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6 IN THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 OUSIN SAEPHANH,
9
10 Petitioner,
11 v.
12 TONYA ANDREWS, et al.,¹
13 Respondents.

CASE NO. 1:25-CV-1668-DAD-SCR

**MEMORANDUM OPPOSING PETITIONER'S
MOTION FOR TEMPORARY RESTRAINING
ORDER**

14 Within three years of arriving in the United States as an adult, Petitioner Ousin Saephanh, a
15 native and citizen of Laos, was convicted of an aggravated felony (specifically, possession with intent to
16 distribute and importation of about 26 pounds of opium) and sentenced to more than five years in prison.
17 Immigration statutes required his removal, and the Executive Branch secured a removal order in 1995.
18 For whatever reason, however, he could not be removed to Laos at that time and was released on an
19 order of supervision (OSUP).

20 In the last three months, however, the Government has been able to secure Saephanh's removal
21 to Laos, and he will be removed within the next two weeks. To aid in removing Saephanh, the
22 Government revoked his release and detained him under 8 U.S.C. § 1231(a).

23 Saephanh now argues that his detention violates 8 C.F.R. §§ 241.4 and 241.13 and the Fifth
24 Amendment's Due Process Clause. He not only seeks immediate release, but a prospective prohibition

25 ¹ The Government moves to dismiss all respondents other than Tonya Andrews from this case.
26 A habeas petitioner may only name the officer having custody of him as the respondent to the petition.
27 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d
28 891, 894 (9th Cir. 1996). Here, Petitioner's custodian is the facility administrator at the Golden State
Annex located in McFarland, California, where Tonya Andrews serves as administrator. No other
parties are proper respondents for a § 2241 habeas petition.

1 on re-detaining him unless the Government satisfies a series of requirements untethered to any statute or
2 regulation. Saephanh's requested relief is excessive on its face, violates the separation of powers, and
3 part of it even exceeds the Court's jurisdiction. It also is unwarranted on the merits. Section 241.13
4 does not apply here, § 241.4 does. Not only did the Government comply with § 241.4, but any technical
5 violations are harmless error given Saephanh's uncontested removability order. Saephanh's due process
6 argument also fails, as there is no danger of indefinite detention, and detention pending removal is a
7 common feature of American immigration law. The Court should deny Saephanh's TRO Motion.

8 I. BACKGROUND

9 A. The Executive Branch's broad statutory power to effect removal.

10 Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off.*
11 *of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The Immigration and Nationality Act (INA),
12 originally enacted in 1952, sets forth a comprehensive plan to administer the immigration system. *See*
13 *generally* 8 U.S.C. Ch. 12. As set forth therein, the President, through the Department of State and the
14 Department of Homeland Security ("DHS"), decides which noncitizens may enter and remain in the
15 United States. *See generally* 8 U.S.C. §§ 1103, 1104.

16 The INA establishes procedures for removing aliens from the United States. Ordinarily, DHS
17 will initiate removal proceedings against the alien. The alien will be given a notice to appear, and an
18 Immigration Judge (IJ) will decide at a hearing whether the alien should be removed. *Johnson v.*
19 *Guzman Chavez*, 594 U.S. 523, 527 (2021); 8 U.S.C. §§ 1229(a)(1)(D), (G)(i). The alien may seek
20 various forms of relief or protection from removal at that hearing. 8 U.S.C. § 1229a(c)(4), (6)-(7);
21 *Johnson*, 594 U.S. at 528 (citing statutes). If the IJ issues an order of removal, the alien may appeal to
22 the Board of Immigration Appeals (BIA) and then seek judicial review in the U.S. Court of Appeals.
23 *Id.*; 8 U.S.C. §§ 1229a(c)(5)-(7), 1252(b); 8 C.F.R. § 1240.15. Once removal is administratively final,
24 the government generally has 90 days to remove the alien.² 8 U.S.C. § 1231(a).

25
26 ² If a court of appeals stays removal pending resolution of an alien's appeal, then the 90-day
27 period begins once the court of appeals vacates the stay. 8 U.S.C. § 1231(a). But "DHS need not wait
28 for the alien to seek, and a court to complete, judicial review of the removal order before executing it.
Rather, once the BIA has reviewed the order . . . , DHS is free to remove the alien *unless* a court issues a
stay." *Johnson*, 594 U.S. at 534-35.

1 Aliens who are removable for certain criminal offenses, including aggravated felonies and drug
2 offenses, may be detained beyond the removal period or may be released subject to terms of supervision.
3 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. § 241.4(a). At minimum, the terms of supervision must include a
4 requirement to periodically appear before an immigration officer; to submit to any necessary medical or
5 psychiatric examinations; to give information under oath about the alien's nationality, circumstances,
6 habits, associations, and activities, and other information that DHS considers appropriate; and to obey
7 reasonable written restrictions on the alien's conduct. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a). DHS
8 also typically requires aliens to assist in obtaining a travel document for removal, to obtain advance
9 approval of travel, and to provide written notice of any change of address. 8 C.F.R. § 241.5(a).

10 Importantly, however, a criminal alien's release may be revoked at any time for multiple
11 independent reasons. 8 C.F.R. § 241.4(l). *First*, an alien's release may be revoked if he violates his
12 conditions of release. The alien "will be notified of the reasons for revocation" and "will be afforded an
13 initial informal interview promptly after . . . return to Service custody." 8 C.F.R. § 241.4(l)(1). *Second*,
14 DHS may revoke release "in the exercise of discretion" where, "in the opinion of the revoking official,"
15 the purposes of release have been served, the alien violates any condition of release, revocation is
16 appropriate to enforce a removal order or commence removal proceedings, *or* the aliens' conduct or any
17 other circumstance indicates that release is no longer appropriate. 8 C.F.R. § 241.4(l)(2). Unlike
18 subsection (l)(1), subsection (l)(2) does not specifically indicate that notice or an initial informal
19 interview will be provided.

20 Regardless of whether DHS revokes an alien's release under § 241.4(l)(1) or (l)(2), as long as the
21 alien was not released after an (l)(1) informal interview, DHS commences an internal review process. 8
22 C.F.R. § 241.4(l)(3). The review process begins with notification to the alien of a records review and a
23 scheduling of the interview. *Id.* The full records review "will ordinarily be expected to occur within
24 approximately three months after release is revoked," but the regulation provides no firm timeline. *Id.*

25 **B. Saephanh's federal criminal convictions and prior immigration proceedings.**

26 Saephanh, a native and citizen of Laos, was admitted to the United States in 1987 as an adult.
27 Ex. A, Declaration of Refugia Guerra ¶ 5; Chohan Decl. Ex. 1-J at 7 (p.141). About three years after
28 being admitted, he was convicted of possession with intent to distribute over 26 pounds of opium and

1 unlawful importation of opium, in violation of 21 U.S.C. §§ 841(a)(1) and 952. *See* Chohan Decl. Ex.
2 1-J at 7 (p.141); Guerra Decl. ¶ 6. He was sentenced to 63 months but was released after serving 53
3 months. Chohan Decl. Ex. 1-J at 1 (p.135); Guerra Decl. ¶ 6.

4 As a result of his convictions, Saephanh was deportable due to being convicted of an aggravated
5 felony (specifically, a drug trafficking crime). *See* 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. § 1101(a)(43)
6 (defining an “aggravated felony” as, *inter alia*, a “drug trafficking crime”); 18 U.S.C. § 924(c)(2)
7 (defining a “drug trafficking crime” as “any felony punishable under the Controlled Substances Act (21
8 U.S.C. 801 et seq.”).³ Deportation proceedings were initiated in August 1994, and Saephanh was taken
9 into custody in December 1994 under INA section 236(c) (8 U.S.C. § 1226(c)). Guerra Decl. ¶¶ 7-8.

10 Saephanh sought a waiver of deportation under the INA § 212(c), which was repealed in 1996.
11 *See* Pub. L. 104-208 § 304(b), 110 Stat. 3009 (Sept. 30, 1996). That provision allowed the government
12 to waive deportation if an alien was a lawful permanent resident, he was returning to an unrelinquished
13 domicile of seven consecutive years, and his application merited favorable discretion. Chohan Decl. Ex.
14 1-J at 2 (p.136). An Immigration Judge rejected his waiver request on March 27, 1995, finding that:

15 Respondent was convicted of a very serious drug trafficking charge, he came to the
16 United States as an adult and his length of residence is just barely over the minimum
17 required for section 212(c) relief. Respondent has been separated from his family for five
18 years, and they do not depend upon him for financial support. Respondent does not have
19 much of an employment history and no business or property ties in the country.

20 Chohan Decl. Ex. 1-J at 9-10 (pp.143-44); Guerra Decl. ¶ 9. Saephanh’s appeal to the Board of
21 Immigration Appeals (BIA) was dismissed on September 28, 1995. Guerra Decl. ¶¶ 10-11; Chohan
22 Decl. Ex. 1-C (pp.59-60). Saephanh then filed a Motion to Reopen with the BIA on October 3, 1996,
23 which was denied in March 1997. Guerra Decl. ¶ 12; Chohan Decl. Ex. 1-C (p.60).

24 For reasons not entirely clear, Saephanh was not removed within the removal period. He instead
25 was released from immigration custody with an Order of Supervision (OSUP) pending removal on April
26 23, 1997. Chohan Decl. Ex. 2; Guerra Decl. ¶ 13. The OSUP imposed several requirements on
27 Saephanh, including that he: (1) appear at the time and place specified for identification and removal;

28 ³ The version of the statutes in effect in 1994 are substantively similar to the current versions, at
least for purposes of this case.

1 (2) provide information under oath about his nationality, circumstances, habits, associations, and
2 activities and such other information “as the [INS] considers appropriate”; (3) furnish written notice of
3 any change of residence of employment within 48 hours of the change; (4) report to the INS office every
4 three months; and (5) assist immigration authorities “in obtaining any necessary travel documents.”

5 Chohan Decl. Ex. 2 (p.173).

6 **C. Saephanh is re-arrested and ICE obtains removal documents to Laos.**

7 On August 6, 2025, DHS revoked Saephanh’s OSUP to pursue a travel document to remove him
8 pursuant to his 1995 removal order, and it detained him under 8 U.S.C. § 1231(a)(6). Guerra Decl. ¶ 14.
9 DHS promptly secured Saephanh’s removal once he was taken into custody. DHS began the process of
10 requesting travel documents from Laos for Saephanh on August 15, 2025. Guerra Decl. ¶ 15. DHS
11 received those documents on November 28, 2025. Guerra Decl. ¶ 18 & Ex. 2. Saephanh is scheduled to
12 be placed on a flight to Laos within the next two weeks. Guerra Decl. ¶ 18.

13 Notably, Saephanh declined to have an interview in connection with DHS’s decision to continue
14 detaining him on November 3, 2025. Guerra Decl. ¶ 17 & Ex. 1. In September 2025, however, he filed
15 a Motion to Reopen with the BIA, which is still pending as of the date of this filing. Guerra Decl. ¶ 16.

16 **D. Procedural history**

17 Saephanh filed a habeas petition and TRO Motion on November 26, 2025. ECF 1, 5. In his
18 TRO Motion, Saephanh requests that the Court order the following:

- 19 (1) Release of Saephanh and a prohibition of continuing to detain him;
- 20 (2) A prohibition on re-detaining Saephanh unless the government demonstrates, at a hearing
21 before an unspecified neutral decisionmaker, that his removal is reasonably foreseeable *and*
22 that he is a danger or a flight risk by clear and convincing evidence;
- 23 (3) A prohibition on removing Saephanh to any third country (i.e., not Laos) without first being
24 provided written notice of the third country at least 21 days before removal and a meaningful
25 opportunity to raise a fear of return under the Convention Against Torture. (ECF 5 at 3-4.)

The Court ordered that Respondents file a response by 5:00pm on December 1, 2025. ECF 7.

26 **II. LEGAL STANDARD**

27 Temporary restraining orders and preliminary injunctions are governed by the same standard.
28 *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal.

1 2001). “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the
2 merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
3 equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786
4 F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show “serious questions going to the merits
5 and the balance of hardships tips sharply towards [plaintiff], as long as the second and third . . . factors
6 are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

7 Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*,
8 555 U.S. 7, 24 (2008). Plaintiffs seeking a preliminary injunction bear a “heavy” burden and “difficult
9 task in proving that they are entitled to this extraordinary relief. *Earth Island Inst. v. Carlton*, 626 F.3d
10 462, 469 (9th Cir. 2010) (internal quotation omitted). A preliminary injunction requires “substantial
11 proof” and a “clear showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted).

12 A court must exercise “heightened scrutiny” where a party seeks a mandatory injunction.”⁴ *Dahl*
13 *v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). If “a party seeks mandatory preliminary
14 relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely
15 cautious about issuing a preliminary injunction.” *Martin v. Int’l Olympic Cmte.*, 740 F.2d 670, 675 (9th
16 Cir. 1984); *see also Cmte. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1442 (9th Cir. 1986).

17 III. LAW AND ANALYSIS

18 Saephanh asserts that he has not been given information on any changed circumstances relating
19 to his removal, nor has he been provided with any information indicating a significant likelihood that he
20 will be removed in the reasonably foreseeable future. He therefore requests that he be released, that the
21 Government be prohibited from detaining him unless it shows that his removal is reasonably foreseeable
22 and that he is a flight risk, and that he not be removed to any third country without being allowed to
23 assert a fear of persecution. His injunctive relief requests are improper. He seeks the same relief as in
24 his habeas petition. His requests for prospective relief also infringe upon the separation of powers and
25 are jurisdictionally barred. And his third country request is moot, as he will be removed to Laos. His
26

27 ⁴ “A mandatory injunction orders a responsible party to take action, while [a] prohibitory
28 injunction prohibits a party from taking action and preserves the status quo pending a determination of
the action on the merits.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014).

1 Motion also is meritless, as regulations permit him to be detained and there are no due process concerns
2 given that his deportation is reasonably foreseeable (indeed, imminent). It therefore should be denied.

3 **A. Saephanh is not likely to succeed on the merits of his claims.**

4 **1. Saephanh’s requested relief is improper.**

5 **a. Saephanh’s Motion seeks the same relief as his habeas petition.**

6 The purpose of a preliminary injunction is to preserve the status quo between the parties pending
7 a resolution of a case on the merits. *See U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th
8 Cir. 2010). To that end, “judgment on the merits in the guise of preliminary relief is a highly
9 inappropriate result.” *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992); *Keo v. Warden*,
10 No. 1:24-cv-919, 2024 WL 3970514, at *2 (E.D. Cal. Aug. 28, 2024) (denying detainee’s TRO seeking
11 same relief as habeas petition, finding “it is generally inappropriate for a federal court at the preliminary
12 injunction stage to give a final judgment on the merits”). But that is precisely what Saephanh seeks by
13 asking the Court, through the guise of preliminary relief, to prohibit DHS from detaining him in aid of
14 executing his 1995 removal order (the validity of which he does not contest). In short, he seeks an
15 expedited order that would grant him the ultimate relief he seeks in his petition—all while depriving
16 Respondent an opportunity to address the merits. The Court should reject his request.

17 **b. Saephanh’s third country request for relief is moot.**

18 Among other things, Saephanh asks that he not be removed to a “third country” (i.e., a country
19 other than Laos) without certain procedures and a hearing. Mot. at 22-24. This request is moot, as
20 Saephanh will be removed to Laos and not a third country. *See Nguyen v. Noem*, -- F. Supp. 3d --, 2025
21 WL 2737803, at *11 (N.D. Tex. 2025).

22 **c. Saephanh’s request for prospective relief exceeds the Court’s
23 jurisdiction and violates separation of powers.**

24 Saephanh’s Motion goes beyond simply arguing that DHS wrongfully failed to follow its own
25 regulations in revoking his OSUP—he also seeks prospective relief barring DHS from adjusting his
26 OSUP status unless it demonstrates numerous matters by clear and convincing evidence at a hearing
27 before an unspecified neutral. But courts lack jurisdiction “to hear any cause or claim by or on behalf of
28 any alien arising from the decision or action . . . to commence proceedings, adjudicate cases, or execute

1 removal orders against any alien.” 8 U.S.C. § 1252(g). And a decision to revoke an OSUP is directly
2 related to DHS’s decision to execute removal orders. In fact, Saephanh’s OSUP was revoked precisely
3 so that DHS could secure travel documents to execute his 1995 removal order. Guerra Decl. ¶ 14. The
4 Court lacks jurisdiction over DHS’s decision to revoke an OSUP under these circumstances. *Navarro v.*
5 *Bondi*, No. 8:25-cv-3213, 2025 WL 3275944, at *2 (M.D. Fla. Nov. 25, 2025); *Barrios v. Ripa*, No.
6 1:25-cv-22644, 2025 WL 2280485, at *4-5 (S.D. Fla. Aug. 8, 2025).⁵

7 Saephanh’s request for prospective relief also violates separation of powers. *Zadvydas v. Davis*,
8 533 U.S. 678 (2001), upon which Saephanh primarily relies, “did not imbue the courts with expansive
9 authority to interfere with the government’s ability to effectuate federal immigration law.” *Phan v.*
10 *Becerra*, No. 2:25-cv-1757, 2025 WL 1808702, at *4 (E.D. Cal. June 30, 2025); *Hoac v. Becerra*, No.
11 2:25-cv-1740, 2025 WL 1808697, at *3 (E.D. Cal. June 30, 2025). Rather, it permits “challenge [to]
12 ‘indefinite . . . imprisonment’ *once it occurs*.” *Trinh v. Homan*, No. 18-316, 2018 WL 11184556, at *8
13 (C.D. Cal. Oct. 18, 2018). But Saephanh requests far more—he seeks prospective relief requiring the
14 government to make evidentiary demonstrations before re-detaining him, including that he is reasonably
15 likely to be removed *and* is not a flight risk. Such relief has no textual basis in the controlling statutes or
16 regulations—Saephanh relies exclusively on due process principles. And it “contradicts *Zadvydas* and
17 intrudes on legislative and executive branch authority.” *Trinh*, 2018 WL 11184556, at *8; *see also*
18 *Phan*, 2025 WL 1808702, at *4 (the “court lack[ed] authority to grant” petitioner’s TRO request that the
19 government be enjoined from re-detaining petitioner without a hearing before the court).

20 Thus, separate and apart from the merits of Saephanh’s regulatory and due process claims, his
21 request for prospective relief should be denied as exceeding the Court’s jurisdiction and wrongly
22 encroaching on the authority and expertise of the political branches.

23 **2. Saephanh is not likely to succeed on the merits of his claims.**

24 **a. Saephanh has no regulatory basis to contest his detention.**

25 Saephanh argues that DHS violated 8 C.F.R. §§ 241.4 and 241.13. He is incorrect on both

26
27 ⁵ As these authorities indicate, the Court arguably has jurisdiction over Saephanh’s argument that
28 DHS wrongly failed to follow its own regulations in revoking his OSUP, which is a distinct claim from
his argument that DHS cannot revoke his OSUP at all, or only under pre-specified conditions. But for
the reasons discussed below, this argument should be rejected on the merits.

1 counts. Section 214.13 does not apply here. As that provision states, § 241.4 governs “unless [DHS]
2 makes a determination under this section that there is no significant likelihood of removal in the
3 reasonably foreseeable future.” 8 C.F.R. § 241.4(b)(1); *see also* 8 C.F.R. § 241.4(b)(4) (§ 241.4 does
4 not apply where DHS has made a § 241.13 determination). DHS has made no such determination—to
5 the contrary, it has arranged for Saephanh’s imminent removal.⁶ Further, § 241.13 only applies “where
6 *the alien* has provided a good reason to believe there is no significant likelihood of removal to the
7 country to which he or she was ordered removed . . . in the reasonably foreseeable future.” 8 C.F.R. §
8 241.13(a). Saephanh has not, and cannot, make such a showing. Thus, § 241.4, not § 241.13, applies.

9 And DHS has not violated § 241.4. Section 241.4 “permits the Government extraordinarily
10 broad discretion to revoke an OSUP; and that discretion is expressly not limited to circumstances where
11 a non-citizen violates the conditions of his OSUP.” *Tanha v. Warden*, No. 1:25-cv-2121, 2025 WL
12 2062181, at *5 (D. Md. July 22, 2025); *Tran v. Baker*, No. 1:25-cv-1598, 2025 WL 2085020, at *4 (D.
13 Md. July 24, 2025). Releases may be revoked if, among other things, “[t]he purposes of release have
14 been served” or “[i]t is appropriate to enforce a removal order.” 8 C.F.R. § 241.4(l)(2)(i), (iii). Both are
15 true here. To the extent Saephanh’s release was justified by a difficulty in removing him (as Saephanh
16 suggests is the case), that difficulty has been removed. Further, Saephanh’s detention is appropriate to
17 enforce his December 14, 2025 removal to Laos. *See Abedi v. Carter*, No. 25-3141, 2025 WL 3209009,
18 at *1 (D. Kan. Oct. 6, 2025) (ICE could revoke OSUP nearly 23 years after release from custody
19 because “the applicable regulations clearly provide for revocation of release”).

20 Saephanh argues that he was entitled to, but did not receive, notice and interview requirements
21 under §§ 241.4(l)(1) and 241.13(i)(3). As noted above, § 241.13 does not apply. And the notice and
22 interview requirements are only referenced in § 241.4(l)(1). Their absence from § 241.4(l)(2) indicates
23 that they are not required for revocations under the latter subsection. *Barrios*, 2025 WL 2280485, at *6.
24 Although several courts (including some judges from this Court) have held that the notice and interview
25 requirements are implicit in § 241.4(l)(2), the Government respectfully maintains they were incorrect.

26
27 ⁶ Even if DHS had made such a determination, once DHS “subsequently determines, because of
28 a change in circumstances, that there is a significant likelihood that the alien may be removed in the
reasonably foreseeable future . . . , the alien shall again be subject to the custody review procedure under
[§ 241.4].” 8 C.F.R. § 241.4(b)(4).

1 Those cases could reach their conclusion only by grafting language onto § 241.4(l)(2) and ignoring the
2 unambiguous separation between revocations under § 241.4(l)(1) and § 241.4(l)(2). But “[t]o interpret a
3 regulation, [the Court] look[s] first to its plain language. . . . [W]e presume the drafters said what they
4 meant and meant what they said. If the regulation is unambiguous, its plain meaning controls unless
5 such reading would lead to absurd results.” *United States v. Bucher*, 375 F.3d 929, 932 (9th Cir. 2004);
6 *Pardini v. Unilever U.S., Inc.*, 65 F.4th 1081, 1087 (9th Cir. 2023) (“We interpret regulations, like
7 statutes, based on their plain language.”); *see also Kinney v. Yerusalim*, 9 F.3d 1067, 1072 n.4 (3d Cir.
8 1993) (the Court “cannot rewrite the plain language of the regulations”).

9 Not only does limiting the notice and informal interview to § 241.4(l)(1) not lead to absurd
10 results (Saephanh certainly has not suggested any), but the dichotomy makes logical sense. Violating
11 conditions of release is an objective accusation, and thus written notice and an early informal interview
12 would be salutary. Section 241.4(l)(2) revocations, however, are “in the exercise of discretion” based on
13 “the opinion of [a] revoking official.” 8 C.F.R. § 241.4(l)(2). They are subjective determinations that
14 rely on the judgment of knowledgeable DHS authorities, which will not be factually refutable in most
15 cases. Written notice and an early informal interview would have far less utility in such a situation. It is
16 worth noting, however, that DHS gave Saephanh an opportunity to be interviewed in connection with its
17 decision to continue detention for removal—but he rejected it. Guerra Decl. ¶ 17 & Ex. 1.

18 Further, although § 241.4 “prescribes in considerable detail a set of custody reviews, release
19 procedures, and other processes,” there is “[n]o procedure in this regulation [that] creates a basis for [an
20 alien] to challenge his current detention.” *Alam v. Nielsen*, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018)
21 (upholding revocation of OSUP after petitioner had been released for 10 years). Section 241.4(l)(2)
22 “does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding
23 to revoke; nor does the regulation . . . require the Government to demonstrate what, if any, steps it took
24 to effect or secure removal prior to OSUP revocation.” *Tran*, 2025 WL 2085020, at *4; *Tanha*, 2025
25 WL 2062181, at *5. In short, § 241.4(l)(2) does not require that DHS authorities make a formal
26 determination as to why revocation is warranted. *See Doe v. Smith*, No. 18-11363, 2018 WL 4696748,
27 at *11 (D. Mass. Oct. 1, 2018). So long as DHS authorities determine that revocation is necessary to
28 initiate Saephanh’s removal, “[n]o further justification [i]s required.” *Doe*, 2018 WL 4696748, at *11.

1 But even if the Court agreed with Saephanh and found that DHS did not follow the requirements
2 of 8 C.F.R. §§ 241.4(l) and 241.13(i)(3), he still would not be entitled to relief because any such errors
3 were harmless.⁷ Saephanh was detained in aid of removing him under a 1995 removal order. He does
4 not contest the validity of his underlying removal order, nor does he suggest that DHS would be
5 prohibited from enforcing it. Thus, even if Saephanh were given notice and an opportunity to be heard,
6 he could not reasonably contest the reason for his detention. *See Abedi*, 2025 WL 3209009, at *2
7 (holding that even if ICE did not properly find changed circumstances at the time of revocation,
8 subsequent developments that “Iran has indicated to immigration officials that it is willing to issue a
9 travel document for petitioner if needed, and that officials are actively investigating the possibility of
10 removal to two alternative countries” could satisfy changed circumstances because “habeas relief is
11 forward-looking,” and “required change in circumstances may occur after the initial revocation”).

12 **b. Saephanh cannot establish a violation of due process.**

13 Relying on *Zadvydas*, Saephanh argues that he is entitled to a pre-detention hearing. *See* Mot. at
14 12. Although § 1231 does not limit how long ICE may detain an alien during a post-removal period, the
15 Supreme Court has held that it permits post-removal period detention to that “reasonably necessary to
16 bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689; *see also Johnson*,
17 594 U.S. at 529. *Zadvydas* created a presumption of constitutionality for § 1231 detentions up to six
18 months. 533 U.S. at 701. After that six-month period, the *alien* must “provide[] good reason to believe
19 that there is no significant likelihood of removal in the reasonably foreseeable future” before the
20 Government is obligated to justify continued detention. 533 U.S. at 701.

21 Here, the presumptive six-month period has not yet elapsed, and thus Saephanh’s request for
22 release is premature. *See Barrios*, 2025 WL 2280485, at *8. But even if the six-month period had run,
23 *Zadvydas*’s concern with “indefinite, perhaps permanent, detention” under § 1231 does not exist here.
24 533 U.S. at 690-91, 698. Saephanh’s removal is imminent⁸ and has a far more definite endpoint than

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26 ⁷ Harmless error applies in immigration cases. *Zamorano v. Garland*, 2 F.4th 1213, 1228 (9th
27 Cir. 2021); *Ngarurih v. Ashcroft*, 371 F.3d 182, 190 n.8 (4th Cir. 2004). This includes alleged
28 procedural violations by an agency. *City of Arlington v. FCC*, 668 F.3d 229, 243-44 (5th Cir. 2012).

⁸ Even if Saephanh is able to delay his removal through his Motion to Reopen before the BIA
and subsequent Court of Appeals review, the mere lack of a certain end date does not in itself render his
detention impermissibly indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008); *Diouf*

1 other cases that have rejected due process challenges to an alien’s detention pending removal. *See Ton*
2 *v. Noem*, No. 5:25-cv-2033, 2025 WL 2995068, at *3 (C.D. Cal. Sept. 3, 2025) (denying TRO because
3 the petitioner “provide[d] no evidence that he cannot be removed to China,” and identified “no evidence
4 that China will not accept him”); *Roe v. Oddo*, No. 3:25-cv-128, 2025 WL 1892445, at *6-7 (W.D. Pa.
5 July 9, 2025) (rejecting *Zadvydas* claim because new Administration policy regarding removing
6 criminal aliens and ICE possessing a travel document application by petitioner undermined petitioner’s
7 claim that there was no significant likelihood of removal in the reasonably foreseeable future).

8 Saephanh employs the multi-factor balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976),
9 in arguing for entitlement to release under due process. Mot. at 12-14. *Mathews* does not appear to
10 govern due process claims raised by detained aliens, as the Supreme Court has not adjudicated due
11 process challenges to detainment through the *Mathews* factors despite several opportunities. *See*
12 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022); *see also id.* at 1214 (Bumatay, J.,
13 concurring) (“In resolving familiar immigration-detention challenges, the Supreme Court has not relied
14 on the *Mathews* framework.”).

15 Regardless, the *Mathews* factors do not create the free-standing liberty interest that Saephanh
16 seeks. *Mathews* considers three factors: (1) the private interest that will be affected; (2) the risk of an
17 erroneous deprivation of such interest through the procedures used and the value, if any, of additional or
18 substitute safeguards; and (3) the government’s interest. *Id.* at 1207. In applying these factors, the
19 Court “can and must account for the heightened governmental interest in the immigration detention
20 context.” *Id.* at 1206; *see also Zadvydas*, 533 U.S. at 699-700 (courts “must defer to Executive and
21 Legislative Branch decisionmaking” in immigration law and “take appropriate account of the greater
22

23 *v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008). Rather, he “must show that he would be unremovable
24 even if the government defeated his petition for review.” *Diouf*, 542 F.3d at 1233; *see also Prieto-*
25 *Romero*, 534 F.3d at 1063 (*Zadvydas* requires that a petitioner show he is stuck in a “removable-but-
26 unremovable limbo.”). That is not the case here. If the Government defeats Saephanh’s efforts to delay
27 his removal, nothing will prevent his removal to Laos. *See Diouf*, 542 F.3d at 1233 (government could
28 detain petitioner beyond six-month period because there was no evidence his home country “would
refuse to accept him, or that his removal is barred by our own laws”); *Soberanes v. Comfort*, 388 F.3d
1305, 1311 (10th Cir. 2004) (alien’s detention pending Ninth Circuit’s petition for review was not
excessive because it “is neither indefinite nor potentially permanent . . . [but is] directly associated with
a judicial review process that has a definite and evidently impending termination point, and, thus, is more
akin to detention during the administrative review process[.]”).

1 immigration-related expertise of the Executive Branch”).

2 None of the factors supports habeas relief for Saephanh here. The first factor does not weigh
3 strongly in his favor. “[D]etention during deportation proceedings [is] a constitutionally valid aspect of
4 the deportation process.” *Demore*, 538 U.S. at 523; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993);
5 *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Further, Saephanh has not been detained for a long
6 period of time, nor is his detention indefinite—it will end as soon as he is removed. *Compare Zadvydas*,
7 533 U.S. at 690-91, 698 (concerned with “indefinite, perhaps permanent, detention”).

8 The second factor likewise does not assist Saephanh. Saephanh is subject to a valid underlying
9 removal order, and he has only been released because there was difficulty in removing him to Laos. But
10 that difficulty has been resolved, and Saephanh can be removed imminently. Releasing Saephanh under
11 these circumstances would be an overly drastic remedy. *See Tanha*, 2025 WL 2062181, at *6 (holding
12 that ICE’s failure to schedule a § 241.4(l)(1) informal interview did not require a release from detention,
13 which was “an overreach and not the appropriate cure”); *Barrios*, 2025 WL 2280485, at *8
14 (alternatively holding that even if § 241.4(l)(1) procedures applied to § 214.4(l)(2) OSUP revocations,
15 “a release from detention would be too drastic a remedy for a procedural violation. Instead, the Court
16 could order Respondents to provide . . . a new Notice signed by the appropriate official and afford
17 Petitioner a more robust interview”).

18 Finally, the Government has a significant interest in Saephanh’s detention. Even if he
19 specifically does not appear to be a danger or flight risk, the Government has a strong interest in
20 effectuating the “system Congress devised.” *DHS v. Thuraissigiam*, 591 U.S. 103, 106 (2020). “The
21 government’s interest in efficient administration of the immigration laws” is “weighty,” and “it must
22 weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely
23 within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982).
24 The system Congress devised requires detention until Saephanh’s removal is complete.

25 **B. Saephanh has not met his heavy burden to show he will likely suffer irreparable**
26 **harm absent immediate injunctive relief.**

27 A shown in Section III.A, Saephanh’s detention does not constitute a regulatory or a
28 constitutional violation. Immigration laws have long authorized immigration officials to charge aliens

1 as removable from the country, to arrest aliens subject to removal, and to detain aliens pending removal.
2 *Demore*, 538 U.S. at 523-26. Through the INA, Congress created a multi-layered statutory scheme for
3 aliens' detention during removal. *See* 8 U.S.C. § 1231(a)(2), (a)(6); *Johnson*, 594 U.S. at 529-30.
4 "Detention is necessarily a part of [the] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538
5 (1952). And removal proceedings "would be in vain if those accused could not be held in custody
6 pending the inquiry into their true character." *Demore*, 538 U.S. at 523; *cf. Reno*, 507 U.S. at 306
7 ("Congress eliminated any presumption of release pending deportation, committing that determination to
8 the discretion of the Attorney General.").

9 **C. The balance of equities and the public interest do not favor Saephanh.⁹**

10 "The government's interest in efficient administration of the immigration laws" is "weighty,"
11 and "it must weigh heavily in the balance that control over matters of immigration is a sovereign
12 prerogative, largely within the control of the executive and the legislature." *Plasencia*, 459 U.S. at 34.
13 Further, the government's interest in protecting the public and preventing deportable non-citizens from
14 fleeing are strong and compelling. *See e.g., Rodriguez Diaz*, 53 F.4th at 1208 (government's interests in
15 "protecting the public from dangerous criminal aliens" and "increas[ing] the chance that, if ordered
16 removed, the aliens will be successfully removed" are "interests of the highest order").

17 Those interests are especially compelling here. Saephanh is subject to a valid removal order,
18 reflecting Congress's judgment as to what aliens should and should not be permitted to remain in the
19 United States. The government seeks to vindicate those interests here, whereas Saephanh seeks to
20 exempt himself from the unambiguous statutes. In fact, granting relief would undermine the
21 immigration statutory framework. Congress has removed this Court's jurisdiction to entertain
22 challenges to executing removal orders. 8 U.S.C. § 1252(g). Preliminary relief would violate multiple
23 statutes, in a subject matter entrusted to Congress and the Executive Branch.

24 **IV. CONCLUSION**

25 For the foregoing reasons, Saephanh's Motion for Temporary Restraining Order should be denied.
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27

28 ⁹ When the government is a party, the third and fourth preliminary injunction factors merge.
Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014).

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