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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) **Petitioner's Reply in Support of Habeas Petition and Preliminary Injunction**

Introduction

Respondents' opposition does not cure the central defect in this case: ICE revoked Petitioner's long-standing Order of Supervision and re-detained him based on a claim of "imminent removal" that DHS's own record does not support. DHS confirms Petitioner was released on an order of supervision on March 8, 2007 and remained in the community for years thereafter. (Medina Decl. ¶ 12.) On June 12, 2025, ICE arrested Petitioner at a routine check-in and, the same day, served a Notice of Revocation of Release. (*Id.* ¶ 13.) The Notice does not allege any violation of supervision conditions. Instead, it invokes "changed circumstances" and asserts that "ICE is in possession of a travel document to effect your imminent removal," expressly citing 8 C.F.R. § 241.13 as the authority for continued custody. (ECF No. 11-2 at 1.)

DHS's own timeline, however, contradicts that asserted predicate. DHS states that "[o]n or about July 30, 2025, Laos issued travel documents"—weeks after ICE revoked release on June 12. (Medina Decl. ¶ 14.) DHS further admits that "in August 2025, ICE attempted, but was unable to facilitate, Petitioner's return to Laos via air." (Id. ¶ 15.) Thus, ICE re-detained Petitioner based on a representation that travel documents were already in hand and removal was "imminent," yet DHS's declaration places issuance of the travel documents after the revocation and confirms removal still did not occur. (ECF No. 11-2 at 1; Medina Decl. ¶¶ 13–15.) That discrepancy is not immaterial. Under DHS's own post-order custody framework, revocation based on "changed circumstances" requires a reliable showing that removal is significantly likely in the reasonably foreseeable future. See 8 C.F.R. § 241.13(i)(2). DHS cannot satisfy that standard with a record that contradicts its stated justification at the moment it deprived Petitioner of liberty.

Having failed to justify re-detention on the grounds it invoked at the time, Respondents pivot to a new theory: mandatory detention under 8 U.S.C. § 1226(c) based on decades-old convictions. Even accepting the statutory reach of § 1226(c) after Nielsen v. Preap, Preap does not decide the Fifth Amendment question presented here—whether the government may impose months of preventive civil confinement on a longtime lawful permanent resident who lived peacefully in the community under ICE supervision for approximately eighteen years, without individualized process and without any current, record-based showing of flight risk or danger. Due process does not permit civil detention to become untethered from its legitimate purpose; at minimum, it requires individualized process once detention becomes prolonged. *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

Nor can Respondents rely on "imminent removal" now. DHS admits the Immigration Judge granted a stay of removal on or about September 10, 2025 and granted reopening on or about September 25, 2025. (Medina Decl. ¶¶ 19–20.) DHS also states venue transfer is pending and that DHS "will be filing" additional charges only after venue changes. (*Id.* ¶¶ 21–22.) In other words, DHS is not detaining Petitioner to execute an imminent removal order; DHS is detaining him while removal is stayed and proceedings are reopened, and while DHS pursues procedural steps that prolong confinement. The Court should reject Respondents' post hoc rationalizations, enforce the governing regulations and due process limits, and order immediate release (or, at minimum, prompt individualized process with the government bearing the burden), and enjoin removal while this habeas action is pending.

I. Revocation of the Order of Supervision Was Unlawful and Arbitrary

Respondents have not supplied a valid factual or procedural basis for revoking Petitioner's longstanding Order of Supervision. DHS confirms Petitioner was released on an order of supervision on March 8, 2007 and lived in the community under supervision for years thereafter. (Medina Decl. ¶ 12.) On June 12, 2025, ICE arrested Petitioner at a routine check-in and served a "Notice of Revocation of Release." (*Id.* ¶ 13.) The Notice does not allege any violation of release conditions. Instead, it invokes "changed circumstances" and asserts that "ICE is in possession of a travel document to effect your imminent removal," expressly citing 8 C.F.R. § 241.13 as the authority for continued custody. (ECF No. 11-2 at 1.)

That stated predicate is not supported by DHS's own timeline. DHS now states that "[o]n or about July 30, 2025, Laos issued travel documents"—weeks after ICE revoked release on June 12—and further admits that in August 2025 ICE attempted, but was unable, to remove Petitioner. (Medina Decl. ¶¶ 14–15.) Because ICE invoked § 241.13 to revoke release based on "changed circumstances," DHS must satisfy the regulation's core requirement: revocation based on changed circumstances requires a reliable showing of a significant likelihood of removal in the reasonably foreseeable future. See 8 C.F.R. § 241.13(i)(2). DHS cannot meet that standard on a record that contradicts the asserted basis for revocation at the time Petitioner was deprived of liberty.

In addition, § 241.13 contemplates mandatory procedural protections when DHS returns a supervised individual to custody, including a prompt opportunity to respond to the stated grounds and further review before continued detention is maintained. See, e.g., 8 C.F.R. § 241.13(h)(3). Here, ICE's Notice itself promised an "informal interview" and further review within approximately three months (ECF No. 11-2 at 1), but Respondents' opposition does not document that the required process occurred—or explain how continued detention remains justified given the failure to remove and the later stay and reopening. On this record, the revocation and resulting detention were unlawful from inception and cannot be sustained by post hoc theories.

A. No Significant Likelihood of Removal in the Reasonably Foreseeable Future

ICE purported to revoke Petitioner's Order of Supervision on June 12, 2025 based on "changed circumstances"—specifically, the Notice's assertion that "ICE is in possession of a travel document to effect your imminent removal." (ECF No. 11-2 at 1; Medina Decl. ¶ 13.) That assertion matters because DHS may revoke release under § 241.13 only if, "on account of changed circumstances," DHS determines "there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

DHS's own declaration undercuts the "imminent removal" premise. DHS now states that Laos issued travel documents "[o]n or about July 30, 2025"—weeks after the June 12 revocation—and admits that in August 2025 ICE "attempted, but was unable to facilitate" Petitioner's return to Laos despite having the document. (Medina Decl. ¶¶ 14–15.) In other words, even accepting DHS's later timeline, removal was not "imminent" on June 12, and removal was not practicable even after a travel document was issued. That record does not support the regulatory condition required for revocation under § 241.13(i)(2): a significant likelihood of removal in the reasonably foreseeable future.

The procedural defects reinforce the same point. Section 241.13 requires that upon revocation DHS notify the noncitizen of the reasons for revocation, conduct an initial informal interview promptly after return to custody to allow a response, permit submission of evidence bearing on foreseeability (and/or alleged violations), and conduct a revocation custody review that evaluates contested facts and determines whether continued detention is warranted. 8 C.F.R. § 241.13(i)(3). Here, ICE invoked § 241.13 as the basis for custody (ECF No. 11-2 at 1), yet Respondents do not reconcile the revocation notice's stated predicate ("in possession" of travel documents for "imminent" removal) with DHS's later admission that travel documents were issued weeks later and removal still failed. (Medina Decl. ¶¶ 13–15.)

The post-revocation developments confirm that removal was not reasonably foreseeable. DHS acknowledges that an Immigration Judge granted a stay of removal on or about September 10, 2025 and later granted reopening on or about September 25, 2025. (Medina Decl. ¶¶ 19–20.) Whatever the ultimate merits of the reopened proceedings, the stay alone means removal could not lawfully proceed during the pendency of that relief. The government therefore cannot justify continued incarceration on the premise that removal is imminent or reliably achievable.

These facts align with the core limitation articulated in *Zadvydas v. Davis*: civil immigration detention is justified only so long as it bears a reasonable relation to the purpose of effectuating removal, and once removal is no longer reasonably foreseeable, continued detention becomes unreasonable and unauthorized. 533 U.S. 678, 690, 699 (2001). While *Zadvydas* addresses post-order detention under § 1231(a)(6), § 241.13 implements the same "significant likelihood" foreseeability standard—and ICE expressly invoked § 241.13 as its custody authority in the revocation notice. (ECF No. 11-2 at 1.) On this record, Petitioner has more than "good reason" to believe removal is not likely in the reasonably foreseeable future: the revocation was premised on a claimed travel document that DHS's own timeline places later, removal efforts failed even after documents issued, and removal was then stayed during reopened proceedings.

Finally, to the extent Respondents imply that detention may continue based on generalized danger concerns untethered to removal foreseeability, that position cannot salvage detention under the regulatory and constitutional framework recognized in *Zadvydas* and applied by the Ninth Circuit. See *Tuan Thai v. Ashcroft*, 366 F.3d 790 (9th Cir. 2004). The government's own evidence thus reveals the fatal weakness in the revocation decision: ICE did not—and on this record cannot—show that Petitioner's removal was significantly likely in the reasonably foreseeable future when it revoked supervision and returned him to custody. Absent that showing, revocation was not authorized under 8 C.F.R. § 241.13(i)(2), and continued detention cannot be justified by after-the-fact relabeling.

B. Failure to Follow Required Revocation Procedures (*Accardi* Violation)

Even apart from the lack of any genuine "changed circumstances," ICE's revocation was independently unlawful because the agency did not follow the mandatory procedures that govern revocation of release under its own post-order custody framework. When an agency "fails to follow its own regulations" in a manner that affects an individual's protected interests, courts set aside the action. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Service v. Dulles*, 354 U.S. 363, 388–89 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 546 (1959). The Ninth Circuit applies the same principle in immigration enforcement: where DHS/INS violates a regulation intended to protect the noncitizen, the action cannot stand at least where the violation causes prejudice. *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir. 1979).

Here, ICE expressly invoked 8 C.F.R. § 241.13 as the authority for revoking Petitioner's long-standing supervision and returning him to custody. (Notice of Revocation, ECF No. 11-2 at 1; Medina Decl. ¶ 13.) That regulation does not permit summary reincarceration without process. To the contrary, once ICE revokes release, § 241.13(i)(3) requires: (1) written notice stating the reasons for revocation; (2) a prompt initial informal interview after the person is returned to custody, so he can respond; and (3) a revocation custody review that evaluates contested facts and determines whether those facts actually warrant revocation and continued detention. 8 C.F.R. § 241.13(i)(3).

The record shows ICE did not provide the required process. On June 12, 2025, ICE arrested Petitioner at a routine check-in and served a Notice of Revocation stating—without evidentiary support—that "ICE is in possession of a travel document to effect your imminent removal," and indicating that an informal interview and further review would follow. (ECF No. 11-2 at 1.) Medina's declaration confirms the arrest and service of the notice (Medina Decl. ¶ 13), but it does not attest that any § 241.13(i)(3) informal interview occurred, and Respondents provide no interview notes, decision memorandum, or "revocation custody review" determination. In short, Respondents ask this Court to accept that ICE complied with mandatory procedures while offering no record evidence that the procedures were ever carried out.

Prejudice is concrete and obvious. The required interview/review process is designed to test the government's asserted basis for revocation—here, the claim of imminent removal and a travel document "in possession." Yet DHS now concedes that Laos did not issue travel documents until "on or about July 30, 2025," weeks after ICE jailed Petitioner and served the revocation notice. (Medina Decl. ¶ 14.) DHS further admits ICE later "attempted, but was unable to facilitate" Petitioner's removal in August 2025 even after the travel document existed. (Id. ¶ 15.) This is exactly the kind of contested, dispositive factual issue § 241.13(i)(3) requires ICE to address through an interview and revocation custody review before—or at minimum promptly after—reincarceration. Because ICE failed to provide that process, Petitioner was deprived of the opportunity to challenge the revocation's factual predicate and remained detained for months based on an erroneous "imminent removal" premise. That is actionable prejudice under *Calderon-Medina*, and it independently warrants vacatur of the revocation and release.

Finally, Respondents cannot retroactively cure these procedural defects by pivoting to a new detention theory under § 1226(c). *Accardi* forbids post hoc administrative shortcuts where the agency itself invoked a regulatory framework that imposes mandatory procedural safeguards. Because ICE did not follow § 241.13(i)(3), Petitioner has shown a strong likelihood of success on the merits of his claim that the revocation and resulting detention were unlawful, and this Court should order immediate release (or, at minimum, prompt individualized process with DHS bearing the burden) and maintain the status quo while habeas review proceeds.

C. The Revocation Timing and Subsequent Conduct Demonstrate Arbitrary, Pretextual Detention Untethered to Removal

The timing and sequence of DHS's actions underscore that ICE's revocation functioned as an arbitrary—and at minimum pretextual—detention tactic rather than a narrowly tailored step necessary to effect removal. Petitioner lived in the community under ICE supervision for approximately eighteen years without any alleged violation of supervision conditions. (Medina Decl. ¶ 12.) Yet ICE abruptly arrested him at a routine check-in on June 12, 2025 and served a revocation notice that did not allege any supervision violation; instead it asserted that "ICE is in possession of a travel document to effect your imminent removal." (Medina Decl. ¶ 13; ECF No. 11-2 at 1.)

DHS's own declaration undermines that asserted basis. DHS now states that Laos issued travel documents on or about July 30, 2025—weeks after the June 12 revocation—and admits that in August 2025 ICE "attempted, but was unable to facilitate" Petitioner's return to Laos even after travel documents existed. (Medina Decl. ¶¶ 14–15.) Objectively, this record shows ICE took Petitioner into custody well before the government could plausibly claim that removal was imminent, and then continued detention even after removal efforts failed. That sequence supports the inference that detention was not calibrated to effectuating removal, but instead imposed as a default posture—maximizing disruption to Petitioner's settled life—despite the government's inability to carry out its stated purpose.

ICE's actions after the failed removal attempt further confirm the point. Rather than returning Petitioner to supervision once removal proved unachievable in the short term, DHS continued to detain him while proceedings evolved. DHS admits that an Immigration Judge granted a stay of removal on or about September 10, 2025 and granted reopening on or about September 25, 2025. (Medina Decl. ¶¶ 19–20.) DHS also states that venue transfer remains pending and that DHS "will be filing" additional charges after venue is changed. (*Id.* ¶¶ 21–22.) These steps inevitably prolong adjudication while Petitioner remains confined. Whatever the merits of the reopened proceedings, the government's own account shows it is pursuing additional procedural and litigation steps while maintaining custody, rather than effectuating "imminent" removal as the revocation notice claimed.

Due process does not permit civil immigration detention to become an arbitrary, prolonged confinement untethered from its legitimate purpose. See *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001) (explaining that "preventing flight" is "weak or nonexistent where removal seems a remote possibility," and that preventive detention for community protection has been upheld only with strong procedural safeguards and narrow circumstances); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (due process requires that the "nature and duration" of confinement bear a reasonable relation to its purpose). The Ninth Circuit has likewise expressed "grave doubts" about any regime that permits "arbitrary prolonged detention without any process." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). Here, the government's own chronology—revocation premised on "imminent removal," travel documents issued weeks later, removal attempt failed, then reopening/stay and further litigation steps—demonstrates why continued detention is not reasonably related to effectuating removal and cannot be sustained by post hoc rationalizations.

Accordingly, even if the Court need not decide motive, the record supports a finding that the revocation and continued confinement operate as arbitrary civil detention rather than a removal-related necessity. This reinforces Petitioner's likelihood of success on the merits and the need for immediate release (or, at minimum, prompt individualized process with the government bearing the burden) while this habeas action is pending.

II. Continued Detention After Reopening and Stay Is Unlawful, Unnecessary, and Violates Due Process

Once the Immigration Judge granted a stay of removal and reopened proceedings, the legal and practical basis for Petitioner's detention changed fundamentally. When removal is not presently executable because proceedings are reopened and/or a stay is in place, detention is not properly justified as custody "pending removal" under 8 U.S.C. § 1231. See, e.g., Prieto-Romero v. Clark, 534 F.3d 1053, 1059–63 (9th Cir. 2008) (where removal is stayed pending further proceedings, detention does not proceed under § 1231's "removal period" framework). Instead, Petitioner is being held while removal proceedings are pending anew—i.e., under the pre-removal detention statute, 8 U.S.C. § 1226, which authorizes detention or release subject to conditions while the government litigates removability. See *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 948–52 (9th Cir. 2008) (pre-Jennings; describing detention authority during stayed/reopened proceedings).

Respondents concede that, as a general matter, "upon reopening of an immigration case, that order serves to revoke the final order of removal," thereby "changing the detention status to discretionary under 8 U.S.C. § 1226(a)," but they contend Petitioner is an exception and must be detained under § 1226(c). (Opp. 2:21–27, ECF No. 11; Medina Decl. ¶¶ 19–22, ECF No. 11-1.) That concession is significant: it confirms DHS is not detaining Petitioner to carry out an "imminent" removal that can be executed now. DHS is detaining him while it litigates reopened proceedings, seeks a venue transfer, and "will be filing" additional charges after venue changes—steps that by their nature prolong the adjudication timeline. (Medina Decl. ¶¶ 19–22.)

The government nevertheless argues that Petitioner falls into a categorical "no-release" exception—mandatory detention under § 1226(c)—based on decades-old convictions and notwithstanding Petitioner's long-term compliance in the community. Even accepting *Nielsen v. Preap*, 139 S. Ct. 954 (2019), as a statutory interpretation of "when … released," Preap does not decide the constitutional question presented here: whether the Fifth Amendment permits months of civil confinement without individualized process for a longtime lawful permanent resident who lived under supervision for approximately eighteen years and whose removal is presently stayed and proceedings reopened. Nor does *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), resolve that question; *Jennings* rejected a statutory rewrite but left as-applied due process constraints to be adjudicated. On remand, the Ninth Circuit expressly stated it has "grave doubts" that "any statute that allows for arbitrary prolonged detention without any process is constitutional," and it recognized that due process may require individualized process once detention becomes prolonged. *Rodriguez v. Marin, 909* F.3d 252, 256 (9th Cir. 2018).

Accordingly, Petitioner's continued detention during reopened/stayed proceedings is unlawful for at least three independent reasons:

(A) It no longer serves the narrow civil purpose that can justify immigration detention—effectuating removal—because removal is stayed and proceedings are reopened, while DHS pursues litigation steps that prolong resolution. See *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

(B) Even if DHS invokes § 1226(c), prolonged detention without individualized process raises serious Fifth Amendment problems as applied here, where detention has become excessive and untethered from its lawful purpose. See *Rodriguez v. Marin*, 909 F.3d at 256; see also *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005) (recognizing the constitutional concern where § 1226(c) detention becomes prolonged).

(C) The record provides no current, individualized basis to treat Petitioner as a flight risk or danger that cannot be addressed by conditions of supervision—especially given the government's own history of supervised release and the absence of any allegation that Petitioner violated supervision conditions before the June 2025 arrest. (Medina Decl. ¶ 12; ECF No. 11-2.)

For these reasons, the Court should reject the government's rigid "mandatory detention" position and order Petitioner's immediate release under appropriate conditions. At minimum, the Court should order prompt individualized process at which DHS bears the burden to justify continued detention under the Fifth Amendment.

A. Detention No Longer Serves Its Intended Civil Purpose Once Removal Was Stayed and Proceedings Were Reopened

Immigration detention is civil, and it remains constitutionally permissible only insofar as it is reasonably related to its legitimate purposes—principally ensuring a noncitizen's availability for removal and, in narrow circumstances, protecting the community through lawful process. *Zadvydas v. Davis* underscores that the "flight" justification is "weak or nonexistent" where removal is a remote possibility, and that preventive detention based on dangerousness has been upheld only with strong procedural safeguards and special circumstances. 533 U.S. 678, 699–700 (2001).

The Supreme Court's decision in *Demore v. Kim*—often invoked to justify categorical detention under § 1226(c)—rests on a critical factual premise: detention under § 1226(c) was upheld against a facial due process challenge because it was understood to be brief and tied to the expeditious completion of removal proceedings. 538 U.S. 510, 529–30 (2003). Justice Kennedy's concurrence further confirms that if detention becomes unreasonably prolonged because of delay, habeas relief is available. *Id.* at 532 (Kennedy, J., concurring).

That premise does not fit this case. Once the Immigration Judge granted a stay of removal and later reopened proceedings, Petitioner ceased being held to effectuate an imminent removal under § 1231; he is now detained while DHS litigates reopened proceedings under § 1226—proceedings that DHS itself is prolonging through a pending venue transfer and announced intent to add charges. (Opp. at 2; Medina Decl. ¶¶ 19–22.) In this posture, detention is no longer a short, removal-proximate measure; it is prolonged preventive confinement while the government pursues a new litigation course.

The Supreme Court has made clear that *Jennings v. Rodriguez* rejected reading a six-month bond-hearing requirement into the statute as a matter of *statutory interpretation*, but it left open as-applied constitutional challenges to prolonged detention. 138 S. Ct. 830 (2018). On remand, the Ninth Circuit expressly recognized "grave doubts" about the constitutionality of prolonged detention without process and acknowledged that due process may require an individualized bond hearing once detention becomes prolonged. *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). Long before Jennings, the Ninth Circuit likewise treated extended § 1226(c) detention as constitutionally suspect, construing detention authority as tethered to *expedited* removal and ordering a bond hearing where detention had stretched for years. *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005).

Here, Petitioner has already been confined for months after an 18-year history of successful community supervision, with no individualized adjudication that confinement is necessary to prevent flight or mitigate danger under current conditions. Where detention has become prolonged, the Ninth Circuit requires robust procedural protections at any individualized hearing, including the government's burden to justify detention by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011).

Accordingly, once removal was stayed and proceedings reopened, continued categorical detention without individualized process ceased to be reasonably related to its asserted civil purposes and became excessive as applied. The Court should order Petitioner's immediate release under appropriate conditions of supervision—or, at minimum, order a prompt individualized bond hearing at which the government bears the burden to prove, by clear and convincing evidence, that continued detention is necessary to prevent flight or danger.

B. The Government's Reliance on § 1226(c) Is Misplaced as Applied to Petitioner's Unique Posture and Binding Due Process Limits

Respondents contend that Petitioner must remain detained without any opportunity for release because his decades-old conviction purportedly falls within 8 U.S.C. § 1226(c)(1)(B). (Opp. at 3.) That categorical position ignores the posture of this case and the constitutional limits that apply when detention becomes prolonged and untethered from its civil purpose.

First, the government's "mandatory detention" theory treats Petitioner as if he were a newly released offender entering removal proceedings for the first time. The record shows the opposite. DHS confirms that ICE arrested Petitioner in 2006, served an NTA, and detained him during the prior proceedings. (Medina Decl. ¶¶ 8–11.) DHS further confirms that ICE released Petitioner on an Order of Supervision on March 8, 2007, after removal could not be effectuated. (*Id.* ¶ 12.) Thus, DHS already used custody authority to detain Petitioner during his earlier proceedings and then supervised him in the community for years. Re-invoking mandatory no-bond detention nearly two decades later—after sustained compliance in the community—presents a fundamentally different due process question than the one addressed in cases involving immediate post-release detention.

Second, even accepting the Supreme Court's statutory holding in *Nielsen v. Preap*, 139 S. Ct. 954 (2019), Respondents still must confront the Fifth Amendment. Preap interpreted the "when…released" language and did not decide whether due process permits mandatory, no-bond detention after a lengthy gap and prolonged confinement. *Id.* at 972 (not reaching procedural due process challenge). *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), likewise rejected imposing a bond-hearing rule as a matter of statutory interpretation, but expressly left constitutional challenges to prolonged detention available. *Id.* at 851. The Ninth Circuit's remand decision underscored the point: it expressed "grave doubts" about the constitutionality of any statute permitting "arbitrary prolonged detention without any process," and recognized that due process may require individualized process once detention becomes prolonged. *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

Third, Respondents' position cannot be reconciled with the premise that sustained *Demore v. Kim*. The Supreme Court upheld § 1226(c) against a facial challenge largely because detention in that context was understood to be brief and to end when removal proceedings concluded. 538 U.S. 510, 529–30 (2003). Justice Kennedy's concurrence emphasized that where detention becomes unreasonably prolonged due to delay, habeas relief is available. *Id.* at 532 (Kennedy, J., concurring). The Ninth Circuit has likewise treated prolonged mandatory detention as constitutionally suspect: *Tijani v. Willis* ordered a bond hearing where § 1226(c) detention had become unreasonably long. 430 F.3d 1241, 1242 (9th Cir. 2005). And when due process requires a hearing in the prolonged-detention setting, the Ninth Circuit requires that the government bear a meaningful burden—by clear and convincing evidence—to justify continued confinement. *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011).

Fourth, Respondents' own filing highlights the arbitrariness of continuing detention without individualized process. They represent that, "[p]ursuant to the Court's docket order," the United States "has no knowledge of any facts suggesting a change in circumstance that is material to the danger to public safety or flight risk." (Opp. at 3.) If the government cannot point to any current, individualized facts supporting danger or flight risk, it cannot constitutionally insist that Petitioner must remain imprisoned without any neutral assessment—particularly where Petitioner lived under ICE supervision for years and appeared for the very check-in at which ICE arrested him. (Medina Decl. ¶¶ 12–13.)

In short, Respondents' reliance on § 1226(c) as an automatic "no-process" command is misplaced as applied here. Under *Demore, Jennings, Rodriguez v. Marin, Tijani*, and *Singh*, prolonged civil detention—especially where removal is stayed and proceedings are reopened—cannot persist indefinitely without individualized process. Petitioner therefore respectfully requests immediate release under appropriate conditions, or at minimum a prompt individualized bond hearing at which DHS bears the burden to prove, by clear and convincing evidence, that continued detention is necessary to prevent flight or danger.

C. Petitioner Presents No Current Flight Risk or Danger; Continued Detention Is Excessive and Untethered to Any Civil Purpose

Even if the Court assumes Respondents may invoke § 1226(c) in the abstract, the record confirms that continued incarceration is unnecessary to protect any legitimate governmental interest and has become excessive as applied. Petitioner lived in the community under ICE supervision for approximately eighteen years. (Medina Decl. ¶ 12.) He did not abscond; he appeared for supervision and was arrested only when he reported for a routine check-in on June 12, 2025. (Medina Decl. ¶ 13.) The government also represents that it has "no knowledge of any facts suggesting a change in circumstance that is material to the danger to public safety or flight risk." (Opp. at 3.) These are not disputed points—they are the government's own record admissions. Together, they defeat any claim that continued incarceration is necessary to prevent flight or mitigate danger.

1. Flight risk is minimal and readily addressed by conditions of supervision.

The Supreme Court has recognized that the government's interest in preventing flight is "weak or nonexistent where removal seems a remote possibility." *Zadvydas v. Davis*, 533 U.S. 678, 699–700 (2001). Here, removal is stayed and proceedings are reopened, and DHS is pursuing further litigation steps (including venue change and contemplated additional charges), which prolong resolution. (Medina Decl. ¶¶ 19–22.) In this posture, detention does not function as a short-term measure to ensure immediate removal; rather, it becomes prolonged confinement while proceedings play out. In any event, the record already demonstrates an effective, less restrictive alternative: ICE successfully supervised Petitioner in the community for years, and Petitioner appeared as required. (Medina Decl. ¶¶ 12–13.) Supervision conditions—reporting requirements, geographic limits, and other standard ICE controls—are sufficient to address any legitimate attendance concerns without incarceration.

2. The record does not support a finding of current danger.

Respondents do not identify any post-supervision conduct or contemporary facts establishing that Petitioner poses a present danger. To the contrary, Respondents affirm they have "no knowledge" of any material change in circumstance bearing on danger. (Opp. at 3.) Where detention becomes prolonged, due process requires individualized process and a meaningful burden on the government to justify continued confinement. *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011). Prolonged incarceration based solely on decades-old convictions—without current, individualized evidence of danger—cannot satisfy due process once detention is no longer brief and removal is not imminent. See *Demore v. Kim*, 538 U.S. 510, 529–30 (2003) (upholding § 1226(c) in reliance on typically brief detention);

Rodriguez v. Marin, 909 F.3d 252, 256 (9th Cir. 2018) (expressing "grave doubts" about any statute that permits "arbitrary prolonged detention without any process").

3. As applied here, continued detention is excessive and no longer reasonably related to its civil purpose.

Civil immigration detention must bear a reasonable relation to its legitimate purpose; it cannot become arbitrary confinement divorced from removal feasibility and individualized necessity. *Zadvydas*, 533 U.S. at 690–91; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Because Petitioner's removal is stayed and proceedings are reopened, and because the government identifies no current individualized facts supporting flight risk or danger, continued detention is excessive and untethered to any legitimate civil objective. (Opp. at 3; Medina Decl. ¶¶ 12–13, 19–22.) The resulting deprivation of liberty constitutes irreparable harm, and the public interest favors preventing constitutional violations. *Hernandez v. Sessions*, 872 F.3d 976, 994–96 (9th Cir. 2017).

Accordingly, Petitioner respectfully requests immediate release under appropriate conditions of supervision. At minimum, the Court should order prompt individualized process—at which DHS bears the burden to justify continued detention—because the present record does not support ongoing incarceration as necessary to prevent flight or danger.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Court grant habeas and preliminary injunctive relief. The record demonstrates that ICE revoked Petitioner's long-standing Order of Supervision and re-detained him on a stated premise—"imminent removal" supported by travel documents—that DHS's own chronology does not substantiate, and without the mandatory revocation procedures required by 8 C.F.R. § 241.13. The government cannot salvage that unlawful revocation through post hoc relabeling.

Further, once the Immigration Judge stayed removal and reopened proceedings, Petitioner's confinement became prolonged preventive detention during ongoing litigation under § 1226, while DHS seeks a venue change and contemplates additional charges. In these circumstances, the government's categorical reliance on § 1226(c) cannot displace the Fifth Amendment's requirement that detention remain reasonably related to its civil purpose and, when prolonged, be accompanied by individualized process. Petitioner has shown a strong likelihood of success on the merits; he also faces irreparable harm from each additional day of unlawful confinement, and the balance of equities and public interest favor adherence to constitutional and regulatory limits on civil detention.

Petitioner therefore asks the Court to (1) order his immediate release under appropriate conditions of supervision, and (2) enjoin removal while this habeas action is pending. In the alternative, Petitioner requests an order requiring prompt individualized custody proceedings at which DHS bears the burden to justify continued detention under the governing constitutional standard.

Dated: December 31, 2025

Respectfully submitted,

/s/Daniel M Huynh

Daniel M Huynh, Esq.
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Daniel M. Huynh, certify that on 12/31/2025, I served the foregoing **Petitioner's Reply in Support of Habeas Petition and Preliminary Injunction** in Phommavongsa v. Chesnut, Case No. 1:25-cv-01852-JLT-CDB (HC), by filing it through the Court's CM/ECF system, which effects service on all registered CM/ECF users.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/31/2025 at Arlington, Virginia.

/s/ Daniel M. Huynh
Daniel M. Huynh