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

12 Chai Ly,

13 Petitioner,

14 v.

15 Pamela Bondi, *et al.*

16 Respondents.
 17
 18

No. CV-25-03443-PHX-KML (JZB)

**RESPONSE TO MOTION FOR
 PRELIMINARY INJUNCTION**

19 **I. INTRODUCTION**

20 Respondents, by and through counsel, respond to Petitioner’s Motion for a
 21 Preliminary Injunction (Doc. 11). Petitioner Chai Ly is a Vietnamese national and a
 22 criminal alien convicted of an aggravated felony. An immigration court ordered that he be
 23 removed to Vietnam after his conviction. He was most recently detained by U.S.
 24 Immigration and Customs Enforcement (“ICE”) on May 9, 2025, after he was convicted
 25 of grand theft. In this habeas petition, Petitioner seeks a Court order directing ICE to
 26 immediately release him from immigration detention on an order of supervision.
 27 Respondents respectfully request that this Court deny the Motion because Petitioner has
 28 not been unconstitutionally detained where he cannot establish that his removal is not likely

1 to occur in the reasonably foreseeable future. For these reasons, which are explained fully
2 below, the Court should deny the Motion.

3 **II. FACTUAL BACKGROUND**

4 Petitioner entered the United States on September 30, 1987, as a lawful permanent
5 resident. Declaration of Nellie Martinez, Deportation Officer, Enforcement and Removal
6 Operations, attached as Exhibit A, at ¶ 4. Petitioner was convicted of burglary in 1994 and
7 robbery in 1996, and he was sentenced to a total of seven years in prison for these two
8 crimes. *Id.* at ¶¶ 5–6. On February 8, 2000, the Immigration and Naturalization Service
9 (“INS”) began removal proceedings against Petitioner under Immigration and Nationality
10 Act (“INA”) § 237(a)(2)(A)(iii) because Petitioner was convicted of an aggravated felony.
11 *Id.* at ¶ 8. On May 2, 2000, an immigration judge ordered Petitioner removed to Vietnam.
12 *Id.* at ¶ 10. Petitioner waived his right to appeal, so his removal order became
13 administratively final the same day. *Id.* Petitioner was released from immigration custody
14 on October 23, 2000. *Id.* at ¶ 11. On May 5, 2005, Petitioner was convicted of a drug
15 offense and a weapons offense in 2005. *Id.* at ¶ 13. A year and a half later, on November
16 21, 2006, Petitioner was returned to immigration custody, but he was granted supervised
17 release on February 26, 2007. *Id.* at ¶ 14. On May 9, 2025, Petitioner was convicted of
18 various crimes, and ICE took him from the custody of state law enforcement that same day.
19 *Id.* at ¶¶ 16–19. ICE has taken several steps toward acquiring travel documents for
20 Petitioner. *Id.* at ¶¶ 20–29.

21 **III. THE HABEAS PETITION SHOULD BE DENIED**

22 **A. Petitioner’s detention is statutorily authorized and constitutional.**

23 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
24 678 (2001) because his removal is not “reasonably foreseeable.” However, Petitioner
25 cannot establish, as *Zadvydas* requires to be entitled to release, that his removal is not likely
26 to occur in the foreseeable future because his removal is neither “potentially permanent”
27 nor “no longer practically attainable.” *Demore v. Kim*, 538 U.S. 510, 527–28 (2003)
28 (internal quotations omitted).

1 An alien who is ordered removed must be detained for 90 days once their removal
2 order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien
3 has not left the United States voluntarily or been removed during this 90-day period, the
4 alien will generally be granted supervised release. 8 U.S.C. § 1231(a)(3). However, an alien
5 ordered removed under INA § 237(a)(2) may be detained for a longer period. 8 U.S.C. §
6 1231(a)(6). The INA does not authorize indefinite detention. *Zadvydas v. Davis*, 533 U.S.
7 678, 689 (2001). An alien may be detained for up to six months pursuant to a final order
8 of removal, after which, the alien may be released if they can “provide[] good reason to
9 believe that there is no significant likelihood of removal in the reasonably foreseeable
10 future” and the Government fails to show otherwise. *Id.* at 701. This six-month period
11 includes the initial 90-day mandatory detention period and three months thereafter. *Ma v.*
12 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).

13 Petitioner was ordered removed under INA § 237(a)(2). *See* Exhibit A at ¶ 8. As
14 discussed above, an alien ordered removed under INA § 237(a)(2) may be detained beyond
15 the initial 90-day period. 8 U.S.C. § 1231(a)(6). Even though Petitioner has been detained
16 for longer than six months, Petitioner may only be granted release from detention if he can
17 show “good reason to believe that there is no significant likelihood of removal in the
18 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Courts have held that
19 Petitioners have met this bar when no country would agree to accept the alien or when the
20 alien’s home country had no repatriation treaty with the United States, *id.* at 686, when the
21 government “concede[d] that it [was] no longer even involved in repatriation negotiations”
22 with the alien’s home country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and
23 when the alien had been detained for five years and had “won relief at every administrative
24 level.” *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court
25 clarified that its holding in *Zadvydas* was concerned with detention that is “indefinite and
26 potentially permanent,” and for aliens whose removal is “no longer practically attainable.”
27 *See Demore*, 538 at 527–28 (internal quotations omitted). The mere fact that an alien’s
28 detention “lacks a certain end date” does not render their detention unlawfully indefinite.

1 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

2 Petitioner’s removal is practically attainable, and his detention is not “potentially
3 permanent.” *Demore*, 538 U.S. at 528. Petitioner argues that “the Vietnamese Embassy
4 will continue to refuse to issue him a passport or other travel documents” because of the
5 allegedly stringent requirements imposed by the 2020 Memorandum of Understanding
6 (“MOU”) agreed to by the United States and Vietnam. Second Amended Petition for Writ
7 of Habeas Corpus, Doc. 10 at ¶ 22. But Respondents do not agree that this is so, and in
8 fact, Respondents have shown that over half of all removals to Vietnam in the fiscal year
9 2025 were individuals similarly situated to Petitioner. *See* Exhibit A at ¶¶ 30–32. Petitioner
10 has provided only a summary of repatriation efforts as of 2020, *see* Doc. 10 at ¶ 12(a)–(g),
11 and a copy of the MOU to support his claim that his removal will not occur in the
12 reasonably foreseeable future. Petitioner provides no information specific to his situation
13 that suggests that he is less removable than any other pre-1995 emigrant from Vietnam.

14 Petitioner’s allegations fall flat in light of similar claims brought before this Court.
15 In a recent habeas petition before this Court, the petitioner made a similar argument—that
16 is, that the petitioner was not significantly likely to be removed to Vietnam as a pre-1995
17 emigrant. That petition was ultimately dismissed as moot, because the petitioner was
18 successfully removed to Vietnam a mere two months after he filed his habeas petition.
19 *Long Phi Do v. Rivas, et al.*, 2:25-cv-01885-KLM (ASB) Docs. 23-24. This Court also
20 granted a habeas claim under *Zadvydas* on grounds identical to those argued by Petitioner
21 here; that is, that Vietnam would not issue travel documents under the 2020 MOU in a
22 timely manner. *Bui v. Archambeault*, No. CV-25-03774-PHX-KML (JFM) (Doc. 11) at 2–
23 4. However, Vietnam issued travel documents within a week and a half of the Court’s order
24 granting habeas in that case. It is clear that Vietnam regularly issues travel documents to
25 repatriate pre-1995 emigrants, so Petitioner’s conclusory allegations are insufficient to
26 entitle him to release.

27 Moreover, as discussed above, a petitioner is not entitled to relief under *Zadvydas*
28 simply because the process for requesting travel documents has not been completed—a

1 petitioner is only entitled to relief if there is some meaningful impediment to their removal.
2 Here, there is no impediment to Petitioner’s removal. The government is currently
3 processing an application for travel documents on Petitioner’s behalf, *see* Exhibit A at ¶¶
4 20–29, and Petitioner has provided no compelling reason to support his assertion that this
5 application cannot be granted. Petitioner’s argument for why his removal is not practicable
6 focuses entirely on how removable pre-1995 emigrants from Vietnam are. *See* Doc. 10 at
7 ¶¶ 12, 18–22. He makes a conclusory statement that “ICE does not have documentation
8 that would satisfy the Vietnamese Embassy under the criteria laid out in the November
9 2020 memorandum of understanding,” Doc. 10 at ¶ 18, but he does not say what document
10 or documents ICE is missing, nor does he explain why any missing documents could not
11 be obtained.¹ Thus, Petitioner has failed to show that his detention is unconstitutionally
12 indefinite under *Zadvydas*, so his habeas petition should be denied. *See Zadvydas*, 533 U.S.
13 at 700–01.

14 **IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF**

15 **A. Legal Standard**

16 Petitioner asks this Court to issue a preliminary injunction granting him immediate
17 release from custody. Respondents argue that this motion should be denied because
18 Petitioner has not demonstrated entitlement to any of the relief he requests.

19 To obtain a preliminary injunction, a petitioner must show “that he is likely to
20 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
21

22 ¹ It is unclear what documents Petitioner thinks are missing. By Petitioner’s own admission,
23 the MOU requires that ICE submit five categories of documents with a request for travel
24 documents: a cover letter, a “self-declaration form of the individual to be removed,” a copy
25 of the removal order and any criminal conviction documents, a “decision of discharge from
26 prison or reduction or sentence,” and “copies of other identity or citizenship documents *as*
27 *appropriate and available*.” Doc. 10 at ¶ 12(j)(ii) (emphasis added). Only the “identity and
28 citizenship documents” could even plausibly be missing, and they are only required “as
appropriate and available.” Vietnam may “request additional information derived from
official records to confirm an individual’s identity and citizenship,” Doc. 10 at ¶ 12(j)(iii),
but Petitioner has not stated that any such documents are missing or do not exist, let alone
that Vietnam has demanded them.

1 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
2 the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Injunctive
3 relief is “an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 9.

4 **B. Petitioner is not likely to succeed on the merits.**

5 Petitioner also requests that this Court order his immediate release and reinstate his
6 prior order of supervision. As argued in Section III above, Petitioner’s habeas claim should
7 not be granted. For these same reasons, Petitioner cannot show that he is “likely to succeed
8 on the merits,” as is required for injunctive relief. *Winter*, 555 U.S. at 20.

9 **C. Petitioner cannot establish irreparable harm.**

10 The Court should deny Petitioner’s Motion, because Petitioner “must demonstrate
11 immediate threatened injury as a prerequisite to preliminary injunctive relief.” *Caribbean*
12 *Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). The “possibility” of
13 injury is “too remote and speculative to constitute an irreparable injury meriting
14 preliminary injunctive relief.” *Id.* “Subjective apprehensions and unsupported predictions
15 . . . are not sufficient to satisfy a plaintiff’s burden of demonstrating an immediate threat
16 of irreparable harm.” *Id.* at 675-76.

17 Petitioner cannot show that denying the preliminary injunction would make
18 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]
19 demonstrate that irreparable injury is likely in the absence of an injunction.”) (emphasis in
20 original). “[A] preliminary injunction will not be issued simply to prevent the possibility
21 of some remote future injury.” *Id.* “Speculative injury does not constitute irreparable
22 injury.” *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th
23 Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention
24 where he is lawfully and constitutionally detained pursuant to a final executable removal
25 order.

26 **D. The equities and public interest do not favor Petitioner.**

27 The third and fourth factors, “harm to the opposing party” and the “public interest,”
28 “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “In exercising

1 their sound discretion, courts of equity should pay particular regard for the public
2 consequences in employing the extraordinary remedy of injunction.” *Weinberger v.*
3 *Romero-Barcelo*, 456 U.S. 305, 312 (1982).

4 An adverse decision here would negatively impact the public interest by
5 jeopardizing “the orderly and efficient administration of this country’s immigration laws.”
6 *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ.*
7 *Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a state suffers
8 irreparable injury whenever an enactment of its people or their representatives is
9 enjoined.”). The public has a legitimate interest in the government’s enforcement of its
10 laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he
11 district court should give due weight to the serious consideration of the public interest in
12 this case that has already been undertaken by the responsible state officials in Washington,
13 who unanimously passed the rules that are the subject of this appeal.”).

14 While it is in the public interest to protect constitutional rights, if the petitioner has
15 not shown a likelihood of success on the merits of that claim—as Petitioner has not shown
16 here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d
17 815, 826 (9th Cir. 2005). And the public interest lies in the Executive’s ability to enforce
18 U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
19 742, 750 (9th Cir. 1991) (“Control over immigration is a sovereign prerogative.”). Given
20 Petitioner’s undisputed criminal history and likelihood of removal to Vietnam, the public
21 and governmental interest in permitting his continued detention to effectuate removal is
22 significant. Because Petitioner is a convicted criminal subject to a final removal order, the
23 public interest lies with the government’s ability to effectuate his removal to Vietnam.

24 For the foregoing reasons, Respondents respectfully request that this Court deny the
25 Motion for a Preliminary Injunction (Doc. 11).

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RESPECTFULLY SUBMITTED November 20, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing.

s/M. Beickert
United States Attorney’s Office