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

Toan Sy Le,

Petitioner,

v.

Fred Figueroa, et al.,

Respondents.

Case No: CV-25-04130-PHX-SMB (CDB)

**Reply in Support of Petition for Writ of
Habeas Corpus and Motion for
Preliminary Injunction**

INTRODUCTION

Petitioner Toan Sy Le, a lawful permanent resident who has resided in the United States since 1995, respectfully submits this reply to the Government's opposition. Petitioner does not challenge his final order of removal in this habeas action; rather, he seeks release from prolonged and unjustified detention pending resolution of his post-conviction proceedings. The Government's attempt to defend Mr. Le's continued detention fails on both legal and factual grounds. Mr. Le's detention has already extended for months with no end in sight, even though he has deep community ties, a record of rehabilitation, and a meritorious claim that his sole removal-triggering conviction is unconstitutional.


Under these circumstances, continued incarceration serves no legitimate purpose and inflicts irreparable harm on Mr. Le and his family. Habeas corpus relief and preliminary injunctive relief are not only appropriate, but necessary to prevent manifest injustice.

As detailed below, the Government's arguments – that Mr. Le's prolonged detention is lawful, that habeas relief is unavailable, and that injunctive relief is unwarranted – are without merit. Petitioner will show that (1) his ongoing detention violates due process and exceeds statutory authority given his unique situation, (2) this Court has clear jurisdiction to grant habeas relief and order his release notwithstanding the Government's procedural objections, and (3) all factors for a preliminary injunction weigh decisively in Petitioner's favor. Mr. Le's lawful permanent resident status, extensive family and community ties, and evidence of rehabilitation underscore that he is neither a flight risk nor a danger. He has raised substantial constitutional claims under *Padilla v. Kentucky*, 559 U.S. 356 (2010), which form the basis of active post-conviction relief proceedings challenging the validity of his 2002 conviction. If successful, that challenge would eliminate the sole basis for his removal. In the meantime, every additional day of detention causes Mr. Le and his U.S. citizen family irreparable harm, and it is contrary to the public interest to needlessly jail a long-term resident with a strong case and spotless record since his decades-old offense.

For these reasons, the Court should grant the writ of habeas corpus or, at minimum, issue a preliminary injunction ordering Mr. Le's immediate release from custody pending final resolution of his habeas and post-conviction claims.

ARGUMENT

I. Petitioner's Lawful Status, Rehabilitation, and Deep Community Ties

Mr. Le's personal history and equities are compelling and supported by the record. He entered the United States as a refugee in 1995 and is a lawful permanent resident. He has built a life firmly rooted in his community and family and is the devoted father of two U.S.-citizen daughters. His older daughter, Lillian Le (born )³, was raised primarily by Mr. Le after her biological mother was no longer present in her life from infancy. His younger daughter, Courtney Le, is ten years old. While Mr. Le's wife provides day-to-day caregiving, Mr. Le has been the family's principal financial supporter and an essential parent, providing stability, guidance, and support.

Beyond his family ties, Mr. Le is a small business owner and productive community member. He has a long history of gainful employment and entrepreneurship in Arizona, including owning and operating local nail salon businesses that provide jobs and services in his community. He has maintained a continuous residence in the United States since 1995 and has no ties to any other country that could draw him away. Indeed, his "life is entrenched here in the U.S.".

Importantly, Mr. Le's record since his sole criminal offense in 2002 has been spotless. Over the 23 years since that conviction for a nonviolent drug offense, he has not re-offended. On the contrary, he has demonstrated rehabilitation and upstanding conduct. In 2004, Mr. Le was the victim of a violent crime (kidnapping and assault) and cooperated with law enforcement, obtaining certification for a U visa as a crime victim. He filed a U visa petition with USCIS that remains pending, reflecting both his willingness to assist

authorities and the humanitarian equities in his favor. Far from posing any threat, Mr. Le has been recognized as someone worthy of protection due to the harm he suffered.

Respondents identify no evidence that Mr. Le is a danger to the community or a risk of flight. His longstanding LPR status, family responsibilities, and business ties make clear he has every reason to remain and abide by the law. In fact, even after Mr. Le was ordered removed years ago, he lived openly in the community for many years, continuing to raise his family and run his business, with no indication that ICE saw any need to take him into custody. He did not abscond or go into hiding; he remained available to authorities at all times. This history demonstrates that Mr. Le can be trusted to appear for any proceedings as required and that preventive detention is unnecessary. As the record confirms, He does not pose a security threat to the U.S. and there is no risk of flight. His longstanding residence, close family ties, and community ties strongly weigh against flight.

In sum, Mr. Le's character, history, and circumstances show that continued detention is extraordinarily punitive and unwarranted in his case. Jailing a longtime lawful resident and essential parent and principal financial supporter to U.S. children – a man who has shown rehabilitation and even helped law enforcement – serves no valid purpose. This context must inform the Court's analysis of the legality of Mr. Le's detention and the equitable factors supporting immediate relief.

II. Prolonged Detention Under These Circumstances is Unlawful and Unconstitutional

Respondents' opposition does not carry their burden to justify continued civil detention on this record. Although the Government has authority to detain certain

noncitizens with final removal orders for a limited period, that authority is constrained by statute and the Constitution and must remain reasonably related to the legitimate civil purpose of effectuating removal. Mr. Le has now been detained for months, removal is not shown to be significantly likely in the reasonably foreseeable future, and Respondents have not identified any concrete, near-term removal plan. Under these circumstances, continued detention exceeds the permissible bounds recognized in *Zadvydas* and violates the Fifth Amendment's guarantee of due process.

1. Statutory Framework Governing Respondents' Detention Authority (8 U.S.C. §§ 1231 and 1226)

Respondents' Response proceeds on the premise that Petitioner is detained under 8 U.S.C. § 1231—i.e., post-final order detention. Respondents expressly invoke the statutory 90-day “removal period,” and cite 8 U.S.C. § 1231(a)(1)(A)–(B) and § 1231(a)(2) as the governing framework for mandatory detention during that period. (Resp., Doc. 18 at 4). Respondents further rely on § 1231(a)(6), as construed by *Zadvydas v. Davis*, 533 U.S. 678 (2001), to argue that post-removal-period detention is permissible so long as removal remains significantly likely in the reasonably foreseeable future. (Resp., Doc. 18 at 4–5). At the same time, however, Respondents repeatedly represent that a Ninth Circuit stay of removal remains active and is the reason removal has not occurred. Respondents state that Petitioner “obtained a stay of removal from the Ninth Circuit in 2018,” that “the stay has remained in place,” and that ICE detained Petitioner “to effectuate his removal” while that stay remains pending. (Resp., Doc. 18 at 1). Respondents further argue that “the reason Respondents have yet to remove Petitioner is because the Ninth Circuit's stay of removal

remains in place.” (Resp., Doc. 18 at 6–7). Respondents further assert in a footnote that, even if Petitioner believes a stay was lifted, “on information and belief, Respondents’ internal systems have flagged Petitioner as having an active stay of removal from the Ninth Circuit.” (Resp., Doc. 18 at 6 n.2).

These positions create a statutory timing problem that matters only for identifying the correct detention framework—not for challenging the removal order itself. Under 8 U.S.C. § 1231(a)(1)(B)(ii), when judicial review is sought and a court enters a stay of removal, the “removal period” begins on “the date of the court’s final order,” not on the date the order became administratively final. Accordingly, Respondents cannot simultaneously invoke § 1231’s mandatory “removal period” framework while also insisting that removal has been legally barred for years by an active judicial stay. Consistent with the statutory text, the Ninth Circuit has held that detention during an active court-of-appeals stay is governed by 8 U.S.C. § 1226(a), and that the source of detention authority shifts to § 1231 only after the court of appeals issues its final order. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059–60 (9th Cir. 2008). Other circuits agree; the Second Circuit held that where a judicial stay is in place, the “plain language of the statute” dictates detention proceeds under § 1226 rather than § 1231. *Hechavarria v. Sessions*, 891 F.3d 49, 58 (2d Cir. 2018). Either way, Petitioner is entitled to relief: if § 1231 governs, Respondents must satisfy *Zadvydas* by producing case-specific evidence that removal is significantly likely in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001). And if § 1226 governs because the stay remains operative, Respondents cannot rely on a

“removal period” theory and must instead justify any continued detention through meaningful, individualized process and a showing that detention is necessary.

2. Merits: Respondents Cannot Rebut Petitioner’s Showing Under *Zadvydas*

Immigration detention is civil in nature and is justified only to the extent it serves the limited purpose of effectuating removal—not as punishment. To the extent Respondents rely on 8 U.S.C. § 1231(a), Congress provides a 90-day “removal period” during which the Government is expected to carry out removal, and continued detention thereafter is permissible only for the time reasonably necessary to accomplish removal. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001). Mr. Le has been in ICE custody since July 24, 2025. As his detention approaches the presumptively reasonable six-month period recognized in *Zadvydas*, Respondents still have not identified any concrete, near-term removal plan, produced evidence that travel documents have been issued or are likely to issue on a defined timeline, or otherwise shown that removal will occur in the reasonably foreseeable future. Removal is, at best, uncertain: Mr. Le is actively pursuing state post-conviction relief that could vacate the conviction underlying the removal order, and those proceedings will take time to resolve. Under *Zadvydas*, detention that is not tied to a realistic, reasonably foreseeable removal timeline no longer bears a reasonable relation to its civil purpose and cannot be sustained. Petitioner need not wait until the six-month mark to seek relief where, as here, the lack of travel documents and the active judicial stay render removal legally and factually impossible today. *See Zadvydas*, 533 U.S. at 701 (detention must end 'once it is no longer reasonably foreseeable,' not merely after six months)

Even if the Ninth Circuit were to lift any judicial stay, that would eliminate only a legal impediment; it would not supply the missing factual predicate required by *Zadvydas*—evidence that removal is significantly likely in the reasonably foreseeable future. Courts have repeatedly rejected efforts to equate “stay lifted” (or an asserted intent to pursue travel documents) with an actual, workable removal plan, particularly where removal depends on Vietnam’s discretionary issuance of travel documents. In *Tuan Thai v. Ashcroft*, 366 F.3d 790 (9th Cir. 2004), the Ninth Circuit emphasized that the validity of the removal order was not at issue, yet continued detention could not be justified where Vietnam travel documentation was not forthcoming. Accordingly, Respondents’ theory—“once the stay is lifted, removal becomes foreseeable”—fails because it substitutes speculation for case-specific evidence of concrete steps and a realistic repatriation timeline. And if Respondents contend § 1231 is not yet operative due to the stay, prolonged detention still requires meaningful process and individualized justification under the governing detention authority; either way, indefinite detention without a realistic removal plan is unlawful.

Notably, any delay in effectuating removal is not attributable to dilatory conduct by Mr. Le, but to his good-faith pursuit of lawful post-conviction relief aimed at correcting a serious constitutional defect in the sole predicate conviction underlying the removal order. Mr. Le should not be forced to choose between continued physical confinement and exercising his right to seek judicial review of his conviction. Nor may the Government treat detention as a pressure mechanism to discourage or penalize the pursuit of post-conviction remedies. The record reflects that Mr. Le acted promptly after learning—upon his July

2025 ICE arrest and detention—of the immigration consequences of his 2002 plea and the availability of a *Padilla* claim, and that his earlier inability to file was “without fault on [his] part” because neither counsel nor the court advised him of the plea’s severe immigration consequences. Continued detention on the theory that Mr. Le must abandon a nonfrivolous constitutional challenge in order to regain his liberty would transform civil detention into a punitive measure and is incompatible with due process.

Respondents’ authorities are inapposite and, in key respects, support relief rather than defeat it. Respondents rely heavily on the premise that Petitioner’s litigation activity (including post-conviction proceedings) “tolls” the *Zadvydas* analysis. But *Zadvydas* and § 1231 draw a sharp distinction between good-faith pursuit of legal remedies and affirmative obstruction of removal. To the extent Respondents invoke pre-*Zadvydas*, out-of-circuit decisions suggesting detention may be extended where a noncitizen “hampered” removal through obstructionist conduct, those cases are factually and legally distinguishable. See, e.g., *Doherty v. Thornburgh*, 750 F. Supp. 131, 137 (S.D.N.Y. 1990); *Balogun v. INS*, 9 F.3d 347, 351 (5th Cir. 1993); *Riley v. Greene*, 149 F. Supp. 2d 1256, 1262–63 (D. Colo. 2001). Here, Respondents do not and cannot allege that Mr. Le has refused to cooperate with removal or otherwise acted to prevent repatriation within the meaning of § 1231(a)(1)(C). Instead, Mr. Le has pursued lawful, nonfrivolous remedies in good faith while Respondents identify no case-specific travel-document status, scheduled removal, or other concrete steps demonstrating a realistic timeline for repatriation. Under *Zadvydas*, detention must still bear a reasonable relation to the civil purpose of effectuating

removal, and it cannot be sustained on a punitive “fault” theory where removal is not significantly likely in the reasonably foreseeable future. 533 U.S. at 699–701.

Respondents also cite nonbinding district-court decisions to argue that litigation-related delay forecloses relief. Those cases do not help Respondents here. *Zadvydas* does not create an automatic tolling rule whenever a detainee pursues lawful remedies; the inquiry remains fact-specific and turns on whether removal is significantly likely in the reasonably foreseeable future. See, e.g., *Ahmed v. Brott*, No. 14-5000, 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015), report and recommendation adopted, 2015 WL 1542155 (D. Minn. Apr. 7, 2015). As explained above, Respondents’ stay narrative and their lack of a concrete, case-specific removal plan fail that standard.

3. Due Process Requires a Meaningful Justification for Continued Detention

Even apart from statutory limits, the Fifth Amendment demands that civil immigration detention not be arbitrary or punitive. As time passes, the Government must justify continued detention with individualized reasons, such as danger to the community or risk of flight. Here, by the Government’s own silence, there is effectively a concession that no such justification exists. Mr. Le has no recent criminal history and has demonstrated compliance with law for decades. He has “*no risk of flight*” and “*no security threat*” profile whatsoever. Any generalized government interest in detaining removable noncitizens cannot outweigh Mr. Le’s fundamental liberty interest given his specific situation. Continuing to detain him serves no cognizable purpose: it does not protect the public (as Mr. Le poses no danger) and it does not materially advance removal (since legal impediments and the possibility of vacatur of conviction mean removal is not currently

achievable). Detention under such conditions “can reasonably be found to be punitive”, which the Constitution forbids in civil immigration custody. The length of Mr. Le’s detention to date, combined with the lack of any legitimate rationale, renders it arbitrary. Each additional day behind bars is an affront to due process when balanced against the absence of flight risk or danger.

III. Habeas Corpus and Injunctive Relief Are Appropriate Remedies

The Government’s opposition further contends that habeas relief is unavailable or that this Court lacks authority to grant the requested injunction. These procedural and jurisdictional arguments are unfounded. This Court is fully empowered to address Mr. Le’s unlawful detention through the writ of habeas corpus and to grant preliminary injunctive relief to prevent further irreparable harm. No provision of the immigration laws strips this Court of jurisdiction over Mr. Le’s claim, and the relief he seeks is squarely within the Court’s equitable powers.

1. Jurisdiction Under 28 U.S.C. § 2241:

Congress has preserved the right of noncitizens to challenge the fact of their physical detention via habeas corpus. Mr. Le’s petition, filed under 28 U.S.C. § 2241, falls within the core of habeas jurisdiction: he alleges that his ongoing custody violates the Constitution and laws of the United States. Importantly, Mr. Le is not using habeas to challenge his removal order; he explicitly “*does not challenge the removal order itself*” here, focusing solely on his detention. Thus, the jurisdiction-channeling provisions of 8 U.S.C. §1252 that relate to review of removal orders (such as §§1252(a)(5) and 1252(b)(9)) do not bar this Court’s review. The Supreme Court and Ninth Circuit have made clear that district courts

retain jurisdiction over habeas petitions contesting the legality of immigration detention as a condition of confinement, as opposed to direct attacks on removal orders (see *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (Section 1252(b)(9) does not apply to claims that are not challenging a final order); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017)). Mr. Le's claim – that his prolonged detention without adequate justification or process is unlawful – is exactly the type of claim that remains within this Court's purview.

To the extent the Government invokes 8 U.S.C. §1252(f)(1) (the so-called “anti-injunction” provision), that too is unavailing. Section 1252(f)(1) prohibits federal courts from enjoining or restraining the operation of certain immigration statutes on a class-wide basis, but it expressly permits injunctions “with respect to the application of such provisions to an individual alien.” Here, Mr. Le seeks individualized relief from his detention. He is not asking the Court to categorically strike down any statute or enjoin its operation across the board – only to prevent the unlawful application of the detention statutes to him under these unique facts. This is precisely the scenario in which §1252(f) does not strip jurisdiction. Moreover, habeas corpus has traditionally been understood as a specific individual remedy; granting a writ releasing Mr. Le (or an equivalent injunction) is well within the Court's authority and does not implicate §1252(f)'s limitations.

Nor does 8 U.S.C. §1252(g) bar relief. That provision is narrowly directed at precluding review of the Executive's discretionary decisions to commence, adjudicate, or execute removal orders. Mr. Le is not challenging a discretionary decision to execute removal; indeed, he is not seeking to stop removal proceedings but rather to secure release from detention. Ordering Mr. Le's release from custody does not negate or interfere with

the final order of removal itself – it simply allows him to be at liberty (under appropriate conditions set by the Court) while he continues to litigate collateral matters. Courts have routinely distinguished between enjoining removal (which §1252(g) may bar outside the PFR context) and enjoining unlawful detention or other collateral harms, which remains permissible.

2. Appropriateness of Injunctive Relief in Habeas Context:

The Government’s suggestion that injunctive relief is “unavailable” or “inappropriate” here is misguided. A habeas petition seeks an order of release (a form of injunctive relief), and courts also grant interim relief to prevent ongoing irreparable injury pending final adjudication. In immigration detention cases, courts routinely issue narrowly tailored interim relief—such as orders of release or expedited custody determinations—directed to the lawfulness of custody, without adjudicating the validity of the underlying removal order. Here, Petitioner seeks custody-directed relief to prevent continuing loss of liberty and to ensure that any ultimate habeas decision is not rendered practically ineffectual. Properly framed, such interim relief does not “stay” the removal order; it addresses only whether continued civil confinement is lawful under the Constitution and governing detention statutes.

Finally, to the extent the Government raises any exhaustion or procedural default arguments (such as claiming Mr. Le should have pursued administrative release or similar), those fail as well. There is no statutory exhaustion requirement for habeas challenges to detention, and any discretionary review processes within ICE (like post-order custody reviews) are not adequate substitutes for judicial review. Mr. Le has already effectively

sought release through the avenues available – for instance, ICE conducted a 90-day post-order custody review and chose to keep him detained. The law does not require an exercise in futility by waiting several more months for a 180-day review when irreparable harm is ongoing now. In short, this Court has both the jurisdiction and the responsibility to hear Mr. Le’s habeas claims and to grant interim relief to prevent further harm.

IV. Petitioner Satisfies the Requirements for a Preliminary Injunction

To secure a preliminary injunction, a petitioner must show: (1) a likelihood of success on the merits (or at least serious questions going to the merits); (2) irreparable harm in the absence of relief; (3) that the balance of equities tips in the petitioner’s favor; and (4) that an injunction is in the public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Abbassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998). Mr. Le meets all four factors. Indeed, this case presents a paradigmatic example of when preliminary relief is warranted to prevent grave injustice.

A. Likelihood of Success on the Merits

Mr. Le is likely to succeed on the merits of his detention claim, and he has at minimum raised serious questions warranting interim relief. The posture of his pending post-conviction proceedings further underscores the equities and the need to preserve meaningful review while this Court adjudicates the legality of continued detention.

(i) Unlawful Detention Claim

For the reasons explained in Part II above, Petitioner has a very strong claim that continued detention violates statutory and constitutional limits. The material facts are largely undisputed: he has been detained for months, Respondents have not identified a

concrete, near-term removal plan, and he poses no demonstrated flight risk or danger. Whether analyzed under § 1231 (even assuming it applies) or under § 1226 during an active judicial stay, prolonged civil detention must remain reasonably related to its legitimate purpose and supported by meaningful, individualized justification. On this record, Respondents have offered no case-specific evidence sufficient to justify continued confinement. Thus, on the merits of the habeas petition, Mr. Le is likely to prevail in obtaining custody-directed relief.

(ii) Post-Conviction Relief (*Padilla*) Claim:

This Court need not decide the merits of Mr. Le's Arizona Rule 32 petition to resolve the detention question. It is enough at this stage that Mr. Le has presented a substantial, nonfrivolous *Padilla*-based claim that his 2002 plea was not knowing and voluntary because counsel failed to advise him of the plea's mandatory immigration consequences, and that his post-conviction proceedings are actively pending in the Arizona courts. That posture heightens the irreparable harm of continued detention (and the risk of removal) during the pendency of collateral review, and it supports interim relief to ensure that any ultimate ruling—by this Court or the state courts—is not rendered practically ineffectual.

This link between the pending post-conviction litigation and the detention analysis is critical. Under *Zadvydas*, continued detention is permissible only so long as removal is "reasonably foreseeable"—i.e., significantly likely in the reasonably foreseeable future. 533 U.S. 678, 699–701 (2001). Respondents' opposition assumes removal will become inevitable once any appellate stay is lifted. That assumption ignores the posture and strength of Mr. Le's *Padilla*-based Rule 32 claim. If Mr. Le prevails in state court—as the

record indicates is at least substantially likely—his conviction is vacated, and the Government’s asserted predicate for removability is eliminated (or, at minimum, materially altered). In that circumstance, removal cannot be treated as foreseeable on any defined timeline. Accordingly, the Government cannot carry its burden to justify continued civil detention by presuming a removal outcome that is itself likely to be erased through ongoing collateral review.

The evidence supporting Mr. Le’s Padilla claim is strong. There is nothing in the contemporaneous record from 2002 indicating that Mr. Le was ever warned that deportation would result from his plea. In fact, Mr. Le’s petition alleges that “nowhere in the 2002 plea paperwork or colloquy is there an indication that Petitioner personally understood he would be deported; a boilerplate clause about possible immigration consequences, if it existed, is insufficient”. These allegations have not been “conclusively refuted by the existing record” – indeed, the Government has not produced any evidence that Mr. Le was advised of the immigration impact. On the other hand, Mr. Le is prepared to testify that his attorney never discussed immigration at all. Such testimony, if credited, would establish deficient performance under *Padilla*.

Moreover, Mr. Le can demonstrate prejudice under *Strickland/Hill*. He has consistently affirmed that he would never have accepted the plea bargain had he known it would lead to mandatory deportation. At the time of the plea, his foremost priorities were his family and ability to remain in the U.S.; had he been properly informed, he would have insisted on going to trial or negotiating a different outcome. This claim of prejudice is eminently credible given Mr. Le’s deep roots and the draconian consequence of

deportation. The removal resulting from the conviction is, as the Supreme Court put it, a “particularly severe penalty – often termed a ‘silent sentence’”. It is self-evident that a father like Mr. Le, who fled Vietnam as a refugee and built his entire life here, would have viewed the risk of exile as far more consequential than any term of imprisonment in the plea deal. Thus, there is a strong likelihood the state court will find that “*Petitioner was prejudiced as a result*” of counsel’s failures. Indeed, Arizona law holds that if a petitioner presents a colorable claim of ineffective assistance – which Mr. Le surely has – he is entitled to an evidentiary hearing and ultimately relief.

The Government’s opposition offers little to undermine the merits of the Padilla claim. It might argue procedural points (like timeliness or retroactivity), but Mr. Le’s petition meticulously addresses those. He has invoked Arizona Rule 32.1(g) (significant change in the law) and Rule 32.1(f) (no fault untimeliness) to *excuse any delay*, noting that *Padilla* was a “game changer” that came after his conviction and that he “became fully aware” of his right to challenge the plea only after his ICE arrest in 2025. Arizona courts have discretion to avoid manifest injustice in such situations. As Mr. Le argued, it would be a “*manifest injustice*” to remove him from his family and country due to a constitutional violation that was only recognized years later. The state court is empowered to hear his claim on the merits – and when it does, the merits strongly favor Mr. Le. He has requested expedited treatment in state court because each day brings him closer to “imminent removal” and “irreparable harm” to him and his family, and the state court has every reason to act swiftly given the gravity of the claim.

In short, Petitioner has shown a high probability of success on the central issues. The Court need not conclusively decide the ultimate merits at this stage; it is enough that Mr. Le's claims are more than merely plausible – they are compelling and supported by uncontroverted evidence. At the very least, he has raised serious legal questions going to the core of his conviction and detention. This factor thus weighs strongly in favor of injunctive relief.

B. Irreparable Harm

Mr. Le is presently suffering—and will continue to suffer—irreparable harm absent prompt interim relief from this Court. The harm is immediate and not compensable: each additional day of civil confinement is a loss of liberty that cannot later be restored. Moreover, removal during the pendency of this habeas action and Mr. Le's collateral proceedings would likely deprive this Court of the ability to provide effective relief and would cause permanent family separation.

First, continued detention is inflicting profound harm on Mr. Le and his U.S.-citizen children. Mr. Le is a central parent and the family's principal financial supporter. Although his wife is providing day-to-day caregiving, detention removes Mr. Le from his parental role and cuts off the primary income supporting the household, placing his 10-year-old daughter and family at immediate risk of financial instability. Time lost with one's child, and the emotional and developmental consequences of prolonged separation from a parent, are irreparable.

Second, the risk of removal before this Court can adjudicate the detention claim creates irreparable harm for independent reasons. Petitioner does not ask this Court to

adjudicate an asylum or CAT claim; removal is relevant only because it would foreclose meaningful litigation of his pending post-conviction and reopening efforts and would render later relief ineffectual. If removed, Mr. Le would face substantial practical barriers to consulting with counsel, accessing records and witnesses, and participating in state-court and administrative proceedings; those lost opportunities cannot be recreated after the fact. To the extent return to Vietnam carries serious, irreversible consequences for Mr. Le, those consequences likewise cannot be remedied once removal occurs.

Third, detention itself materially interferes with Mr. Le's ability to vindicate his rights. Confinement restricts communication with counsel, access to legal materials and evidence, and the ability to coordinate hearings and declarations in his pending cases. The resulting impairment is not speculative; it is an ongoing, compounding injury that cannot be cured by a later favorable ruling.

Respondents' suggestion that irreparable harm is absent therefore fails. The injury from continued confinement is occurring now, and the prospect of removal before resolution would make subsequent relief largely meaningless. The irreparable-harm factor weighs decisively in Petitioner's favor.

C. Balance of Equities

The balance of equities in this case tips sharply in Mr. Le's favor. On one side of the scale is the significant, multi-faceted harm to Petitioner and his family described above. On the other side is the Government's interest in enforcing immigration laws and ensuring that removable individuals appear for removal. While that is a legitimate interest in general, in Mr. Le's specific case the Government's equitable interest is minimal to none. Releasing

Mr. Le under appropriate conditions (such as an order of supervision or bond) will not prejudice the Government's ultimate ability to enforce his removal if it remains legally valid. Mr. Le has shown that he will cooperate and appear as required – remember that he complied with all legal processes for years while out of custody. He “lived openly...for many years” post-order, indicating he has no intent to flee. If anything, his incentive to comply is now stronger than ever, since he is fighting to vacate his conviction and needs to be present here to see that through. In short, the Government faces no meaningful hardship by releasing Mr. Le. They can impose regular check-ins, travel restrictions, or other conditions if needed. The administrative burden of supervising Mr. Le in the community is trivial compared to the routine burdens ICE already manages. While *Rodriguez Diaz v. Garland* addressed statutory bond hearings generally, it left open as-applied due process challenges. Given Mr. Le's prolonged detention approaching six months and his substantial equities, placing the burden on him to prove a negative (that he is not a danger) would violate Due Process in this specific instance. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (noting due process checks remain for 'prolonged' detention).

In contrast, the hardship to Mr. Le of continued detention is enormous. The equities weigh heavily on the side of freedom: Mr. Le's decades of lawful residency, his role as a father and provider, and his stake in the outcome of his post-conviction case all counsel in favor of release. Continuing detention would effectively punish Mr. Le (and punish his innocent family) despite his likely entitlement to relief – a profoundly inequitable result. The “balance of hardships tips sharply in the petitioner's favor.” This aligns with the Ninth

Circuit's flexible sliding-scale approach, where a strong showing of hardships can compensate for a lesser (but still serious) showing on the merits. Here, Mr. Le's case is strong on both fronts, making the balance of equities an easy call.

Furthermore, consider that Mr. Le's release will allow him to better assist in his own legal cases, potentially speeding their resolution, which in turn benefits the Government's interest in finality. Keeping him detained and fighting on multiple fronts (habeas, state court, possibly appeals) actually prolongs the overall saga, whereas releasing him removes the need for urgent federal court intervention on detention issues and allows focus on the merits. Thus, even from the Government's perspective, release is a sound and fair course.

The Government's opposition has not articulated any specific harm it would suffer from Mr. Le's release – beyond the abstract notion that someone with a final order “should” be detained. But abstract interests cannot outweigh concrete individual hardships. If the Court grants relief and later Mr. Le's legal efforts fail, the Government can re-detain and remove him then. That hypothetical scenario does not outweigh the very real injury he is suffering now. Equity demands that, pending the outcome of those efforts, he not be subjected to unnecessary misery.

D. Public Interest

Finally, the public interest strongly favors granting a preliminary injunction. The public has multiple interests at stake here, and they all point toward Mr. Le's release.

There is a strong public interest in ensuring that civil immigration detention remains lawful, nonpunitive, and subject to meaningful judicial review. The public does not benefit from continued detention of an individual who poses no demonstrated danger or flight risk,

particularly where Respondents have not identified a concrete, near-term removal plan. The public interest is also served by family stability and the well-being of U.S.-citizen children, and by the efficient use of government resources where less restrictive alternatives to detention are available.

The public interest also lies in family unity and the well-being of citizen children. It is not in the public's interest to have U.S. citizen children separated from their loving parent and possibly forced onto public assistance or into foster care due to a parent's detention or deportation. Keeping Mr. Le detained (or removing him) would destabilize his family, which can have ripple effects in the community. By contrast, allowing him to remain free and with his children supports family stability, productivity (he can run his business and contribute to the economy), and community health. These are positive public goods.

The Government may cite a general public interest in the execution of final removal orders. But that interest does not support unnecessary civil confinement that exceeds statutory and constitutional limits. Here, narrowly tailored interim relief serves the public interest by ensuring that detention remains tethered to its legitimate purpose, and by preserving the practical ability of the courts and the parties to complete pending legal proceedings without rendering later relief ineffectual.

Furthermore, Mr. Le is the beneficiary of a pending U-Visa petition based on his cooperation with law enforcement as a victim of violent crime. Facilitating his removal before USCIS can adjudicate his petition would undermine the Congressional intent of the VTVPA, which was designed to protect cooperating victims and keep them in the country.

In sum, every relevant public interest consideration favors Mr. Le's immediate release. Upholding constitutional rights, preventing irreparable harm, preserving family unity, and ensuring that justice is done – these interests far outweigh any abstract interest in continued detention for a removable individual. The public is best served by an outcome that comports with justice and humanity, which in this case means granting the preliminary injunction.

V. Rebuttal of Respondents' Remaining Threshold Arguments

Respondents' remaining procedural and jurisdictional objections provide no basis to deny relief.

A. This petition states a cognizable § 2241 claim. Habeas corpus is the traditional vehicle to challenge unlawful physical confinement and to seek release from custody. Petitioner challenges only the legality of continued civil detention, not the underlying removal order, and the requested remedy—release (or a prompt, meaningful custody determination)—falls squarely within the core of habeas relief. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (habeas jurisdiction to review post-order detention); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

B. Venue and respondent are proper. Petitioner filed in the district of confinement and named his immediate custodian as Respondent, satisfying the settled “district of confinement/immediate custodian” rule for core habeas petitions seeking release. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35, 442–43 (2004).

C. Exhaustion is not a bar. Respondents point to no statute requiring administrative exhaustion for a constitutional challenge to prolonged detention under § 2241. Any discretionary ICE custody review is not an adequate substitute for judicial review of whether continued detention has become unlawful under *Zadvydas* and the Fifth Amendment.

D. Section 1252 does not strip this Court of jurisdiction over a detention-only habeas claim. Respondents may invoke the INA’s channeling and jurisdiction-limiting provisions to argue this Court lacks authority. But Petitioner does not ask this Court to review, vacate, or enjoin the removal order; he challenges only the legality of continued custody. The Supreme Court has repeatedly recognized habeas jurisdiction over immigration detention claims, including post-order detention subject to *Zadvydas*. See *Zadvydas*, 533 U.S. at 687–88; *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (explaining channeling provisions do not convert independent detention challenges into “review of an order of removal”); *Reno v. AADC*, 525 U.S. 471, 482 (1999) (narrow construction of § 1252(g)).

E. The requested preliminary relief is not an impermissible “stay of removal.” Petitioner seeks relief directed to custody—release on conditions (or other narrowly tailored interim relief) to prevent ongoing unlawful detention while this Court adjudicates the habeas claim. Framed this way, the relief does not adjudicate removability or invalidate the removal order; it addresses only the legality of continued confinement.

F. Alternative relief (if the Court deems it appropriate). Petitioner's principal request is release because continued detention is unlawful on this record. In the alternative—particularly if the Court concludes detention is governed by § 1226 during an active judicial stay—Petitioner would accept an order requiring a prompt, meaningful custody hearing at which the Government bears the burden to justify continued detention and the Court can consider conditions of release sufficient to mitigate any asserted flight-risk concerns.

In short, none of Respondents' remaining threshold arguments undermines Petitioner's showing that continued civil detention is unlawful and that interim relief is warranted.

CONCLUSION

For the foregoing reasons, Petitioner Toan Sy Le respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order his immediate release from immigration detention, subject to appropriate conditions if necessary. In the alternative, Petitioner requests narrowly tailored interim relief—such as an order of release pending final adjudication of this § 2241 detention claim, or other relief the Court deems just—to prevent ongoing irreparable injury and to ensure that any ultimate habeas decision is not rendered practically ineffectual.

Petitioner does not ask this Court to adjudicate the merits of his state post-conviction proceedings or the validity of the underlying removal order. Rather, the existence of an actively pending, nonfrivolous *Padilla*-based collateral challenge underscores the legal and practical uncertainty surrounding removal and further demonstrates why continued civil

detention—without a concrete, near-term removal plan and without meaningful individualized justification—cannot be sustained. Because Petitioner’s confinement has ceased to bear a reasonable relation to its civil purpose, and because continued detention inflicts ongoing harm that cannot later be remedied, the Court should grant the writ or interim relief as warranted and order any further measures necessary to end unlawful prolonged detention.

Dated: December 24, 2025.

Respectfully submitted,

/s/Daniel M Huynh

Daniel M Huynh, Esq
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2025, I electronically filed the foregoing Reply in Support of Petition for Writ of Habeas Corpus and Motion for Preliminary Injunction with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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