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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SISAWANG KHAMBOUNHEUANG,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA JO BONDI, Attorney General; TODD LYONS, Acting Director, Immigration and Customs Enforcement; JESUS ROCHA, Acting Field Office Director, San Diego Field Office; CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No. 25-cv-02575-JO-SBC

RESPONDENTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date: October 23, 2025
Time: 8:30 a.m.
Judge: Hon. Jinsook Ohta

I. INTRODUCTION

Having secured release from Immigration and Customs Enforcement (ICE) custody when the Court granted Petitioner's motion for temporary restraining order, Petitioner now seeks a preliminary injunction. Aside from his request for an order prohibiting the government from removing him to a third country without notice and an opportunity to be heard, however, it is unclear what additional injunctive relief Petitioner seeks. As for Petitioner's third country removal claim, the claim is not justiciable because it is conjectural and hypothetical.

Since the hearing on Petitioner's motion for temporary restraining order, ICE has obtained a travel document authorizing Petitioner's removal to Laos, and ICE has nominated him to be on the next scheduled removal flight to Laos, which is expected to occur no later than November 4, 2025. Petitioner is thus unable to demonstrate there is no likelihood of removal in the reasonably foreseeable future. Petitioner cannot satisfy his burden to show entitlement to preliminary injunctive relief. The Court should accordingly deny Petitioner's motion for preliminary injunction and dismiss his habeas petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Laos. Declaration of Sisawang Khambounheuang ("Khambounheuang Decl.") at ¶ 1.[1] In 1979, Petitioner arrived in the United States as a refugee and subsequently adjusted his status to that of a lawful permanent resident. *Id.* In 1996, he was convicted of assault in Kansas stemming from a shooting incident. *Id.* at ¶ 2. Subsequently, the Department of Homeland Security (DHS) placed Petitioner in removal proceedings, and on July 17, 2000, an immigration judge ordered Petitioner removed from the United States to Laos. Khambounheuang Decl. at ¶ 3; Declaration of Jason Cole, ECF No. 10-2, at ¶ 4, Ex. A. In May 2002, Petitioner was released from ICE custody under an order of supervision pending removal to Laos. Khambounheuang Decl. at ¶ 4; ECF No. 10-2 at ¶ 5, Ex. B.

[1] Petitioner's declaration is found at pages 24–26 of ECF No. 1.

On August 13, 2025, a Form I-200, Warrant for Arrest of Alien, was issued for Petitioner's arrest, finding probable cause to believe that Petitioner is removable from the United States. ECF No. 10-2 at ¶ 6, Ex. C. On August 13, 2025, ICE re-detained Petitioner to execute his removal order to Laos. *Id.* at ¶ 7, Ex. D. On July 24, 2025, ICE issued a Warrant of Removal/Deportation. *Id.* at ¶ 8, Ex. E.

ICE is not seeking to remove Petitioner to a third country. *Id.* at ¶ 9.

On September 30, 2025, Petitioner commenced this action, seeking habeas relief: (1) ordering Respondents to prove there is a significant likelihood of removal in the reasonably foreseeable future and, if they do not, ordering his release; and (2) prohibiting the government from removing him to a third country without notice and an opportunity to be heard. *See* ECF No. 1 at 20:2–7. Petitioner also filed a motion for temporary restraining order seeking: (1) reinstatement of Petitioner's release on supervision; and (2) prohibiting the government from removing him to a third country without notice and an opportunity to be heard. ECF No. 3.

On October 9, 2025, the Court held a hearing on Petitioner's motion for temporary restraining order. The Court granted Petitioner's motion and ordered Petitioner released from ICE custody by 12:00 p.m. on October 10, 2025, under the same conditions of release as his prior release. ECF Nos. 11, 12. The Court deferred ruling on Petitioner's request that ICE be prohibited from removing him to a third country without notice and an opportunity to be heard. ICE released Petitioner from custody on October 9, 2025. ECF No. 14.

Prior to the hearing on Petitioner's motion for temporary restraining order, Respondents filed a declaration from an ICE Deportation Office, Jason Cole, confirming that: ICE had been working expeditiously to effectuate Petitioner's removal to Laos; ICE had been diligently preparing a travel document request to send to the Laos embassy; ICE had been routinely obtaining travel documents for Laos citizens, having removed 177 Laotian citizens to Laos in fiscal year 2025 (as of September 8, 2025); and ICE has flights to Laos scheduled every month, including one on October 22, 2025.

ECF No. 10-2 at ¶¶ 10–17.

At the hearing on October 9, 2025, the Court held that although ICE had commenced efforts to effectuate Petitioner's removal to Laos, those efforts were insufficient to demonstrate that ICE was significantly likely to remove Petitioner to Laos in the reasonably foreseeable future. However, subsequent developments confirm that Petitioner's removal to Loas is significantly likely to occur in the reasonably foreseeable future. Specifically, on October 10, 2025, ICE ERO obtained a travel document from Laos, dated October 8, 2025, authorizing Petitioner to travel to Laos. Declaration of Humberto Martinez ("Martinez Decl."), ¶ 8. The travel document is valid for 90 days from issuance, that is, until January 6, 2026. *Id.* The undersigned counsel is prepared to provide the Court with a copy of the travel document for *in camera* review at the hearing on October 23, 2025. Declaration of Matthew Riley ("Riley Decl."), ¶ 2.

Petitioner has been nominated to be on the next scheduled removal flight to Laos. Martinez Decl., ¶ 8. Once Petitioner is confirmed for the next scheduled flight, his removal to Laos is expected to be effectuated no later than November 4, 2025. *Id.* at ¶ 9.

Based on ICE's recent receipt of the travel document, and in an effort to conserve the parties' and the Court's resources by proceeding with an unmeritorious motion for preliminary injunction, on October 13, 2025, the undersigned counsel emailed Petitioner's counsel to: (1) inform her that ICE had received a travel document to remove Petitioner to Laos and that arrangements are being made to schedule him for a flight to occur no later than November 4, 2025; (2) propose that (a) Petitioner agree to be re-detained by ICE on October 28, 2025; (b) the parties file a joint motion to stay the case pending his removal to Laos; and (c) following his removal, the parties file a joint motion to dismiss this action. Riley Decl., ¶ 3, Ex. A. Petitioner rejected Respondents' proposal (*id.*) and proceeded to file his motion for preliminary injunction on October 15, 2025. ECF No. 15.

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III. ARGUMENT

Petitioner's motion for preliminary injunction should be denied. Petitioner has not established that he is entitled to preliminary injunction because he cannot establish that he is likely to succeed on the underlying merits of his habeas petition, he has not demonstrated irreparable harm, and the equities do not weigh in his favor.

A court may grant preliminary injunctive relief to prevent "immediate and irreparable injury." Fed. R. Civ. P. 65(b). A preliminary injunction is an extraordinary and drastic remedy. *Munaf v. Geren*, 553 U.S. 674, 689 (2008). It "may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To prevail on a motion for preliminary injunction, a petitioner must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20. When "a plaintiff has failed to show the likelihood of success on the merits, [courts] need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the government is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878–79 (1975); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "'must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the [moving party's] favor.'") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220–21 (D.C. Cir.

1981).

A. Petitioner Is Not Likely to Succeed on the Merits.

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner argues he is likely to prevail on the merits of his claims that: (1) his continued detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he has cumulatively been detained for more than six months and there is no significant likelihood of removal in the reasonably foreseeable future; (2) ICE violated its own regulations when it re-detained him in August 2025, and more recently when he checked in with ICE on October 14, 2025, at which time he was outfitted with an ankle monitor; and (3) he is entitled to adequate notice and an opportunity to be heard prior to any third country removal. As discussed below, Petitioner cannot demonstrate a likelihood of success on the underlying merits of his claims.

1. Petitioner cannot show there is no significant likelihood of removal to Laos in the reasonably foreseeable future.

An alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period under subsection (a)(1)). The statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and "does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 701. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added).

The *Zadvydas* court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

Here, Petitioner cannot demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future. Indeed, on October 10, 2025, ICE ERO obtained a travel document authorizing ICE to remove Petitioner to Laos on or before January 6, 2026. Martinez Decl., ¶ 8. ICE has nominated Petitioner to be on the next scheduled removal flight to Laos. *Id.* Once Petitioner is confirmed for the next scheduled flight, his removal to Laos is expected to be effectuated no later than November 4, 2025. *Id.* at ¶ 9.

Petitioner argues there is no significant likelihood of removal in the reasonably foreseeable future because ICE was unable to remove Petitioner during his initial detention from 2000 to 2002 or during his recent two-month detention, and that Laos has no repatriation agreement with the United States. ECF No. 15 at 9:14–19. But ICE now has a travel document and expects to remove Petitioner no later than November 4, 2025. Any prior inability to remove Petitioner does not change this fact. ICE's confidence in effectuating Petitioner's removal to Laos is further based on ICE's current ability to do so. Compared to fiscal year 2024, where ICE removed no Laotian citizens, ICE removed 177 Laotian citizens to Laos in fiscal year 2025 (as of September 8, 2025). ECF No. 10-2 at ¶ 15. Moreover, Petitioner appears to concede that once the travel document's existence is verified, it is significantly likely that he will be removed in the reasonably foreseeable future. *See* ECF No. 15 at 9:19–21 ("*Absent actual evidence* (beyond its unverified assertion) *that ICE has obtained a travel document*, it is not

significantly likely that he will be removed in the reasonably foreseeable future." [emphasis added]). The constitutional standard is whether there is "a significant likelihood of removal" in the "reasonably foreseeable future"—not whether a removal will occur "imminently." That Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (explaining that a demonstration of "no significant likelihood of removal in the reasonably foreseeable future" would include a country's refusal to accept a noncitizen or that removal is barred by our own laws).

Petitioner was released from ICE's custody pursuant to the Court's order granting a temporary restraining order. There is thus no "continued detention" at this time that could be deemed unlawful. And because Petitioner's removal to Laos is significantly likely to occur in the reasonably foreseeable future, Petitioner cannot demonstrate a likelihood of success on his *Zadvydas* claim.

2. Petitioner's claim that ICE violated its own regulations does not entitle him to habeas relief and, in any event, the claim is moot.

Petitioner next contends that he is likely to prevail on the merits of his claim that ICE violated its own regulations. ECF No. 15 at 9:23–12:10. When granting Petitioner's motion for temporary restraining order, the Court ordered that the parties address, in conjunction with Petitioner's motion for preliminary injunction, "the Government's compliance with procedures under both 8 C.F.R. § 241.1 and 8 C.F.R. § 241.13," including "(a) the Government's grounds and internal decision-making process for revoking Petitioner's release, including whether any changed circumstances justify revocation of Petitioner's release, and (2) whether Petitioner has been provided an initial informal interview." ECF No. 12 at 2:4–10. As of the filing of this opposition, the undersigned counsel has been unable to confirm ICE's efforts, if any, to comply with 8 C.F.R. § 241.1 and 8 C.F.R. § 241.13 in connection with ICE's re-detention of Petitioner in August 2025. Notwithstanding, for the reasons discussed below, Petitioner cannot demonstrate that he is likely to be entitled to habeas relief based on alleged regulatory

violations.

"While the regulations cited by Petitioner . . . establish procedural safeguards—including the requirements that revocation be based on a condition of release violation or on a significant likelihood of removal, and that the noncitizen receive notice and an informal interview—they do not create independent substantive rights that override the statutory grant of detention authority." *See* ECF No. 10-1, Ex. C, *Morales Sanchez v. Bondi*, Case No. 25-cv-02530-AB-DTB, at p. 4 (C.D. Cal. Oct. 3, 2025) (citing 8 C.F.R. §§ 241.13(i)(1)–(2), 241.4; *Zadvydas*, 533 U.S. at 701; *Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) (concluding that agency rules must prescribe substantive law, not merely procedural or policy guidance, to be enforceable)).

Indeed, Petitioner does not have a protected liberty interest in remaining free from detention where ICE has exercised its discretion under a valid removal order and its regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, No. ED CV 20-00696-DOC-JDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that 8 C.F.R. § 241.4(*l*) was a violation of their procedural due process rights and noting, "Petitioners . . . fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders."). "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, *or any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010), *abrogated on other grounds by Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2010) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)) (emphasis in original).

Moreover, there is no basis for claiming that, "before" revoking an individual's release from immigration custody, ICE must provide notice of the reasons for the

revocation, pursuant to 8 C.F.R. § 214.4(*l*). The regulation clearly provides:

> *Upon revocation*, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly *after* his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.

Id. (emphasis added). There is therefore no legal basis for Petitioner's claim that he was entitled under the regulation to prior notice of revocation and re-detention.[2]

Even assuming the agency's compliance with the regulations fell short, Petitioner has not established substantial prejudice. *See Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (adopting prejudice standard to determine whether regulatory violation violated due process); *Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 921 (N.D. Cal. 2025) (the *Accardi* doctrine, which generally requires federal agencies to comply with their own regulations, requires plaintiffs to "show both that (1) the Government violated its own regulations, and (2) Plaintiffs suffer substantial prejudice as a result of that violation.") (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268) (1954); *Al Otro Lado, Inc. v. Mayorkas*, No. 23-cv-1367-AGS-BLM, 2024 WL 4370577, at *8–9 (S.D. Cal. Sept. 30, 2024)).

Moreover, federal courts do not have jurisdiction "to give opinion upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). "A claim is moot if it has lost its character as a present, live controversy." *Rosemere Neighborhood Ass'n v. U.S. Env't Prot. Agency*, 581 F.3d 1169, 1172–73 (9th Cir. 2009). A case becomes moot "when the issues presented are

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[2] There are also obvious law enforcement reasons for not providing prior notice of a re-detention to execute a warrant of removal, just as there is no requirement to provide prior notice of execution of an arrest warrant. Providing such notice "creates a risk that the alien will leave town before the delivery or deportation date." *United States v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.*, 103 F. Supp. 3d 1121, 1137 (N.D. Cal. 2015).

no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Cnty. of L.A. v. Davis*, 440 U.S. 625, 631 (1979). The Court therefore lacks jurisdiction because there is no live case or controversy remaining. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982). Here, Petitioner has already been released pursuant to the Court's order. ECF No. 14. Thus, any regulatory violation has been cured, this claim has become moot, and there is no further habeas relief the Court could order in connection with this claim.

Importantly, ICE now has a travel document authorizing Petitioner's removal to Laos. There is thus an evidentiary basis for Respondents' position that there is a significant likelihood that Petitioner will be removed to Laos in the reasonably foreseeable future, and any challenge that Petitioner would have raised under the regulations would have failed. Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant further habeas relief here. *See, e.g.*, *Carnation Co.*, 641 F.2d at 804 n.4 ("violations of procedural regulations should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

Finally, Petitioner appears to suggest that ICE violated its regulations when it enrolled him in an ATD program at his check-in on October 14, 2025, without providing an informal interview with an opportunity to contest his re-detention and required him to be present at his home on October 15–16, 2025. *See* ECF No. 4:6–12. Yet Plaintiff identifies no regulation that supports this argument. He cites only 8 C.F.R.

§ 241.13(i)(3), which applies to procedures attendant to revocation of release. But ICE did not revoke Petitioner's release at his October 14, 2025, check-in. He remains released pursuant to the Court's order. And to the extent Petitioner argues his enrollment in an ATD program violated the Court's temporary restraining order (*see id.* at 2:7–10), the argument lacks merit. This Court ordered Petitioner's release under the same conditions of release as his prior release. Petitioner's prior release conditions included enrollment and successful participation in an ATD program. *See* Martinez Decl., ¶¶ 5–6, Ex. A. Further, the instruction to remain at home on October 15–16, 2025, was given to ensure that a Residence Verification check could be completed. *Id.* at ¶ 11. The Residence Verification check was completed on October 15, 2025, at approximately 9:17 a.m., at which time Petitioner was informed that he was free to leave his house since the Residence Verification check had been completed. *Id.* at ¶ 12. Petitioner has thus failed to demonstrate any violation of ICE regulations in connection with his October 14, 2025, check-in, enrollment in the ATD program, or the Residence Verification check. And in any event, the Court lacks jurisdiction to review this claim. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.").

3. Petitioner is not likely to prevail on his third country removal claim.

Finally, Petitioner argues that he is likely to prevail on his claim that he is entitled to adequate notice and an opportunity to be heard prior to any third country removal. ECF No. 15 at 12:11–14:23. The Court should reject this argument because this claim is not justiciable and, even if it were, Petitioner is unlikely to prevail on the claim given that ICE intends to remove Petitioner to Laos, not to a third country.

"Pursuant to Article III of the U.S. Constitution, federal courts can only adjudicate live cases or controversies." *Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (citation omitted). Relevant here, "[r]ipeness is an Article

III doctrine designed to ensure that courts adjudicate live cases or controversies and do not issue advisory opinions or declare rights in hypothetical cases." *Id.* (simplified). A case is ripe if it presents "issues that are 'definite and concrete, not hypothetical or abstract.'" *Id.* (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000)). "The constitutional component of the ripeness inquiry is often treated under the rubric of standing and, in many cases, ripeness coincides squarely with standing's injury in fact prong." *Thomas*, 220 F.3d at 1138. To meet standing's injury-in-fact prong, the petitioner "must demonstrate 'an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.'" *Bishop Paiute Tribe*, 863 F.3d at 1153 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Here, Respondents were not, and are not, seeking to remove Petitioner to a third country. *See* ECF No. 10-2 at ¶ 9. Further, ICE has obtained a travel document authorizing Petitioner's removal to Laos, and ICE expects to effectuate that removal no later than November 4, 2025. Martinez Decl., ¶¶ 8–9. There being no actual threat of third country removal to Petitioner, the issues raised in his petition and motion for preliminary injunction concerning third countries are conjectural and hypothetical—not definite or concrete. Whether considering constitutional ripeness or standing, the analysis and conclusion here is the same: there is no live case or controversy or injury-in-fact concerning third country resettlement for the Court to resolve. *See Thomas*, 220 F.3d at 1140 (finding the case not ripe for judicial review and that plaintiff lacked standing where the record was "devoid of any threat—generalized or specific—directed toward [the plaintiffs]" and only a theoretical possibility of enforcement existed); *Bishop Paiute Tribe*, 863 F.3d at 1154 ("generalized threats of prosecution do not confer constitutional ripeness"). Because there is no live case or controversy or injury-in-fact concerning third country resettlement, the Court lacks authority to adjudicate the issue here. *See Thomas*, 220 F.3d at 1138 ("Our role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies

consistent with the powers granted the judiciary in Article III of the Constitution.") (citing U.S. Const. art. III).

B. Petitioner Has Not Shown Irreparable Harm.

Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.*

Here, Petitioner argues he will suffer irreparable harm absent injunctive relief. ECF No. 15 at 14:24–15:14. The only alleged irreparable harm Petitioner identifies is unlawful detention and the risk of third country removal. *Id.* at 15:5–14. But Petitioner is not currently detained, and any future re-detention in preparation for his upcoming removal to Laos will not be unlawful because it will occur to effectuate his removal in the reasonably foreseeable future. Moreover, Petitioner cannot show irreparable injury due to the risks allegedly associated with hypothetical third country removal because, again, ICE intends to remove Petitioner to Laos and not to any third country.

While Petitioner does not appear to argue that he will suffer irreparable harm absent injunctive relief based on ICE's alleged regulatory violations, to the extent Petitioner is asserting such an argument, the argument fails. Even assuming ICE failed to provide Petitioner with an informal interview, the alleged lack of an interview does not entitle Petitioner to further relief. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful

because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* at *5. In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations given that ICE had procured a travel document and scheduled [petitioner's] removal." *Id.* Similarly, in *Doe v. Smith*, the court held that even if ICE detained the petitioner without providing a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "it is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order . . . . Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

The same is true here. Whatever procedural deficiencies or delays may have occurred, they do not warrant any further habeas relief. Petitioner has already been released. He does not challenge his removal order, nor could he. And ICE has obtained a travel document and should be permitted to proceed with effectuating Petitioner's removal in the reasonably foreseeable future.

In conclusion, Petitioner is unable to demonstrate he will suffer irreparable harm if the Court does not grant a preliminary injunction.

C. The Balance of Equities Does Not Tip in Petitioner's Favor.

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551–58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [the

Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted). Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

Here, as explained above, Petitioner cannot succeed on the merits of his claims and the public interest in the prompt execution of removal orders is significant. The balancing of equities and the public interest thus weigh heavily against granting any further injunctive relief in this case.

D. The Court Should Not Enjoin Petitioner's Removal to Laos.

Petitioner does not appear to be seeking a preliminary injunction preventing the government from removing him to Laos. Nor could he. Courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o 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."). However, the Court's order granting Petitioner's motion for temporary restraining order prohibits the government from removing Petitioner "pending the resolution of this matter[.]" ECF No. 12 at 1:25–27. Because Petitioner cannot demonstrate that he is entitled to a preliminary injunction, as discussed above, and because the Court's prior order requiring his release from ICE custody has already provided all relief potentially available to him in this action, Respondents respectfully request that the Court dismiss Petitioner's habeas petition to avoid any tension between the Court's temporary restraining order and the jurisdictional bar on the Attorney General's decision to execute Petitioner's removal order in the reasonably foreseeable future.

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IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's motion for preliminary injunction and dismiss his habeas petition.

DATED: October 17, 2025

Respectfully submitted,

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United States Attorney

s/ Matthew Riley
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SISAWANG KHAMBOUNHEUANG,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA JO BONDI, Attorney General; TODD LYONS, Acting Director, Immigration and Customs Enforcement; JESUS ROCHA, Acting Field Office Director, San Diego Field Office; CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No. 25-cv-02575-JO-SBC

DECLARATION OF HUMBERTO MARTINEZ IN SUPPORT OF RESPONDENTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I, Humberto Martinez, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am currently employed by the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), as a Supervisory Detention and Deportation Officer (SDDO) assigned to the ICE ERO San Diego Field Office.

2. I have been employed by ICE as a law enforcement officer since November 8, 2009, and serving as an SDDO since May 12, 2019. I currently am serving as the Acting Assistant Field Officer Director ((A)AFOD) over the Non-Detained Unit of ICE ERO San Diego. As an (A)AFOD, I am responsible for, among other things, supervising the daily operations of ICE ERO deportation officers assigned to the Non-Detained / Alternative to Detention Unit of the ICE ERO San Diego Field Office, and ensuring that those officers comply with all relevant laws, regulations, and policies.

3. This declaration is based upon my personal knowledge and experience as a law enforcement officer and information provided to me in my official capacity as an SDDO and the (A)AFOD over the Non-Detained Unit of ICE ERO San Diego, as well as my review of government databases and documentation relating to Petitioner Sisawang Khambounheuang (Petitioner).

4. On July 17, 2000, Petitioner was ordered removed to Laos.

5. In May 2002, Petitioner was released from ICE custody under an order of supervision pending removal to Laos because ICE was unable to obtain a travel document. Subsequent to his release from ICE custody, Petitioner was enrolled in an Alternative to Detention (ATD) program, including use of an ankle monitor, from December 4, 2009, to December 14, 2009, and then again from March 22, 2010, to July 26, 2010.

6. On December 12, 2022, ICE issued Petitioner an Order of Supervision notice which included several conditions governing Petitioner's release from custody,

including Petitioner's enrollment and successful participation in an ATD program and that Petitioner may be subject to a curfew. Attached to this declaration as Exhibit A is a true and correct copy of the Order of Supervision notice, dated December 12, 2022, pertaining to Petitioner (with redactions to protect private and confidential information).

7. On August 13, 2025, ICE re-detained Petitioner to execute his removal to Laos.

8. On October 10, 2025, ERO obtained a travel document from Laos, dated October 8, 2025, authorizing Petitioner to travel to Laos. The travel document is valid for 90 days from issuance. The Petitioner has been nominated to be on the next scheduled removal flight to Laos. In addition, ERO is looking into the availability of additional removal flights.

9. Once the Petitioner is confirmed for the next scheduled flight, the Petitioner's removal to Laos is expected to be effectuated no later than November 4, 2025.

10. I am aware of no reason that would prevent or delay Petitioner's removal to Laos during the 90-day validity of Petitioner's travel document.

11. On October 14, 2025, Petitioner was enrolled in an ATD program requiring that he be outfitted with an ankle monitor. Petitioner was asked to be at his home from 7:00 a.m. to 6:00 p.m. on the next two days so that BI Incorporate, a contract company that handles the ATD program and Intensive Supervision Appearance Program (ISAP) on ICE's behalf, could conduct a Residence Verification check. BI Incorporate conducts Residence Verification checks within two days of an alien's enrollment in the ATD program, which is explained to participants. If an ATD participant is unable to be at their home for the scheduled Residence Verification check, the participant may communicate that information to the case specialist, and the participant is then told to report to the ISAP office the next day to explain why they could not be at home during the scheduled visit, such as a doctor's appointment, school, church event, etc.

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12. BI Incorporate completed a Residence Verification check at Petitioner's home on October 15, 2025, at approximately 9:17 a.m., at which time Petitioner was informed that he was free to leave his house since the Residence Verification check had been completed.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of October 2025.

HUMBERTO E MARTINEZ

Digitally signed by HUMBERTO E MARTINEZ
Date: 2025.10.17 14:33:35 -07'00'

Humberto Martinez
SDDO / (A)AFOD
ICE ERO San Diego Field Office