresponding benefit. ICE detention is costly to the government (hundreds of dollars per day per detainee) and to society (removing a contributing member from his family and community). By contrast, supervised release imposes minimal cost and allows Petitioner to continue supporting his U.S. citizen family. Especially given that Petitioner was productively living in the community for years, the public gains nothing from his incarceration. Releasing him pending resolution of the case would conserve government resources and align with the public interest in efficient allocation of enforcement efforts – ICE can focus on individuals who pose an actual threat or who are removable, rather than expending limited detention space on someone in Petitioner's circumstances.

Humanitarian and Community Interests: Petitioner's case has garnered support from his community, including friends, family, and even a U.S. Navy service member (Petitioner's stepdaughter) who are all distressed by his detention. The public interest encompasses the humanitarian concern of keeping families united and avoiding infliction of undue suffering. Petitioner's family are U.S. citizens who are, in effect, collateral victims of his continued detention. The public has an interest in minimizing harm to such innocent parties, consistent with our values of family unity and fairness. Granting relief would reunite a father with his children and a husband with his ailing wife, outcomes that resonate with basic community values. There is no countervailing public interest in keeping Petitioner jailed; indeed, doing so arguably undermines community trust in the system.

Orderly Administration of Immigration Laws: Finally, issuing an injunction to prevent removal while this habeas petition is pending serves the public interest by ensuring orderly judicial review and preventing mootness or circumvention of the court process. If, hypothetically, ICE were to attempt removal (should Laos suddenly issue a document or should ICE dispute the IJ's stay), it could moot the habeas petition and potentially violate the IJ's stay. While we trust that Respondents will abide by the IJ's stay of removal, an injunction from this Court barring any removal efforts during the pendency of this case will provide an additional safeguard and clarity. The public interest is furthered when court orders (like the IJ's stay and any future relief from this Court) are respected and when judicial review proceeds without interference. *See Nken*, 556 U.S. at 436 (recognizing public interest in maintaining the courts' ability to review removal orders). By granting the preliminary injunction, this Court would ensure that its ultimate decision on the merits of the habeas petition will not be undermined by premature removal or continued detention that could effectively circumvent meaningful review.

In sum, every relevant public interest consideration – from respect for the Constitution, to efficient use of resources, to humanitarian concerns, to preserving the judiciary's role – favors the issuance of a preliminary injunction in this case. There is no public interest in the indefinite detention of a long-time lawful resident who cannot be deported and who poses no threat. To the contrary, the public interest lies in correcting such an injustice immediately.

Conclusion

For the foregoing reasons, Petitioner has met all prerequisites for preliminary injunctive relief. He has shown a strong likelihood of success on the merits of his claims that his detention is unauthorized and unconstitutional. He is suffering ongoing irreparable harm in the form of unlawful confinement, loss of liberty, and separation from his family – harm that will continue absent this Court's intervention. The balance of equities decisively favors Petitioner, as the hardship he faces without relief vastly outweighs any nominal burden on Respondents from releasing him under supervision. And the public interest is served by effectuating the rule of law and preventing an unlawful detention from continuing one day more.

Accordingly, Petitioner respectfully requests that the Court grant the preliminary injunction and order the following relief:

1. Immediate Release from ICE Custody: Respondents should be ordered to release Petitioner forthwith from immigration detention. Petitioner is prepared to comply with any conditions of release the Court or ICE deems appropriate, such as periodic reporting, electronic monitoring, travel restrictions, or other reasonable supervision measures. Given Petitioner's lengthy record of compliance and his family ties, he respectfully suggests that the least restrictive conditions necessary to assure his appearance should be imposed.

2. Stay of Removal / Injunction Against Removal: Respondents should be enjoined from removing or deporting Petitioner from the United States, or otherwise effectuating his physical removal, until this Court has fully resolved the pending habeas corpus petition and any subsequent appeals. This relief is consistent with the

IJ's stay of removal already in place and will ensure that the Court's jurisdiction to decide the case is preserved.

3. Any Further Just and Proper Relief: The Court may grant any additional relief it deems just and proper to protect Petitioner's rights during the pendency of this action, including (if the Court finds it necessary) an order that Petitioner receive a bond hearing before an Immigration Judge by a date certain, or periodic reporting to the Court on the status of travel document acquisition, etc. (Petitioner leaves the formulation of any such additional relief to the Court's discretion).

Petitioner notes that under the Eastern District's Local Rules, motions for preliminary injunction are generally submitted on the papers without oral argument unless the Court orders otherwise. *See* E.D. Cal. Local Rule 230(g). In compliance with that rule and the Court's December 17, 2025 Order, Petitioner does not affirmatively request an oral hearing. However, should the Court have questions or prefer a hearing to address any aspect of this motion, Petitioner stands ready to present argument at a time convenient to the Court.

Dated: December 18, 2025.

Respectfully submitted,

/s/Daniel M Huynh

Daniel M Huynh, Esq.
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Daniel M. Huynh, certify under penalty of perjury that on December 18, 2025, I served a true and correct copy of the foregoing MOTION FOR PRELIMINARY INJUNCTIVE RELIEF on Respondents by placing the document(s) in the United States mail, first-class postage prepaid, addressed as follows:

Civil Process Clerk
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Christopher Chestnut (Facility Administrator)
California City Detention Center
425 Golden State Avenue
Bakersfield, CA 93301

Dated: December 18, 2025.

Respectfully submitted,

/s/Daniel M Huynh

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