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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Chi Thien Bui, Petitioner, v. Gregory J. Archambeault, *et al.* Respondents.	No. CV-25-03774-PHX-KML (JFM) **RESPONSE TO ORDER TO SHOW CAUSE, PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER, AND PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Respondents, by and through counsel, respond to the Court's Order to Show Cause (Doc. 5), and accordingly to the Petition for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining Order (Doc. 2). Petitioner Chi Thien Bui is a 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 April 17, 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 from immigration detention on an order of supervision, and to enjoin Respondents from removing him to a country other than Vietnam. Respondents respectfully request that this Court deny the Petition and Motion because Petitioner has not been unconstitutionally detained, he cannot establish that his removal is not likely to occur in the reasonably foreseeable future, and Respondents have no intention of removing him to a country other than Vietnam. For these reasons, which are explained fully below, the Court should deny the Petition and Motion.

II. FACTUAL BACKGROUND

Petitioner Chi Thien Bui entered the United States on December 10, 1991, in San Francisco, California. Declaration of Fernando Valenzuela, Assistant Field Office Director, Enforcement and Removal Operations, attached as Exhibit A, at ¶ 6. At that time, he was admitted into the United States as a lawful permanent resident. *Id.* On September 29, 2014, the Department of Homeland Security ("DHS") began removal proceedings against Petitioner under Immigration and Nationality Act ("INA") § 237(a)(2)(A)(iii) because Petitioner was convicted of drug trafficking. *Id.* at ¶¶ 7–9. On January 21, 2015, an immigration judge ordered Petitioner removed to Vietnam under INA § 237(a)(2). *Id.* at ¶¶ 10, 23. Petitioner did not reserve the right to appeal, so his removal order became administratively final on January 21, 2015. *Id.* at ¶ 11. On February 5, 2015, Immigration and Customs Enforcement ("ICE") released Petitioner from custody on an order of supervision. *Id.* at ¶ 12. Petitioner was out of immigration custody until ICE detained him on April 17, 2025, for removal to Vietnam. *Id.* at ¶ 13. ICE completed a request for travel documents, which it submitted to the United States Embassy in Vietnam on August 5, 2025. *Id.* at ¶¶ 14–15. An official at the Embassy forwarded the request to the government of Vietnam. *Id.* at ¶ 16. On October 20, 2025, ICE provided Petitioner with notice that his order of supervision was revoked, and they will promptly provide him with an informal interview that will allow him to contest its revocation. *Id.* at ¶ 23; Notice of Revocation of Release, attached as Exhibit B.

III. THE HABEAS PETITION SHOULD BE DENIED

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

Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001) because his removal is not "reasonably foreseeable." Petitioner qualifies for detention beyond 90 days because he was removed due to a controlled-substance conviction. Petitioner cannot establish, as *Zadvydas* requires to be entitled to release, that his removal is not likely to occur in the foreseeable future.

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

Petitioner was ordered removed under INA § 237(a)(2). *See* Exhibit A at ¶¶ 9, 22. As discussed above, an alien ordered removed under INA § 237(a)(2) may be detained beyond the initial 90-day period. 8 U.S.C. § 1231(a)(6). Even though Petitioner has been detained for longer than six months, Petitioner may only be granted release from detention if he can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Courts have held that Petitioners have met this bar when no country would agree to accept the alien or when the alien's home country had no repatriation treaty with the United States, *id.* at 686, when the government "concede[d] that it [was] no longer even involved in repatriation negotiations" with the alien's home country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and

when the alien had been detained for five years and had "won relief at every administrative level." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its holding in *Zadvydas* was concerned with detention that is "indefinite and potentially permanent," and for aliens whose removal is "no longer practically attainable." *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact that an alien's detention "lacks a certain end date" does not render their detention unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Petitioner's removal is practically attainable, and his detention is not "potentially permanent." *Demore*, 538 U.S. at 528. Petitioner argues that Vietnam is not accepting pre-1995 emigrants "at greater rates that would make removal significantly likely in the reasonably foreseeable future." Doc. 2 at 15. But Respondents do not agree that this is so. *See* Exhibit A at ¶¶ 17–21. Petitioner has provided only unsubstantiated assertions about the removal rate of pre-1995 Vietnamese emigrants to Vietnam, which are insufficient to grant his release from custody on their own.

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

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

Unlike in *Hoac v. Becerra*, 2025 WL 1993771 (E.D. Cal. 2025), on which Petitioner

relies, ICE has made substantial progress towards obtaining travel documents for Petitioner. *See* Exhibit A at ¶¶ 17–21. Moreover, Petitioner's detention is not unlawfully indefinite because its end is in sight—either Vietnam will grant the government's request for travel documents, or it will not. Petitioner states that he applied for travel documents on his behalf, but that that application was denied. Declaration of Tin Thanh Nguyen, Doc. 2-1, at ¶¶ 13–14. However, the government has since made its own application for travel documents on Petitioner's behalf, *see* Exhibit A at ¶¶ 14–16, and Petitioner has provided no compelling reason to support his assertion that this application will not be timely granted. Petitioner has provided no compelling reason to believe that Vietnam will not decide soon whether to issue travel documents to him beyond an unsupported allegation from his own attorney. *See* Declaration of Tin Thanh Nguyen, Doc. 2-1, at ¶¶ 7–11. Thus, Petitioner has failed to show that his detention is unconstitutionally indefinite under *Zadvydas*, so his habeas petition should be denied. *See Zadvydas*, 533 U.S. at 700–01.

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

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

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

Many of Petitioner's arguments that his order of supervision was unlawfully revoked are based on procedures promised in a different regulation, which are required only when the order of supervision is revoked under that regulation's authority. *See* Doc.

1 at ¶¶ 65–67 (citing 8 C.F.R. § 241.4). However, in this case, ICE revoked Petitioner's supervised release because it "determined that [he] can be expeditiously removed from the United States pursuant to the outstanding order of removal against [him]." Exhibit B. The regulation that authorizes such revocations is 8 C.F.R. § 241.13(i), which grants only two procedural protections to an alien whose order of supervision is revoked: the alien is entitled to know "the reasons for revocation of his or her release," and the alien is entitled to "an initial informal interview promptly after his or her return to [ICE] custody" to respond to the reasons for revocation. 8 C.F.R. § 241.13(i)(2), (3); *see also* Exhibit B. ICE has provided Petitioner with the required notice, and it will promptly provide him with the required informal interview. *See* Exhibit A at ¶ 23; *see also* Exhibit B. ICE has therefore provided Petitioner with all the procedural protections to which he is entitled. Petitioner may argue that the interview was not provided "promptly," as the regulation requires. However, Petitioner cannot show that any delay in providing him due process harmed him in any meaningful way. It is well-established that habeas petitioners are entitled to relief only if "they can establish that [an error] resulted in actual prejudice." *Ayala*, 576 U.S. at 267 (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)) (internal quotations omitted).[1] Because Petitioner was not harmed by any delay in providing him notice of the revocation and an informal interview under 8 C.F.R. § 241.13(i)(3), he cannot prevail on a habeas claim based thereon. In any event, ICE complied with the relevant regulatory procedures established for revoking an order of supervision. The habeas petition should be

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[1] Respondents are aware of this Court's ruling yesterday in a nearly identical case. *Ho v. Archambeault*, No. 2:25-3753-PHX-JJT (D. Ariz. Oct. 20, 2025). The Court held that there was no harmless error analysis involved when ICE fails to follow its own regulations because "their failure to comply with their own regulations is the very harm at issue." *Id.*, slip op. at 2. Respectfully, Respondents request that this Court consider contrary findings from other courts in the context of an alleged failure to follow 8 C.F.R. § 241.13(i)(3). *See, e.g.*, *Nguyen v. Noem*, 2025 U.S. Dist. LEXIS 191727 (N.D. Tex. Aug. 10, 2025) at *16–17 & n.2; *Qui v. Carter*, 2025 U.S. Dist. LEXIS 190236 (D. Kan. Sept. 26, 2025) at *3–4. Further, Respondents argue that when, as here, a petitioner brings a challenge under the Administrative Procedure Act, a court is required to consider whether an error was prejudicial. 5 U.S.C. § 706.

denied.

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF

A. Legal Standard

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

A temporary restraining order ("TRO") should be granted to "preserv[e] the status quo and prevent[] irreparable harm just so long as is necessary to hold a hearing and no longer." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)). A petitioner must show "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" to receive a TRO. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating that the "analysis is substantially identical for [an] injunction and [a] TRO"). Injunctive relief like a TRO is "an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 9. A TRO normally lasts for no longer than fourteen days, but a court may extend a TRO's duration for an additional fourteen days "for good cause." FRCP 65(b)(2). However, a TRO may not last longer than 28 days unless the adverse party consents. *Id.*; *see also H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 844 ("[T]he great weight of authority support the view that 28 days is the outer limit for a TRO without the consent of the enjoined party. . . .").

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

Petitioner asks this Court to enjoin Respondents from removing him to a third country without providing him several procedural protections. Respondents have no

present intention of removing him to a third country—they intend to remove him to Vietnam. *See* Exhibit A at ¶¶ 13–16. Further, Petitioner has presented no support, beyond a naked hearsay assertion, for the proposition that ICE intends to remove him to a country other than Vietnam. *See* Declaration of My Linh Ha-Bui, Doc. 2-1 at ¶ 27. This Court has no jurisdiction to entertain an action when the petitioner lacks standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). A petitioner lacks standing when their suit is not grounded in an "actual or imminent" injury. *Id.* Although "an allegation of future injury may suffice" for standing purposes, the threatened injury must be "certainly impending," or there must be a "substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 414 n.5 (2013)). Petitioner has not shown and cannot show that he is at substantial risk of removal to a third country, so this Court has no jurisdiction to grant relief based on speculation that he might be.

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

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

D. Petitioner cannot establish irreparable harm.

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

Petitioner cannot show that denying the temporary restraining order would make "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must]

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

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

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

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

While it is in the public interest to protect constitutional rights, if the petitioner has not shown a likelihood of success on the merits of that claim—as Petitioner has not shown here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d

815, 826 (9th Cir. 2005). And the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's undisputed criminal history and likelihood of removal to Vietnam, the public and governmental interest in permitting his continued detention to effectuate removal is significant. Because Petitioner is a convicted criminal subject to a final removal order, the public interest lies with the government's ability to effectuate his removal to Vietnam.

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

RESPECTFULLY SUBMITTED October 21, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2025, I electronically transmitted the attached documents by Electronic Mail to :

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