District Judge Jamal N. Whitehead
Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHITTAKONE PHETSADAKONE, Petitioner, v. BRUCE SCOTT, *et al.*, Respondents.	Case No. 2:25-cv-01678-JNW-BAT FEDERAL RESPONDENTS'[1] OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER **Noted for consideration:** **August 29, 2025**

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") has lawfully detained Petitioner Chittakone Phetsadakone, a citizen of Laos who is subject to a final removal order, to facilitate his removal to Laos. Petitioner seeks the extraordinary remedy of a temporary restraining order ("TRO") claiming that he is "experiencing unlawful prolonged immigration detention" and "faces a threat of removal to a third country in violation of his statutory and constitutional rights." Dkt. No. 2-1, Mem., at 1. He is wrong on both counts. Contrary to his allegations, Petitioner's detention is lawful. He is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C.

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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§ 1231. His detention is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), as ICE has obtained a travel document to execute his removal to Laos. Because ICE is arranging travel for his removal to Laos, his claims concerning possible third country removal are not at issue.

Petitioner further seeks an order enjoining his removal "to *any* country pending the resolution of his pending writ of corum nobis." Mem., at 1 (emphasis added). But the INA's jurisdiction stripping provisions prevent this Court from issuing such an order. *See* 8 U.S.C. §§ 1252(a)(5), (g). The proper forum for seeking a stay of removal pending the outcome of his motion to reopen or writ of coram nobis is the Board of Immigration Appeals or the Ninth Circuit.

Lastly, Petitioner asks this Court to issue an order enjoining his transfer out of this District. To the extent that this Court entertains this request, Federal Respondents ask that this Court allow a transfer out of this District for the purposes of his removal to Laos.

Accordingly, this Court should deny Petitioner's TRO Motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for

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removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

During the removal period, ICE[2] is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.*, at 701.

Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h). ICE may revoke a noncitizen's OSUP and return the noncitizen to custody when, on account of changed circumstances, there becomes a significant likelihood of the noncitizen's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2).

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[2] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

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Here, Petitioner is the subject of an administrative order of removal that became final on November 27, 2000. Booth Decl. ¶ 9. ICE released Petitioner on an OSUP on or about June 25, 2001. Thus, the "presumptively reasonable" six-month custody period has expired. *Zadvydas*, 533 U.S. at 701. However, Laos' recent issuance of a travel document supports his current detention as his removal will occur once travel arrangements to Laos have been finalized. ICE is currently in the process of scheduling Petitioner's removal. Booth Decl., ¶ 14.

B. Petitioner Chittakone Phetsadakone

Petitioner is a native and citizen of Laos. Booth Decl., ¶ 3; Pet., ¶¶ 9, 16. He was admitted to the United States as a refugee in or about 1981 and later became a lawful permanent resident. Pet., ¶¶ 17, 18. In 1997, Petitioner pled guilty to committing Bank Fraud in violation of 18 U.S.C. §§ 1344, 2. Booth Decl., ¶ 4; Pet., ¶ 30. Shortly thereafter, Petitioner was placed in removal proceedings before an Immigration Judge ("IJ") pursuant to a Notice to Appear charging him with removability pursuant to 8 U.S.C. § 1227(a)(2)(A)(ii), which was later amended to include a second charge of removability under to 8 U.S.C. § 1227(a)(2)(A)(iii). Booth Decl., ¶¶ 5, 6. He was represented by counsel during his removal proceedings. Booth Decl., ¶¶ 8 n.1 & 9 n.2

On May 11, 1998, an IJ denied Petitioner's applications for relief removal and ordered him removed to Laos. Booth Decl., ¶ 8; Pet., ¶ 34. The BIA dismissed Petitioner's appeal of the IJ's order on November 27, 2000. Booth Decl., ¶ 9; Pet., ¶ 35. Because Petitioner sought no further judicial review, the removal became administratively final on that date. On or about June 25, 2001, Petitioner was released from immigration detention under an OSUP. Booth Decl., ¶ 10; Pet., ¶ 36.

On July 21, 2025, ICE revoked Petitioner's OSUP pursuant 8 C.F.R. § 241.13 because circumstances had changed in that Petitioner's removal to Laos had become significantly likely to

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occur in the reasonably foreseeable future. Booth Decl., ¶ 11;[3] Pet., ¶ 42; Lambert Decl., Ex. A, Notice of Revocation of Release. ICE arrested him and he is detained at the Northwest ICE Processing Facility pending his removal. Approximately two weeks after the revocation of his OSUP, the Government of Laos issued a temporary travel document for Petitioner's removal to Laos, which expires on November 4, 2025. Booth Decl., ¶ 13; Lambert Decl., Ex. B, Travel Document. ICE is in the process of scheduling Petitioner's removal to Laos. Booth Decl., ¶ 14.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

"A party can obtain a preliminary injunction by showing that (1) [he] is 'likely to succeed on the merits,' (2) [he] is 'likely to suffer irreparable harm in the absence of preliminary relief,' (3) 'the balance of equities tips in [his] favor,' and (4) 'an injunction is in the public interest.'" *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Winter*, 555 U.S. at 20). Alternatively, a plaintiff can show that there are "serious questions going to the merits and

[3] The declaration mistakenly states that Petitioner's OSUP was revoked "on or about June 21, 2025." This is a typo The following paragraph contains the correct date of arrest. Booth Decl., ¶ 12. The Notice of Revocation further confirms that the correct date is July 21, 2025. Lambert Decl., Ex. A.

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the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Id.* (internal quotation omitted).

IV. ARGUMENT

A. Petitioner is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241. Petitioner contends that his redetention violates the Due Process Clause, 8 U.S.C. § 1231(a), 8 C.F.R. § 241.13, and the Administrative Procedure Act.[4] Pet., ¶ 84. His unlawful redetention claim lacks merit.

First, Petitioner is not subject to indefinite detention in violation of due process. Mem., at 14. Petitioner incorrectly states that "the government asks this [C]ourt to authorize detention again on the off chance that Laos or some other country will accept Petitioner." *Id.* However, Laos has issued a travel document for Petitioner. Lambert Decl., Ex. B. Thus, Petitioner's detention is not based "on a whim or a hunch" as Petitioner asserts. Mem., at 14. The fact that Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). The reality is that he will be removed to Laos as soon as his travel can be arranged. Consequently, Petitioner has failed to demonstrate a good

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[4] The Petition merely asserts that his redetention violates "the APA." It does not provide what section of the "APA" allegedly has been violated or specify any facts concerning the purported APA violation. As a result, Federal Respondents cannot respond to this asserted claim here.

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reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

Second, due process does not require a pre-deprivation hearing prior to the revocation of an OSUP. Mem., at 15-16. Petitioner asserts that his release on OSUP "cannot be taken away without notice and a pre-deprivation hearing." Mem., at 15. But Petitioner is subject to a final order of removal. ICE has a valid travel document to execute that removal order. Based on those facts, any protected liberty interest that Petitioner may have in remaining in the community on supervision is addressed by 8 C.F.R. § 241.13. *See Ahmad v. Whitaker*, No. 18-cv-287-JLR-BAT, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019) (discussing requirements of Section 241.13 and stating that "[t]he regulations do not require notice").

The regulation requires a cause for redetention, "namely a change in circumstances such that there is a significant likelihood that the noncitizen will be removed in the reasonably foreseeable future." *Id.* (citing 8 C.F.R. § 241.13(i)(2)). The facts here clearly demonstrate such a change in circumstances. While ICE had been unable to obtain a travel document to conduct Petitioner's removal to Laos for decades, ICE now has a travel document, which was received shortly after Petitioner's redetention. Furthermore, Petitioner received notification of the reason for the OSUP revocation. Lambert Decl., Ex. A.

At this time, Federal Respondents are unable to confirm whether Petitioner received an informal interview pursuant to 8 C.F.R. § 241.13(i)(3). However, Petitioner cannot demonstrate that the facts here support an actionable injury even if an informal interview was not conducted given that ICE has obtained a travel document for his removal to Laos. The informal interview is required so a noncitizen may present information showing that there is no significant likelihood of

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removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(3). As Laos issued the travel document approximately two weeks after Petitioner's redetention, it is unclear how Petitioner could provide any such information. "Thus, there is no apparent reason that ICE's failure to provide an informal interview should result in [Petitioner's] release." *Ahmad*, 2018 WL 6928540, at *5.

The cases that Petitioner relies on for the proposition that due process requires a pre-deprivation hearing are easily distinguishable from the facts here. Mem., at 15. Many of the cases involve instances where a noncitizen had been redetained after having been released on bond while immigration proceedings continued and prior to a final order of removal. *See, e.g., E.A. T.-B. v. Wamsley*, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Azarte v. Andrews*, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025); *Sequen v. Kaiser*, 2025 WL 2203419 (N.D. Cal. Aug. 1, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *1 (E.D. Cal. July 14, 2025). As a result, the courts found that prior to redetention, an individual analysis of whether the person is a danger to the community or a flight risk is required. 8 C.F.R. § 1236.1(c)(8). In those cases, the issue of the foreseeability of removability is not a part of those analyses because removal is not yet an issue. In contrast, the OSUP revocation here required ICE to determine a change in circumstances concerning its ability to remove Petitioner. 8 C.F.R. § 241.13(i)(2). Thus, the due process analysis for the cited cases differs from here.

The other group of cases that Petitioner cites to involves noncitizens released on OSUPs, but in those cases the district courts found that ICE failed to establish a significant likelihood of removal in the reasonably foreseeable future. *See, e.g., Zakzouk v. Becerra*, No. 25-cv-06254, 2025 WL 2097470, at *3 (N.D. Cal. July 26, 2025); *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash.

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Aug. 21, 2025); *Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025). Because ICE has a travel document for Petitioner here, these cases are clearly distinguishable.

Finally, Petitioner speculates that his release document, like a sample release notice, provided him an "opportunity for an orderly departure." Mem., at 18. However, the language in the sample notice provided by Petitioner (Pasquarella Decl., ¶ 20) may not be the language in the release documents for Petitioner. *Ahmad*, 2018 WL 6928540, at *6 (pointing out that release document did not contain "orderly departure language"). Petitioner has not provided his release paperwork and the paperwork that ICE could locate during this expedited briefing schedule does not contain that language. Lambert Decl., Ex. C, Letter, dated June 25, 2001. Thus, Petitioner has not made a clear showing that he had been promised time to prepare for an orderly departure prior to his removal.

Accordingly, Petitioner is lawfully detained. This Court should deny Petitioner's request for release from immigration detention pending his removal.

B. This Court lacks jurisdiction to enjoin Petitioner's removal to Laos.[5]

1. The IIRIRA and REAL ID Act Amendments to the INA

In the exercise of its constitutional power to define federal court jurisdiction, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation, and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the Immigration and

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[5] Petitioner's claims concerning third country removal are moot as there is no issue or controversy for this Court to decide. *See* Mem., at 18-24. ICE has a travel document for Petitioner's removal to Laos and is currently scheduling his removal to Laos – not to a third country.

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Nationality Act ("INA"), Congress provided in the newly-enacted section 1252(g) that reads as follows:

> Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended section 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas actions, such as the one Petitioner now brings before this Court. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, section 1252(g), now provides that:

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

8 U.S.C. § 1252(g) (2017) (emphasis added).

In addition to the bar to jurisdiction at section 1252(g), the IIRIRA and REAL ID Act amendments to the INA also reflect Congress's desire to "streamline immigration proceedings" and to "effectively limit all aliens to one bite of the apple with regard to challenging an order of removal." *Singh v. Gonzales*, 499 F.3d 969, 976-77 (9th Cir. 2007) (quoting *Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005)). Under these amendments, individuals who seek to challenge an order of removal may do so, but only as part of a petition for review in the appropriate court of appeals, as provided under section 1252. In particular, section 1252(b)(9) provides that:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from

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> any action taken or proceeding brought to remove an alien from the United States under this subchapter *shall be available only in judicial review of a final order under this section.* Except as otherwise provided in this section, *no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision*, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) ("Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal . . . ").

2. Section 1252(g) prohibits this Court from staying Petitioner's removal to Laos to pursue administrative remedies.

This Court should find that it lacks jurisdiction to review Petitioner's request to stay his removal to Laos while his writ of coram nobis is decided in his original criminal matter. Mem., at 24-25. His writ of coram nobis is separate and apart from this habeas petition. Moreover, even if Petitioner is successful on his writ, he will have to move to vacate his removal order before the BIA or the immigration court. Thus, his actual request to this Court is to stay his removal during his pending motion to allow him to reopen his immigration proceedings with the BIA. Pet., ¶ 82. The correct venue for a motion to stay his removal proceedings is with the BIA or the Ninth Circuit. 8 U.S.C. § 1252(a)(5).

In *AADC*, the Supreme Court held that 1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (original emphasis). In accordance with the Supreme Court's reading of the statute, courts in this district and nationwide have routinely held that they

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lack jurisdiction to stay removal "even if the claim is for a short stay of removal while [the petitioner] seeks additional administrative remedies." *Diaz-Amezcua v. Johnson*, No. 14-cv-1313-MJP, 2015 WL 419029, at *3 (W.D. Wash. Jan. 30, 2015) (dismissing habeas petition for lack of jurisdiction where petitioner sought stay of removal while he pursued appeals before the BIA and USCIS); *see also Garcia-Herrera v. Asher*, 585 F. App'x 439, 440 (9th Cir. 2014) (holding that the district court properly dismissed habeas petition for lack of jurisdiction where petitioner sought a stay of removal in order to allow for adjudication of his application for Deferred Action for Childhood Arrivals).

It is undisputed that Petitioner has a removal order pending against him. Petitioner's request to stay his removal to Laos arose due to ICE's decision to execute his removal order. Thus, Section 1252(g) applies to the request to stay his removal to "all countries" and this Court is precluded from exercising its jurisdiction over his request. *Gahano v. Renaud*, No. 20-cv-1094-MJP-MLP, 2021 WL 2530714, at *2 (W.D. Wash. June 21, 2021); *see, e.g.*, *Mora Flores v. Garland*, No. C24-1692-RSM, 2024 WL 4520052, at *2 (W.D. Wash. Oct. 17, 2024) (finding that the court lacked jurisdiction to issue a TRO to prevent a deportation hearing based on a pending motion to reopen); *Ramos v. Clark*, No. 10-cv-1226, 2011 WL 321743, *3 (W.D. Wash. Jan. 12, 2011), *R&R adopted* 2011 WL 317737 (W.D. Wash. Jan 28, 2011) (no jurisdiction to stay removal to allow petitioner to challenge his guilty plea); *Kostenko v. Gonzales*, No. 07-cv-0804, 2007 WL 1847183, *2 (W.D. Wash. June 26, 2007) (no jurisdiction to stay removal while motion to reopen pending with BIA and Petition for Governor's Pardon pending).

Petitioner's request fares no better even if this Court reviews Petitioner's request to stay his removal as limited only to the duration of his writ of coram nobis. *See Eisa v. Immigr. & Customs Enf't*, No. 08-cv-6204, 2008 WL 4223618, at *4 (S.D.N.Y. Sept. 11, 2008) (finding court

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lacks jurisdiction to stay removal while the petitioner attacks his underlying conviction); *United States v. Morillo*, No. 15-CR-174-SM-AJ-1, 2025 WL 1707710, at *2 (D.N.H. June 18, 2025) (same).

3. Even if this Court had jurisdiction, the motion to stay his removal should be denied because he is unlikely to succeed on his writ of coram nobis.

Petitioner is not likely to succeed in his writ of coram nobis that he filed more than a quarter of a century after his criminal conviction. Petitioner alleges that he received ineffective assistance of counsel in that his counsel misadvised him that "a conviction to the charge of bank fraud would not lead to certain deportation." Mem., at 24. "A petition for a writ of coram nobis provides a way to collaterally attack a criminal conviction for a person . . . who is no longer 'in custody' and therefore cannot seek habeas relief under U.S.C. § 2255 or § 2241." *Chaidez v. United States*, 568 U.S. 342, 345, n.1. (2013). But "the writ of error coram nobis is a highly unusual remedy, available only to correct grave injustices in a narrow range of cases where no more conventional remedy is applicable." *United States v. Riedl*, 496 F.3d 1003, 1006 (9th Cir. 2007). The writ's availability is limited "to 'extraordinary' cases presenting circumstances compelling its use 'to achieve justice.'" *United States v. Denedo*, 556 U.S. 904, 911 (2009) (citation omitted).

To qualify for coram nobis relief, the defendant must establish four things: "(1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character." *Riedl*, 496 F.3d at 1006 (citation omitted). "Because these requirements are conjunctive, failure to meet any one of them is fatal." *Matus-Leva v. United States*, 287 F.3d 758, 760 (9th Cir. 2002).

Petitioner will likely not succeed on demonstrating a valid reason for not attacking his conviction in the last 25 years. While coram nobis petitions are not subject to "a specific statute

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of limitations," a defendant who delays must "provide valid or sound reasons explaining why [he] did not attack [his] sentence[] or convictions earlier." *United States v. Kwan*, 407 F.3d 1005, 1012 (9th Cir. 2005), *abrogated on other grounds by Padilla v. Kentucky*, 559 U.S. 356 (2010). If a defendant "reasonably could have asserted the basis for [his] coram nobis petition earlier, [he] ha[s] no valid justification for delaying pursuit of that claim." *United States v. Kroytor*, 977 F.3d 957, 961 (9th Cir. 2020). And if a defendant unjustifiably delays in challenging his conviction, coram nobis relief is unavailable. *See id.*; *Riedl*, 496 F.3d at 1006-07. By contrast, if the defendant "did not have a reasonable chance to pursue [his] claim earlier due to the specific circumstances [he] faced, delay during the time when such circumstances existed may be justified." *Kroytor*, 977 F.3d at 961.

Even if Petitioner is correct that he did not know his conviction would lead to certain deportation, Petitioner has been on notice of the immigration consequences since the time his Notice to Appear was issued and he was placed in removal proceedings in 1997. Booth Decl., ¶ 5. And if he had any remaining questions concerning the impact of his conviction on his deportation, those questions were answered when an IJ ordered him removed to Laos in 1998 and then the BIA dismissed his appeal of the removal order in 2000. *Id.*, ¶¶ 8, 9. Thus, Petitioner has been on notice since at least 2000. And there is no merit to Petitioner's claim that the audio recording that his attorney recently obtained from the district court's clerk office is "newly discovered evidence." Mem., at 24; Pasquarella Decl., Ex. F.[6] Petitioner makes no assertions that he had attempted to obtain this recording previously and was denied or that he took *any* action to challenge his underlying conviction before now.

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[6] Undersigned counsel was first notified of this habeas litigation and TRO motion through an email sent by Petitioner's counsel at 10:57pm on the Friday night before Labor Day weekend. Due to this timing, undersigned counsel has been unable to obtain a copy of the audio recording and has not had the opportunity to listen to its contents.

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The Ninth Circuit has held that a defendant who "waited two years" to seek coram nobis relief after learning that the only way to avoid mandatory removal was to seek to have his conviction vacated could not establish that his coram nobis petition was timely. *Kroytor*, 977 F.3d at 962-63 (citing *Ragbir v. United States*, 950 F.3d 54, 65 (3d Cir. 2020)). And that was true even though the petition in that case actually offered a reason for the delay: legal uncertainty about whether the rule announced by the Ninth Circuit under which the defendant sought relief was retroactive. *Id.* Accordingly, it is likely that Petitioner's coram nobis petition is untimely and will be denied for that reason.

As a result, this Court should not stay Petitioner's removal to Laos.

C. Petitioner has not shown irreparable harm.

Petitioner has not demonstrated that he will suffer irreparable injury absent a release from immigration detention or a stay of his removal to Laos. "The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on a [TRO]." *Juarez v. Asher*, 556 F. Supp.3d 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674 (9th Cir. 1988)). To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22.

Petitioner asserts that "[a]bsent relief, [he] will remain detained in an indefinite and prolonged state . . .." *See* Mem., ¶ 26. But Petitioner will not be subject to indefinite detention as ICE has a valid travel document to effect his removal to Laos. Once he is removed, he will no longer be in detention. And he is detained for the legitimate purpose of carrying out his removal.

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Petitioner further asserts that his detention constitutes irreparable injury. Mem., at 25. But this irreparable harm argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, additional time in immigration detention pending removal does not constitute immediate irreparable injury. *See Resendiz v. Holder*, 12-cv-4850, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012) ("loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations").

Accordingly, Petitioner has not made a clear showing that he will be subject to immediate irreparable injury without the requested injunctive relief.

D. The balance of hardships and public interests favor the Government.

It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders). ICE can promptly execute Petitioner's outstanding removal order to Laos. This public interest outweighs Petitioner's private interest here.

Accordingly, this Court should deny Petitioner's motion for a TRO.

V. CONCLUSION

For the foregoing reasons, Petitioner has not satisfied his high burden of establishing entitlement to injunctive relief, and his Motion should be denied.

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DATED this 31st day of August, 2025.

Respectfully submitted,

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I certify that this memorandum contains 5,094 words, in compliance with the Local Civil Rules.

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