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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Keomanivone Phrommany, Petitioner, v. Kristi Noem, *et al.*, Respondents.	No. CV-25-03789-PHX-SHD (JZB) **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. 9), and accordingly to the Petition for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining Order (Doc. 2). Petitioner Keomanivone Phrommany is a national of Laos and a criminal alien convicted of drug trafficking. An immigration court ordered that he be removed to Laos after his conviction. He was most recently detained by U.S. Immigration and Customs Enforcement ("ICE") on July 28, 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 from the District of Arizona pending disposition of this action. Respondents respectfully request that this Court deny the Petition and Motion because Petitioner has not been unconstitutionally detained and he cannot establish that his removal is not likely to occur in the reasonably foreseeable future. For these reasons, which are explained fully below, the Court should deny the Petition and Motion.

II. FACTUAL BACKGROUND

Petitioner Keomanivone Phrommany entered the United States as a refugee from Laos on February 27, 1980. Declaration of Christopher Apodaca, Deportation Officer, Enforcement and Removal Operations, attached as Exhibit A, at ¶¶ 3–4. Petitioner was subsequently convicted of two state-law offenses: drug trafficking in 1991 and fraud in 1993. *Id.* at ¶¶ 5–6. The Immigration and Naturalization Service ("INS") began removal proceedings against Petitioner on November 30, 1994, under Immigration and Nationality Act ("INA") sections 241(a)(2)(B)(i) and 241(a)(2)(A)(iii).[1] *Id.* at ¶ 9. On August 13, 1997, an immigration judge ordered Petitioner removed to Laos. *Id.* at ¶¶ 11. Petitioner did not file an appeal. *Id.* Petitioner had been released on bond during his removal proceeding, and INS allowed him to remain out of custody on bond after the immigration court proceedings were complete and the IJ's order became final. *Id.* at ¶¶ 11, 15. On July 22, 1998, Petitioner's bond was canceled, and his release became conditioned on an order of supervision. *Id.* at ¶ 15. On March 28, 2008, Petitioner was issued a new order of supervision. *Id.* at ¶ 16. Petitioner was out of immigration custody until Immigration and Customs Enforcement ("ICE") detained him on July 28, 2025, for removal to Laos. *Id.* at ¶ 17. ICE served Petitioner with a notice that it was revoking his supervised release on the same day. *Id.* at ¶ 18; Notice of Revocation, Proof of Service, and Record of Informal Interview, attached as Exhibit B, at 1–2. Four days later, on August 1, 2025, ICE conducted an initial interview with Petitioner allowing him to contest the reasons for the revocation

[1] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") renumbered the sections of the INA, so that INA § 241 became INA § 237. *See Bell v. Reno*, 218 F.3d 86, 89 (2d. Cir. 2000)

of his supervised release. Exhibit A at ¶ 19; Exhibit B at 3. On August 6, 2025, the Embassy of Laos in the United States issued travel documents allowing ICE to remove Petitioner. *Id.* at ¶ 20. ICE has scheduled Petitioner's removal on a flight that is scheduled to leave on October 22, 2025. *Id.* at ¶¶ 25–27.

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 argues that he may not be detained longer than 90 days because the statute that authorizes longer detentions does not apply to him. However, Petitioner misrepresents both his own situation and the holding of *Zadvydas*. Petitioner qualifies for detention beyond 90 days because he was removed due to a controlled-substance conviction, which qualifies him for detention beyond 90 days. Petitioner may only challenge his confinement pursuant to *Zadvydas* once he has been detained by ICE for six months, and Petitioner has not been detained for six months. Finally, Petitioner cannot establish, as *Zadvydas* requires to be entitled to release, that his removal is not likely to occur in the reasonably 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. At this time, an alien is not presumed to be entitled to release; the alien must show that their detention is "indefinite—i.e., that there is good reason to believe that there is no significant likelihood of removal in

the reasonably foreseeable future." *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701) (internal quotation marks removed). 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, *see also supra* fn. 1. 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). Thus, Petitioner's argument that he may only be detained for 90 days is meritless.

Petitioner's removal order became administratively final on August 13, 1997. Exhibit A at ¶ 14. Petitioner does not allege that he was detained during the 90 days following his removal order, and it seems that Petitioner was released on bond the entire time. *Id.* at ¶¶ 11, 15.[2] Petitioner was free from immigration detention until July 28, 2025, when he was detained by ICE. *Id.* at ¶¶ 15–17. Petitioner cannot state a viable claim for unconstitutionally indefinite detention under *Zadvydas* until he has been detained for six months pursuant to a final order of removal. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002); *see, e.g., Singh v. Donelan*, 2015 U.S. Dist. LEXIS 59734 (D. Mass March 4, 2015) at *6–7 (collecting cases). Petitioner does not argue that he was detained during the 90–day removal period. Even if he had been, Petitioner may be detained for three additional months. *See Ma*, 257 F.3d at 1102 n.5. Petitioner will not have been detained for three additional months until October 28, 2025. "It is not enough that the period of time expired by the time the petition is ruled on by the court, the *Zadvydas* period must have expired before the petition is filed." *Ba v. Gonzales*, 2008 U.S. Dist. LEXIS 113385 (N.D. Fla. March 6, 2008) at *4–5, *R&R adopted* 2008 U.S. Dist. LEXIS 43766 (N.D. Fla. May 19, 2008). Thus, *Zadvydas* bars Petitioner from claiming that his detention

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[2] Respondents note that, by law, Petitioner should not have been allowed to remain out of custody during this time, *see* 8 U.S.C. § 1231(a)(2)(A), but for the reasons that follow, Petitioner cannot prevail under *Zadvydas* even if he had been detained during the removal period.

is unconstitutionally indefinite until October 28, 2025 at the earliest, and his petition must be dismissed as premature on that basis.

Further, even if Petitioner's claim were ripe—which it is not—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. The government of Laos has already issued travel documents that would allow ICE to remove him. Exhibit A at ¶ 20. Petitioner argues that his removal is "not significantly likely to occur in the reasonably foreseeable future as she [sic] has been granted relief under the Convention Against Torture," Doc. ¶ 1 at 65, but Petitioner does not state what specific relief was provided, who provided this relief, or when it was provided anywhere in his Petition or Motion. Moreover, Petitioner's final order of removal does not reflect any such relief. *See* Removal Order, attached as Exhibit C. Petitioner states that he "has no information that Respondents have secured a travel document to any country, Laos or otherwise," Doc. 1 at ¶ 42, but Respondents have travel documents that will allow them to remove him to Laos. Exhibit A at ¶ 20. In fact, Petitioner

is scheduled to be removed on October 22, 2025.[3] Exhibit A at ¶ 19. If Petitioner's removal is not "significantly likely to occur in the reasonably foreseeable future," it is unclear whether any removal ever would be. 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. However, because ICE correctly followed its own procedures as laid out in the relevant regulations, Petitioner's order of supervision was properly revoked.

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).

Petitioner argues that he was given notice that ICE revoked his supervised release on October 10, 2025. Doc. 1 at ¶ 39. It appears that ICE did, in fact, provide Petitioner with such a notice on that date. *See* Exhibit A at ¶ 24. However, ICE previously gave Petitioner notice that it was revoking his supervised release on July 28, 2025—the day ICE took Petitioner back into custody. *Id.* at ¶ 18; Exhibit B at 1–2. Four days later, ICE gave Petitioner the "brief informal interview" that 8 C.F.R. § 241.13(i)(3) requires them to provide. Exhibit A at ¶ 19; Exhibit B at 3. Courts have held that an interview held within a

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[3] Petitioner does not request that this Court stay his removal. Respondents note that, although Petitioner has a pending appeal of the denial of his motions to stay removal and reopen removal proceedings before the Board of Immigration Appeals, *see* Exhibit A at ¶ 18, this Court has no jurisdiction to issue a stay of removal in these circumstances. *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (citing 8 U.S.C. § 1252(g)).

month was "prompt" according to 8 C.F.R. § 241.13(i)(3). *See, e.g., Roe v. Oddo*, 2025 U.S. Dist. LEXIS 130489 (W.D. Penn. July 9, 2025), at *6, 20–21 (detention in "early May," interview granted on June 6 of the same year). Courts have also held that a petitioner is not entitled to release even if an interview was not provided properly where, as here, ICE has procured a travel document and scheduled Petitioner's removal. *Ahmad v. Whitaker*, 2018 U.S. Dist. LEXIS 218367 (W.D. Wash. Dec. 4, 2018) at *16–17 (holding that the purpose of the interview is so that the alien may "present information showing that there is no significant likelihood of removal in the reasonably foreseeable future," which is futile in such circumstances). Although ICE seems to have inadvertently issued a second notice of revocation, the first notice, which was issued and served promptly, provided Petitioner with the notice to which he was entitled.

ICE complied with the relevant regulatory procedures established for revoking an order of supervision by providing Petitioner with notice that his order of supervision was being revoked and the grounds on which it was being revoked, and by promptly granting him a "brief informal interview" to allow him the opportunity to contest those grounds. The habeas petition should be denied.

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF

A. Legal Standard

Petitioner asks this Court to issue a temporary restraining order and preliminary injunction granting him immediate release from custody and preventing Respondents from removing him from the District of Arizona until the Petition is disposed of. 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 or a preliminary injunction. *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 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. Petitioner is not likely to succeed on the merits.

Petitioner requests that this Court order his immediate release. 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. Thus, this Court should issue neither a temporary restraining order nor a preliminary injunction.

C. 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.

D. 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 Laos, 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 Laos.

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 and Preliminary Injunction (Doc. 2).

RESPECTFULLY SUBMITTED October 22, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2025, I electronically transmitted the attached documents by Electronic Mail to :

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