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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Thai-Quang Quach,

Petitioner,

vs.

M. Martinez, et al.

Respondents.

Case No. 25-cv-02937-JJT-JFM

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR PRELIMINARY INJUNCTION

Assigned to Hon. John J. Tuchi

ARGUMENT

THE COURT SHOULD GRANT THE PETITION AND MOTION[1]

I. Petitioner is likely to succeed on the merits and has raised serious questions going to the merits of his claims.

To grant preliminary injunctive relief, a court must find that "a certain threshold showing [has been] made on each factor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam) Assuming that this threshold is met, "serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (internal quotation marks omitted). Preliminary relief is appropriate here because "serious questions going to the merits" exist, and the balance of hardships tips sharply towards Mr. Quach.

A. The government has not rebutted Mr. Quach's showing that his removal is not "reasonably foreseeable."

The government first argues that the Court should deny Mr. Quach's habeas corpus petition and motion for a preliminary injunction because they assert that his removal is reasonably foreseeable. Dkt. 24 at 5-6.

However, the government misstates the burden of proof by claiming that Mr. Quach must show that removal is not reasonably foreseeable. Dkt. 24 at 5. Mr. Quach was

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[1] This Reply was prepared on Friday, October 17, 2025. Upon information and belief, Petitioner has since been taken from the State of Arizona, although he remains in ICE custody. Counsel will promptly inform the Court if she learns that Respondent DHS has executed Petitioner's removal order.

detained for over six months after his removal order became final, and he was released in November 2003. Dkt. 24-1, ¶¶ 12-14. Both the removal period and the presumptively reasonable six-month period for his detention thus expired over twenty years ago. As such, if Mr. Quach has provided "good reason" to believe that his removal was unlikely in the reasonably foreseeable future, it is "the Government" that "must respond with evidence sufficient to rebut that showing." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).[2]

In his petition, Mr. Quach provided ample reason to believe that removal was unlikely in the reasonably foreseeable future. As he explained, an ongoing agreement between the United States and Vietnam precludes removal of individuals like Mr. Quach, who entered as refugees before 1995.[3] Dkt. 17 at 2, 4. Furthermore, even to this date, the government has not produced a travel document nor specifically alleged that it has obtained a travel document *to Vietnam*. *See id.* The burden has thus shifted to the government to rebut Mr. Quach's showing that removal is not reasonably foreseeable. *Zadvydas*, 533 U.S. at 701.

The government has failed to make this rebuttal showing. Indeed, in its response, the government implicitly acknowledges that it did not have travel documents for Mr. Quach

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[2] The government's suggested burden-shifting framework would permit it to subject noncitizens to infinitely-recurring six-month periods of detention with no meaningful review. This is no different from what the Supreme Court deemed impermissible in *Zadvydas*. It would further disregard the removal period definition at 8 U.S.C. § 1231(a)(1)(A)-(C),

[3] *See* U.S. Department of State, "Repatriation Agreement Between the United States of America and Vietnam" (Jan. 22, 2008), available at: https://www.state.gov/wp-content/uploads/2019/02/08-322-Vietnam-Repatriations.pdf ("Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995....").

when his petition was filed, and it specifically concedes that he did not have a consular interview until over a month after the petition's filing date. *See* Dkt. 24-1, ¶ 22. The government attempts to meet its burden with only a spare assertion by a single DHS employee that "[o]n October 8, 2025, DHS received travel documents for the Petitioner."[4] Dkt 24-1, ¶ 24. DHS has not produced these alleged travel documents to undersigned counsel or the Court, and it notably declines to specify which country issued the putative travel documents. *See id.* Whereas the government's response states that "the Government received travel documents from Vietnam," Dkt. 24 at 8, its evidentiary submission establishes no such thing. In fact, declarant Miguel Martinez is elusive about which country allegedly provided travel documents. Mr. Martinez clearly states that the government *requested* travel documents from Vietnam on August 4, 2025, but he does not specify which country ultimately *provided* travel documents on October 8. *See* Dkt. 24-1, ¶¶ 20, 24. Nor does he certify that the government requested documents *only* from Vietnam, or that his account is a complete inventory of the government's actions in Mr. Quach's case. While the government asserts in its response that "[t]he record shows that no consideration to a third country has occurred in this matter." Dkt. 24 at 12, Mr. Martinez says nothing about whether the government has considered or requested documents from any third countries, and the government submits no other evidence to

[4] The Declaration of Miguel Martinez omits his position title, indicating only that he is "currently employed as a [sic] with U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO)." Dkt. 24-1.

support of its claim.[5] In the face of such evidentiary deficits, and without permitting the tribunal to inspect the alleged travel documents, the government has failed to rebut Petitioner's showing that his removal is not reasonably foreseeable.[6]

B. The Fifth Amendment Due Process Clause and the INA foreclose Petitioner's detention until his removal is "reasonably foreseeable."

Despite the government's claims to the contrary, Mr. Quach is entitled to a pre-deprivation administrative hearing on the likelihood and foreseeability of his removal. Mr. Quach has shown that such a hearing is warranted prior to any re-detention under the factors set forth in *Mathews v. Eldridge*: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335 (1976).

The government argues that Mr. Quach has no basis to assert a procedural due process right to a pre-deprivation hearing because his detention is aimed at effectuating his

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[5] Mr. Martinez's declaration indicates that his summary of the Mr. Quach's file is "true and correct," but notably omits any certification that the summary is "complete." Dkt 24-1, ¶ 3.

[6] The government argues that the Court should deny the requested injunction because it would "alter the status quo by providing [Petitioner] the ultimate relief he seeks in this litigation." Dkt 24 at 12. However, the government simultaneously urges the Court to resolve the litigation by denying Mr. Quach's petition. *Id.* at 14. Mr. Quach submits that the Court should grant the petition because the government has not rebutted his showing, and grant the injunction because he has shown not only a likelihood of success on the merits, but also the other required factors as detailed below.

removal. Dkt. 24, p. 8-12. However, Mr. Quach's detention has already lasted well in excess of what is "reasonably necessary" to secure removal. *Zadvydas*, 533 U.S. at 690, 699-700. The bare facts of Mr. Quach's two detentions, and the intervening 22 years, show that "there is no significant likelihood of removal in the reasonably foreseeable future," and that even if removal were likely in the reasonably foreseeable future, detention is not "reasonably necessary" to effectuate his removal. *Id.*

In *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 U.S. Dist. LEXIS 113566, 2025 WL 1676854 (N.D. Cal. Jun. 14, 2025), the Court granted a temporary restraining order on similar facts. In that case, the petitioner had been out of ICE custody for five years, feared detention at an upcoming ICE check-in, and thus sought freedom from detention unless and until a pre-deprivation hearing was held. After analyzing the claim under the *Mathews* factors, the court enjoined the government from detaining Diaz at his check-in. The court found that his private interest in not being detained was substantial; that the risk of erroneous deprivation without a pre-deprivation hearing was great; and that the government's interest in detention without a hearing was low because Diaz had complied with his supervision requirements for years. *Id.*[7] The same is true for Mr. Quach.

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[7] Numerous courts have issued similar orders in similar circumstances. *See Quoc Chi Hoac v. Becerra*, 2025 U.S. Dist. LEXIS 136002, 2025 LX 206685 (E.D. Cal. July 16, 2025) (ordering immediate release and enjoining re-detention without notice and opportunity to be heard); *Soto Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 U.S. Dist. LEXIS 133521 (E.D.C.A. July 14, 2025) (ordering immediate release unless and until the petitioner is afforded notice and a hearing before an immigration judge); *T.P.S. v. Kaiser, et al.*, 3:25-cv-05428 (N.D. Cal. June 30, 2025) (granting a TRO prohibiting the government from re-detaining the petitioner without notice and a hearing before a neutral adjudicator); *Tadros v. Noem*, No. 2:25-cv-04108-EP, 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 17, 2025).

Indeed, in Mr. Quach's case, the risk of erroneous deprivation has already come to pass. *Contra* Dkt. 24 at 9 (arguing that the risk of erroneous deprivation under existing procedures is low). In violation of the administrative processes described in 8 C.F.R. § 241.4(l), Mr. Quach was not "promptly" provided with an informal interview and was not provided with an opportunity "to respond to the reasons for revocation." In fact, the government specifically concedes that Mr. Quach was not provided with an informal interview until October 2, 2025 – over *five months* after his re-detention, and only after he obtained counsel and filed amended pleadings in this litigation. Dkt. 24-1, ¶ 23.

Moreover, the interview did not provide Mr. Quach with the specific "reasons for revocation" of his OSUP. *Id.* Miguel Martinez asserts that on October 8, 2025, "the Petitioner was informed" – by whom he does not state – that "he would remain in detention pending removal from the United States." Dkt 24-1, ¶ 25. But Mr. Martinez's declaration does not provide any indication that the government believed, at the time it re-detained Mr. Quach, that it had the ability to effectuate his removal in the reasonably foreseeable future. *See id.* Instead, Mr. Martinez simply states that the government re-detained Mr. Quach "because of his removal order," and it did not even request travel documents for him until over three months after the re-detention. *Id.* at ¶¶ 17, 20. The government therefore provides no evidence whatsoever that it complied with its own regulations governing re-detention, and in fact, it implicitly concedes that it did not.[8] *Id.*

[8] The government's pleading again diverges significantly from its evidentiary submission on this point. The government's response asserts, without citation to the record, that "Petitioner's Order for Supervised Release (OSUP) was revoked, and he was

Bafflingly, the government further argues that it was not required to "show 'changed circumstances' or provide advance notice prior to revoking an OSUP," because Mr. Quach's "revocation of release occurred under 8 C.F.R. § 241.13." Dkt. 24 at 7. However, just before making this assertion, the government quotes the very text of § 241.13 that permits revocation of release only "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." Dkt. 24 at 6 (emphasis added). The government cannot unilaterally divest itself of its regulatory obligations, particularly where it concedes that 8 C.F.R. § 241.13 governed its decision-making in re-detaining Mr. Quach.[9]

Mr. Quach's removal period expired over twenty years ago, without the government securing travel documents to Vietnam or any other country. Dkt. 17-3, 24-1. In the intervening two decades, Mr. Quach was released and has appeared for all of his check-ins, and ICE declined to re-detain him notwithstanding any criminal issues.[10] There is no

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re-detained, because the government determined it was significantly likely to be able to effectuate his removal to Vietnam in the reasonably foreseeable future under 8 C.F.R. § 241.13(i)(2)." Dkt. 24 at 7. But as mentioned above, that is not the basis Mr. Martinez proffers for the re-detention in his declaration, and Petitioner recalls being told that his OSUP was revoked "based on a new policy" and "because of the Trump administration." Dkt.17-3.

[9] The government's arguments about detention "during removal proceedings," and about Constitutional requirements for hearings before arrest under 8 U.S.C. § 1226, Dkt. 24 at 8 & 9-10, are inapposite, because removal proceedings in this case ended in 2003.

[10] The government asserts that criminal issues from 2016 indicate that Mr. Quach failed to comply with the conditions of his release and "further justified his recent and ongoing detention." Dkt. 24 at 2, n.1. Once again, the government provides no evidentiary support for the argument that Mr. Quach's criminal issues motivated either

indication that Mr. Quach's detention is "reasonably necessary" to secure his removal if travel documents ever become available.

Ultimately, Mr. Quach has shown that there are "serious questions" regarding whether his removal is reasonably foreseeable, or whether detention is reasonably necessary to secure his removal. The government's claim to have obtained travel documents is dubious in light of its failure to produce these documents or identify the issuing country. Because the government has not shown that removal is reasonably foreseeable, and it already violated its own regulations in re-detaining Mr. Quach, the Court should order Mr. Quach's immediate release and require a pre-detention hearing before any future re-detention.[11]

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his initial re-detention or the decision to continue detaining him. As explained, the *only* basis identified in the government's evidence for Mr. Quach's re-detention in May 2025 was the existence of his removal order from 2003. Dkt. 24-1. Mr. Martinez does not identify Mr. Quach's criminal history as a factor in the decision to re-detain him, or in the decision to continue detaining him. Nor does the government address the gap of *nine years* during which ICE permitted Mr. Quach to remain under supervised release between 2016 and 2025.

[11] *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), does not preclude such an order. *Contra* Dkt. 24 at 9. The Supreme Court in that case did not address the requirements for revocation of an OSUP, and it specifically indicated that *Zadvydas* was still good law. Furthermore, the government offers up a parade of horribles by suggesting that ordering a pre-detention hearing in this case "would have a significant impact on the removal system" because Mr. Quach's situation "represents a large portion of the final order alien population." Dkt. 24 at 12. Unless the government means to suggest that it is detaining "a large portion of the final order alien population" in violation of its own regulations, months before even requesting travel documents based on decades-old removal orders, this Court can adjudicate Mr. Quach's request without simultaneously addressing the situation of every noncitizen who is under an OSUP. Nor has the government explained what "hurdles" might exist to "efficiently schedule a hearing" for a "non-detained individual." Dkt. 24 at 12. The government does not and cannot reconcile

C. The Fifth Amendment Due Process Clause requires the government to provide meaningful notice and opportunity to respond and contest –and express a fear of removal to a third country.

As explained above, Mr. Martinez's declaration does not identify which country allegedly provided travel documents for Mr. Quach, and the government has not produced any travel documents to the Court. Dkt. 24-1. The government makes no substantive response to Mr. Quach's arguments regarding his right to be afforded notice and an opportunity to be heard on a fear-based claim as to any third country of removal. Accordingly, Mr. Quach has demonstrated a likelihood of success on this point.

II. Petitioner is already suffering irreparable harm.

The government asserts only that Mr. Quach is not suffering irreparable harm because it claims that "his removal will occur." Dkt. 24 at 13. However, "it is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable *injury.*" *Melendrez v. Arpaio*, 695 F.3d. 990, 1002 (9th Cir. 2012) (*quoting Elrod v. Burns*, 427 U.S. 247, 272 (1976)). In addition, the Ninth Circuit has recognized "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Mr. Quach's detention—already over five (5) months in its current duration—is imposing severe burdens on him, and his U.S.-citizen family members, Dkt. 17 at 23-25, and he has shown irreparable harm.

III. The balance of equities and the public interest tip in Mr. Quach's favor.

Finally, the balance of equities and the public interest tip sharply in Mr. Quach's

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its efficient scheduling concern with the fact that thousands of non-detained individuals appear for hearings in Immigration Court every day across the country.

favor. The government offers no meaningful argument to the contrary apart from an uncited assertion about the value of Executive power.[12] Dkt 24 at 14. "The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process." *Hernandez*, 872 F.3d at 996. "In addition, the [Government] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983). The government's own documents demonstrate that ICE did not attempt to obtain travel documents for Mr. Quach for three months after his re-detention. Dkt. 24-1, ¶ 20. Nor did Mr. Quach ever fail to appear for a scheduled check-in. Dkt. 17-1. In other words, it is unclear what the government's "legitimate purpose" is in detaining Mr. Quach, as detention is not necessary to effectuate his eventual removal. Without the requested injunctive relief, Petitioner and his family will continue to be subject to significant hardship. Yet the comparative harm potentially imposed on Respondents-Defendants is minimal—a short delay in detaining Petitioner, should the government ultimately show that detention is warranted.

CONCLUSION

For all the above reasons, the Court should grant Mr. Quach's petition, order his immediate release from custody, enjoin his re-detention unless he is afforded notice and

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[12] The government's indication that it has an interest in keeping individuals detained who have violated the terms of their release it at odds with the government's own clear evidence that Mr. Quach was not detained based on any such violation, but merely based on the continued existence of his removal order. Dkt. 24-1, ¶ 20.

a hearing before an Immigration Judge, and enjoin his removal to any third country without first providing him with constitutionally-compliant procedures.

Dated: October 21, 2025

Respectfully submitted,

s/ Ami Hutchinson
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