

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-02926-PJS-SGE

TOU PAO LEE,

Petitioner,

v.

PAMELA BONDI et al.,

Respondents.

**FEDERAL RESPONDENTS'
RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS AND
OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Petitioner Tou Pao Lee filed this petition for a writ of habeas corpus to seek release from detention by the U.S. Immigration and Customs Enforcement (“ICE”) pending his removal from the country. Dkt. 1. Lee also filed a motion for a temporary restraining order, asking the Court to block Lee’s removal from Minnesota (and thus, from the United States) while this case and his proceedings in Immigration Court are ongoing. Dkt. 9.

Respondents Pamela Bondi, Kristi Noem, and Todd M. Lyons (collectively, the “Federal Respondents”) respectfully request that the Court deny Lee’s habeas petition and accompanying motion for a temporary restraining order. Contrary to the allegations in Lee’s petition, there is a significant likelihood that his removal from the United States will occur in the reasonably foreseeable future. Lee does not cite any evidence suggesting otherwise. Denying the habeas petition will render Lee’s pursuit of a temporary restraining order moot. But even if the Court determines that further proceedings are required, Lee’s motion for a temporary restraining order should be denied on the merits.

BACKGROUND

The Federal Respondents draw the following background information from Lee's petition, as well as from the Declaration of John D. Ligon ("Ligon Decl.") and the accompanying exhibits.¹

I. Lee's Background and Criminal Activity

Lee is a citizen of Laos who claims to have entered the United States in December 1991, as a refugee. *See* Declaration of John D. Ligon ("Ligon Decl.") ¶ 4. He adjusted his immigration status to that of a lawful permanent resident in 1993. Ligon Decl. ¶ 5.

In 2004, Lee pled guilty in Minnesota state court to one felony count of aiding and abetting the prostitution of an individual under the age of 18, in violation of Minnesota Statutes § 609.322, subdivision 1(1) and § 609.05. Ligon Decl. ¶ 6, Ex. A, at 9-10. The case arose out of Lee's involvement in forcing a 12-year-old girl to engage in acts of prostitution. Ligon Decl. Ex. A, at 5-7, 19. He was sentenced to 86 months in prison, with the execution of that sentence stayed for a 20-year period of probation. Ligon Decl. Ex. A, at 11. He was also ordered to register as a sex offender. Ligon Decl. Ex. A, at 11.

II. Lee's Removal Proceedings and Initial Detention

On January 18, 2005, ICE officials arrested Lee and served him with a Notice to Appear that initiated removal proceedings against him under Section 240 of the

¹ Lee attaches several exhibits directly to his unverified petition, without alleging their authenticity. Some of the exhibits are not even labeled. *See* Dkt. 1-3, Dkt. 1-4, and Dkt. 1-6. Lee makes similar mistakes in his motion for a temporary restraining order, attaching exhibits directly to the motion without the supporting declaration or index required under Local Rule 7.1(l). *See* Dkt. 9-1 and 9-2. Although the Federal Respondents rely on some of the same documents in this response, they will cite the to properly authenticated copies that are attached to John D. Ligon's declaration.

Immigration and Nationality Act (“INA”). Ligon Decl. ¶ 7, Ex. B. The Notice to Appear charged Lee with being removable under INA § 237(a)(2)(A)(iii) because he had been convicted of an aggravated felony. Ligon Decl. Ex. B, at 3. Lee’s removal proceedings ended with an order entered by an immigration judge on February 1, 2005, directing that Lee be removed to Laos. Ligon Decl. ¶ 8, Ex. C.

ICE released Lee from detention on June 27, 2005, less than five months after his removal order was entered. Ligon Decl. ¶ 9. He was released pursuant to an Order of Supervision. Ligon Decl. ¶ 9, Ex. D. ICE decided to release Lee rather than detain him pending removal because, at the time, Laos was not issuing travel documents to individuals in the United States who had been ordered removed to Laos. Ligon Decl. ¶ 9.

III. Lee’s Current Detention and Attempts to Reopen Immigration Proceedings

On June 6, 2025, agents from Homeland Security Investigations and the Bureau of Alcohol, Tobacco, Firearms and Explosives arrested Lee. Ligon Decl. ¶ 10. He was issued a Notice of Revocation of Release that rescinded the Order of Supervision under which Lee was released in 2005. Ligon Decl. ¶ 10, Ex. E, at 1-2. The reason ICE took Lee back into custody is simple: circumstances with Laos have changed, and the country is once again issuing travel documents and accepting individuals for repatriation. Ligon Decl. ¶ 11. In fact, ICE officials in Minnesota have successfully removed five individuals to Laos since March 2025. Ligon Decl. ¶ 11. These developments led ICE to determine there was a significant likelihood that Lee would be removed from the United States in the reasonably foreseeable future. Ligon Decl. ¶ 11, Ex. E, at 1.

After taking no action to challenge his final order of removal in the last 20 years, Lee's recent detention spurred him into action. Attorneys representing Lee filed a Motion to Reopen or Motion to Reconsider with the Immigration Court at Fort Snelling on June 13, 2025. Ligon Decl. ¶ 12. His attorneys also moved the Immigration Court to stay Lee's removal pending resolution of the Motion to Reopen. Ligon Decl. ¶ 12. An immigration judge denied both motions a few days later. Ligon Decl. ¶ 12, Ex. F. The immigration judge's written order explained that Lee's motion to reopen his removal proceedings was untimely and that his substantive arguments for revisiting the issue of removability lacked merit. Ligon Decl. Ex. F, at 5-6. Undeterred, Lee's attorneys filed a second Emergency Motion to Reopen and second Emergency Motion to Stay Removal on June 23, 2025. Ligon Decl. ¶ 13, Ex. G. In pertinent part, Lee argued that he was entitled to reopen his removal proceedings to seek adjustment of his immigration status and pursue a waiver that would allow him to remain in the country despite his 2004 state court conviction. Ligon Decl. Ex. G, at 3-4. Lee also argued that the Immigration Court should sua sponte reopen his proceedings in the interest of justice. Ligon Decl. Ex. G, at 4-8. An immigration judge disagreed on both points, denying Lee's second round of motions the day after they were filed. Ligon Decl. Ex. G, at 19-22.

Meanwhile, ICE continued to arrange for Lee's removal. On June 24, 2025, ICE personnel requested travel documents for Lee. Ligon Decl. ¶ 14. That request is currently pending. Ligon Decl. ¶ 14. But based on the agency's recent experience removing individuals to Laos, ICE anticipates that the request for travel documents will be approved soon, and Lee will be removed in the foreseeable future. Ligon Decl. ¶ 14.

While Lee was in ICE custody, he was served with a Form I-229(a) and Notice to Alien of File Custody Review. Ligon Decl. ¶ 15, Ex. H. The purpose of this notice was to provide instructions regarding the evidence or documentation that Lee would be able to submit for consideration during a review of his ongoing detention, pursuant to 8 C.F.R. § 241.4. Ligon Decl. ¶ 15. Lee also participated in an informal interview with ICE officials on June 7, 2025, the day after his arrest. Ligon Decl. ¶ 10, Ex. E, at 3. ICE personnel used the information obtained during the interview to complete a Form I-213, Record of Deportable/Inadmissible Alien. Ligon Decl. ¶ 10, Ex. E, at 4-6. Lee did not provide any statements or documents during the interview showing that his removal was unlikely. Ligon Decl. Ex. E, at 3, 5-6. He instead talked about his 2004 criminal conviction and his family. Ligon Decl. Ex. E, at 3. Lee was not released following the interview, and he remains in ICE custody at the Freeborn Adult Detention Center. Pet. ¶ 1.

IV. Procedural History

Lee filed this petition on July 18, 2025, asserting three grounds for habeas relief under 28 U.S.C. § 2241. Pet. ¶¶ 21-26. The gravamen of Lee's petition is that ICE has already detained him for six months, which is the presumptively reasonable length of time that the agency can detain an individual while working to effectuate his removal. Pet. ¶¶ 19-20. Lee also filed a motion for a temporary restraining order based on concerns that ICE was going to move him outside the boundaries of Minnesota. Dkt. 9. But his brief in support of that motion explained that Lee's true concern was with his imminent removal from the United States. *See, e.g.*, Dkt. 10, at 3 (describing "immediate threat of removal from the

U.S.”), 4-5 (describing Lee’s pursuit of remedies in Immigration Court that “go directly to the heart of his removability”).

The same day he filed this habeas petition, Lee filed a *third* round of emergency motions with the Immigration Court. Ligon Decl. ¶ 16, Ex. I.² As before, his attorneys filed a motion to reopen Lee’s removal proceedings and a motion to stay Lee’s removal. Ligon Decl. Ex. I, at 5-14. And as before, the immigration judge denied both motions. Ligon Decl. Ex. I, at 18-21. This time, Lee’s motions drew a rebuke from the immigration judge:

Contrary to counsel's assertion, this is Respondent's third, and still untimely, motion to reopen. Respondent's newly filed motion to reopen asserts, for the first time in any of the three motions, that he is not removable as an aggravated felon for sexual abuse of a minor in light of the Supreme Court's decision in *Esquivel-Quintana v. Sessions*, 581 U.S. 385 (2017), which dealt only with the issue of statutory rape. Respondent was not convicted of statutory rape. Instead, Respondent was convicted of soliciting or inducing a minor for prostitution, an entirely unique offense and well beyond statutory rape. Therefore, Respondent's reliance on the Supreme Court's decision is misplaced and does not accurately reflect the nature of Respondent's conviction.

Respondent, even in this third attempt, has not established why these proceedings should be reopened at this late juncture, or that he is not removable on this or any other basis (i.e., crimes involving child abuse pursuant to INA Section 237(a)(2)(E)(i)). The Court denies the motion to reopen with prejudice. Instead of continuously bombarding the Court with ever-evolving motions that remain time- and number-barred, Respondent's remedy is to appeal any decision by this Court with which he does not agree.

Ligon Decl. Ex. I, at 20.

Pursuant to the briefing schedules that this Court established, Dkt. 8 and Dkt. 15, the Federal Respondents now timely submit their response to Lee’s petition and their opposition to his motion for a temporary restraining order.

² Lee labeled his filings “Second” motions. Ligon Decl. Ex. I, at 5, 11. But he had already filed two requests to reopen his immigration proceedings and stay removal, so those submissions should have been labeled “Third” motions.

ARGUMENT

The Court should deny Lee's habeas petition and deny his motion for a temporary restraining order. Starting with the petition, Lee's pursuit of habeas relief is premised on the idea that his removal is not significantly likely to occur in the reasonably foreseeable future. Pet. ¶¶ 22, 24, 26. That's wrong. And Lee obviously understands his removal is going to occur soon because he would not be filing duplicative "emergency" motions in Immigration Court if he believed otherwise. Regardless, the evidence accompanying this motion demonstrates that ICE is diligently working to coordinate Lee's return to Laos, making removal likely to occur in the foreseeable future. As to Lee's request for a temporary restraining order, the Court should deny the motion as moot after denying his habeas petition. Mootness aside, Lee fails to demonstrate that the extraordinary step of a temporary restraining order (or preliminary injunction) is appropriate in this case.

I. Lee's Habeas Petition

A. Jurisdiction, Burden of Proof, and Scope of Review

Lee seeks relief under 28 U.S.C. § 2241, which gives district courts the jurisdiction to hear habeas petitions brought by individuals in federal custody. But judicial review is limited in the context of immigration matters. *See I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over aliens is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation" and "repeatedly emphasized that over no conceivable subject is the legislative

power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citations and internal quotation marks omitted).

These limitations are even more important in habeas actions that challenge a noncitizen’s civil immigration detention. Federal courts employ a narrow standard of review and exercise “the greatest caution” in evaluating constitutional claims that implicate those decisions. *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”).

Lee’s challenge in this case is to his detention pending removal. *See* Pet. ¶¶ 19-26.³ He spreads that challenge across three counts: (1) a statutory violation; (2) a substantive due process violation; and (3) a procedural due process violation. *Id.* All three counts

³ Lee’s petition haphazardly invokes the Administrative Procedure Act, 5 U.S.C. § 701 et seq. *See* Pet. ¶¶ 2-3. But he does not assert any claims under the APA, and he paid only \$5.00 to file this case—the filing fee for habeas actions, not standard civil actions.

invoke the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Federal Respondents will address these counts below, but it is worth emphasizing at the outset that Lee cannot use this petition to challenge the validity of his underlying removal order. Jurisdiction over that type of challenge lies with the Immigration Court in the first instance, and then with the appropriate federal court of appeals. *See* 8 U.S.C. § 1252; *Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007).

B. Legal and Statutory Authority for Detention Pending Removal

ICE has the authority to detain Lee pending his removal from the United States. For more than two centuries, immigration officials have had the authority to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233 (1960). Through the INA, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, and 1231. Once a noncitizen is subject to a final removal order—as Lee is here—detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241.

A noncitizen who has been ordered removed lacks a legal right to remain in the United States, and his liberty interest in remaining in the country is reduced. Accordingly, federal law provides that “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days” and “shall detain

the alien” during the removal period. 8 U.S.C. § 1231(a)(1)(A) and (a)(2)(A).⁴ The “removal period” is the period during which the Department of Homeland Security begins to take steps to execute the noncitizen’s final removal order. *See id.* § 1231(a)(1)(A)-(B). That period begins on the latest of: (1) the “date the order of removal becomes administratively final”; (2) “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order”; or (3) “[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” *Id.* § 1231(a)(1)(B)(i)-(iii).

Detention during the 90-day removal period can be extended in some circumstances. For example, noncitizens who are removable after conviction of an aggravated felony may be detained beyond 90 days. *Id.* § 1231(a)(6); *see also id.* § 1231(a)(1)(C) (suspension of removal period when noncitizen fails to make timely application for travel documents or acts to prevent removal). That rule applies to Lee’s detention in this case, as his 2004 conviction in Minnesota state court was for an aggravated felony. In the context of extended detention, the Department of Homeland Security conducts periodic post-order custody reviews to determine whether a noncitizen subject to a final removal order should continue to be detained beyond the initial removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other noncitizens). ICE complied with these procedures when arresting and detaining Lee in June 2025. Legion Decl. ¶¶ 10, 15.

⁴ Although § 1231 and other provisions of the INA refer to the “Attorney General,” the Homeland Security Act of 2002 transferred many immigration enforcement and administrative functions to the Secretary of Homeland Security. *See* Pub. L. No. 107-296, 116 Stat. 2135 (2002).

After the expiration of the removal period, a noncitizen may be released under an order of supervision. *See* 8 C.F.R. § 241.13. Specifically, a noncitizen held beyond the removal period can seek release from custody by showing that “there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.” *Id.* § 241.13(a). However, the Department of Homeland Security can revoke release “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.” *Id.* § 241.13(i)(2). The procedures for revocation are set out in a federal regulation, which requires that the noncitizen:

be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3). When a noncitizen is not released following an interview, § 241.4 governs the person’s continued detention pending removal. *Id.* § 241.13(i)(2).

C. Lee’s Challenge to his Detention

Lee argues that his continued detention violates 8 U.S.C. § 1231(a)(6) and his substantive due process rights. Pet. ¶¶ 21-24. He also raises a procedural due process challenge, arguing that ICE failed to provide him with a “neutral decision-maker” and a “meaningful opportunity to demonstrate that s/he should not be detained.” Pet. ¶ 26. These claims fail, and the Court should deny Lee’s habeas petition in its entirety.

1. Lee's *Zadvydas* Challenge

The first two counts in the petition raise the same argument for habeas relief. Lee says his continued detention violates § 1231(a)(6), as the Supreme Court has construed the statute under the Fifth Amendment's Due Process Clause. This is a *Zadvydas* challenge.

Although the plain language of § 1231(a)(6) does not impose any limit on how long a noncitizen can be detained pending removal, the Supreme Court in *Zadvydas* “read an implicit limitation into” the statute. 533 U.S. at 689. Thus, a person subject to a final order of removal cannot be detained indefinitely. *Id.* at 699-700. *Zadvydas* established a temporal marker: detention for six months or less is presumptively constitutional. *Id.* at 701. But continued detention does not automatically become unconstitutional after six months; longer detention still comports with due process if there is a “significant likelihood of removal in the reasonably foreseeable future.” *Id.* As the Supreme Court explained:

[a]fter 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 post-removal 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.*

Id. (emphasis added). The end result is that a habeas petitioner must meet the initial burden of demonstrating no significant likelihood of his removal in the reasonably foreseeable future. *Id.* If he makes this showing, then the government must rebut it. *Id.*

Lee's *Zadvydas* claim starts off on shaky ground because he does not identify any authority for combining his 2005 detention with his 2025 detention to get over the six-month mark. The petition simply assumes Lee can do so and then asserts that his time in detention has exceeded six months in total. *See* Pet. ¶¶ 20, 22, 24. Lee's brief in support of a temporary restraining order does not go much further, offering just a token citation to *Zadvydas* without even a pincite. *See* Dkt. 10, at 2. Yet as one federal district court recently explained, "*Zadvydas* did not (1) address a situation where an alien was released and then re-detained or (2) purport to create some sort of limitations period for § 1231(a)(6) detention." *Ghamelian v. Baker*, 2025 U.S. Dist. LEXIS 139238, at *11 (D. Md. July 22, 2025). That court went on to reject the argument that a petitioner could combine his six-month detention in the 1990s with his one-month detention in 2025 to mount a *Zadvydas* challenge. *Id.* at *11-14. Lee's failure to confront this issue and properly support his petition is reason enough to reject his first two grounds for habeas relief.

Six-month issue aside, there is no due process violation in this case. Lee fails to overcome the threshold requirement that he "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The petition is noticeably thin on this point, relying entirely on the fact that Laos did not issue travel documents or accept individuals for repatriation in the 20 years after an immigration judge ordered Lee removed. Pet. ¶ 14. Based on that observation, Lee alleges "there has been no indication from the Government of Laos that a travel document will issue for the Petitioner nor that the decision on its issuance is anticipated in the near future." Pet. ¶ 14.

Conclusory statements like Lee's do not satisfy a petitioner's initial burden under *Zadvydas*. Take for example *Mehighlovesky v. United States Department of Homeland Security*, where a petition baldly asserted nine impediments to removal. 2012 U.S. Dist. LEXIS 185286, at *10 (D. Minn. Dec. 7, 2012), *adopted by* 2013 U.S. Dist. LEXIS 6963 (D. Minn. Jan. 17, 2013). Many of those assertions had "no bearing on the feasibility of [the petitioner's] removal," much like Lee's observation in this case that Laos was not accepting individuals for repatriation in 2005. *Id.* at *10. But even for the assertions that could have affected the petitioner's prospects of removal, the *Mehighlovesky* court concluded that he had "not adequately substantiated any of these alleged impediments. He has not offered any evidence of any kind—not even a self-serving declaration—to support his conclusory allegations regarding the supposed impediments to his removal." *Id.* at *11; *see also Abraham Dut M. v. Barr*, 2020 U.S. Dist. LEXIS 168615, at *3 (D. Minn. Sep. 15, 2020) ("Abraham did not provide any evidence to meet this burden in his Petition."). Lee's petition suffers from the same lack of evidentiary support and should therefore meet the same fate.

Beyond conclusory statements in the petition, Lee offers no reason to believe his removal is unlikely to occur soon. In fact, Lee repeatedly said the exact *opposite* to the Immigration Court. On three separate occasions, Lee and his attorneys sought "emergency" relief from an immigration judge to block ICE from removing him. Ligon Decl. Exs. F, G, and I. Lee argued that a stay of removal was urgently necessary because "his removal from the United States is imminent." Ligon Decl. Ex. G, at 12; *see also id.* at 13 ("Respondents [sic] will be removed imminently." He cannot have it both ways—raising the alarm in one

courtroom because his removal is imminent, and then running into a different courtroom to suggest his removal is not likely to occur in the foreseeable future.

Lee fares no better at the second step of the *Zadvydas* analysis. The record evidence rebuts any notion that there is no significant likelihood of his removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. Laos recently started issuing travel documents and accepting individuals for repatriation. Ligon Decl. ¶¶ 11, 14. In the Minneapolis-St. Paul area alone, five individuals have been successfully removed to Laos in the last few months. Ligon Decl. ¶ 11. In other words, there has been a significant change in the circumstances that historically prevented ICE from removing Lee. His petition does not acknowledge the change, let alone explain how ICE will continue to have difficulty removing him. When the record shows such “diligent and reasonable efforts to obtain travel documents,” and “the alien’s native country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude that there is a significant likelihood of removal in the foreseeable future.” *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346, at *15 (D. Minn. Mar. 17, 2015) (citations and internal quotation marks omitted). ICE has requested travel documents for Lee. Ligon Decl. ¶ 14. To the extent the agency encounters delays in obtaining those documents, such delays would not be “sufficient to trigger an inference that there is no significant likelihood of removal; they simply show that the bureaucratic gears are slowly grinding away.” *Id.* (citations, alterations, and internal quotation marks omitted).

Moreover, Lee’s current detention serves a clear purpose by “assuring [his] presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. The Supreme Court long ago

recognized that detention to facilitate removal is a legitimate governmental objective. *See Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character and while arrangements were being made for their deportation.”). Lee’s detention has a definitive endpoint: his removal to Laos. He has currently been detained for less than two months while ICE works to facilitate that removal, and “[t]he mere passage of time, including concomitant delays in obtaining travel documents, is not alone sufficient to show that no such likelihood exists unless the delays are so extraordinarily long as to trigger an inference that travel documents will likely never issue at all.” *Yongdi Chen v. Banieke*, 2015 U.S. Dist. LEXIS 105145, at *11 (D. Minn. July 14, 2015), *adopted by* 2015 U.S. Dist. LEXIS 104914 (D. Minn. Aug. 11, 2015). For these reasons, the Federal Respondents have rebutted any presumption Lee raised (or tried to raise) regarding the likelihood of his removal in the reasonably foreseeable future.

This case is nearly identical to the habeas petition filed in *Vue v. Mchenry et. al.*, which this Court recently dismissed. No. 25-2827 (PAM/DLM) (D. Minn. filed July 11, 2025). Like Lee, the petitioner in *Vue* was a citizen of Laos who was ordered removed from the United States more than twenty years ago. *Id.* ECF No. 7, at 2 (memorandum and order filed July 21, 2025). And like Lee, the petitioner was arrested and re-detained in June 2025, when ICE revoked his Order of Supervision and started the process of obtaining travel documents from Laos. *Id.* Mr. Vue filed a habeas petition to challenge his detention, invoking *Zadvydas*. *Id.* at 4. This Court denied that petition on July 21, 2025, concluding that: (1) the petitioner had received a Notice of Revocation that explained the basis for the

revocation of his supervision; and (2) ICE was securing a travel document for him so his removal to Laos was reasonably likely to occur in the foreseeable future. *Id.* at 4-5. *Vue* is on-point and supports denying Lee's petition.

Because the constitutional due process standards set forth in *Zadvydas* are satisfied in this case, Lee is not entitled to habeas relief.

2. Lee's Procedural Due Process Challenge

The third count of the petition alleges that Lee's continued detention violates his procedural due process rights. Pet. ¶ 26. In particular, Lee suggests that ICE failed to make a "neutral" decision or offer him a "timely and meaningful opportunity to demonstrate that s/he should not be detained." Pet. ¶ 26. He also says "[t]here is no administrative mechanism in place" to challenge ICE's decision to detain him. Pet. ¶ 26. None of that is right. The federal regulations discussed above set out a comprehensive mechanism for detainees to seek and obtain release. ICE followed those regulations in this case. *See* Ligon Decl. ¶¶ 10, 15. And contrary to the allegations in the petition, Lee had ample review by a neutral immigration judge—three sets of emergency motions' worth, to be exact. There is simply no basis for Lee to obtain habeas relief on procedural due process grounds.

Lee's petition does not identify any legal framework for reviewing his procedural due process challenge. *See* Pet. ¶¶ 19-20, 26. But this Court recently explained that "[p]rocedural due process requires the opportunity to be heard at a meaningful time and in a meaningful manner" and "[n]on-citizens detained under 8 U.S.C. § 1231(a)(6) are entitled to custody reviews under relevant Immigration Regulations." *Perez v. Berg*, 2025 U.S. Dist. LEXIS 31311, at *13 (D. Minn. Jan. 6, 2025), *adopted by* 2025 U.S. Dist. LEXIS

30097 (D. Minn. Feb. 20, 2025). When immigration officials follow the regulations governing continued-custody decisions, this Court holds that the constitutional due process requirements are satisfied. *Id.*; *Nour v. Sessions*, 2017 U.S. Dist. LEXIS 86951, at *11 (D. Minn. Apr. 18, 2017) (collecting authority). Thus, Lee’s procedural due process claim fails because the record is clear that ICE officials reviewed his detention and determined that it was appropriate. Ligon Decl. ¶¶ 10-11, 15. Lee did not dispute the government’s basis for revocation at his informal interview or provide any evidence or information that would rebut ICE’s conclusions about the likelihood of his removal in the foreseeable future. Ligon Decl. Ex. E, at 3. He was given the opportunity to do so, which is all the regulation requires. *See* 8 C.F.R. § 241.13(i)(3).

As for the assertion that Lee’s detention was not reviewed by a neutral decision-maker, that is a non-starter. Paragraph 26 of Lee’s petition lifts language verbatim from other habeas petitions that raised this issue. *See, e.g., Moses v. Lynch*, 2016 U.S. Dist. LEXIS 60411, at *11 (D. Minn. Apr. 12, 2016) (quoting petition and observing that “[t]he exact contours of this claim are not immediately apparent”), *adopted by* 2016 U.S. Dist. LEXIS 60484 (D. Minn. May 5, 2016). Those cases ended in the denial of habeas relief after courts rejected the argument “that the custody-review process was constitutionally insufficient because the petitioner was not afforded review by a neutral decisionmaker, such as an immigration judge, or the opportunity to cross-examine witnesses.” *Id.*; *see also Nour*, 2017 U.S. Dist. LEXIS 86951, at *12 (collecting authority); *Macow v. Sessions*, 2017 U.S. Dist. LEXIS 68538, at *15 (D. Minn. Apr. 4, 2017) (“This standard, however,

is not required by the Constitution.”). In other words, this aspect of Lee’s procedural due process challenge fails because he invokes protections that simply do not exist.

II. Lee’s Motion for a Temporary Restraining Order

Lee fails to demonstrate that a temporary restraining order is appropriate in this case. Somewhat paradoxically given the *Zadvydas* claim in his petition, Lee seeks emergency injunctive relief based on what he says is an “immediate threat of removal from the U.S.” *See* Dkt. 10, at 3. If the Court denies Lee’s habeas petition for the reasons discussed above, then his pursuit of a temporary restraining order becomes moot. But for the sake of completeness, the Federal Respondents will discuss the *Dataphase* factors and explain why Lee’s motion should be denied on the merits as well.

A court evaluating a motion for a temporary restraining order (or a preliminary injunction, which would be more appropriate given the procedural posture here) must weigh four factors: (1) the movant’s likelihood of success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm injunctive relief would cause to the other litigants; and (4) the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc). A movant’s likelihood of success on the merits “does not singularly control, but it should receive substantial weight in the court’s analysis.” *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1343 (8th Cir. 2024). Ultimately, “[a] preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008).

Here, Lee cannot show any likelihood of success on the merits of his habeas petition. His statutory and substantive due process claims are doomed, and his procedural due

process claim is based on a misunderstanding of the law. Lee’s brief does not persuasively argue otherwise—he cites *Zadvydas* a few times, baldly claims there is no reason to believe he will be removed to Laos in the foreseeable future, and then moves on. Dkt. 10, at 5-6. That anemic analysis cannot support the extraordinary relief of a temporary restraining order, particularly considering the record evidence showing that ICE is diligently making progress toward Lee’s removal.

Lee also suggests that the Court should consider his chances of success in Immigration Court. *Id.* at 5. Set aside whether this is a credible suggestion now that an immigration judge has denied Lee’s request for relief three separate times. But Lee’s chance of success in *this* action—not some other proceeding—is what the Court analyzes when considering emergency injunctive relief.⁵ Simply put, the first *Dataphase* factor weighs heavily against entering a temporary restraining order.

Although the lack of likelihood of success on the merits should be dispositive in this case, the remaining *Dataphase* factors do not collectively support injunctive relief either. In the absence of an injunction, Lee will remain detained and may be removed from the United States to Laos. He has known for decades that this outcome was going to happen. An immigration judge determined that he should be removed to Laos in 2005, yet Lee never appealed that order or took any action to reopen his removal proceedings until just recently. *See Ligon Decl. Ex. F*, at 5. Furthermore, Lee’s “emergency motion essentially

⁵ Equally important, wading into the merits of Lee’s arguments for reopening his removal proceedings and challenging his removability would take this Court dangerously close to running afoul of the jurisdiction-stripping provisions in 8 U.S.C. § 1252(g).

seeks a preliminary injunction barring ICE from deporting him, but that request does not align with the relief he could ultimately obtain if his habeas petition were granted.” *Abdirahman A. v. DHS-ICE Chief Counsel*, 2020 U.S. Dist. LEXIS 83951, at *2 (D. Minn. Apr. 22, 2020), *adopted by* 2020 U.S. Dist. LEXIS 83532 (D. Minn. May 12, 2020). He is asking this Court to prevent injuries that might arise from his *removal* but doing so in habeas proceedings that are limited to challenging only his *detention*. Lee cannot mix-and-match his way to injunctive relief.

The temporary restraining order that Lee seeks will cause harm to the government. The order would restrict ICE’s ongoing removal efforts, and it is especially important that Lee’s removal proceed before Laos’s current openness to repatriation changes. The government would also incur costs associated with supervising Lee outside of detention and with re-detaining him later to carry out his removal. Finally, there is a strong public interest in the efficient administration of the nation’s immigration laws and in the removal of a noncitizen who was convicted of a serious felony involving the forced prostitution of a 12-year-old. Just as with the first *Dataphase* factor, the remaining factors weigh heavily against entering a temporary restraining order.

Whether on mootness grounds or on the merits, the Court should deny Lee’s motion for a temporary restraining order.

CONCLUSION

The Federal Respondents respectfully request that the Court deny Lee's habeas petition and accompanying motion for a temporary restraining order. No evidentiary hearing is necessary in this matter because the submissions filed with this response provide a sufficient record upon which the Court can adjudicate the petition.

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