

1 TIMOTHY COURCHAINÉ  
 2 United States Attorney  
 3 District of Arizona  
 4 THEO NICKERSON  
 5 Connecticut State Bar No. 429356  
 6 Assistant United States Attorneys  
 7 Two Renaissance Square  
 8 40 North Central Avenue, Suite 1800  
 9 Phoenix, Arizona 85004-4449  
 Telephone: 602-514-7500  
 Facsimile: 602-514-7760  
 Email: Theo.Nickerson2@usdoj.gov  
*Attorneys for Respondents*

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

12 Tai Quoc Dang,  
 13  
 14 **Petitioner,**  
 15 v.  
 16 David R. Rivas, et al.,  
 17  
 18 **Respondents.**

No. 2:25-cv-03673-PHX-SPL (JFM)

**ANSWER TO PETITION FOR WRIT  
 OF HABEAS CORPUS PURSUANT TO  
 28 U.S.C. § 2241  
 AND  
 RESPONSE IN OPPOSITION TO  
 MOTION FOR TEMPORARY  
 RESTRAINING ORDER AND  
 PRELIMINARY INJUNCTION**

20 **I. INTRODUCTION.**


21 Respondents David R. Rivas, Warden, San Luis Detention Center, Gregory J.  
 22 Archambeault, San Diego Field Office Director, U.S. Immigration and Customs  
 23 Enforcement (“ICE”), Pamela Jo Bondi, Attorney General of the United States, and Kristi  
 24 Noem, Secretary of Department of Homeland Security (“Respondents”), through  
 25 undersigned counsel, hereby respond in opposition to Petitioner’s Motion for Temporary  
 26 Restraining Order and Preliminary Injunction (Doc. 3) and answer the Petition for Writ of  
 27 Habeas Corpus (Doc. 1). Petitioner is a convicted murderer who has a valid, final and  
 28 executable removal order to Vietnam. He has been detained subject to his final order for

1 less than three months under 8 U.S.C. § 1231. In his habeas petition, he asserts two grounds  
2 for relief. Ground one asserts that Petitioner's continued detention pursuant to a final  
3 removal order violates the Due Process Clause of the Fifth Amendment pursuant to  
4 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Ground two asserts that his immigration  
5 detention pending any removal to a third country violates the Due Process Clause of the  
6 Fifth Amendment.

7 Because Petitioner has been detained less than three months, he is well within the  
8 six-month presumptively reasonable period of detention proscribed by the Supreme Court  
9 in *Zadvydas*. Further, ICE has been coordinating for his removal from the United States to  
10 Vietnam, has a travel document request pending with the government of Vietnam, and has  
11 been successful at repatriating Vietnamese citizens who immigrated to the United States  
12 before July 1, 2009, and did not register with the Vietnamese Embassy, like Petitioner.  
13 Mere speculation that Petitioner's citizenship has been cancelled due to a failure to register  
14 with the Vietnamese Embassy, does not meet Petitioner's burden to establish that there is  
15 no significant likelihood of removal in the reasonably foreseeable future. Rather, to the  
16 contrary, there is no reason at this time to believe that his removal is not likely in the  
17 reasonably foreseeable future. Accordingly, Petitioner is not entitled to relief on ground  
18 one. Ground two must also fail because, as a factual matter, the government is not  
19 attempting to remove Petitioner to any third country. Instead, it is attempting to remove  
20 Petitioner to his country of citizenship, Vietnam.

21 For these reasons, the habeas petition should be denied. Further, because he cannot  
22 establish either ground for relief asserted in the habeas petition, Petitioner likewise cannot  
23 establish he is entitled to a temporary restraining order or any other preliminary injunctive  
24 relief.

## 25 II. FACTUAL BACKGROUND.

26 Petitioner is a citizen and national of Vietnam. Exhibit A, Declaration of Assistant Field  
27 Office Director, Fernando Valenzuela, ¶ 4. Petitioner was born on  in  
28 Vietnam. *Id.* Petitioner was originally admitted to the United States on or about November

1 22, 1988, as a Lawful Permanent Resident. *Id.* ¶ 5. On May 16, 2000, Petitioner was  
2 convicted in the Superior Court of California, County of Santa Clara, of Murder in the First  
3 Degree, in violation of California Penal Code 187. For this offense he was sentenced to a  
4 term of imprisonment of 50 years to life. *Id.* ¶ 6.

5 On June 6, 2023, a Notice to Appear was filed in the Van Nuys Immigration Court  
6 charging Petitioner with removability from the United States pursuant to 8 U.S.C. §  
7 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony pursuant to 8 U.S.C.  
8 § 1101(a)(43)(A), a law relating to Murder, Rape, or Sexual Abuse of a Minor. Exhibit A  
9 ¶ 7. On June 6, 2023, Petitioner was paroled from the custody of the State of California  
10 and was then taken into immigration custody pending the completion of his immigration  
11 proceedings. *Id.* ¶ 8.

12 On July 13, 2023, an Immigration Judge ordered Petitioner removed from the United  
13 States, based upon the charges in the Notice to Appear. Exhibit A ¶ 9. Petitioner conceded  
14 the allegations in the Notice to Appear, and did not make any application for relief from  
15 removal. *Id.* On September 15, 2023, the Petitioner was released from immigration custody  
16 on an Order of Supervision due to an inability at that time to repatriate Petitioner to  
17 Vietnam. *Id.* ¶ 10.

18 On July 26, 2025, Petitioner's Order of Supervision was revoked, and Petitioner was  
19 taken into immigration custody in order to effectuate repatriation to Vietnam. Exhibit A ¶  
20 11. Beginning in 2025, Vietnam has started routinely issuing travel documents for its  
21 citizens, where it had not done so previously. *Id.* Petitioner is still in immigration custody  
22 and as of today's date has been detained less than three months or 81 days. *Id.* ¶¶ 11-12.

23 On August 12, 2025, a new request for issuance of a travel documents was sent to the  
24 government of Vietnam on behalf of Petitioner. Exhibit A ¶ 13. ICE is currently awaiting  
25 a response from the government of Vietnam regarding this request. *Id.* ICE routinely  
26 obtains travel documents for Vietnamese citizens, including those who immigrated to the  
27 United States prior to 1995. *Id.* ¶ 14. In fiscal year 2025, ICE has removed at least 587  
28 Vietnamese citizens to Vietnam. *Id.* ¶ 15. Of those 587 removed, 324 were Vietnamese

1 citizens who immigrated to the United States before July 12, 1995, like Petitioner. *Id.* ICE  
2 has removed Vietnamese citizens to Vietnam as recently as September 2025. *Id.* ¶ 16. ICE  
3 routinely has flights to Vietnam. *Id.* ¶ 17. Once ICE receives a travel document for  
4 Petitioner, his removal can be effectuated promptly. *Id.* ¶ 18.

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

6 **A. Petitioner is lawfully and constitutionally detained.**

7 The detention, release, and removal of aliens subject to a final order of removal is  
8 governed by § 241 of the INA, 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney  
9 General has 90 days to remove an alien from the United States after an order of removal  
10 becomes final. During this “removal period,” detention of the alien is mandatory. *Id.* After  
11 the 90-day period, if the alien has not been removed and remains in the United States, his  
12 detention may be continued, or he may be released under the supervision of the Attorney  
13 General. INA § 241, 8 U.S.C. § 1231(a)(3) and (a)(6). ICE may detain an alien for a  
14 “reasonable time” necessary to effectuate the alien’s removal. INA § 241(a), 8 U.S.C. §  
15 1231(a). However, indefinite detention is not authorized by the statute. *Zadvydas*, 533 U.S.  
16 at 689.

17 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable  
18 period of detention for aliens, like Petitioner, who are detained under section 1231(a). *See*  
19 *Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a  
20 detention period of six months, that there is “good reason to believe that there is no  
21 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If the  
22 alien makes that showing, the government must then introduce evidence to refute that  
23 assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40  
24 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a period  
25 reasonably necessary to secure removal. It should measure reasonableness primarily in  
26 terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment  
27 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued  
28 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

1 Here, Petitioner has been detained for less than three months, since July 26, 2025.  
2 Exhibit A ¶¶ 11-12. Specifically, he's been detained for 81 days. *Id.* Accordingly, under  
3 *Zadvydas*, Petitioner's detention remains authorized by the statute and constitutionally  
4 permissible. *Zadvydas*, 533 U.S. at 699. Even if Petitioner were detained beyond the six-  
5 month presumptively reasonable period under *Zadvydas*, which he has not been, he is  
6 unable to meet his burden to establish that his removal to Vietnam is unlikely in the  
7 reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701-702.

8 Petitioner asserts without any substantiation that Vietnam has cancelled his citizenship  
9 and will refuse to issue him a passport or other travel document. To date, Vietnam has not  
10 refused ICE's request for a travel document for Petitioner and there has been no indication  
11 from Vietnam that it does not consider Petitioner to be a citizen. Notably, counsel for  
12 Petitioner made the exact same argument as asserted here in *Long Phi Do v. Rivas, et al.*,  
13 2:25-cv-01885-KLM (ASB), another habeas petition and motion for temporary restraining  
14 order and preliminary injunction involving a Vietnam citizen detained pursuant to a final  
15 order. In that case, in a nearly identical habeas petition to the one filed in this case,  
16 Petitioner's counsel argued there was no significant likelihood of removal, such that  
17 continued detention was unconstitutional, because Mr. Do was "effectively stateless" and  
18 had not registered with the Vietnamese Embassy on or before July 1, 2014, and therefore  
19 his citizenship had been "cancelled." *Long Phi Do v. Rivas, et al.*, 2:25-cv-01885-KLM  
20 (ASB) Doc. 1. Yet, just two months after Petitioner asserted these unsubstantiated claims  
21 in the habeas petition, ICE successfully repatriated Mr. Do to Vietnam and the petition was  
22 dismissed as moot. *Long Phi Do v. Rivas, et al.*, 2:25-cv-01885-KLM (ASB) Docs. 23-24.

23 Likewise, here, Petitioner's unsubstantiated claims that he is stateless and that his  
24 Vietnamese citizenship has been cancelled are without merit. Indeed, ICE routinely obtains  
25 travel documents for Vietnamese citizens, including those who immigrated to the United  
26 States prior to 1995. Exhibit A ¶ 14. In 2025, ICE has removed at least 587 Vietnamese  
27 citizens to Vietnam. *Id.* ¶ 15. Of those 587 removed, 324 were Vietnamese citizens who  
28 immigrated to the United States before 1995, like Petitioner. *Id.* ICE has removed

1 Vietnamese citizens to Vietnam as recently as September 2025 without issue. *Id.* ¶ 16. ICE  
2 routinely has flights to Vietnam. *Id.* ¶ 17. Once ICE receives a travel document for  
3 Petitioner, his removal can be effectuated promptly. *Id.* ¶ 18.

4 Petitioner's less than three-month detention is presumptively reasonable under  
5 *Zadvydas*. Even if it were not, he cannot meet his burden to establish that his removal is  
6 not likely in the reasonably foreseeable future. The government can rebut any such showing  
7 because it has recently successfully removed Vietnamese citizens who likewise claimed to  
8 be "stateless" and to have had their citizenship "cancelled." Ground one of the habeas  
9 petition fails. Petitioner is lawfully and constitutionally detained to fulfill the statute's basic  
10 purpose of effectuating removal.

11 **B. The government is not seeking to remove Petitioner to a third country.**

12 The government is currently seeking to repatriate Petitioner to his native country of  
13 Vietnam. *See generally* Exhibit A. Petitioner can point to no evidence that the government  
14 is seeking to remove Petitioner to any other country. Thus, as a factual matter, the issue of  
15 whether Petitioner is lawfully detained pending removal to a third country, is simply not  
16 before the Court. Accordingly, ground two of the habeas petition likewise fails.

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

18 **A. Legal standards for temporary restraining orders and preliminary**  
19 **injunctions.**

20 The substantive standard for issuing a temporary restraining order is identical to the  
21 standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D.*  
22 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable  
23 discretion and is "an extraordinary remedy that may only be awarded upon a clear showing  
24 that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.  
25 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

26 Preliminary injunctions are intended to preserve the relative positions of the parties  
27 until a trial on the merits can be held, "preventing the irreparable loss of a right or  
28 judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.

1 1984). Preliminary injunctions are “not a preliminary adjudication on the merits.” *Id.* A  
2 court should not grant a preliminary injunction unless the applicant shows: (1) a strong  
3 likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable  
4 injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4)  
5 the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm,  
6 a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.*  
7 at 22. Where the government is a party, courts merge the analysis of the final two *Winter*  
8 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*,  
9 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).  
10 Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’  
11 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and  
12 third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d  
13 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-  
14 35 (9th Cir. 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in  
15 proving that they are entitled to this ‘extraordinary remedy.’” *Earth Island Inst. v. Carlton*,  
16 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s burden is aptly described as a “heavy” one.  
17 *Id.*

18 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a  
19 party from taking action and preserves the status quo pending a determination of the action  
20 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,  
21 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party to  
22 take action. . . . A mandatory injunction goes well beyond simply maintaining the status  
23 quo pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory  
24 injunction is “subject to a higher degree of scrutiny because such relief is particularly  
25 disfavored under the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313,  
26 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be  
27 “extremely cautious” when issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740  
28 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied “unless

1 extreme or very serious damage will result,” and even then, not in “doubtful cases.” *Marlyn*  
2 *Nutraceuticals, Inc.*, 571 F.3d at 879; accord *LGS Architects, Inc. v. Concordia Homes of*  
3 *Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740  
4 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts  
5 and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

6 **B. Petitioner cannot establish a likelihood of success on the merits.**

7 For all the reasons argued above in section III, Petitioner’s habeas petition is  
8 unlikely to succeed on the merits and should be denied. Because he cannot establish a  
9 likelihood of success on the merits of his habeas petition, Petitioner is not entitled to  
10 injunctive relief. *Winter*, 555 U.S. at 20.

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

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

19 Petitioner cannot show that denying the temporary restraining order would make  
20 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]  
21 demonstrate that irreparable injury is *likely* in the absence of an injunction.”) (emphasis in  
22 original). “[A] preliminary injunction will not be issued simply to prevent the possibility  
23 of some remote future injury.” *Id.* “Speculative injury does not constitute irreparable  
24 injury.” *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th  
25 Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention  
26 where he is lawfully and constitutionally detained pursuant to a final executable removal  
27 order.  
28

1           **C. The equities and public interest do not favor Petitioner.**

2           The third and fourth factors, “harm to the opposing party” and the “public interest,”  
3 “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “In exercising  
4 their sound discretion, courts of equity should pay particular regard for the public  
5 consequences in employing the extraordinary remedy of injunction.” *Weinberger v.*  
6 *Romero-Barcelo*, 456 U.S. 305, 312 (1982).

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

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

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**V. CONCLUSION.**

For all the foregoing reasons, this Court should deny the habeas petition (Doc. 1) and Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 3).

Respectfully submitted this 15th day of October, 2025.

TIMOTHY COURCHAINE  
United States Attorney  
District of Arizona

*s/ Theo Nickerson*  
THEO NICKERSON  
Assistant United States Attorney  
*Attorneys for Respondents*