BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
DANIEL A. BECK (Cal. Bar No. 204496)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2574
E-mail: Daniel.Beck@usdoj.gov

Attorneys for Federal Respondents

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

DABONA TANG,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, et al.,

Respondents.

No. 2:25-cv-04638-MRA-PD

FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION AND RESPONSE TO ORDER TO SHOW CAUSE

[Declaration of Christopher Hubbard and Daniel A. Beck filed in support thereof]

Hearing: June 9, 2025, at 1:30 p.m.

Honorable Mónica Ramírez Almadani
United States District Judge

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY

Petitioner Dabona Tang, a citizen of Vietnam who is subject to a final removal order, was detained on May 21, 2025, and filed his habeas Petition on May 22, 2025 [Dkt. 1]. Petitioner then applied *ex parte* for a temporary restraining order [Dkt. 8] (the "TRO Application") providing that: "Petitioner Dabona Tang shall not be removed from the U.S. for __ days and he shall be released from custody unless he is given notice and an opportunity to challenge his detention before a neutral party." [Dkt. 8-2]. The Court denied the TRO Application, but ordered Respondents to show cause as to why a preliminary injunction (PI) should not be issued. [Dkt. 9].

The government is preparing the request for Petitioner's travel papers to Vietnam. *See* Declaration of Christopher Hubbard ("Hubbard Decl."). There is no jurisdiction or basis for the requested relief, which must be denied for many independent reasons.

First, there is no jurisdiction to challenge Petitioner's removal pursuant to a final removal order. The Petition identifies no unlawfulness for Petitioner's removal, nor is there any. 8 U.S.C. § 1252(g) provides that for "Judicial review of orders of removal":

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

While removals may still be challenged on some specific bases (*e.g.*, if the detainee is a citizen, or there is an appellate stay), the Petition raises none of those bases. To the contrary, Petitioner concedes he is ultimately removable. *See* PI Supplement, p. 2.

Turning to Petitioner's detention—a different issue—a habeas petition must be directed at ordering release from custody. Petitioner states that fourteen years ago he was detained pending his removal pursuant to a final removal order, but he was then released after six months because the government was unable to arrange for his travel to Vietnam. Having been arrested on May 21, 2025, and filed his Petition on May 22, 2025,

Petitioner complains he has not been given an explanation for his redetention, and claims the government will not likely remove him in the reasonably foreseeable future.

Petitioner has not established entitlement for habeas release from detention under the governing standard of *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, if a detained noncitizen is not removed within six months, the burden then shifts to the government to show it will remove them in a reasonably foreseeable time. A noncitizen "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*, 701.

Historically, there were indeed political barriers to removing citizens of Vietnam, as well as other Southeast Asian nations. Those barriers generated litigation, and many otherwise removable noncitizens—like Petitioner—were released under orders of supervision because they could not be removed. But that was many years ago. Those barriers were eventually dismantled. Vietnamese citizens are now readily removed. A few years ago, Judge Carney discussed the salient points in his summary judgment ruling in the putative class action case of *Trinh v. Homan*, 466 F.3d 1077 (C.D. Cal. 2020). As Judge Carney found after exhaustive analysis:

> The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. … Instead, Vietnam now considers each request from ICE on a case-by-case basis. (*Id.*) ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. ….. Petitioners do not appear to dispute that once Vietnam issues a travel document, removal becomes significantly likely, rendering class members unable to meet their initial burden under *Zadvydas*.

Trinh, 466 F. Supp. 3d at 1090. Judge Carney thus refused to certify a class because he found that while some pre-1995 Vietnamese immigrants might not likely be removed, other pre-1995 Vietnamese immigrants might likely be removed. *Id.* at 1090-92.

Removing Vietnamese citizens to Vietnam is thus now readily accomplished, which is a significantly changed circumstances from Petitioner's situation over a decade ago. For example, in another unreasonably prolonged detention habeas petition recently

filed in this district, the government demonstrated that the petitioner's removal to Vietnam was being scheduled and flights to Vietnam purchased. *See Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM. The petition was thus held in abeyance. *See* Dkt. 11. The detained petitioner was then indeed promptly removed to Vietnam, thereby mooting his habeas petition, which was dismissed accordingly on April 9, 2025. *See* Dkt. 12. The same result should be applied here, consistent with the governing law.

Moreover, while Petitioner claims he was previously detained for 180 days, ICE records show he was detained from May 19, 2011 to his supervised release on August 19, 2011, a total prior detention of just 92 days. *See* Hubbard Decl., ¶¶ 10-11. His current total detention time thus remains *well* within the presumptively constitutional time.

As for removal, the Court's TRO Order ordered that Petitioner temporarily not be removed, citing Alien Enemies Act (AEA) precedent. [Dkt. 9]. But this is not an AEA case, and the Petition raises no grounds to review and delay Petitioner's removal. Nor does Petitioner's supplemental filing. [Dkt. 12]. AEA issues are not a basis for injunctive relief when the Petition itself does not raise such issues (plausibly or otherwise). Petitioner is being removed to Vietnam under the INA. *See* Hubbard Decl.

Finally, it is improper to seek the ultimate relief for a lawsuit in the form of a mandatory preliminary injunction. A TRO or PI is intended to preserve the status quo until the case can be judged on the merits. The status quo is that Petitioner is detained. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

Petitioner's filings fail to meet his very high burden for a preliminary habeas release. He does not want to be detained, understandably, and his PI Supplement articulates harms that detention causes him and his family. But Petitioner is subject to a final order of removal, and the government is taking steps to remove him to Vietnam. He has not established that "there is no significant likelihood of removal in the reasonably foreseeable future," as required to establish a claim under *Zadvydas*. Accordingly, Petitioner's request for a preliminary injunction should be denied.

II. FACTUAL BACKGROUND

As set forth in the concurrently filed declaration of Deportation Officer Christopher Hubbard, Petitioner is a native of the Philippines and a citizen of Vietnam. *See* Hubbard Decl., ¶ 3. On or about October 29, 1981, he was admitted to the United States as a refugee. *Id.* On or about May 6, 1983, Petitioner's status was adjusted to that of lawful permanent resident. *Id.*, ¶ 4.

On or about October 3, 2000, Petitioner was convicted in the Superior Court of the State of California of the offense of Receiving Stolen Property in violation of California Penal Code Section 496(a) and sentenced to 36 months of probation. *Id.*, ¶ 5.

On or about July 27, 2009, Petitioner was convicted in the United States District Court, Central District of California for the offense of Conspiracy to Possess with Intent to Distribute Methylenedioxymethamphetamine (MDMA) in violation of 21 U.S.C. section 846, 841(b)(1)(C). For this crime Petitioner was sentenced to 24 months; 12 months in the United States Bureau of Prisons and 12 months of home detention with electronic monitoring. *Id.*, ¶ 6.

On or about December 13, 2010, ERO encountered Petitioner while conducting record checks on incarcerated individuals due to his arrest for a violation of Title 21 U.S.C. Section 846, 841 (b)(1)(C), Conspiracy to Possess with Intent to Distribute 3,4-Methylenedioxymethamphetamine (MDMA). ERO lodged an Immigration Detainer, Form I-247. *Id.*, ¶ 7.

On or about January 6. 2011, ERO served Petitioner with a Notice to Appear (NTA) charging him under INA Section 237(a)(2)(A)(iii) for having been convicted of an aggravated felony as defined in section 101(a)(43)(U) of the Act. *Id.*, ¶ 8.

On February 17, 2011, the immigration judge ordered Petitioner removed to Vietnam. Petitioner waived appeal of that decision. *Id.*, ¶ 9.

On or about May 19, 2011, the Immigration Detainer was honored and ERO arrested Petitioner upon his release from the Flightline Correctional Facility in Big Springs, Texas and transferred him to the Rolling Plains Detention Center. *Id.*, ¶ 10.

On or about August 19, 2011, Petitioner posted bond and ERO released him on an Order of Supervision, Form I-220B. *Id.*, ¶ 11.

On or about June 19, 2014, Petitioner was convicted in the Superior Court of California of the offense of Driving Under the Influence Alcohol/0.08 Percent in violation of California Vehicle Code Section 23152(b) and sentenced to three years of probation and a fine. *Id.*, ¶ 12.

On May 21, 2025, ERO took Petitioner into custody in Los Angeles, California pursuant to 8 U.S.C. section 1231(a). On May 22, 2025, ERO transferred Petitioner to the Northwest ICE Processing Center in Tacoma, Washington where he remains detained pending his removal from the United States. *Id.*, ¶ 13.

On June 6, 2025, a Notice of Revocation of Release was served on Petitioner. *Id.*, ¶ 14.

ICE is in the process of preparing a request for travel documents to submit to the government of Vietnam for the Petitioner. *Id.*, ¶ 15.

ICE expects that a travel document for Petitioner will be issued and ICE will be able to effect his removal to Vietnam in the reasonably foreseeable future. *Id.*, ¶¶ 16-17.

III. PROCEDURAL HISTORY

A. Petitioner Did Not Comply With Fed. R. Civ. P. 65(b)(1)(B)

The Petition [Dkt. 1] was filed on May 22, 2025, the same day that Petitioner was re-detained. The PI Supplement claims that Petitioner gave sufficient notice of his application for a temporary restraining order [Dkt 8] and of the preliminary injunction motion more generally. Specifically, Petitioner claims:

> On May 28, 2025, the Magistrate Judge Patricia Donahue directed the court to serve the habeas petition on the Respondents in accordance with FRCP 4 and required a response. *See* Dckt. 6. Thus, the adverse party was notified of the nature of the petition and Daniel Beck, United States Attorney entered an appearance in accordance with the court's order. *See* Dckt. 10. Because the adverse party has been noticed, this court may issue the preliminary injunction.

PI Supplement, p. 7. In the Declaration of Andres J. Ortiz [Dkt. 8-1, p. 46], filed in

support of his TRO application, Petitioner's counsel claimed he had given full and proper notice of that application to the USAO, and yet received no response:

> 3. I am writing this declaration to explain our compliance with FRCP 65.
>
> 4. On May 28, 2025 I contacted Joanne Osinoff U.S. Attorney's Office for the Central District of California, via her email address. I explained the nature of the proceedings and informed her that the clerk of the court had served the habeas petition on the office. I asked for her office's opinion with respect to the request for a Temporary Restraining Order (TRO).
>
> 5. As of 3:03 pm on May 28, 2025, I have not received a response from the U.S. Attorney's Office.

Id. These claims were not correct.

On May 27, 2025, at 4:32 p.m., Petitioner's counsel emailed Joanne Osinoff at the United States Attorney's Office (USAO) and stated in full as follows: "Hello, I will be filing a TRO shortly, do you have a position on this? Best." *See* Beck Decl., Exh. A. Ms. Osinoff responded at 5:01 p.m. on May 27, 2025 as follows: "Dear Counsel, Your email below fails to comply with the notice requirements of Rule 65 and the local rules of this court. Our office has no record of service of the complaint or any other pleadings in this action. Thus, we have no idea what your client is claiming or the reasons for the TRO." *Id.* Petitioner's counsel responded:

> Counsel, According to LR 4-4: In all cases where a petitioner has filed a habeas corpus petition under 28 U.S.C. § 2241 or a motion under 28 U.S.C. § 2255, which challenges the judgment of a federal court or a decision of a federal agency, the procedures for service of the petitions, motions, and related orders will be pursuant to the agreement between the United States Attorneys' Office and the Court set forth in Appendix C to these Local Rules. There is no agreement that the court will direct service to your office?

Id. On May 28, 2025, at 12:30 p.m. Magistrate Judge Donahue issued an order requiring a response, notifying the USAO. [Dkt. 6]. At 3:24 p.m., Joanne Osinoff of the USAO e-mailed Judge Donahue's Courtroom Deputy and requested a copy of the habeas petition, noting that "The petition is restricted and cannot be accessed. Thank you." *See* Beck

Decl. Exh. B. Ms. Osinoff copied Petitioner's counsel on that email thread. *Id.* The Courtroom Deputy then forwarded a copy of the habeas petition to the USAO at 3:50 p.m. on May 28, 2025, via an email that Petitioner's counsel was copied on. *Id.*

At 5:37 p.m. on May 28, 2025, Petitioner filed his TRO application and supporting documents. *See* Dkt. 8. Again, Petitioner provided no copies to the USAO.

Contrary to his declaration, Petitioner's counsel did not explain the details of his case to the USAO, serve it with a copy of the petition prior to filing his Application, or otherwise comply with the rules that govern seeking a TRO or PI. Further, insofar as Petitioner's counsel e-mailed the USAO, he received correspondence back from AUSA Osinoff, both before the time cited in his declaration, and also before he filed the application. *See* Beck Decl., Exhs. A-B.

At 10:37 a.m. on May 29, 2025, without Respondents having filed their response to the TRO application or having appeared in the case—and without the applicable deadline for either of those events having elapsed pursuant to the Local Rules and Magistrate Judge Donahue's order—the Court issued the TRO Order. [Dkt. 9]. The TRO Order found that "Although Petitioner's counsel has adequately certified 'any efforts made to give notice,' he does not elaborate on 'the reasons why it should not be required.'" *Id.*, p. 5.

B. The Court's TRO Order

The Court's TRO Order denied Petitioner's TRO Application, but ordered that the Respondents are "(a) **TEMPORARILY ENJOINED** from transferring, relocating, or removing Petitioner from the United States without an Order from this Court, and (b) **ORDERED TO SHOW CAUSE** why a preliminary injunction should not issue." Dkt. 9, p. 1.

The TRO Order noted that "On May 28, 2025, the assigned Magistrate Judge issued an Order directing the Clerk to promptly serve the Petition and Order on Respondents… . Respondents were further ordered in relevant part to file and serve a Notice of Appearance no later than May 29, 2025. That same day, the Magistrate

Judge amended the Order to provide that **"[w]here the Petitioner challenges a final order of removal, Respondent Shall Not remove Petitioner prior to the resolution of this action without providing reasonable notice to the Court**." *Id.*

The Court's TRO Order found that "Petitioner's claims fall within the scope of the Court's habeas jurisdiction," citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001):

> The Constitution limits this post-removal-period detention to "a period reasonably necessary to bring about that [noncitizen]'s removal from the United States. It does not permit indefinite detention." Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by § 1231(a)(6)" and DHS must release the noncitizen.

Id. (internal citations omitted). That is a correct statement of habeas jurisdiction in this context, which does not permit barring the noncitizen's removal, but permits deciding habeas petitions when the noncitizen is not being detained to "a period reasonably necessary to effectuate that alien's removal from the United States." 533 U.S. at 680.

The TRO Order then describes the general procedures and regulations governing the re-detention of noncitizens who have released under an order of supervision, OSUP. *See* TRO Order, pp. 6-8. As noted therein, the regulations provide that the DHS may revoke the release on grounds including if "the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. 241.13(i)(2).

The TRO Order states that (based on his allegations) "Petitioner was released from post-removal-period detention after 180 days once it was determined that his removal was not reasonably foreseeable. Approximately 14 years later, his supervision was revoked, and he was returned to custody purportedly in violation of the revocation regulations. As alleged, Petitioner was not notified of the reasons for the revocation, nor was he promptly interviewed or otherwise afforded an opportunity to respond to the government's purported reasons for redetention. He was not made aware of any "changed circumstances" reflecting a "significant likelihood" that he will be removed in

the reasonably foreseeable future." TRO Order, p. 7.

The Court's order held that "although ICE allegedly indicated that it has yet to obtain a travel document from Vietnamese authorities, Petitioner was transferred within days of his revocation from California to Washington, raising the prospect of either prolonged detention or imminent deportation without further notice. Such deprivations lie "at the heart of the liberty" protected by the Due Process Clause."

Finally, the TRO Order found that "Petitioner's removal, if indeed imminent, may gravely undermine the Court's jurisdiction to remedy Petitioner's purportedly unlawful detention." TRO Order at 7. As grounds for this, the Court cited *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *4 (4th Cir. Apr. 7, 2025).

Understanding that it was intended to maintain the status quo, there are multiple problems with that ruling. **First**, this is a habeas petition, and the applicable remedy would be release from detention, not preventing wrongful removal. In *Zadvydas*, the Supreme Court was concerned with *detention* that was not facilitating the noncitizen's removal. **Second**, there are other potential remedies for wrongful detention, and they do not require blocking removal. As the Supreme Court has noted, Congress changed the law to provide jurisdiction for review of deportation orders for noncitizens who have already been removed: "Congress lifted the ban on adjudication of a petition for review once an alien has departed." *Nken v. Holder*, 556 U.S. 418, 424 (2009). As the Supreme Court further explained, "It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury. Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal." *Nken*, 556 U.S. at 435. Furthermore, noncitizens can also seek tort remedies for detention when they are wrongfully removed. *See Arce v. United States*, 899 F.3d 796 (9th Cir. 2018) (noting that the Ninth Circuit had ordered the plaintiff's return after their wrongful removal in violation of Ninth Circuit stay). **Third**, there is no 'wrongful removal' claim in this lawsuit. **Fourth,** this is not an AEA case, and Petitioner

is not being removed into foreign custody.

Specialized cases under non-INA legal authority are inapposite. They do not apply to persons removed to their own country of citizenship under the INA, where there is no evidence they will be imprisoned there—and perhaps more importantly, where the pleadings and papers (like here) do not allege or establish such a situation.

Finally, citizens cannot challenge their removal under 8 U.S.C. § 1231 and its implementing regulations, whether by the APA or otherwise. *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (noting noncitizens may not bring causes of action under § 1231; instead, they may rely on 28 U.S.C. § 2241—the general habeas corpus statute—to challenge detention that is without statutory authority).

The TRO Order concluded that "In such circumstances, the Court finds that a TRO maintaining the status quo is necessary to preserve the Court's jurisdiction to consider the request for relief presented in the Petition and TRO Application and afford the parties an opportunity to develop a more comprehensive record on an order to show cause why a preliminary injunction should not issue." TRO Order, p. 7.

IV. STANDARD OF REVIEW

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain injunctive relief, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20.

Because Petitioner seeks a mandatory injunction here, the already high standard is "doubly demanding." *Garcia v. Google, Inc.* 786 F.3d 733, 740 (9th Cir. 2015). Thus, Petitioner must establish that the law and facts *clearly favor* his position, not simply that he is likely to succeed. *Id.* Further, a mandatory preliminary injunction will not issue

unless extreme or very serious damage will otherwise result. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022).

Finally, where a litigant seeks their ultimate relief by preliminary injunctive means, that is improper since "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

V. ARGUMENT

A. Petitioner has not shown a likelihood of success on the merits because he has not established that "there is no significant likelihood of removal in the reasonably foreseeable future."

Petitioner's PI Supplement fails to make a showing on the merits of his claim. He largely ignores that issue, focusing instead on articulating the harms that detention imposes on him and others in his family. *See* PI Supplement. [Dkt. 12.] But showing likelihood of success on the merits is a requisite threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, *supra*, 786 F.3d at 740 (internal quotation omitted). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. Petitioner is in custody, being detained in the State of Washington. But he has not shown that his current custody is unlawful, and it is not unlawful.

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Under *Zadvydas v. Davis*, detention for six months following a final removal order is presumptively valid. 533 U.S. 678, 701 (2001). After that time, a noncitizen may request release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Here, Petitioner does not challenge the validity of his final removal order or that 8 U.S.C. § 1231(a)(6) governs his detention. *See* Petition [Dkt. 1]. Nor would there have been jurisdiction to do so. Instead, Petitioner argues he should be released by preliminary injunctive relief because:

> While Mr. Tang acknowledges that his removal may ultimately occur, and his supervision may be revoked if he violates its terms or there is *substantial evidence* that his removal is imminent, neither of these conditions are present in his case.

PI Supp., p. 2. Petitioner contends his removal is not reasonably foreseeable at this juncture, given that (1) the government was unable to remove him to Vietnam fourteen years ago, and instead released him on an OSUP; and (2) with his re-detention, he was not provided an explanation for why he was re-detained or given travel documents. He also complains of (3) alleged procedural deficiencies in his re-arrest—e.g. lack of a revocation explanation or an informal interview. None of these arguments, however, are sufficient to support his request for release from detention via a PI.

As an initial matter, Petitioner mixes two different issues: (1) the agency's reason for revoking his release and his return to custody; and (2) whether his current detention is unconstitutionally prolonged under the *Zadvydas* standard. The regulatory standard for revocation—which is not the same as the constitutional standard—provides that "The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. 241.13(i)(2). As discussed below, however, that is not the standard governing whether detention is constitutional or not for purposes of a habeas claim.

Instead, whether Petitioner's current detention is constitutional is governed by the

Supreme Court's directives in *Zadvydas*. In that regard, Petitioner filed his Petition on May 22, 2025—the day after he was detained. Petitioner claims that because he was previously detained by ICE for 180 days, the government now has a burden to show that his *current* detention is constitutional relative to timely removing him to Vietnam.

As a threshold matter, there are evidentiary problems with Petitioner's claim that he was previously detained for **180** days. ICE records show that Petitioner was detained from his release from BOP custody in Texas on May 19, 2011 (when he was serving his criminal sentence) until his supervised release on August 19, 2011, a total prior ICE detention period of **92** days. *See* Hubbard Decl., ¶¶ 10-11. Petitioner's declaration, however, asserts that he was taken into ICE custody "in February, 2011. Almost immediately, I was removed from the United States, but I learned that I would not be immediately deported because I am Vietnamese and the Vietnamese government would not accept me." Tang Decl., ¶ 2 [Dkt. 12-1 at pp. 3-4]. It is not clear what Petitioner is referring to, as he provides no details or supporting documentation. It appears that when Petitioner claims "[a]lmost immediately, I was removed from the United States," he refers to the fact he was *ordered* removed by the IJ in February of 2011. But being ordered removed is not the same as being removed, nor as being detained. Petitioner may not understand the differences between (1) his being in BOP criminal custody; (2) his being issued a removal order; and (3) his being transferred into ICE civil detention.

In any event, not only does he fail to show that his total detention is in excess of the presumptively constitutional period, Petitioner also gives an inaccurate paraphrase of the *Zadvydas* standard, so it is important to emphasize how the Supreme Court actually ruled and what the exact constitutional standard is:

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months.

> To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Zadvydas, 533 U.S. at 701. Thus the noncitizen "may be held in confinement until it has been determined that there is ***no significant likelihood of removal in the reasonably foreseeable future.***" *Id.* (bold italic emphasis added).

Here, there is certainly a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future. He was very recently taken into re-detention—May 21, 2025. The government is preparing his travel document request. *See* Hubbard Decl., ¶ 15. The fact that Petitioner almost immediately filed his Petition does not mean there is "no significant likelihood" that he will be removed "in the reasonably foreseeable future." To the contrary, it takes some amount of time to remove people who are arrested pursuant to a final removal order—particularly when courts order they *not* be removed for a preliminary length of time. There is no bar against Petitioner's removal to Vietnam, and the government is currently arranging for that removal.

Effectuating his removal is thus affirmatively likely, just as the Vietnamese petitioner's removal was likely in the *Zadvydas* challenge case of *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM, recently filed in this District, where the Vietnamese citizen was efficiently and timely removed, mooting the case, which was stayed (pending the removal, with updates on its status) and then dismissed.

It is true that that fourteen years ago the government was not able to remove Petitioner to Vietnam, as with other similarly situated individuals, because the prior political relationship between the United States and Vietnam prevented their removals. That produced significant litigation from detainees who argued that they could not be removed to their home nations due to the lack of cooperation, and so their detentions were indefinite. But that barrier to removal was removed. This issue was exhaustively addressed in more recent litigation addressing detainees facing removal to Vietnam. In 2020, Judge Carney explained the then-current state of affairs:

> The parties now agree that Vietnam does not maintain a blanket policy of

> refusing to repatriate pre-1995 immigrants. … Instead, Vietnam now considers each request from ICE on a case-by-case basis. (*Id.*) ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. ….. Petitioners do not appear to dispute that once Vietnam issues a travel document, removal becomes significantly likely, rendering class members unable to meet their initial burden under *Zadvydas*.

Trinh, *supra*, 466 F. Supp. 3d at 1090.

Petitioner may complain that the government is still requesting his travel documents after he filed his Petition and TRO Application—and that it did not already obtain such documents before taking him back into detention. But again, Petitioner almost instantly filed his Petition on May 22, 2025, the day after he was taken into detention. *Zadvydas* does not require the government to pre-arrange a noncitizen's removal travel before arresting them, which would often be extremely difficult if not impossible. The constitutional standard is whether there is "a significant likelihood of removal" in the "reasonably foreseeable future"—not whether a removal will occur "imminently," which Petitioner incorrectly suggests as a heightened substitute standard. Indeed, this Court affirmatively ordered that Petitioner *not be removed* pending resolution of the OSC; it would create a serious jurisdictional conflict if the government had to prove it would "imminently" remove a noncitizen who it had been ordered not to remove. The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, the Supreme Court was clear that the Constitution prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Courts therefore properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order). That Petitioner does not yet

have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).

Accordingly, Petitioner has failed to establish a likelihood of success on his claims, defeating his request for preliminary injunctive relief. It is therefore not necessary to proceed to the remaining *Winter* factors, but Respondents will do so below.

B. Petitioner's Complaints about Procedural Deficiencies in His Redetention Do Not Establish a Basis for Habeas Relief

Petitioner complains that ICE has not followed all of the procedures applicable to a revocation of supervised release in his case; he complains he was arrested, but has not yet been given an explanation for the revocation, or an informal interview. As an initial matter, Petitioner filed his Petition with incredible speed, and the lack of some typical aspects of re-detention procedure may be in part reflect the nearly instantaneous filing of the Petition. In that regard, Petitioner has now been issued a Notice of Revocation of Release. *See* Hubbard Decl., ¶ 14.

But in any event, Petitioner does not have a protected liberty interest in remaining free from detention where ICE has exercised its discretion under a valid removal order and its regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders."). "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation "when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§

241.4(l)(2)(i), (iv) (emphasis in original).

It is unclear whether Petitioner's conversations with ICE officers to date amount to an informal interview, but even if they do not, the alleged lack of an interview does not entitle Petitioner to release. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

The same is true here. Whatever procedural deficiencies or delays may have occurred, they do not warrant Petitioner's release, and indeed could be cured by means well short of release. He does not challenge his removal order, nor could he. Finally, ICE is preparing Petitioner's travel document request, and expects the removal of the Petitioner to Vietnam to occur in the reasonably foreseeable future. *See* Hubbard Decl., ¶¶ 15-17.

C. Petitioner has not shown he will suffer irreparable harm absent a mandatory preliminary injunction

Petitioner has not demonstrated that he will suffer irreparable injury absent his release. To show irreparable harm, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury.[1] But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting a mandatory preliminary injunction.

Petitioner's PI Supplement discusses the harms he believes detention threatens him with. Many of those harms, however, would be inherent in his pending removal to Vietnam. Many of the harms are also articulated as harms born by his family members from his absence, which are understandable, but again would be caused by his removal,

---

[1] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

and which are also not his own harms (as the moving party, who must show his own irreparable harm, not the harms of others).

Petitioner argues his detention is not fair because "I already served six months in detention before. I haven't committed any crimes since." Tang Decl., ¶ 17. It is uncertain what he construes as that detention. ICE's records show that "[o]n or about May 19, 2011, the Immigration Detainer was honored and ERO arrested TANG upon his release from the Flightline Correctional Facility in Big Springs, Texas and transferred him to the Rolling Plains Detention Center." Hubbard Decl., ¶ 10. And Petitioner did commit crime since—"On or about June 19, 2014, TANG was convicted in the Superior Court of California of the offense of Driving Under the Influence Alcohol/0.08 Percent in violation of California Vehicle Code Section 23152(b) and sentenced to three years probation and a fine." Hubbard Decl., ¶ 12.

But more importantly, the purpose of civil detention is facilitating removal. The government is working to timely remove Petitioner. The family separation harms he complains of are significant, but are not specific to his detention. Petitioner does complain about medical care and food, but he does not provide specifics in that regard, and it is well established that complaints about conditions of confinement are not a basis for habeas relief. *See Pinson v. Carvajal,* 69 F.4th 1059 (9th Cir. 2023).

D. The Balance of Interests Favors the Government

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]"). This public interest outweighs Petitioner's private interest here. Petitioner asks the Court to declare his detention unlawful, despite the government's valid reasons and statutory bases for detaining him to effectuate his removal pursuant to valid final

removal order that he does not challenge.

VI. CONCLUSION

For all the above reasons, the Respondents respectfully request that Petitioner's motion for a preliminary injunction be denied.

Dated: June 6, 2025

Respectfully submitted,

BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Daniel A. Beck
DANIEL A. BECK
Assistant United States Attorney

Attorneys for Respondents

Certificate of Compliance under L.R. 11-6.2

Counsel of record for Respondents certifies that this brief contains 6,741 words, which complies with the word limit of L.R. 11-6.1.