UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
No. 25-CV-02836-LMP-JFD

Va Vang, Petitioner, v. James McHenry, et al., Respondent.	**PETITIONER'S REPLY RE: SECOND ORDER TO SHOW CAUSE**

On August 4, 2025, the Court issued a Second Order to Show Cause ("OSC") in this matter, ordering the government to provide detailed information about various topics. *See* ECF No. 13. On August 7, 2025, the government declined to comply with the Court's Order by filing a reply that unilaterally determined that "the questions in the Court's Second Order to Show Cause are moot." ECF No. 14 at 2 n.1. The government submits Petitioner's petition "must be denied since ICE has obtained his travel document and he will be removed imminently." *Id.*

PROCEDURAL & FACTUAL HISTORY

Petitioner incorporates by reference his prior fact section in ECF No. 11.

Additionally, the undersigned reached out to the government's attorney on July 30, 2025 to ask whether the government had a travel document at that time; the government declined to provide a substantive answer to the question. A few hours after receiving Petitioner's reply brief, the government's counsel reached out and communicated that they

had just learned that a travel document had been procured, declining to state when the government actually received the travel document.

Shortly thereafter, this Court issued a Second OSC that specifically ordered the government to disclose: (1) "[a]ny communications that the United States Government has had with the Government of Laos regarding the present request for a travel document for Petitioner," (2) "[w]hat efforts ICE undertook to procure a travel document for Petitioner prior to June 24, 2025," and (3) "[a]ny prior attempts to procure a travel document from Laos for Petitioner." *See* ECF No. 13 at 2.

On August 7, 2025, the government filed a response that chose not to answer the Court's questions. *See* ECF No. 14.

ARGUMENT

Circumstantial and direct evidence provide compelling evidence that the government detained Petitioner for an improper purpose and without following Supreme Court precedent or its own regulations. The government detained Petitioner without having a travel document, and waited 18 days to even begin the process of obtaining a travel document despite knowing that Petitioner had previously been detained for 201 days after being ordered removed in 2009. This constitutes circumstantial evidence that supports concluding the government sought to punish Petitioner for: (1) remaining in the United States after being ordered removed, and (2) criminal convictions after he completed his sentences. *See* ECF No. 12 at 6 ("prison isn't supposed to be fun. It's a necessary measure to… punish bad guys. … What's more: prison can be avoided by self-deportation. … If you are a criminal alien and we have to deport you, you could end up in

Guantanamo Bay or CECOT. Leave now."); *see also* ECF No. 7 at ¶¶ 5-7 (emphasizing Petitioner's criminal history despite its total lack of relevance to the present proceedings); ECF No. 7-2 (same). There is also circumstantial evidence that supports concluding Respondents unlawfully detained Petitioner in violation of their own regulations for the illegitimate purpose of sending a message other Laotians present in the United States with final removal orders who have been unremovable that they need to "[l]eave now," and/or to coerce Laos into issuing more travel documents for its detained citizens. *See* ECF No. 12 at 6, 8-9, 20.

The evidence adduced thus far, and the government's course of conduct in this and other recent cases, supports concluding that Petitioner's detention has been punitive. *See Zadyvdas v. Davis*, 533 U.S. 678, 690 (2001) (**immigration detention must remain "nonpunitive in purpose and effect"**) (emphasis added). It has been extended longer than necessary because of the government's wish to punish Petitioner and other similarly situated individuals. *See Mohammed H.*, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) ("Punishing Petitioner for protected speech or **using him as an example to intimidate other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes**.") (emphasis added).

The government now hopes to moot this case and thereby avoid answering the Court's inquiries made via the Second OSC. However, because an exception to the mootness doctrine applies, the Court may still order the government to answer the questions the Court asked in its Second OSC and, from there, determine whether temporary or permanent statewide injunctive relief is warranted.

The Supreme Court has held that courts may retain jurisdiction over otherwise moot cases when the issue is capable of repetition yet evades review, or when the defendant's voluntary cessation of the challenged conduct deprives the plaintiff of their right to relief. *See Friends of the Earth, Inc. v. Laidlaw Environ. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

Assuming *arguendo* that this matter is moot due to the government's obtention of a travel document, the issue confronting the Court is whether the case presented is capable of repetition while evading review. *See generally* ECF No. 14 at 4 ("Petitioner's petition, **like the petitions in *Kamara* and *Martinez***, must be denied since ICE has obtained his travel document…") (bold emphasis added); *Banyee v. Bondi*, 131 F.4th 823, 824 (8th Cir. 2025) (en banc) ("a habeas challenge to immigration detention 'remain[s] live as long as the petitioner [is] detained and the government refuse[s] to grant his release' and 'does not become moot when[ever] an intervening change merely affects the parties' arguments on the merits'") (quoting *Hassoun v. Searls*, 976 F.3d 121, 129 (2d Cir. 2020)); *Banyee*, 131 F.4th at 824 n.1 (relying, in part, on the capable of repetition yet evading review exception to mootness to explain why the immigration habeas appeal was not moot).

Petitioner submits that, unless this Court holds that ICE's conduct in this matter was unconstitutional and temporarily and/or permanently enjoins ICE, at a statewide level, from the unconstitutional conduct it exhibited towards Petitioner, ICE will continue to: (1) detain similarly situated noncitizens despite the agency's non-possession of travel documents at time of arrest, (2) delay obtaining those travel documents longer than necessary despite previous extended periods of post-removal-order confinement, and (3)

otherwise use civil detention punitively against criminal aliens with final orders of removal.

CONCLUSION

Because a mootness exception applies, the Court should issue another Order, instructing Respondents to fully answer each question in the Court's Second OSC.

The Court should also issue a temporary statewide injunction preventing ICE from detaining certain aliens—*i.e.*, those who: (1) have already served 90 days or more in post-administratively-final-removal-order custody, (2) have already served 180 days or more in immigration custody (regardless of when the removal order issued or became final), and (3) have subsequently been released on an Order of Supervision after demonstrating there is no significant likelihood of removal in the reasonably foreseeable future—prior to actually obtaining a valid travel document for the individual, potentially to be made permanent after further briefing and a hearing that complies with Fed. R. Civ. P. 65(a).

DATED: August 10, 2025

Respectfully submitted,

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