

1 TIMOTHY COURCHAINE  
 2 United States Attorney  
 District of Arizona  
 3 LAURENCE G. TINSLEY, JR.  
 4 Arizona State Bar No. 012581  
 Assistant United States Attorney  
 5 Two Renaissance Square  
 40 North Central Avenue, Suite 1800  
 6 Phoenix, Arizona 85004-4408  
 7 Telephone: (602) 514-7500  
 Facsimile: (602) 514-7760  
 8 laurence.tinsley@usdoj.gov  
 9 *Attorneys for Respondents*

10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE DISTRICT OF ARIZONA**

12  
 13  
 14 Thai Quang Quach,  
 15  
 Petitioner,  
 16  
 v.  
 17  
 M. Martinez, et al.,  
 18  
 Respondents.  
 19  
 20  
 21

No. CV-25-02937-PHX-JJT (JFM)

**RESPONSE TO FIRST AMENDED  
 PETITION FOR WRIT OF  
 HABEAS CORPUS AND  
 COMPLAINT FOR  
 DECLARATORY AND  
 INJUNCTIVE RELIEF**  
*and*  
**RESPONSE TO MOTION FOR  
 PRELIMINARY INJUNCTIVE  
 RELIEF**

22 Respondents respond to the Amended Petition for Writ of Habeas Corpus, Etc. (Dkt.  
 23 17 and Motion for Preliminary Injunctive Relief (Dkt. 18) and request that the Court deny the  
 24 requested relief.



25 Petitioner, a convicted criminal and alien who was born in Vietnam, and who is subject  
 26 to a final order of removal, has been detained for 166 days since May 1, 2025 to October 14,  
 27 2025, which under *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001), is within the presumptively  
 28 reasonable detention period. Petitioner thus cannot meet his burden under the *Zadvydas*

1 framework.

2 Instead, he seeks a Court order directing ICE to immediately release him from  
3 immigration detention on an order of supervision, claiming there is no significant likelihood  
4 of removal to Vietnam in the foreseeable future. However, the record shows that Petitioner  
5 has received travel documents and is scheduled to be removed on October 22, 2025.  
6 Accordingly, his removal is likely to occur in the reasonably foreseeable future and the habeas  
7 petition should be denied.

8 Despite Petitioner's argument in his 45 page Amended Petition and 37 page Motion for  
9 Preliminary Injunction, Petitioner was in-fact re-detained because of a change of circumstance  
10 – *i.e.*, the Government's determination that a significant likelihood in the foreseeable future  
11 of his being removed exists. *See* Ex. A, ¶ 22.<sup>1</sup>

12 **I. Factual background.**

13 Thai Quang Quach (Petitioner) is a native and citizen of Vietnam, born on   
14  *Id.* at ¶ 4. On July 13, 1983, Petitioner was admitted into the United States as  
15 a Lawful Permanent Resident (LPR). *Id.* at ¶ 5.

16 On September 24, 1997, Petitioner was convicted for Driving under the influence of a  
17 controlled substance. *Id.* at ¶ 6. On March 9, 1998, Petitioner was convicted of Willful  
18 Discharge of a Firearm-Negligent Manner and Receiving Known Stolen Property. *Id.* at ¶ 7.  
19 On April 29, 1998, Petitioner was convicted of Second-Degree Burglary. *Id.* at ¶ 8. On  
20 December 5, 2000, Petitioner was convicted of Kidnapping. *Id.* at ¶ 9.

21 On March 11, 2003, Petitioner was interviewed in prison and was subsequently placed  
22 in removal proceedings. *Id.* at ¶ 10.

23 On March 28, 2003, he was served with a Notice to Appear (NTA) charging him with  
24 removability under § 237(a)(2)(A)(iii) (8 U.S.C. § 1227) of the Immigration and Nationality  
25 Act (INA). *Id.* at ¶ 11.

26 <sup>1</sup> Additionally, his criminal record, which he minimizes in his pleadings (*see* Ex. A at ¶¶ 6-  
27 9), indicates that he violated his conditions of his Order for Supervised Release (OSUP) which  
28 further justified his recent and ongoing detention.

1 On April 8, 2003, the Petitioner was ordered removed to Vietnam. *Id.* at ¶ 12. On April  
2 10, 2003, ICE requested travel documents for Petitioner from the Vietnamese Embassy in  
3 Washington, D.C. *Id.* at ¶ 13.

4 On November 25, 2003, Petitioner was released pursuant to *Zadvydas v. Davis*, 533  
5 U.S. 678, 689 (2001). *Id.* at ¶ 14.

6 More recently, on April 5, 2016, Petitioner was arrested for Damage to Property,  
7 Assault and Child Abuse. Ex. A at ¶ 15. The Damage to Property and Assault charges were  
8 dismissed; Petitioner was convicted of Misdemeanor Child Abuse. *Id.*

9 On May 3, 2016, Petitioner was charged with Distribution of a Controlled Substance,  
10 and two counts of Distribution of Dangerous Drugs Imitation of a Controlled Substance.  
11 Petitioner was convicted of Distribution of Imitation Controlled substance. *Id.* at ¶ 16.

12 On May 1, 2025, Petitioner arrived at the Phoenix ICE/ERO Office for his scheduled  
13 appointment and was taken into custody because of his removal order. This removal order  
14 was issued on April 4, 2003. *Id.* at ¶ 17.

15 On May 1, 2025, Petitioner was transferred to Florence, Arizona. *Id.* at ¶ 18. On May  
16 3, 2025, Petitioner was transferred to the Central Arizona Florence Correctional Complex. *Id.*  
17 at ¶ 19.

18 On August 4, 2025, travel documents were requested for Petitioner to travel back to  
19 Vietnam. *Id.* at ¶ 20.

20 On August 6, 2025, Petitioner was served with the decision revoking his release, *i.e.*,  
21 a notice of revocation. *See* 8 C.F.R. § 241.13. Ex. A at ¶ 21.

22 On September 19, 2025, Petitioner completed his consulate interview. *Id.* at ¶ 22.

23 On October 2, 2025, Petitioner had an informal interview regarding his continued  
24 detention. *See* 8 C.F.R. § 241.13. Ex. A at ¶ 23.

25 On October 8, 2025, DHS received traveled documents for Petitioner, and he was told  
26 that he would remain in detention pending removal from the United States. *Id.* at ¶¶ 24-25.  
27 On October 22, 2025, Petitioner will be removed from the United States. *Id.* at ¶ 26.

28 **II. The standard governing detention of aliens with final removal orders.**

1 INA, § 241 (8 U.S.C. § 1231), governs the detention, release, and removal of aliens  
2 subject to a final order of removal. Under INA § 241(a), the Attorney General has 90 days to  
3 remove an alien from the United States after an order of removal becomes final. During this  
4 “removal period,” detention of the alien is mandatory. *Id.* After the 90-day period, if the  
5 alien has not been removed and remains in the United States, his detention may be continued,  
6 or he may be released under the supervision of the Attorney General. 8 U.S.C. § 1231(a)(3)  
7 and (a)(6). ICE may detain an alien for a “reasonable time” necessary to effectuate the alien’s  
8 removal. 8 U.S.C. § 1231(a). However, indefinite detention is not authorized by the statute.  
9 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

10 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable  
11 period of detention for aliens, like Petitioner, who are detained under § 1231(a). *Id.* at 701-  
12 702 (“This 6 month presumption, of course, does not mean that every alien not removed must  
13 be released after six months. To the contrary, an alien may be held in confinement until it has  
14 been determined that there is no significant likelihood of removal in the reasonably  
15 foreseeable future.”). *Zadvydas* places the burden on the alien to show, after a detention  
16 period of six months, that there is “good reason to believe that there is no significant likelihood  
17 of removal in the reasonably foreseeable future.” *Id.* at 701. If the alien makes that showing,  
18 the Government must then introduce evidence to refute that assertion to keep the alien in  
19 custody. *Id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir. 2002). The court must “ask  
20 whether the detention in question exceeds a period reasonably necessary to secure removal.  
21 It should measure reasonableness primarily in terms of the statute’s basic purpose, namely,  
22 assuring the alien’s presence at the moment of removal. Thus, if removal is not reasonably  
23 foreseeable, the court should hold continued detention unreasonable and no longer authorized  
24 by statute.” *Zadvydas*, 533 U.S. at 699. The passage of time alone is insufficient to establish  
25 that no significant likelihood of removal exists in the reasonably foreseeable future. *Lema v.*  
26 *I.N.S.*, 214 F.Supp.2d 1116, 1118 (W.D.Wash. 2002). In *Lema*, where the alien had been  
27 detained for more than a year, the district court held that the passage of time was only the first  
28

1 step in the analysis, and that the alien must then provide good reason to believe that no  
2 significant likelihood of removal exists in the reasonably foreseeable future. *Id.*<sup>2</sup>

3 **III. Petitioner's detention is lawful and constitutionally permitted.**

4 Petitioner cannot meet his burden to show that his removal is unlikely in the reasonably  
5 foreseeable future. Even if he could, Respondents have overcome that showing with evidence  
6 that his removal is likely. Indeed, Petitioner's travel documents have arrived and he is  
7 scheduled to be removed on October 22, 2025.

8 In *Zadvydas*, the Supreme Court designated six months as a presumptively reasonable  
9 period of time to allow the Government to remove an alien detained under 8 U.S.C. § 1231(a),  
10 but an alien is not automatically entitled to release after six months of detention. *Id.* at 701.  
11 Rather, to be entitled to release after the six-month presumptively reasonable period  
12 established in *Zadvydas*, the Petitioner bears the burden to demonstrate his removal is not  
13 likely in the reasonably foreseeable future. *Id.* Petitioner cannot meet this burden.

14 *A. Petitioner's removal will occur in the reasonably foreseeable future.*

15 As shown, Plaintiff's removal is scheduled to occur on October 22, 2025. Given the  
16 arrival of his travel documents and his scheduled removal date in *eight days*, Petitioner fails  
17 to meet his burden to establish that there is no significant likelihood of removal in the  
18 reasonably foreseeable future

19 Moreover, Petitioner's detention is not beyond the six-month presumptively  
20 reasonable period. As of today's date, Petitioner has only been detained since May 1, 2025,  
21 a period of 166 days. Only two weeks remain until the expiration of the presumptively  
22 reasonable time period under *Zadvydas* to effectuate Petitioner's removal. Thus Petitioner's  
23 continued detention is not constitutionally indefinite as contemplated by *Zadvydas* and instead

---

24 <sup>2</sup> Though he was previously detained and released in 2003, Petitioner was not in ICE custody  
25 for approximately 22 years – until he was re-detained by ICE on May 1, 2025, when a  
26 significant likelihood of removal in the reasonably foreseeable future developed. Even if his  
27 prior detention two decades ago were counted toward the presumptively reasonable period,  
28 which it should not be, it would still be Petitioner's burden to establish that his removal is not  
likely at this time (*Zadvydas*, 533 U.S. at 701), which he cannot do.

1 remains necessary to ensure his presence at the time of removal. *Zadvydas*, 533 U.S. at 701.  
2 Rather, the “basic purpose” of immigration detention is “assuring the alien’s presence at the  
3 moment of removal.” The Court in *Zadvydas* concluded this purpose was not served by the  
4 continued detention of aliens whose removal was not “reasonably foreseeable.” (*Id.* at 699.  
5 Unlike this case, removal was not reasonably foreseeable in *Zadvydas* because no country  
6 would accept the deportees or because the United States lacked an extradition treaty with their  
7 home countries.

8 This case is thus distinguishable from *Zadvydas*, because Petitioner is an alien whom  
9 the Government lawfully can remove and is in the process of removing.

10 **IV. The Attorney General properly revoked Petitioner’s order of supervised**  
11 **release under 8 U.S.C. § 1231 and 8 C.F.R. § 241.13.**

12 Nor was Petitioner’s supervised release improperly revoked. The plain language of  
13 8 U.S.C. § 1231(a)(3)(D) allows the Attorney General to set conditions for supervised release  
14 from immigration detention including “to obey reasonable written restrictions on the alien’s  
15 conduct or activities that the Attorney prescribes for the alien.” *Id.* The statute gives the  
16 Attorney General wide discretion to set restrictions on an alien’s behavior once he or she is  
17 granted supervised release. *Zavala v. Prendes*, 2010 WL 4454055, at \*1 (N.D.Tex. Oct. 5,  
18 2010), *report and recommendation adopted*, 2010 WL 4627736 (N.D.Tex. Nov. 1, 2010)  
19 (“[t]he few courts that have considered habeas challenges to post-removal orders of  
20 supervision have given administrative authorities wide latitude to impose such orders.”).

21 Moreover, DHS has enacted regulations relating to aliens who are detained beyond  
22 the removal period and subject to release. *See e.g.*, 8 C.F.R. § 241.13:

23 *Revocation for removal.* The Service may revoke an alien’s release under this  
24 section and return the alien to custody if, on account of changed circumstances, the  
25 Service determines that there is a significant likelihood that the alien may be  
26 removed in the reasonably foreseeable future.

27 In this case, the record establishes that Petitioner was both (1) provided notice for the  
28 revocation of his supervised release, and (2) informally interviewed under 8 C.F.R. §  
241.13(i)(3), in which his revocation and further detention was discussed.

As stated, the purpose of § 1231(a)(6) detention is to effectuate removal. *Demore v.*

1 *Kim*, 538 U.S. 510, 527 (2003) (analyzing *Zadvydas* and explaining that the removal period  
2 is based on the “reasonably necessary” time “to secure the alien’s removal”). The statute  
3 provides that – if the alien is not removed – the alien “shall be subject to supervision” under  
4 relevant regulations with certain requirements. 8 U.S.C. § 1231(a)(3). Here, Petitioner’s  
5 Order for Supervised Release (OSUP) was revoked, and he was re-detained, because the  
6 government determined it was significantly likely to be able to effectuate his removal to  
7 Vietnam in the reasonably foreseeable future under 8 C.F.R. § 241.13(i)(2). Indeed, his  
8 removal date is now scheduled for October 22, 2025.

9 ICE thus properly provided notice to Petitioner of the revocation of his release because  
10 there is a significant likelihood that he will be removed in the reasonably foreseeable future,  
11 *i.e.*, in the next week. ICE complied with the regulations for revoking release. 8 C.F.R. §  
12 241.13(i)(2). Petitioner’s continued detention does not violate either 8 U.S.C. § 1231 nor  
13 *Zadvydas*. 533 U.S. at 689. Rather, Petitioner has a valid final removal and executable order.

14 Nor do the regulations require that the Government show “changed circumstances” or  
15 provide advance notice prior to revoking an OSUP, as Petitioner argues.<sup>3</sup> His revocation of  
16 supervised release occurred under 8 C.F.R. § 241.13. This section does not require a  
17 revocation notice or a pre-detention hearing. *Moran v. U.S. Dep’t of Homeland Sec.*, 2020 WL  
18 6083445, at \*9 (C.D.Cal. Aug. 21, 2020) (“Here, Petitioners have not alleged with sufficient  
19 particularity the source of any due process right to advance notice of revocation of supervised  
20 release or other removal-related detention.”).<sup>4</sup>

21 \_\_\_\_\_  
22 <sup>3</sup> Petitioner’s citation to 8 C.F.R. § 241.4 is inapposite. This regulation (entitled “continued  
23 detention of inadmissible, criminal, and other aliens beyond the removal period”) applies only  
24 to cases involving *removal proceedings* under 8 U.S.C. § 1226(c).

25 <sup>4</sup> Further, in *Zadvydas*, the Supreme Court specifically held that release after the removal  
26 period where removal is not likely in the reasonably foreseeable future “should be conditioned  
27 on any of the various forms of supervised release that are appropriate in the circumstances,  
28 and the alien may *no doubt* be returned to custody upon a violation of those conditions.  
*Zadvydas*, 533 U.S. at 700 (emphasis added) (*citing* 8 U.S.C. § 1231(a)(3)(D); 8 C.F.R. §  
241.5). If an alien is returned to custody, the habeas court should consider the risk of the alien  
committing further crimes as a factor potentially justifying confinement within the reasonable

1           Moreover, it is well established that “detention during deportation proceedings [is] a  
2 constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. at 523; *see*  
3 *also Reno v. Flores*, 507 U.S. 292, 309 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952)  
4 (“Detention is necessarily a part of this deportation procedure.”). In every case in which  
5 detention incident to removal proceedings has arisen, the Supreme Court has concluded that  
6 it is constitutional. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear  
7 that detention, or temporary confinement, as part of the means necessary to give effect to the  
8 provisions for the exclusion or expulsion of aliens would be valid.”). The Ninth Circuit also  
9 held in *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 and 1203 (9th Cir. 2022) that the  
10 Due Process Clause does not require a second bond hearing when a petitioner is subject to  
11 ongoing detention. The procedural process provided to Petitioner was constitutionally  
12 adequate and no additional process should be required.

13           All that said, at bottom, the Government received travel documents from Vietnam and  
14 Petitioner is scheduled for removal on October 22, 2025. Thus, there is indeed a significant  
15 likelihood of removal in the reasonably foreseeable future and Petitioner’s 166-day detention  
16 has not been constitutionally infirm or indefinite. *Zadvydas*, 533 U.S. at 701. The Court  
17 should dismiss Petitioner’s challenge to the Attorney General’s decision to revoke the order  
18 of supervision. His Petition should be denied.

19           **V. Petitioner is not entitled to a new pre-detention hearing in the future.**

20           As shown, the statute and regulations allow for ICE’s current detention of Petitioner.  
21 There is no statutory or regulatory requirement that entitles him to an additional “pre-  
22 \_\_\_\_\_  
23 removal period. *Id.* Here, the record suggests that Petitioner did violate the terms of his  
24 OSUP. Petitioner minimizes this criminal history by only alleging that he pled no contest to  
25 kidnapping in California. Amended Petition at 14. However, his pre-final removal order  
26 criminal history is substantially longer. Ex. A at ¶¶ 6-9. Further, despite his efforts to  
27 minimize his criminal history, the record suggests that Petitioner engaged in additional  
28 criminal conduct in 2016. *Id.* at ¶¶ 14, 15.

          Under these conditions and under *Zadvydas*, there can be “no doubt” that Petitioner may  
be re-detained for violating the conditions of his supervised release. *Zadvydas*, 533 U.S. at  
695.

1 deprivation” hearing at some undefined date when he might be re-arrested – much less one  
2 involving burden-shifting against the government. *See generally* 8 U.S.C. § 1231(a)(6); 8  
3 C.F.R. § 241.4. For this Court to read one into the immigration custody statute would be to  
4 create a process that the current statutory and regulatory scheme do not contemplate or  
5 specify. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). Thus, Petitioner can cite  
6 no liberty or property interest to which due process protections attach.

7 Further, the Supreme Court has upheld the constitutionality of basic processes of  
8 providing hearings post-detention. *See, e.g., Reno v. Flores*, 507 U.S. at 309 (rejecting a  
9 procedural due process claim that “the INS procedures are faulty because they do not provide  
10 for automatic review by an immigration judge of the initial deportability and custody  
11 determinations”); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the “impressive  
12 historical evidence of acceptance of the validity of statutes providing for administrative  
13 deportation arrest from almost the beginning of the Nation”). Instead of a guarantee of pre-  
14 detention review by an Immigration Judge, aliens detained are provided with multiple avenues  
15 to seek review of their detention once they are in custody – a process which the Ninth Circuit  
16 has already held is constitutionally sufficient. *See Rodriguez Diaz v. Garland*, 53 F.4th at  
17 1196-97. The Ninth Circuit held that that the “existing agency procedures” sufficiently  
18 protect liberty interest of aliens and “mitigate the risk of erroneous deprivation.” *Id.* at 1209.  
19 (“In short, the agency’s decision to detain Rodriguez Diaz was subject to numerous levels of  
20 review, each offering Rodriguez Diaz the opportunity to be heard by a neutral decisionmaker.)  
21 These procedures ensured that the risk of erroneous deprivation would be ‘relatively small.’”  
22 (*quoting Yagman v. Garcetti*, 852 F.3d 859, 865 (9th Cir. 2017)).

23 Other courts, including those in this judicial circuit, have rejected the premise that the  
24 Constitution requires an extra hearing before an alien can be arrested under 8 U.S.C. §  
25 1226(b). *See, e.g., United States v. Cisneros*, 2021 WL 5908407, at \*4 (N.D.Cal. Dec. 14,  
26 2021) (“[t]he law does not require a hearing before arrest” where a noncitizen released from  
27 ICE custody had been picked up by the San Francisco Police Department for assault). Other  
28 courts have also recognized that there is no “due process right to a pre-detention hearing where

1 a noncitizen, subject to pending removal proceedings...is at risk of being re-detained after  
2 being at liberty for more than two years.” *Reyes v. King*, 2021 WL 3727614, at \*11 (S.D.N.Y.  
3 Aug. 20, 2021); *accord Salvador F.-G. v. Noem*, 2025 WL 1669356, at \*8 (N.D.Okla. June  
4 12, 2025) (“On careful consideration of the statute, the implementing regulations, and the  
5 BIA’s decisions in *Sugay* and *Valles-Perez*, the Court rejects petitioner’s claim that the DHS  
6 has no authority to revoke a bond issued by an immigration judge.”).

7 Petitioner’s reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) is misplaced.  
8 *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.*  
9 at 472-73. It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme  
10 Court reaffirmed that “due process is flexible and calls for such procedural protections as the  
11 particular situation demands.” *Id.* at 481. Additionally, the “[c]onsideration of what  
12 procedures due process may require under any given set of circumstances must begin with a  
13 determination of the precise nature of the government function.” *Id.* As to the precise nature  
14 of the government function, the Supreme Court has long held that “Congress regularly makes  
15 rules” regarding immigration that “would be unacceptable if applied to citizens.” *Mathews v.*  
16 *Diaz*, 426 U.S. 67, 79-80 (1976). Under these circumstances, Petitioner does not have a  
17 cognizable liberty interest in a pre-detention hearing. But even assuming he had one, it would  
18 be reduced based on the immigration context.

19 Thus, the procedural process provided to Petitioner, if he is ever re-detained, is  
20 constitutionally adequate, and no additional process is required. “Procedural due process  
21 imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or  
22 ‘property’ interests within the meaning of the [Fifth Amendment] Due Process Clause.”  
23 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of  
24 [procedural] due process is the opportunity to be heard ‘at a meaningful time and in a  
25 meaningful manner.’” *Id.* at 333 (*quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

26 To determine whether procedural protections satisfy the Due Process Clause, courts  
27 consider three factors: (1) “the private interest that will be affected by the official action”; (2)  
28 “the risk of an erroneous deprivation of such interest through the procedures used, and the

1 probable value, if any, of additional or substitute procedural safeguards”; and (3) “the  
2 Government’s interest, including the function involved and the fiscal and administrative  
3 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

4 The first factor favors Respondents. The Supreme Court has long recognized that due  
5 process as applied to immigration cases does not require the same strictures as it might in  
6 other circumstances. In *Mathews v. Diaz*, the Court held that when exercising its “broad  
7 power over naturalization and immigration, Congress regularly makes rules regarding aliens  
8 that would be unacceptable if applied to citizens.” *See* 426 U.S. at 79-80. In *Demore*, the  
9 Court likewise recognized that the liberty interests of aliens are subject to limitations not  
10 applicable to citizens. 538 U.S. at 522 (*citing Zadvydas*, 533 U.S. at 718 (Kennedy, J.,  
11 dissenting)). Accordingly, while the Ninth Circuit has recognized the individuals subject to  
12 immigration detention possess at least a limited liberty interest, it has also recognized that  
13 aliens’ liberty interests are less than full. *Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th  
14 Cir. 2011). Because Petitioner’s liberty interest is less than that at issue in *Morrissey*, this  
15 factor does not indicate he must be afforded a pre-detention hearing.

16 The second *Mathews v. Eldridge* factor also favors Respondents. Under the existing  
17 procedures, aliens such as Petitioner face little risk of erroneous deprivation. As explained  
18 above, there is no risk of erroneous deprivation because § 1231(a)(6) unquestionably  
19 authorizes his detention to execute his final removal order to any third country; ICE would be  
20 required to give him additional procedures under the Post Order Custody Review Regulations  
21 in 8 C.F.R. § 241.4. These regulations require periodic custody reviews in which he would  
22 have the opportunity to submit documents in support of his release, including documentation  
23 about flight risk and dangerousness. *See generally* 8 C.F.R. § 241.4(e)-(f) (listing factors to  
24 be considered in custody determinations). These procedures are more than adequate and  
25 unquestionably provide Petitioner notice and opportunity to be heard during his detention.

26 The third *Mathews v. Eldridge* factor – the value of additional safeguards relative to  
27 the fiscal and administrative burdens that they would impose – weighs heavily in favor of  
28 Respondents. As previously explained, Petitioner’s proposed safeguard – a pre-deprivation

1 hearing – adds little value to the system already in place – in which he will receive periodic  
2 reviews to ensure his removal remains reasonably foreseeable, and in which the entire purpose  
3 of his detention is to effectuate his removal. Petitioner’s proposed and novel safeguard would  
4 disrupt the removal process. Because the hearing he proposes would, by definition, involve a  
5 non-detained individual, there would be hurdles to efficiently schedule a hearing. No  
6 administrative process exists for giving an alien with a final order of removal a hearing  
7 resembling a bond hearing before an immigration judge. Petitioner’s proposed safeguard  
8 presents an unworkable solution to a situation already addressed by the current procedures.  
9 *See* 8 C.F.R. § 241.4.

10 Respondents recognize that Petitioner is making an individualized challenge. But the  
11 additional procedure he requests would have a significant impact on the removal system. It  
12 would require ICE and the Executive Office of Immigration Review to set up a novel  
13 administrative process for Petitioner who – for all intents and purposes – represents a large  
14 portion of the final order alien population. Thus, the *Mathews v. Eldridge* factors each show  
15 that due process does not require a pre-deprivation hearing.

16 **VI. U.S. Department of Homeland Security, et al. v. D.V.D., does not apply.**

17 It is unclear why Petitioner cites *U.S. Department of Homeland Security, et al. v.*  
18 *D.V.D., et al.*, 2025 WL 1732103 (June 23, 2025). The record shows that no consideration to  
19 a third country has occurred in this matter. As shown, Petitioner was issued travel documents  
20 to Vietnam, and is scheduled to be removed there on October 22, 2025. Because there is no  
21 third country of removal issue in this case, the *D.V.D.* case is inapplicable.

22 **VII. A preliminary injunction is not warranted.**

23 As for his motion for injunctive relief, the motion is improper. Petitioner is not seeking  
24 to merely preserve the status quo on a temporary basis. Rather, he seeks an injunction that  
25 would alter the status quo by providing him the ultimate relief he seeks in this litigation. As  
26 a matter of law, he is not entitled to what amounts to a tantamount judgment on the merits at  
27 this preliminary stage. *Mendez v. U.S. Immigration and Customs Enforcement*, 2023 WL  
28 2604585 at \*3 (N.D.Cal. Mar. 15, 2023), quoting *Senate of Cal. v. Mosbacher*, 968 F.2d 974,

1 978 (9th Cir. 1992) (“judgment on the merits in the guise of preliminary relief is a highly  
2 inappropriate relief.”). The motion should be denied on this basis.

3 Further, a “preliminary injunction is an extraordinary and drastic remedy.” *Munaf v.*  
4 *Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction  
5 only “upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Natural*  
6 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction,  
7 the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims;  
8 (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that  
9 the balance of equities tips in its favor; and (4) that the proposed injunction is in the public  
10 interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has stated, “[a] stay  
11 is not a matter of right, even if irreparable injury might otherwise result” but is instead an  
12 exercise of judicial discretion that depends on the particular circumstances of the case. *Nken*  
13 *v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658,  
14 672 (1926)).

15 *A. Petitioner cannot establish a likelihood of success on the merits.*

16 As argued above, Petitioner cannot establish a likelihood of success on the merits: he  
17 cannot meet his burden to demonstrate that his removal is unlikely in the reasonably  
18 foreseeable future, particularly since his removal is now scheduled for next week.

19 *B. Petitioner cannot establish irreparable harm.*

20 As established, Petitioner’s 166-day confinement is neither illegal nor  
21 unconstitutional. *Zadvydas*, 533 U.S. at 701. Rather, because his removal will occur, neither  
22 habeas nor injunctive relief should be granted because he has not established any irreparable  
23 harm from his continued detention while the Government executes his removal order.

24 *C. The public interest and balance of the equities favors the government.*

25 Where the Government is the opposing party, the balance of equities and public  
26 interest factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing party,  
27 courts “cannot simply assume that ordinarily, the balance of hardships will weigh heavily in  
28 the applicant’s favor.” *Id.* at 436 (citation and internal quotation marks omitted). Here, the

1 public interest weighs in favor of denying the motion for a preliminary injunction. “Control  
2 over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec. Office of*  
3 *Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest lies in the  
4 Executive’s ability to enforce U.S. immigration laws and to keep aliens who have violated the  
5 conditions of their supervised release detained pending execution of their removal orders.

6 **VIII. Conclusion.**

7 Given that Petitioner is scheduled for removal next week and his detention was  
8 appropriate and constitutional, his Petition for Writ of Habeas Corpus and Motion for  
9 Preliminary Injunction should be denied.

10 RESPECTFULLY SUBMITTED October 14, 2025.

11 TIMOTHY COURCHANE  
12 United States Attorney  
13 District of Arizona

14 *s/ Laurence G. Tinsley, Jr.*  
15 LAURENCE G. TINSLEY, JR.  
16 Assistant United States Attorney  
17 *Attorneys for Respondents*