

1 TIMOTHY COURCHAINE
2 United States Attorney
3 District of Arizona
4 BROOKS CHUPP
5 Assistant United States Attorney
6 Arizona State Bar No. 040231
7 Two Renaissance Square
8 40 North Central Avenue, Suite 1800
9 Phoenix, Arizona 85004-4449
10 Telephone: (602) 514-7500
11 Fax: (602) 514-7760
12 Email: brooks.chupp@usdoj.gov
13 *Attorneys for Respondents*

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

16 Vinh Van Phan,

17 Petitioner,

18 v.

19 David R. Rivas, *et al.*,

20 Respondents.

No. CV-25-04316-PHX-DJH (JZB)

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

21 **I. INTRODUCTION**

22 Respondents, by and through counsel, respond to the Petition for a Writ of Habeas
23 Corpus (Doc. 1) and Motion for a Preliminary Injunction (Doc. 3). Petitioner Vinh Van
24 Phan is a citizen and national of Vietnam and a criminal alien convicted of forgery,
25 burglary, theft, possession of a controlled substance, and witness tampering. An
26 immigration judge ordered that he be removed to Vietnam after his conviction. He was
27 most recently detained by U.S. Immigration and Customs Enforcement (“ICE”) on July 24,
28 2025, to effectuate his removal to Vietnam. In this habeas petition, Petitioner seeks a Court
order directing ICE to release him immediately from immigration detention. The Court
should deny the Petition and Motion. Petitioner’s detention is statutorily authorized and
constitutionally permissible because he has failed to meet his burden to establish that his

1 removal is not likely to occur in the reasonably foreseeable future.

2 **II. FACTUAL BACKGROUND**

3 Petitioner entered the United States on April 9, 1981. Declaration of Lamont Tillery,
4 Deportation Officer, ICE Enforcement and Removal Operations, attached as Exhibit A, at
5 ¶ 6. Petitioner was convicted of forgery twice: once in 1999, once in 2003. *Id.* at ¶¶ 7–8.
6 Because of these convictions, ICE began removal proceedings against Petitioner on June
7 16, 2003, under Immigration and Nationality Act (“INA”) section 237(a)(2)(A)(ii), as an
8 alien convicted of two or more crimes of moral turpitude.¹ *Id.* at ¶ 9. An immigration judge
9 granted Petitioner cancellation of removal on December 4, 2003. *Id.* at ¶ 10. On June 7,
10 2004, Petitioner was convicted of accessing a computer with the intent to defraud. *Id.* at
11 ¶ 11. ICE again began removal proceedings against Petitioner, and an immigration judge
12 ordered him removed to Vietnam on October 28, 2004. *Id.* at ¶¶ 12–13. ICE has released
13 Petitioner on an order of supervision seven times since he was ordered removed. *Id.* at ¶¶
14 14, 17, 18, 20, 23, 26, 29. However, almost every time Petitioner was released, he violated
15 the conditions of his release by committing additional crimes. *Id.* at ¶¶ 15 (burglary and
16 grand theft), 19 (attempted possession of a controlled substance), 24 (possession of a
17 narcotic controlled substance), 27 (felon in possession of a firearm and tampering with a
18 witness by physical force or threat), 31 (use of a controlled substance in violation of his
19 supervised release). Petitioner returned to immigration custody most recently on July 24,
20 2025. *Id.* at ¶ 34. ICE has finalized a travel document request, which will be submitted to
21 Vietnam once a removal date is determined. *See id.* at ¶ 35.

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

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

24 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
25 678 (2001), because his removal is not “reasonably foreseeable.” However, Petitioner
26 cannot, as *Zadvydas* requires to be entitled to release, provide “good reason to believe” that
27 his removal is not likely to occur in the reasonably foreseeable future. *Zadvydas v. Davis*,

28

¹ INA § 212 is codified at 8 U.S.C. § 1227.

1 533 U.S. 678, 701 (2001)

2 An alien who is ordered removed must be detained for 90 days once their removal
3 order becomes administratively final.² 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien
4 has not left the United States voluntarily or been removed during this 90-day period, the
5 alien will generally be granted supervised release. 8 U.S.C. § 1231(a)(3). However, an alien
6 ordered removed under 8 U.S.C. § 1227(a)(2) may be detained for a longer period. 8 U.S.C.
7 § 1231(a)(6). The INA does not authorize indefinite detention. *Zadvydas*, 533 U.S. at 689.
8 An alien may be detained for up to six months pursuant to a final order of removal, after
9 which, the alien may be released if they can “provide[] good reason to believe that there is
10 no significant likelihood of removal in the reasonably foreseeable future” and the
11 Government fails to show otherwise. *Id.* at 701. At this time, an alien is not presumed to
12 be entitled to release; the alien must show that their detention is “indefinite—i.e., that there
13 is good reason to believe that there is no significant likelihood of removal in the reasonably
14 foreseeable future.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting
15 *Zadvydas*, 533 U.S. at 701) (internal quotation marks removed).

16 Petitioner was ordered removed under 8 U.S.C. § 1227(a)(2). *See* Exhibit A at ¶ 6,
17 *see also supra* fn. 1. As discussed above, an alien ordered removed under this section may
18 be detained beyond the initial 90-day period. 8 U.S.C. § 1231(a)(6).

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

27
28 ² A removal order may become administratively final in a number of different
circumstances, including upon an alien’s waiver of appeal rights or the expiration of their
time to appeal. 8 C.F.R. § 1241.1.

1 *Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its
2 holding in *Zadvydas* was concerned with detention that is “indefinite and potentially
3 permanent,” and for aliens whose removal is “no longer practically attainable.” *See*
4 *Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact
5 that an alien’s detention “lacks a certain end date” does not render their detention
6 unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).
7 Further, “mere delay in the issuance of a travel document is insufficient” to justify relief
8 under *Zadvydas* “particularly where . . . efforts to obtain the travel document are ongoing.”
9 *Nasr v. Larocca*, 2016 U.S. Dist. LEXIS 90343 at *11–12 (C.D. Cal. June 1, 2016); *see*
10 *also Roe v. Oddo*, 2025 U.S. Dist. LEXIS 214463 at *20–26. (W.D. Pa. Oct. 30, 2025);
11 *Chen v. Banike*, 2015 U.S. Dist. LEXIS 105145 (D. Minn. July 14, 2025) at *10–11, *R&R*
12 *adopted at* 2015 U.S. Dist. LEXIS 104914 (Aug. 11, 2015) (“For there to be no significant
13 likelihood of removal in the reasonably foreseeable future, there must be some indication
14 that the government is either unwilling to remove an alien or incapable of doing so due to
15 seemingly insurmountable barriers[.]”); *Smith v. Simon*, 2019 U.S. Dist. LEXIS 148526 at
16 *10–11 (N.D. Ohio July 17, 2019) (holding that *Zadvydas* requires a petitioner to show
17 “something more than the mere passage of time” and “something more than speculation
18 and conjecture”) (internal quotation marks omitted); *Ahmed v. Brott*, 2015 U.S. Dist.
19 LEXIS 45346 at *12–13 (D. Minn. Mar. 17, 2015) (collecting cases).

20 Petitioner’s removal is practically attainable, and his detention is not “potentially
21 permanent.” *Demore*, 538 U.S. at 528. Petitioner must show that there is some practical
22 impediment to his removal, and Petitioner has presented this Court with absolutely nothing
23 that suggests that he cannot be removed. Petitioner claims that “ICE does not have
24 documentation that would satisfy the Vietnamese government,” Petition at ¶ 36. However,
25 it is not at all clear that Petitioner’s lack of documentation is any bar to his repatriation. In
26 fact, ICE’s most recent travel document request implies that Vietnam is required to issue
27 travel documents for Petitioner unless it can prove to the United States’ satisfaction that
28 Petitioner is not a Vietnamese national. *See* Exhibit B at 1. Mere speculation for why travel

1 documents have not yet been issued cannot be sufficient grounds for release under
2 *Zadvydas*. See *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001); *Idowu v.*
3 *Ridge*, 2003 U.S. Dist. LEXIS 13503 at *13 (N.D. Tex. Aug. 4, 2003) (“Speculation and
4 conjecture as to reasons for governmental inaction do not suffice to carry petitioner’s
5 burden.”). Even if this Court were to disagree, ICE has recently succeeded in removing
6 many Vietnamese nationals who were ordered removed over a decade ago, suggesting that
7 any impediment which once existed no longer exists.³ ICE has prepared a request for travel
8 documents, and its “efforts to obtain the travel document are ongoing.” Exhibit A at ¶ 13;
9 *Nasr*, 2016 U.S. Dist. LEXIS 90343 at *11–12. In short, Petitioner has not provided “good
10 reason” to question that his removal is likely to occur in the reasonably foreseeable future,
11 and Respondents have shown that his removal is likely to occur in the reasonably
12 foreseeable future, due to his pending request for travel documents. Thus, Petitioner has
13 failed to show that his detention is unconstitutionally indefinite under *Zadvydas*, so his
14 habeas petition should be denied. See *Zadvydas*, 533 U.S. at 700–01.

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

16 **A. Legal Standard**

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

20 To obtain a preliminary injunction, a petitioner must show “that he is likely to
21 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
22 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
23 the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Injunctive

24
25 ³ See, e.g., *Long Phi Do v. Rivas*, No. 2:25-cv-01885-KLM (ASB) Docs. 23-24 (case
26 mooted by the petitioner’s removal to Vietnam). The undersigned is also aware of several
27 instances where this Court has found that a Vietnamese national ordered removed was not
28 “significantly likely to be removed in the reasonably foreseeable future,” only for Vietnam
to issue travel documents anywhere from a week to about a month later. See *Bui v.*
Archambeault, No. 2:25-cv-03774-KML (JFM); *Ho v. Archambeault*, No. 2:25-cv-03753-
JTT (JZB); *Quan v. Martinez*, No. 2:25-cv-02407-PHX-DJH (JFM).

1 relief is “an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 9.

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

3 Petitioner requests that this Court order his immediate release. As argued in Section
4 III above, Petitioner’s habeas claim should not be granted. For these same reasons,
5 Petitioner cannot show that he is “likely to succeed on the merits,” as is required for
6 injunctive relief. *Winter*, 555 U.S. at 20. Thus, this Court should issue neither a temporary
7 restraining order nor a preliminary injunction.

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

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

16 Petitioner cannot show that denying the temporary restraining order would make
17 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]
18 demonstrate that irreparable injury is likely in the absence of an injunction.”) (emphasis in
19 original). “[A] preliminary injunction will not be issued simply to prevent the possibility
20 of some remote future injury.” *Id.* “Speculative injury does not constitute irreparable
21 injury.” *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th
22 Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention
23 where he is lawfully and constitutionally detained pursuant to a final executable removal
24 order.

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

26 The third and fourth factors, “harm to the opposing party” and the “public interest,”
27 “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “In exercising
28 their sound discretion, courts of equity should pay particular regard for the public

1 consequences in employing the extraordinary remedy of injunction.” *Weinberger v.*
2 *Romero-Barcelo*, 456 U.S. 305, 312 (1982).

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

13 While it is in the public interest to protect constitutional rights, if the petitioner has
14 not shown a likelihood of success on the merits of that claim—as Petitioner has not shown
15 here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d
16 815, 826 (9th Cir. 2005). And the public interest lies in the Executive’s ability to enforce
17 U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
18 742, 750 (9th Cir. 1991) (“Control over immigration is a sovereign prerogative.”). Given
19 Petitioner’s undisputed criminal history and likelihood of removal, the public and
20 governmental interest in permitting his continued detention to effectuate removal is
21 significant. Because Petitioner is a convicted criminal subject to a final removal order, the
22 public interest lies with the government’s ability to effectuate his removal.

23 For the foregoing reasons, Respondents respectfully request that this Court deny the
24 Petition for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Preliminary Injunction
25
26
27
28

1 (Doc. 3).

2 RESPECTFULLY SUBMITTED December 19, 2025.

3
4 TIMOTHY COURCHAINED
5 United States Attorney
6 District of Arizona

7 *s/ Brooks Chupp*
8 BROOKS CHUPP
9 Assistant United States Attorney
10 *Attorneys for Respondents*

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on this 19th day of December, 2025, I electronically transmitted
13 the attached document to the Clerk's Office using the CM/ECF System for filing.

14
15 *s/M. Simeonoff*
16 United States Attorney's Office

17
18
19
20
21
22
23
24
25
26
27
28