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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Thuc Vien Ho,
17
18 Petitioner,
19
20 v.
21 Gregory J. Archambeault, *et al.*
22
23 Respondents.

No. CV-25-03753-PHX-JJT (JZB)

**RESPONSE TO ORDER TO SHOW
CAUSE, PETITIONER'S MOTION
FOR A TEMPORARY
RESTRAINING ORDER, AND
PETITION FOR WRIT OF HABEAS
CORPUS**

24 **I. INTRODUCTION**

25 Respondents, by and through counsel, respond to the Court's Order to Show Cause
26 (Doc. 5), and accordingly to the Petition for a Writ of Habeas Corpus (Doc. 1) and the
27 Motion for a Temporary Restraining Order (Doc. 2). Petitioner Thuc Vien Ho is a
28 Vietnamese national and a criminal alien convicted of drug trafficking. An immigration
court ordered that he be removed to Vietnam after his conviction. He was most recently
detained by U.S. Immigration and Customs Enforcement ("ICE") on July 23, 2025 because
ICE determined that his removal would occur in the reasonably foreseeable future. In this
habeas petition, Petitioner seeks a Court order directing ICE to immediately release him

1 from immigration detention on an order of supervision, and to enjoin Respondents from
2 removing him to a country other than Vietnam. Respondents respectfully request that this
3 Court deny the Petition and Motion because Petitioner has not been unconstitutionally
4 detained, he cannot establish that his removal is not likely to occur in the reasonably
5 foreseeable future, and Respondents have no intention of removing him to a country other
6 than Vietnam. For these reasons, which are explained fully below, the Court should deny
7 the Petition and Motion.

8 **II. FACTUAL BACKGROUND**

9 Petitioner Thuc Vien Ho entered the United States on June 28, 1990, in Seattle,
10 Washington. Declaration of Fernando Valenzuela, Assistant Field Office Director,
11 Enforcement and Removal Operations, attached as Exhibit A, at ¶ 6. At that time, he was
12 admitted into the United States as a lawful permanent resident. *Id.* On June 23, 1999, the
13 Immigration and Naturalization Service (“INS”) began removal proceedings against
14 Petitioner under Immigration and Nationality Act (“INA”) § 237(a)(2)(A)(iii) because
15 Petitioner was convicted of drug trafficking. *Id.* at ¶¶ 7–9. On February 14, 2000, an
16 immigration judge ordered Petitioner removed to Vietnam under INA § 237(a)(2). *Id.* at ¶¶
17 11, 24. Petitioner reserved the right to appeal but did not do so, so his removal order became
18 administratively final on March 15, 2000. *Id.* at ¶ 12. On June 14, 2000, INS released
19 Petitioner from custody on an order of supervision. *Id.* at ¶ 14–15. Petitioner was out of
20 immigration custody until Immigration and Customs Enforcement (“ICE”) detained him
21 on July 23, 2025, for removal to Vietnam. *Id.* at ¶ 15. ICE completed a request for travel
22 documents, which it submitted to the United States Embassy in Vietnam on September 24,
23 2025. *Id.* at ¶¶ 16–17. An official at the Embassy forwarded the request to the government
24 of Vietnam, and it expects to hear back around October 25, 2025. *Id.* at ¶ 18–19. On
25 October 16, 2025, ICE provided Petitioner with notice that his order of supervision was
26 revoked, and they will promptly provide him with an informal interview that will allow
27 him to contest its revocation. *Id.* at ¶¶ 25; Notice of Revocation of Release, attached as
28 Exhibit B.

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

2 **A. Petitioner's detention is statutorily authorized and constitutional.**

3 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
4 678 (2001) because his removal is not "reasonably foreseeable." Petitioner argues that he
5 may not be detained longer than 90 days because the statute that authorizes longer
6 detentions does not apply to him. However, Petitioner misrepresents both his own situation
7 and the holding of *Zadvydas*. Petitioner qualifies for detention beyond 90 days because he
8 was removed due to a controlled-substance conviction, which qualifies him for detention
9 beyond 90 days. Petitioner may only challenge his confinement pursuant to *Zadvydas* once
10 he has been detained by ICE for six months, and Petitioner has not been detained for six
11 months. Finally, Petitioner cannot establish, as *Zadvydas* requires to be entitled to release,
12 that his removal is not likely to occur in the foreseeable future.

13 An alien who is ordered removed must be detained for 90 days once their removal
14 order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien
15 has not left the United States voluntarily or been removed during this 90-day period, the
16 alien will generally be granted supervised release. 8 U.S.C. § 1231(a)(3). However, an alien
17 ordered removed under INA § 237(a)(2) may be detained for a longer period. 8 U.S.C. §
18 1231(a)(6). The INA does not authorize indefinite detention. *Zadvydas v. Davis*, 533 U.S.
19 678, 689 (2001). An alien may be detained for up to six months pursuant to a final order
20 of removal, after which, the alien may be released if they can "provide[] good reason to
21 believe that there is no significant likelihood of removal in the reasonably foreseeable
22 future" and the Government fails to show otherwise. *Id.* at 701. This six-month period
23 includes the initial 90-day mandatory detention period and three months thereafter. *Ma v.*
24 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).

25 Petitioner was ordered removed under INA § 237(a)(2). *See* Exhibit A at ¶ 7-11,
26 24. As discussed above, an alien ordered removed under INA § 237(a)(2) may be detained
27 beyond the initial 90-day period. 8 U.S.C. § 1231(a)(6). Thus, Petitioner's argument that
28 he may only be detained for 90 days is meritless.

1 Petitioner's removal order became administratively final on March 15, 2000.
2 Exhibit A at ¶ 12. 90 days later, Petitioner was released from custody under an order of
3 supervision on June 14, 2000. *Id.* at ¶ 13–14. Petitioner was free from immigration
4 detention until July 23, 2025, when he was detained by ICE. *Id.* at ¶ 15; Doc. 1 at ¶ 31.
5 Petitioner was detained for 90 days initially, so his detention is presumptively
6 constitutional until October 23, 2025, three months after the new detention began. Thus,
7 *Zadvydas* bars Petitioner from claiming that his detention is unconstitutionally indefinite
8 until October 23, 2025.

9 Further, even at that time, Petitioner may only be granted release from detention if
10 he can show “good reason to believe that there is no significant likelihood of removal in
11 the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Courts have held that
12 Petitioners have met this bar when no country would agree to accept the alien or when the
13 alien's home country had no repatriation treaty with the United States, *Id.* at 686, when the
14 government “concede[d] that it [was] no longer even involved in repatriation negotiations”
15 with the alien's home country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and
16 when the alien had been detained for five years and had “won relief at every administrative
17 level.” *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court
18 clarified that its holding in *Zadvydas* was concerned with detention that is “indefinite and
19 potentially permanent,” and for aliens whose removal is “no longer practically attainable.”
20 *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere
21 fact that an alien's detention “lacks a certain end date” does not render their detention
22 unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

23 Petitioner's removal is practically attainable, and his detention is not “potentially
24 permanent.” *Demore*, 538 U.S. at 528. Petitioner argues that Vietnam is not accepting pre-
25 1995 emigrants “at greater rates that would make removal significantly likely in the
26 reasonably foreseeable future.” Doc. 2 at 15. But Respondents do not agree that this is so.
27 *See Exhibit A* at ¶¶ 20–23. Petitioner has provided only unsubstantiated assertions about
28 the removal rate of pre-1995 Vietnamese emigrants to Vietnam, which are insufficient to

1 grant his release from custody on their own. Furthermore, Petitioner's own evidence belies
2 his claim. Petitioner provides a declaration that establishes that one of the major
3 impediments to the prompt removal of pre-1995 Vietnamese nationals is the fact that
4 "many people no longer have any relatives in Vietnam who can verify their identity, or
5 they do not have any documentation from Vietnam at all." Declaration of Tin Thanh
6 Nguyen, Doc. 2-1 at 9 . But Petitioner still his Vietnamese birth certificate, because he
7 attached it as an exhibit to his Motion for a Temporary Restraining Order. Doc. 2-1 at 11,
8 13. Thus, Petitioner's Vietnamese citizenship is well-established by documentation, which
9 should help hasten Vietnam's decision on whether to issue travel documents.

10 Not only are Petitioner's allegations unsubstantiated, but they also do not align with
11 the factual circumstances in similar claims brought before this Court. In a recent habeas
12 petition before this Court, the petitioner made a similar argument—that is, that the
13 petitioner was not significantly likely to be removed to Vietnam as a pre-1995 emigrant.
14 That petition was ultimately dismissed as moot, because the petitioner was successfully
15 removed to Vietnam a mere two months after he filed his habeas petition. *Long Phi Do v.*
16 *Rivas, et al.*, 2:25-cv-01885-KLM (ASB) Docs. 23-24.

17 The fact that Petitioner has been under a final order of removal for 25 years without
18 being removed does not establish that his removal is not significantly likely now—there
19 could be any number of reasons that Petitioner was not removed before now, and this *res*
20 *ipsa loquitur* type of reasoning cannot constitute the showing needed to obtain habeas
21 relief. *See Davis v. Ayala*, 576 U.S. 257, 267–68 (2015) (holding that “[t]here must be
22 more than a ‘reasonable possibility’ that [an] error was harmful” to obtain habeas relief).

23 Unlike in *Hoac v. Becerra*, 2025 WL 1993771 (E.D. Cal. 2025), on which Petitioner
24 relies, ICE has made substantial progress towards obtaining travel documents for
25 Petitioner. *See* Exhibit A at ¶¶ 16–19. Moreover, Petitioner's detention is not unlawfully
26 indefinite because its end is in sight—either Vietnam will grant the government's request
27 for travel documents, or it will not. ICE expects Vietnam to make its decision by October
28 25. Exhibit A at ¶ 19. In either case, Respondent will be released from detention once

1 Vietnam decides. Petitioner's detention is presumptively reasonable, and it will continue
2 to be presumptively reasonable until October 23, 2025. Further, Petitioner has provided no
3 compelling reason to believe that Vietnam will not decide soon whether to issue travel
4 documents to him. Thus, Petitioner has failed to show that his detention is
5 unconstitutionally indefinite under *Zadvydas*, so his habeas petition should be denied. *See*
6 *Zadvydas*, 533 U.S. at 700–01.

7 **B. Petitioner's order of supervision was lawfully revoked.**

8 Petitioner also argues that his detention is unlawful because ICE revoked his order
9 of supervision unlawfully. Respondents argue that any error was harmless, because the
10 lapse in procedure was subsequently rectified and even if this court were to order Petitioner
11 to be released on this basis, ICE could detain him again immediately.

12 ICE's regulations permit it to revoke an order of supervision and detain the alien
13 released under it if it "determines that there is a significant likelihood that the alien may be
14 removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). If an alien's order
15 of supervision is revoked for this reason, ICE must notify the alien "of the reasons for
16 revocation" and "conduct an initial informal interview promptly after [the alien's] return
17 to Service custody to afford the alien an opportunity to respond to the reasons for
18 revocation stated in the notification." 8 C.F.R. § 241.13(i)(3).

19 Many of Petitioner's arguments that his order of supervision was unlawfully
20 revoked are based on procedures promised in a different regulation, which are required
21 only when the order of supervision is revoked under that regulation's authority. *See* Doc.
22 1 at ¶¶ 65–67 (citing 8 C.F.R. § 241.4). However, the regulation under which ICE revoked
23 Petitioner's order of supervision grants only two procedural protections to an alien whose
24 order of supervision is revoked: the alien is entitled to know "the reasons for revocation of
25 his or her release," and the alien is entitled to "an initial informal interview promptly after
26 his or her return to [ICE] custody" to respond to the reasons for revocation. 8 C.F.R. §
27 241.13(i)(3); *see also* Exhibit B. ICE has provided Petitioner with the required notice, and
28 it will promptly provide him with the required informal interview. *See* Exhibit A at ¶¶ 25;

1 *see also* Exhibit B. ICE has therefore provided Petitioner with all the procedural protections
2 to which he is entitled. Petitioner may argue that the interview was not provided
3 “promptly,” as the regulation requires. However, Petitioner cannot show that any delay in
4 providing him due process harmed him in any meaningful way. It is well-established that
5 habeas petitioners are entitled to relief only if “they can establish that [an error] resulted in
6 actual prejudice.” *Ayala*, 576 U.S. at 267 (quoting *Brecht v. Abrahamson*, 507 U.S. 619,
7 637 (1993)) (internal quotations omitted). Because Petitioner was not harmed by any delay
8 in providing him notice of the revocation and an informal interview under 8 C.F.R. §
9 241.13(i)(3), he cannot prevail on a habeas claim based thereon. In any event, ICE
10 complied with the relevant regulatory procedures established for revoking an order of
11 supervision. The habeas petition should be denied.

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

13 **A. Legal Standard**

14 Petitioner asks this Court to issue a Temporary Restraining Order granting him three
15 forms of relief: immediate release from custody, restoration of his order of supervision,
16 and prospective relief regarding how ICE may remove him to a third country. Respondents
17 argue that this motion should be denied because Petitioner has not demonstrated
18 entitlement to any of the relief he requests.

19 A temporary restraining order (“TRO”) should be granted to “preserv[e] the status
20 quo and prevent[] irreparable harm just so long as is necessary to hold a hearing and no
21 longer.” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting
22 *Granny Goose Foods v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S.
23 423, 439 (1974)). A petitioner must show “that he is likely to succeed on the merits, that
24 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
25 of equities tips in his favor, and that an injunction is in the public interest” to receive a
26 TRO. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also Stuhlberg Int’l*
27 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating that the
28 “analysis is substantially identical for [an] injunction and [a] TRO”). Injunctive relief like

1 a TRO is “an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 9. A
2 TRO normally lasts for no longer than fourteen days, but a court may extend a TRO’s
3 duration for an additional fourteen days “for good cause.” FRCP 65(b)(2). However, a TRO
4 may not last longer than 28 days unless the adverse party consents. *Id.*; see also *H-D*
5 *Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 844 (“[T]he great weight
6 of authority support the view that 28 days is the outer limit for a TRO without the consent
7 of the enjoined party. . .”).

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

9 Petitioner asks this Court to enjoin Respondents from removing him to a third
10 country without providing him several procedural protections. Respondents have no
11 present intention of removing him to a third country—they intend to remove him to
12 Vietnam. See Exhibit A at ¶¶ 16–19. Further, Petitioner has presented no support for the
13 proposition that ICE intends to remove him to a country other than Vietnam. This Court
14 has no jurisdiction to entertain an action when the petitioner lacks standing. *Lujan v.*
15 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). A petitioner lacks standing when their
16 suit is not grounded in an “actual or imminent” injury. *Id.* Although “an allegation of future
17 injury may suffice” for standing purposes, the threatened injury must be “certainly
18 impending,” or there must be a “substantial risk that the harm will occur.” *Susan B. Anthony*
19 *List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int’l USA*, 568
20 U.S. 398, 409, 414 n.5 (2013)). Petitioner has not and cannot show that he is at substantial
21 risk of removal to a third country, so this Court has no jurisdiction to grant relief based on
22 speculation that he might be.

23 **C. Petitioner is not likely to succeed on the merits.**

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

28

1 **D. Petitioner cannot establish irreparable harm.**

2 The Court should deny Petitioner's Motion, because Petitioner "must demonstrate
3 immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean*
4 *Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). The "possibility" of
5 injury is "too remote and speculative to constitute an irreparable injury meriting
6 preliminary injunctive relief." *Id.* "Subjective apprehensions and unsupported predictions
7 . . . are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat
8 of irreparable harm." *Id.* at 675-76.

9 Petitioner cannot show that denying the temporary restraining order would make
10 "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must]
11 demonstrate that irreparable injury is likely in the absence of an injunction.") (emphasis in
12 original). "[A] preliminary injunction will not be issued simply to prevent the possibility
13 of some remote future injury." *Id.* "Speculative injury does not constitute irreparable
14 injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th
15 Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention
16 where he is lawfully and constitutionally detained pursuant to a final executable removal
17 order. Further, Petitioner cannot establish that his removal to a third country is "likely in
18 the absence of an injunction," *Winter*, 555 U.S. at 22, because ICE is currently attempting
19 to remove him to Vietnam and not a third country.

20 **E. The equities and public interest do not favor Petitioner.**

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

26 An adverse decision here would negatively impact the public interest by
27 jeopardizing "the orderly and efficient administration of this country's immigration laws."
28 *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ.*

1 *Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a state suffers
2 irreparable injury whenever an enactment of its people or their representatives is
3 enjoined.”). The public has a legitimate interest in the government’s enforcement of its
4 laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he
5 district court should give due weight to the serious consideration of the public interest in
6 this case that has already been undertaken by the responsible state officials in Washington,
7 who unanimously passed the rules that are the subject of this appeal.”).

8 While it is in the public interest to protect constitutional rights, if the petitioner has
9 not shown a likelihood of success on the merits of that claim—as Petitioner has not shown
10 here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d
11 815, 826 (9th Cir. 2005). And the public interest lies in the Executive’s ability to enforce
12 U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
13 742, 750 (9th Cir. 1991) (“Control over immigration is a sovereign prerogative.”). Given
14 Petitioner’s undisputed criminal history and likelihood of removal to Vietnam, the public
15 and governmental interest in permitting his continued detention to effectuate removal is
16 significant. Because Petitioner is a convicted criminal subject to a final removal order, the
17 public interest lies with the government’s ability to effectuate his removal to Vietnam.

18 For the foregoing reasons, Respondents respectfully request that this Court deny the
19 Motion for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining
20 Order (Doc. 2).

21 RESPECTFULLY SUBMITTED October 17, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2025, I electronically transmitted the attached documents by Electronic Mail to :

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