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

12 Tanh Van Tran,

13 Petitioner,

14 v.  
15

16 David R. Rivas, *et al.*

17 Respondents.  
18

No. CV-25-04329-PHX-MTL (CDB)

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

19 **I. INTRODUCTION**

20 Respondents, by and through counsel, respond to the Petition for a Writ of Habeas  
21 Corpus (Doc. 1) and Motion for a Preliminary Injunction (Doc. 3). Petitioner Tanh Van  
22 Tran is a citizen and national of Vietnam and a criminal alien convicted of burglary and  
23 assault with a firearm. An immigration judge ordered that he be removed to Vietnam after  
24 his conviction. He was most recently detained by U.S. Immigration and Customs  
25 Enforcement ("ICE") on June 17, 2025, to effectuate his removal. In this habeas petition,  
26 Petitioner seeks a Court order directing ICE to release him immediately from immigration  
27 detention. The Court should deny the Petition and Motion. Moreover, Petitioner's detention  
28 is statutorily authorized and constitutionally permissible because he has failed to meet his

1 burden to establish that his removal is not likely to occur in the reasonably foreseeable  
2 future.

3 **II. FACTUAL BACKGROUND**

4 Petitioner entered the United States on May 16, 1979. Declaration of Jorge  
5 Hernandez, Deportation Officer, ICE Enforcement and Removal Operations, attached as  
6 Exhibit A, at ¶ 4. Petitioner was convicted of burglary in February 1995 and assault with a  
7 firearm in May 1998. *Id.* at ¶¶ 6–7. Because of these convictions, ICE began removal  
8 proceedings against Petitioner in February 2002. *Id.* at ¶ 6. An immigration judge ordered  
9 him removed to Vietnam on March 14, 2002. *Id.* at ¶ 9. On March 20, 2002, the former  
10 Immigration and Nationality Services (“INS”) requested travel documents from Vietnam  
11 to facilitate Petitioner’s removal. *Id.* at ¶ 10. On January 27, 2003, Vietnam denied the  
12 travel document request because Vietnam and the United States had not yet finalized a  
13 repatriation agreement. *Id.*; *see also* Exhibit B. Petitioner was returned to immigration  
14 custody six times between 2004 and 2019 pursuant to criminal convictions, but he was  
15 released each time due to ICE’s inability to obtain a travel document. *Id.* at ¶ 11. Petitioner  
16 returned to immigration custody most recently on June 17, 2025. *Id.* at ¶ 12. ICE has  
17 finalized a travel document request, which will be submitted to Vietnam once a removal  
18 date is determined. *See id.* at ¶ 13.

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

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

21 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.  
22 678 (2001), because his removal is not “reasonably foreseeable.” However, Petitioner  
23 cannot, as *Zadvydas* requires to be entitled to release, provide “good reason to believe” that  
24 his removal is not likely to occur in the reasonably foreseeable future. *Zadvydas v. Davis*,  
25 533 U.S. 678, 701 (2001)

26 An alien who is ordered removed must be detained for 90 days once their removal  
27 order becomes administratively final.<sup>1</sup> 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien

28 <sup>1</sup> A removal order may become administratively final in a number of different

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

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

16 Petitioner may only be granted release from detention if he can show “good reason  
17 to believe that there is no significant likelihood of removal in the reasonably foreseeable  
18 future.” *Zadvydas*, 533 U.S. at 701. Courts have held that Petitioners have met this bar  
19 when no country would agree to accept the alien or when the alien’s home country had no  
20 repatriation treaty with the United States, *id.* at 686, when the government “concede[d] that  
21 it [was] no longer even involved in repatriation negotiations” with the alien’s home  
22 country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and when the alien had been  
23 detained for five years and had “won relief at every administrative level.” *Nadarajah v.*  
24 *Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its  
25 holding in *Zadvydas* was concerned with detention that is “indefinite and potentially  
26 permanent,” and for aliens whose removal is “no longer practically attainable.” *See*  
27 \_\_\_\_\_  
28 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 *Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact  
2 that an alien’s detention “lacks a certain end date” does not render their detention  
3 unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).  
4 Further, “mere delay in the issuance of a travel document is insufficient” to justify relief  
5 under *Zadvydas* “particularly where . . . efforts to obtain the travel document are ongoing.”  
6 *Nasr v. Larocca*, 2016 U.S. Dist. LEXIS 90343 at \*11–12 (C.D. Cal. June 1, 2016); *see*  
7 *also Roe v. Oddo*, 2025 U.S. Dist. LEXIS 214463 at \*20–26. (W.D. Pa. Oct. 30, 2025);  
8 *Chen v. Banike*, 2015 U.S. Dist. LEXIS 105145 (D. Minn. July 14, 2025) at \*10–11, *R&R*  
9 *adopted at* 2015 U.S. Dist. LEXIS 104914 (Aug. 11, 2015) (“For there to be no significant  
10 likelihood of removal in the reasonably foreseeable future, there must be some indication  
11 that the government is either unwilling to remove an alien or incapable of doing so due to  
12 seemingly insurmountable barriers[.]”); *Smith v. Simon*, 2019 U.S. Dist. LEXIS 148526 at  
13 \*10–11 (N.D. Ohio July 17, 2019) (holding that *Zadvydas* requires a petitioner to show  
14 “something more than the mere passage of time” and “something more than speculation  
15 and conjecture”) (internal quotation marks omitted); *Ahmed v. Brott*, 2015 U.S. Dist.  
16 LEXIS 45346 at \*12–13 (D. Minn. Mar. 17, 2015) (collecting cases).

17 Petitioner’s removal is practically attainable, and his detention is not “potentially  
18 permanent.” *Demore*, 538 U.S. at 528. Petitioner must show that there is some practical  
19 impediment to his removal, and Petitioner has presented this Court with absolutely nothing  
20 that suggests that he cannot be removed. Petitioner claims that “ICE does not have  
21 documentation that would satisfy the Vietnamese government,” Petition at ¶ 36. However,  
22 it is not at all clear that Petitioner’s lack of documentation is any bar to his repatriation.  
23 Mere speculation for why travel documents have not yet been issued cannot be sufficient  
24 grounds for release under *Zadvydas*. *See Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D.  
25 Cal. 2001); *Idowu v. Ridge*, 2003 U.S. Dist. LEXIS 13503 at \*13 (N.D. Tex. Aug. 4, 2003)  
26 (“Speculation and conjecture as to reasons for governmental inaction do not suffice to carry  
27 petitioner’s burden.”). Even if this Court were to disagree, ICE has recently succeeded in  
28 removing many Vietnamese nationals who were ordered removed over a decade ago,

1 suggesting that any impediment which once existed no longer exists.<sup>2</sup> ICE has prepared a  
2 request for travel documents, and its “efforts to obtain the travel document are ongoing.”  
3 Exhibit A at ¶ 13; *Nasr*, 2016 U.S. Dist. LEXIS 90343 at \*11–12. In short, Petitioner has  
4 not provided “good reason” to question that his removal is likely to occur in the reasonably  
5 foreseeable future, and Respondents have shown that his removal is likely to occur in the  
6 reasonably foreseeable future, due to his pending request for travel documents. Thus,  
7 Petitioner has failed to show that his detention is unconstitutionally indefinite under  
8 *Zadvydas*, so his habeas petition should be denied. *See Zadvydas*, 533 U.S. at 700–01.

#### 9 **IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF**

##### 10 **A. Legal Standard**

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

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

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

20 Petitioner requests that this Court order his immediate release. As argued in Section  
21 III above, Petitioner’s habeas claim should not be granted. For these same reasons,  
22 Petitioner cannot show that he is “likely to succeed on the merits,” as is required for  
23 injunctive relief. *Winter*, 555 U.S. at 20. Thus, this Court should issue neither a temporary  
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25 <sup>2</sup> *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-  
JJT (JZB); *Quan v. Martinez*, No. 2:25-cv-02407-PHX-DJH (JFM).

1 restraining order nor a preliminary injunction.

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

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

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

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

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

25 An adverse decision here would negatively impact the public interest by  
26 jeopardizing "the orderly and efficient administration of this country's immigration laws."  
27 *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ.*  
28 *Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers

1 irreparable injury whenever an enactment of its people or their representatives is  
2 enjoined.”). The public has a legitimate interest in the government’s enforcement of its  
3 laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he  
4 district court should give due weight to the serious consideration of the public interest in  
5 this case that has already been undertaken by the responsible state officials in Washington,  
6 who unanimously passed the rules that are the subject of this appeal.”).

7 While it is in the public interest to protect constitutional rights, if the petitioner has  
8 not shown a likelihood of success on the merits of that claim—as Petitioner has not shown  
9 here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d  
10 815, 826 (9th Cir. 2005). And the public interest lies in the Executive’s ability to enforce  
11 U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d  
12 742, 750 (9th Cir. 1991) (“Control over immigration is a sovereign prerogative.”). Given  
13 Petitioner’s undisputed criminal history and likelihood of removal, the public and  
14 governmental interest in permitting his continued detention to effectuate removal is  
15 significant. Because Petitioner is a convicted criminal subject to a final removal order, the  
16 public interest lies with the government’s ability to effectuate his removal.

17 For the foregoing reasons, Respondents respectfully request that this Court deny the  
18 Petition for a Writ of Habeas Corpus (Doc. 1).

19 RESPECTFULLY SUBMITTED December 19, 2025.

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**CERTIFICATE OF SERVICE**

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

s/M. Simeonoff  
United States Attorney's Office