John M. Mitchell (AZ Bar No. 039739)*
Christine K. Wee (AZ Bar No. 028535)
American Civil Liberties Union
Foundation of Arizona
2712 N. 7th Street
Phoenix, Arizona 85006
(602) 650-1854
jmitchell@acluaz.org
cwee@acluaz.org

** Admitted pursuant to Arizona Supreme Court Rule 38(d)*

Attorneys for Petitioner Monnathy L. Nambounmy
Additional attorneys listed on next page

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Monnathy L. Nambounmy,

Petitioner,

v.

John E. Cantu, Enforcement and Removal Operations, Arizona Field Office Director, U.S. Immigration and Customs Enforcement; Todd Lyons, Acting Director of Immigration and Customs Enforcement; Kristi Noem, Secretary, U.S. Department of Homeland Security; David R. Rivas, warden at San Luis Regional Detention Center; U.S. Department of Homeland Security; U.S. Immigration and Customs Enforcement,

Respondents.

CV-25-03294-DJH-ASB

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

Andres Holguin-Flores (CA Bar No. 305860)**
ACLU Foundation of San Diego and Imperial Counties
2760 Fifth Ave #300
San Diego, California 92101
(619) 232-2121
aholguinflores@aclu-sdic.org

Geovanna Y. Medel (CA Bar No. 362859)***
ABA Immigration Justice Project
2727 Camino Del Rio South, Suite 320
San Diego, California 92108
(619) 859-6650
Geovanna.Medel@abaijp.org

** *Pro Hac Vice*

*** *Pro Hac Vice* application forthcoming

I. Introduction

Petitioner Monnathy Nambounmy has lived in the United States for nearly his entire life. Since he was a teenager, he has been subject to a removal order that the government was not able to execute because Laos refused to accept U.S. deportees for repatriation. Now, 24 years later, suddenly and without notice, the government re-detained him and seeks his removal on an unspecified timeline they only characterize as "possible." The government provides no legal authority to re-detain Petitioner. The harm caused by the government's unlawful re-detention is immeasurable. Petitioner is the sole caretaker for his dying wife and medically challenged son and the only breadwinner for the family of four. This court should order his immediate release and restore him to the status quo of his prior order of supervision, enjoin third country removal without notice and a meaningful opportunity to be heard in reopened removal proceedings, and enjoin third country removal to any country where he is likely to be imprisoned upon arrival.

II. Petitioner Has Demonstrated He is Likely to Succeed on the Merits of his Claim that his Re-Detention is Unconstitutional and Unlawful.

a. The Government Concedes It Violated Petitioner's Regulatory Rights.

The government concedes it was required to comply and did not comply with the revocation of release procedures in 8 C.F.R. § 241.13(i)(3). Opp. at 4. This alone requires Petitioner's release from custody. *See Hoac v. Becerra,* 2025 WL 1993771 (E.D. Cal. June 30, 2025) (ordering release because government did not comply with 8 C.F.R. § 241.13(i)(3)); *Phan v. Becerra*, 2025 WL 1993735, *4 (E.D. Cal. July 16, 2025) (same) ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful"); *Wing Nuen Liu v. Carter*, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) ("officials did not properly revoke petitioner's release pursuant to [§] 241.13" because "most obviously. . . petitioner was not granted the required interview upon the revocation of his release"); *Roble v. Bondi*, 2025 WL 2443453 (D. Minn. Aug. 25, 2025) (ordering release based on regulatory violation). *See also United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)

(agencies are required to follow their regulations); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) ("[W]hen a regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and [the government] fails to adhere to it, the challenged deportation proceeding is invalid.").

b. Petitioner's Removal is Not Reasonably Foreseeable.

The government has not met its burden to demonstrate that Petitioner's re-detention was authorized under either substantive due process or 8 C.F.R. § 241.13(i)(2). Respondents have now made clear that at the time of Petitioner's re-detention, Petitioner's removal was not reasonably foreseeable because the government did not have a travel document and it had not even requested one. In fact, it did not request a travel document for 19 days *after* Petitioner's re-detention. Opp. at 6. And now, 51 days since his re-detention, the government still has no information about the prospect of Laos issuing a travel document. Tellingly, the government does not even assert that it has requested a travel document from Laos or that it is attempting to deport Petitioner to Laos. It only offers that it sent a request to an ICE headquarters office called Removal and International Operations ("RIO"), which has since been unresponsive. Opp. at 2, 6. Respondents only claim "[t]he government has removed aliens to Laos in 2025[], so Petitioner's removal at some point in the future is likely." Opp. at 6.

"At some point in the future" is not the standard for post-order detention under *Zadvydas* and 8 C.F.R. § 241.13(i)(2). "[C]hanged circumstances" demonstrating a "significant likelihood" of removal "in the reasonably foreseeable future" is the regulatory standard. 8 C.F.R. § 241.13(i)(2). The government's unsupported and conclusory statement that it has "removed aliens to Laos in 2025" without any indication of who, how many, and how long it took to facilitate, fails to meet that standard. Indeed, "[c]ourts in this circuit have regularly refused to find Respondents' burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur," and the court here should find likewise. *Nguyen v. Scott*, 2025 WL 2419288, *16 (W.D. Wash. Aug. 21, 2025); *see id.* at *18 ("The government has not provided any evidence of Vietnam's

eligibility criteria or why it believes Petitioner now meets it."); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006) (ICE did not meet its burden where it "merely assert[ed] that it has followed up on its request for travel documents"); *Chun Yat Ma v. Asher*, 2012 WL 1432229, at *4 (W.D. Wash Apr. 25, 2012); *Hoac v. Beccerra*, 2025 WL 1993771, at *3 (E.D. Cal. June 25, 2025).

Moreover, *Zadvydas v. Davis*, 533 U.S. 678 (2001) does not condone re-detention, regardless of foreseeability, unless a person presently poses a flight risk or danger to the community. Petitioner poses neither.

III. The Government Violated Petitioner's Due Process Rights.

a. The Government Provided Petitioner No Notice or Rational Regarding His Re-detention.

The government is wrong that procedural due process does not protect a person with a final order of removal on a long-standing order of supervision. Indeed, it does: "immigrants have due process rights after final removal orders issue." *Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1246 (C.D. Cal. 2020) (*citing United States v. Raya-Vaca*, 771 F.3d 1195, 1198 (9th Cir. 2014)).

Chhoeun v. Marin is particularly instructive here. In *Chhoeun*, a class of hundreds of Cambodian nationals subject to old removal orders who Immigration and Customs Enforcement ("ICE") abruptly detained and threatened with imminent deportation after Cambodia suddenly agreed to accept some U.S. deportees, challenged the government's conduct as a violation of Due Process, seeking relief from detention and a stay of removal so that they may pursue their claims against removal in motions to reopen. *Id.* The district court granted petitioners' motion for a temporary restraining order, ordering their release and granting a stay of removal for 60 days. *Id.* at 1151. After additional briefing, the court entered a preliminary injunction, continuing to enjoin removal and providing an additional extended stay for those who filed motions to reopen before a certain date to seven days after the Board of Immigration Appeals denial of the motion to reopen. *See id.* On his individual habeas claim, the court ordered lead petitioner Chhoeun released from custody and returned

to his prior order of supervision while he challenged his removal order. *Chhoeun v. Marin*, 2018 WL 1941756, *7 (C.D. Cal. Mar. 26, 2018). After the government issued a series of additional raids on Cambodians with final orders of removal, the court issued another temporary restraining order ordering the government to provide at least 14 days of notice before re-detention. *Chhoeun v. Marin*, 2019 WL 4316509, *2 (C.D. Cal. Jan. 3, 2019). Finally, on summary judgment, the court issued a permanent injunction holding that procedural due process requires the government to provide written notice to class members before re-detaining them. *Chhoeun*, 442 F. Supp. 3d at 1251.

Critically, the court in *Chhoeun* found that due process requires advance notice before the government re-detains a person subject to a final removal order, when that person has abided by an order of supervision for decades. In balancing the familiar three *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) factors—the private interest affected, the risk of erroneous deprivation, and the government's interest—the court concluded that petitioners had a "strong liberty interest in remaining in this country to live, work, and raise families," noting the substantial interest of individuals who have lived for decades in the United States subject to dormant removal orders. *Id.* at 1246-47. Refuting the government's claim that petitioners had ample opportunity to challenge their removal orders or underlying convictions "every day since their removal orders became final," the court responded:

> [T]he government ignores reality. To expect Petitioners to—every day for decades—say goodbye to their families as they leave the house for work with the idea in mind that today could be the day they never return home, is unthinkable. To expect Petitioners to—every day for decades—tell their bosses that that day may be their last day working, is absurd. To expect Petitioners to—every day for decades—arrange alternate arrangements for their children to be picked up from school, for their cars and other personal effects to be picked up from wherever they are detained, and for their bills to be paid going forward, in case they are detained for removal that day, is heartless. Even to expect Petitioners to incur the substantial burdens involved in finding and hiring counsel to consistently monitor new law (which could not have been raised in earlier removal proceedings) and file continuous motions to reopen, is unreasonable.

Id. The court further found that the risk of erroneous deprivation and the value of additional safeguards are high, given that notice would "provide[] the class member an

opportunity to contact an attorney, gather any documents they have, make FOIA requests for other documents, say goodbye to their families and loved ones, and wrap up their affairs, including ensuring adequate childcare and notifying their employers." *Id.* at 1249. Finally, the court concluded that the burden to the government of providing notice before re-detaining is minimal. In granting summary judgment to the class, the court concluded that the "extraordinary circumstances of this case—including the long-dormant removal orders, changes in the law and in Petitioners' lives, the sudden and unexpected threat of removal, and the barriers to accessing attorneys and documents while in detention—had undermined Petitioners' ability to avail themselves of the administrative procedures in place to protect them from erroneous removals." *Id.* at 1251.

Here, Petitioner's facts are substantially the same as in *Chhoeun*, if not stronger. Petitioner is from Laos—a country that, unlike Cambodia, categorically refused nearly all U.S. deportees until a few months ago. Petitioner's private interests are as strong as they can be in this context: his last criminal conviction is from many years ago, he has lived in the United States for nearly his entire life, he has two children (one of whom suffers from high-needs illnesses) and he has been married to a U.S. citizen who is also suffering from a terminal diagnosis. Petitioner's wife and son depend on Petitioner for their survival. Petitioner does not know Laos and he is a productive member of U.S. society. The risk of erroneous deprivation is high because without advance notice, Petitioner cannot prepare and defend himself against removal with sufficient time to do so before any planned removal—a fact illustrated by the government's arguments here that removal should be hastened despite his valid claims to relief.

The government's interest is low. As the court noted in *Chhoeun*, the government here has no legitimate claim that it is burdened by a slight delay of the execution of Petitioner's removal order when it "waited years or decades to execute these removal orders." *Id.* at 1249. Further, the government's claim that a pre-deprivation hearing is not required for a person released on an order of supervision following a final order of removal is also wrong.

The government points to no reason why the procedural due process analysis would be different for a person released from custody pre-removal order, as opposed to post-removal order. However, district courts throughout the Ninth Circuit have found a procedural due process right to pre-deprivation notice and a hearing before the government re-detains a person on a conditional release from immigration custody in a wide variety of contexts. These cases are grounded in the Supreme Court's decision in *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), which held that a parolee had a substantial private interest in remaining out of custody that could not be revoked without notice and a hearing. *See, e.g., Arzate v. Andrews*, 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025) (applying *Morrissey*).

b. The government ignores the irreparable harm that Petitioner and his family suffer from his re-detention.

Finally, the government in its opposition fails to acknowledge the irreparable harm that Petitioner and his family face given his ongoing unlawful detention. As Petitioner evidenced in his underlying motion, the survival of his wife and son quite literally depend on Petitioner's presence. That harm will only be exasperated should the government remove Petitioner from the United States.

IV. Petitioner Has Demonstrated Likelihood of Success on the Merits of his Third Country Removal Claims.

The government claims that Petitioner's allegations about the threat of third country removal are speculative, but makes no effort to explain how that can be true while the government maintains a policy that instructs its officers to remove individuals to third countries with no notice whatsoever, and without first attempting to remove them to the country designated on the removal order. So long as the government's third country removal policy remains in place, he is at risk of unannounced removal to a third country, including for a punitive purpose, in violation of the statute and due process. The government does not address Petitioner's claims on the merits at all.

Instead, the government takes issue with who the statute permits to designate a third country for removal, but it fails to respond at all the central issue about the government's third country removal policy, which flatly violates the statutory framework for third country

removal and the due process requirements of notice and an opportunity to respond and claim fear. Moreover, it completely fails to address Petitioner's claim that the government's third country removal program is unconstitutionally punitive.

a. Petitioner's putative *D.V.D.* class membership does not foreclose the relief he seeks in his Temporary Restraining Order.

Respondents claim that Petitioner's status as a putative class member of *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676 (D. Mass.) warrants dismissal of his "duplicative" claims here. *See* Opp. at 8-10. Respondents misunderstand the Ninth Circuit precedent on this issue and, evidently, Petitioner's claims themselves.

Petitioner seeks relief beyond the scope of *D.V.D.* Plaintiffs in *D.V.D.* alleged—and the reviewing court found—violations of their due process rights under the government's third-country removal scheme. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 388-91 (D. Mass. 2025). Plaintiffs did not allege, as Petitioner does here, that such a scheme is punitive in nature and thus violates the Eighth Amendment as well. *See* Petition at 11-13, 21-22.

Moreover, while a district court "may properly dismiss an individual complaint 'because the complainant is a member in a class action seeking the *same relief*,'" *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir. 2013) (quoting *Crawford v. Bell*, 599 F.2d 890, 89 (9th Cir. 1979)), the Ninth Circuit has made clear that a class member in a pending class action may pursue individual claims for injunctive relief where the individual relief sought is "discrete from the claims for systemic reform" addressed in the class action. *Id.* at 1137. In *Pride*, the Ninth Circuit held that an class member's individual claim for prison medical care could proceed where declining to exercise jurisdiction over his claim due to his membership in a pending class action seeking systemic medical care reform "would lead to unwarranted delay" and render an individual "powerless to petition the courts for redress of [their individual] violation until [the class action], which has been pending now for twelve years, has been fully resolved." *Id.* The court concluded that the injunctive relief the individual sought was not duplicative of the class action, which sought systemic relief,

because the plaintiff's claim "relates solely to his individual need for medical treatment." *Id.* at 1138.

The same rationale applies here. Petitioner seeks only individualized relief against any effort by ICE to remove him to a third country without satisfying the procedural requirements of the statute and due process. He does not challenge or seek systemic relief against ICE's third country removal policy. *See Pride*, 719 F.3d at 1137. And, as in *Pride*, he cannot obtain relief against third country removal in *D.V.D.* because the district court injunction is stayed. That is, absent relief here, he could be removed to a third country long before the resolution of the litigation in *D.V.D*, rendering him "powerless to petition the courts for redress." *See id.*

Further, the relief Petitioner seeks is not duplicative. Petitioner asks the Court to enjoin Respondents from failing to provide him a meaningful opportunity to seek *withholding of removal* prior to third country removal in reopened proceedings before an immigration judge under 8 U.S.C. § 1231(b)(3)(A). The plaintiffs in *D.V.D.* did not request this injunctive relief due to 8 U.S.C. § 1252(f)(1), which bars courts from "enjoin[ing] or restrain[ing] the operation of" specific provisions of the immigration statute, like 8 U.S.C. § 1231, "other than with respect to the application of such provisions to an individual [noncitizen] against whom proceedings under such part have been initiated." *See D.V.D.*, 1:25-cv-10676, Dkt. 7 at 20-21 (TRO and PI Motion) (explaining that Plaintiffs do not seek injunctive or declaratory relief on the withholding of removal claim, other than for individual named Plaintiffs, due to § 1252(f)(1)). Here, Petitioner explicitly seeks injunctive relief with respect to his right to apply for withholding of removal in reopened immigration court proceedings.

Finally, Petitioner does not seek to enjoin the same policy as the *D.V.D.* plaintiffs. Petitioner seeks to enjoin the application of Respondents' July 9 third country removal memo to his case, whereas the *D.V.D.* plaintiffs challenge an unwritten policy and a directive issued on February 18, 2025, instructing DHS officers to review cases of

individuals previously released from immigration detention for re-detention and removal to a third country. *D.V.D.*, 1:25-cv-10676, Dkt. 1 at 2-3, 19 (Complaint).

IV. CONCLUSION

For the foregoing reasons, the Court should immediately grant Petitioner's temporary restraining order.

Respectfully submitted this 19th day of September, 2025.

By /s/Andres Holguin-Flores
John M. Mitchell
Christine K. Wee
ACLU Foundation of Arizona

Andres Holguin-Flores**
ACLU Foundation of San Diego and Imperial Counties

Geovanna Y. Medel***
ABA Immigration Justice Project

** *Pro Hac Vice*
*** *Pro Hac Vice* application forthcoming

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail as indicated on the Notice of Electronic Filing.

/s/Andres Holguin-Flores