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

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No. CV-25-04130-PHX-SMB (CDB)

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS AND
MOTION FOR PRELIMINARY
INJUNCTION**

I. INTRODUCTION

Respondents, by and through counsel, respond to Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) and Motion for a Preliminary Injunction (Doc. 8). Petitioner Toan Sy Le is a Vietnamese national and a criminal alien who pled guilty to solicitation to sell a dangerous drug. An immigration court ordered that he be removed to Vietnam after his conviction. Petitioner obtained a stay of removal from the Ninth Circuit in 2018, after it accepted his petition for review of his removal order. However, the stay has remained in place for seven years because Petitioner continues to delay his own petition for review through countless stay requests and remand requests. Petitioner was most recently detained by U.S. Immigration and Customs Enforcement ("ICE") on July 24, 2025, to effectuate his

1 removal. In this habeas petition, Petitioner seeks a Court order directing ICE to
2 immediately release him from immigration detention on an order of supervision.
3 Respondents respectfully request that this Court deny the Petition and Motion because
4 Petitioner has not been unconstitutionally detained where his removal is delayed for
5 reasons that are entirely of his own making. For these reasons, which are explained fully
6 below, the Court should deny the Petition and Motion.

7 **II. FACTUAL BACKGROUND**

8 Petitioner entered the United States on March 7, 1995, as a lawful permanent
9 resident. Declaration of Brandy Berghouse, Deportation Officer, Enforcement and
10 Removal Operations, attached as Exhibit A, at ¶ 3. On March 1, 2002, Petitioner pled guilty
11 to solicitation to sell ecstasy. *Id.* at ¶ 4. On March 22, 2011, ICE began removal proceedings
12 against Petitioner under Immigration and Nationality Act (“INA”) § 237(a)(2)(A)(i)
13 because Petitioner committed a drug trafficking offense. *Id.* at ¶ 6.¹ On June 16, 2016, an
14 immigration judge ordered Petitioner removed to Vietnam. *Id.* at ¶ 8. Petitioner then moved
15 the immigration judge to rescind and reissue the removal order, and when the immigration
16 judge denied his motion, Petitioner appealed to the Board of Immigration Appeals (“BIA”).
17 *Id.* at ¶¶ 9–10. Petitioner moved in the alternative to have his own appeal remanded to the
18 immigration judge so that he could pursue a U-visa application that would make him
19 eligible for a waiver of inadmissibility. *Id.* at ¶ 10. On May 19, 2017, the BIA dismissed
20 both of Petitioner’s appeals and denied his motion for remand, instead remanding
21 Petitioner’s case to the immigration court for the purpose of reinstating Petitioner’s
22 voluntary departure order. *Id.* at ¶ 11. Petitioner filed a motion to reconsider, a motion to
23 vacate his removal order, and a motion to continue proceedings with the immigration judge,
24 who denied them all on June 12, 2017. *Id.* at ¶ 12. Petitioner appealed these denials to the
25 BIA, which affirmed them on May 30, 2018. *Id.* at ¶¶ 13–14. On June 28, 2018, Petitioner
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27 ¹ ICE later added charges of removability under INA §§ 237(a)(2)(A)(i) and (a)(2)(C),
28 because Petitioner’s crime constituted a “crime involving moral turpitude,” and it provided
“reason to believe” that Petitioner “is or has been an illicit trafficker in any controlled
substance[.]” Exhibit A at ¶ 7.

1 filed a petition for review with the Ninth Circuit, which granted his motion for a stay of
2 removal. *Id.* at ¶ 15; *Le v. Bondi*, No. 18-71871, Doc. 6 (9th Cir. July 2, 2018). Petitioner
3 then moved to stay proceedings on December 18, 2018, and the Ninth Circuit granted his
4 motion. *Id.* at ¶ 15. Petitioner had previously filed a motion with the BIA to reconsider,
5 and the BIA denied that motion on February 8, 2019. *Id.* at ¶¶ 16–17. Petitioner filed a
6 petition for review of this denial on March 8, 2019, and the Ninth Circuit consolidated
7 Petitioner’s two petitions for review. *Id.* at ¶¶ 18–19. On June 25, 2019, Petitioner again
8 moved to stay proceedings on his petition for review, and the Ninth Circuit again granted
9 it. *Id.* at ¶ 20. Petitioner’s petition for review remains stayed, and the Ninth Circuit’s order
10 staying his removal remains in place. *See Le v. Bondi*, No. 18-71871. On July 24, 2025,
11 ICE redetained Petitioner pursuant to his removal order. Petition at 8.

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

13 **A. Petitioner’s detention is statutorily authorized and constitutional.**

14 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
15 678 (2001), because his removal is not “reasonably foreseeable.” However, Petitioner is
16 not entitled to release under *Zadvydas* because he has delayed his own removal through his
17 own actions, which tolls the *Zadvydas* time period.

18 An alien who is ordered removed must be detained for 90 days once their removal
19 order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien
20 has not left the United States voluntarily or been removed during this 90-day period, the
21 alien will generally be granted supervised release. 8 U.S.C. § 1231(a)(3). However, an alien
22 ordered removed under INA § 237(a)(2) may be detained for a longer period. 8 U.S.C.
23 § 1231(a)(6). The INA does not authorize indefinite detention. *Zadvydas*, 533 U.S. at 689.
24 An alien may be detained for up to six months pursuant to a final order of removal, after
25 which, the alien may be released if they can “provide[] good reason to believe that there is
26 no significant likelihood of removal in the reasonably foreseeable future” and the
27 Government fails to show otherwise. *Id.* at 701. This six-month period includes the initial
28 90-day mandatory detention period and three months thereafter. *Ma v. Ashcroft*, 257 F.3d

1 1095, 1102 n.5 (9th Cir. 2001).

2 Petitioner was ordered removed under INA § 237(a)(2). *See* Exhibit A at ¶ 8. As
3 discussed above, an alien ordered removed under INA § 237(a)(2) may be detained beyond
4 the initial 90-day period. 8 U.S.C. § 1231(a)(6). Thus, Petitioner may be detained for six
5 months before he may be entitled to release under *Zadvydas*.

6 When a petitioner delays his removal due to his own litigation strategy, he may not
7 take advantage of *Zadvydas* to secure his release. *Doherty v. Thornburgh*, 943 F.2d 204,
8 211 (2d. Cir. 1991) (holding that a petitioner who “exercise[s] skillfully his rights” through
9 litigation “may not rely on the extra time resulting therefrom to claim that his prolonged
10 detention violates substantive due process.”); *Balogun v. Immigr. & Naturalization Servs.*,
11 9 F.3d 347, 351 (5th Cir. 1993) (“[T]he Attorney General has six ‘unhampered’ months
12 from the date of the final deportation order during which it may detain an alien . . . [t]he
13 six-month period is tolled if the alien ‘hampers’ his deportation by, for example, initiating
14 litigation regarding the validity of the deportation order.”); *Riley v. Greene*, 149 F. Supp.
15 2d. 1256, 1261–62 (D. Colo. 2001) (“At least two federal circuit courts and several district
16 courts have found that if an alien contributes to the delay of his departure he is not allowed
17 the benefit of a release pending his actual removal, and the six-month period to effect an
18 alien’s departure is tolled.”) (collecting cases).

19 Further, even if this Court determines that the *Zadvydas* test applies, Petitioner may
20 only be granted release from detention if he can show “good reason to believe that there is
21 no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533
22 U.S. at 701. Courts have held that petitioners have met this bar when no country would
23 agree to accept the alien or when the alien’s home country had no repatriation treaty with
24 the United States, *id.* at 686, when the government “concede[d] that it [was] no longer even
25 involved in repatriation negotiations” with the alien’s home country, *Clark v. Suarez*
26 *Martinez*, 543 U.S. 371, 386 (2005), and when the alien had been detained for five years
27 and had “won relief at every administrative level.” *Nadarajah v. Gonzales*, 443 F.3d 1069,
28 1081 (9th Cir. 2006). The Supreme Court clarified that its holding in *Zadvydas* was

1 concerned with detention that is “indefinite and potentially permanent,” and for aliens
2 whose removal is “no longer practically attainable.” *See Demore v. Kim*, 538 U.S. 510,
3 527–28 (2003) (internal quotations omitted). The mere fact that an alien’s detention “lacks
4 a certain end date” does not render their detention unlawfully indefinite. *Prieto-Romero v.*
5 *Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). Further, “mere delay in the issuance of a travel
6 document is insufficient” to justify relief under *Zadvydas* “particularly where . . . efforts to
7 obtain the travel document are ongoing.” *Nasr v. Larocca*, 2016 U.S. Dist. LEXIS 90343
8 at *11–12 (C.D. Cal. June 1, 2016); *see also Roe v. Oddo*, 2025 U.S. Dist. LEXIS 214463
9 at *20–26. (W.D. Pa. Oct. 30, 2025); *Chen v. Banike*, 2015 U.S. Dist. LEXIS 105145 (D.
10 Minn. July 14, 2025) at *10–11, *R&R adopted at* 2015 U.S. Dist. LEXIS 104914 (Aug. 11,
11 2015) (“For there to be no significant likelihood of removal in the reasonably foreseeable
12 future, there must be some indication that the government is either unwilling to remove an
13 alien or incapable of doing so due to seemingly insurmountable barriers[.]”); *Smith v.*
14 *Simon*, 2019 U.S. Dist. LEXIS 148526 at *10–11 (N.D. Ohio July 17, 2019) (holding that
15 *Zadvydas* requires a petitioner to show “something more than the mere passage of time”
16 and “something more than speculation and conjecture”) (internal quotation marks omitted);
17 *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346 at *12–13 (D. Minn. Mar. 17, 2015)
18 (collecting cases).

19 The delay of Petitioner’s removal is almost entirely of his own making. Petitioner
20 was ordered removed in 2016, and significantly, Petitioner did not directly appeal the
21 removal order. Instead, Petitioner has filed and appealed motions to rescind and motions
22 to reconsider, *see* Exhibit A at ¶¶ 9–10, 12–15, and he has filed petitions for review with
23 the Ninth Circuit twice. *Id.* at ¶¶ 15, 18. However, once Petitioner secured a stay of removal
24 from the Ninth Circuit, he immediately interrupted his own process, moving to stay the
25 proceedings twice. *Id.* at ¶¶ 15, 20. The current stay of his proceedings in front of the Ninth
26 Circuit has lasted for six and a half years. *See id.* at ¶ 20. Petitioner has asked for these
27 stays so that he can pursue collateral remedies elsewhere, but Petitioner has provided no
28 reason beyond speculation that these collateral remedies will be successful, and

1 “speculation and conjecture” is insufficient to justify release under *Zadvydas. Smith*, 2019
2 U.S. Dist. LEXIS 148526 at *10–11.

3 Indeed, the reason Respondents have yet to remove Petitioner is because the Ninth
4 Circuit’s stay of removal remains in place.² Petitioner’s dilatory litigation tactics are made
5 plain by the fact that the bulk of his habeas petition asked this Court to overturn his final
6 order of removal and stay his removal despite his pending litigation—demands which the
7 Court correctly determined are improper in this posture. *See* Order (Doc. 5) at 6. “[C]ourts
8 must be sensitive to the possibility that dilatory tactics by the removable alien may serve
9 not only to put off the final day of deportation, but also to compel a determination that the
10 alien must be released because of the length of his incarceration.” *Ly v. Hansen*, 351 F.3d
11 263, 272 (6th Cir. 2003). Otherwise, courts “would encourage deportable criminal aliens
12 to raise frivolous objections and string out the proceedings” in hopes of securing release
13 under *Zadvydas. Id.* The government has not delayed Petitioner’s removal by its conduct
14 during Petitioner’s removal proceedings and his related litigation. The delay is attributable
15 almost entirely to Petitioner, who moved quickly to secure a stay of removal from the Ninth
16 Circuit, and who then dragged his feet for over seven years and has made no progress
17 whatsoever on the matters for which the stays of his petitions for review were granted. The
18 Court should not allow Petitioner to benefit from sharp litigation tactics, and it should join
19 with the majority of courts in determining that when a petitioner holds “the key that unlocks
20 his prison cell,” he should not be entitled to release under *Zadvydas. Doherty*, 943 F.2d at
21 212.

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24 ² Petitioner states in his brief that his petition for review was denied in “mid-2019” without
25 a published opinion, and the stay was lifted at that time. Petition at 16. However, the Ninth
26 Circuit’s docket for Petitioner’s consolidated petition for review does not reflect that any
27 order was issued in mid-2019 denying Petitioner’s petition for review, and, on information
28 and belief, Respondents’ internal systems have flagged Petitioner as having an active stay
of removal from the Ninth Circuit. *See generally Le v. Bondi*, No. 18-71871 (9th Cir.); *see also Le v. Bondi*, No. 18-71871, Doc. 9 (9th Cir. Sep. 21, 2018) (granting a stay of removal
“until issuance of the mandate or further order of the court”).

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

2 **A. Legal Standard**

3 Petitioner asks this Court to issue a preliminary injunction granting him immediate
4 release from custody. Respondents argue that this motion should be denied because
5 Petitioner has not demonstrated entitlement to any of the relief he requests.

6 To obtain a preliminary injunction, a petitioner must show “that he is likely to
7 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
8 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
9 the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Injunctive
10 relief is “an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 9.

11 **B. Petitioner is not likely to succeed on the merits.**

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

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

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

24 Petitioner cannot show that denying the preliminary injunction would make
25 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]
26 demonstrate that irreparable injury is likely in the absence of an injunction.”) (emphasis in
27 original). “[A] preliminary injunction will not be issued simply to prevent the possibility
28 of some remote future injury.” *Id.* “Speculative injury does not constitute irreparable

1 injury.” *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th
2 Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention
3 where he is lawfully and constitutionally detained pursuant to a final executable removal
4 order.

5 **D. The equities and public interest do not favor Petitioner.**

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

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

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

1 significant. Because Petitioner is a convicted criminal subject to a final removal order, the
2 public interest lies with the government's ability to effectuate his removal to Vietnam.

3 For the foregoing reasons, Respondents respectfully request that this Court deny the
4 Motion for a Preliminary Injunction (Doc. 8) and the Petition for Write Habeas Corpus
5 (Doc. 1).

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RESPECTFULLY SUBMITTED December 23, 2025.

TIMOTHY COURCHINE
United States Attorney
District of Arizona

s/ Brooks Chupp

BROOKS CHUPP
Assistant United States Attorney
Attorneys for Respondents

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/M. Beickert
United States Attorney's Office