~~Somecheth Sam Yok~~ Somcheth Sam Yok
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Adelanto ICE Processing Center
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[redacted]

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Somcheth Sam Yok

Petitioner,

v.

David Marin, Warden, Adelanto ICE Processing Center

Respondents.

Case No.: 5:25-cv-03377-MWF-MAA

PETITIONER'S *EX PARTE APPLICATION FOR* TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

Immigration Case

For the reasons explained in the accompanying Memorandum of Points and Authorities, Petitioner hereby makes this Ex Parte Application for a Temporary Restraining Order and order to show cause: Preliminary Injunction pursuant to Federal Rule of Civil Procedures 65 and 5 U.S.C. § 705. Petitioner was born on February 8, 1975 in a U.S. military camp in Udon, Thailand from Cambodian parents. Nevertheless, Petitioner is stateless since no country has recognized him as a citizen. Petitioner adjusted his status to Lawful Permanent Resident on June 29, 1975 under Private Law section 95-145. On February 2, 2007, Petitioner was ordered deported by an Immigration Judge ("IJ"). **The Immigration Judge, however, did not ordered him removed to any specific country**. In the same order the IJ granted Petitioner deferral of removal to Cambodia, pursuant to Art. III of the convention against Torture pursuant to 8 C.F.R. § 1208.16(c). Exhibit 1, page 19, because his parents were both persecuted in Cambodia for opposing the Communist regime in that country. Petitioner appealed to the Board of Immigration Appeals ("BIA"), but the BIA dismissed his appeal. Petitioner does not remember, but to the best of his believe, he did not petition to the Ninth Circuit. His order of removal became final May 9, 2007. The government tried to deport him to Thailand but he was released because the government could not deport him to Thailand or to any country other country. Petitioner was re-detained January 31st, 2025, and has been held by immigration authorities now for more than 180 days. He challenges his detention as a violation of the Immigration and Nationality Act, the implementing regulations, and Due Process. Expedited relief is necessary to prevent irreparably injury before a rearing on a preliminary injunction may be held.

Petitioner requests that the Court issue a Temporary Restraining Order and Order to Show Cause re: preliminary injunction in the form of the proposed order submitted currently with this Application. This application is based on the Petition for a Writ of Habeas Corpus, and the declaration and exhibits in support thereof.

Respondents are being serviced with a copy of this document and any other accompanying documents on the same date this instant application is being sent to the court.

I. INTRODUCTION

Petitioner is stateless for no country has recognized him as a citizen. He was born on [redacted] in a U.S. military camp in Udon, Thailand, from Cambodian parents. The mother of his children was a U.S, citizen passed away in 2020. He has a son, a daughter, and a granddaughter who are United States citizens by birth. His brothers and sister are also U.S. citizens and have been in the United States since they came with the parents in 1975.

II. STATEMENT OF FACTS

His order of removal became final on May 9, 2007, but he was released because he could not be deported to any country, since Thailand, the country where he was born, did not recognize him as a citizen. (Exhibit 7) Petitioner was redetained January 31st, 2025, and has been held by immigration authorities now for more than 180 days in custody. His removal is not reasonably foreseeable and is a violation of 8 U.S.C. § 1231(a)(6) and Due Process. Petitioner's family is suffering immensely without Petitioner. For his children, Petitioner is the only surviving parent and they want to be close to him. His siblings do not want to have Petitioner sent far away, neither, since they already lost a brother. He requires an ex parte order from this Court ordering his immediate release.

III. STANDARD OF REVIEW

A Temporary Restraining Order ("TRO) may be issued upon a showing "that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). A trial court may grant a TRO or a preliminary injunction to "preserve the status quo and the rights of the parties" until a decision can be made in the case. *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in this context 'refers not simply to any situation before the filing of a law suit, but instead to 'the last uncontested

status which preceded the pending controversy[.]' " *GoTo.com, Imc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963). The analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc., Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp 2d 1109, 1110 (C.D. Cal. 2009).

To obtain a preliminary injunction, a Petitioner "must establish [1] that he is likely to succeed on the merits, [2] that is he is likely to suffer irreparable harm in the absence of of preliminary relief, [3] that the balance of equities tips in their favor, and [4] that an injunction is in the public interest." *City & County of San Francisco v. USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019) (quoting Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). "Likelihood of success on the merits is the most important factor." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quotations omitted). If the first two factors are met, the third and forth factors merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Additionally, in the Ninth Circuit, courts also "employ an alternative 'serious questions' standard, also known as the 'sliding scale' variant of the *Winter* standard." *Fraihat v. U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 635 (9th Cir. 2021) (quotations and citations omitted and alterations accepted). "Under that formulation, 'serious questions going to the merits' and a balance of hardships that tips sharply towards the Petitioner[s] can support issuance of a preliminary injunction, so long as the Petitioner[s] also show[ ] that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* (quoting *All. For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).

Further, the APA provides that "to the extent necessary to prevent irreparable injury," the Court may issue "all necessary and appropriate process … to preserve status or rights pending" these proceedings. 5 U.S.C. § 705. The standard used by courts for a request to stay agency action "is the same legal standard as that used in a motion for preliminary injunction." *Hill Dermaceuticals, Inc. v.*

U.S. Food and Drug Admin., 524 F. Supp. 2d 5, 8 (D.D.C. 2007); *Nkeen*, 556 U.S. at 428 (describing a stay as "halting or postponing" operation of an action or "temporarily divest an order of enforceability").

Petitioner meets all the requirements for relief.

IV. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

1. Petitioner is Likely to Succeed on the Merits of his Zadvydas Statutory Claim

Petitioner has been detained for more than 189 days and his removal is not reasonably foreseeable. His ongoing detention violates 8 U.S.C. § 1231 (a)(6) and *Zadvydas v. Davis*, 533 U.S. 678 (2001).

In *Zadvydas v. Davis*, 533 U.S. at 682, 689, the Supreme Court held that the post-removal-period detention scheme contains "an implicit 'reasonable time' limitation" and does not permit indefinite detention. The Court reasoned that "[a] statute permitting indefinite detention of a [noncitizen] would raise a serious constitutional problem,"because "[t]he Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' " *Id.* at 690. Th Supreme Court deemed it "practically necessary to recognize some presumptively reasonable period of detention" and deemed a six-month period to be presumptively reasonable. *Id.* at 701. After this six-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* Further, "as the period of prior post removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink" for detention to remain reasonable. *Id.*

Petitioner clearly cannot be removed from the United States. ICE has now tried twice. See *Chun Yat Ma v. Asher*, No. 11-cv-01797-MJP, 2012 WL 1432229, at *5 (W.D. Wash. Apr. 25, 2012)

("An undue delay in removal for an individual alien beyond the typical removal period would naturally suggest that removal is unlikely."); Liu v. Carter, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025) (finding that the respondents had not shown that removal was reasonably foreseeable where they did not provide evidence why seeking travel documentation was more likely to be successful this time around or describe other actions taken to make the petitioner's removal more likely). Petitioner was born in Thailand of Cambodian parents. Cambodia has not recognized Petitioner as a citizen or national. Additionally, Petitioner is under an order of deferral of removal for Cambodia. (See Exhibit 1, final pages with the immigration judge's orders). Petitioner is in the same condition he was the first time he was in immigration detention. The government cannot meet its burden when no progress has been made in removal. *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 3033732, at *2 (S.D. Tex. Oct. 29, 2025) (ordering release where no progress has been made to release the petitioner); *Dougkas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2997585, at *4 (D. Md. Oct. 24, 2025) (ordering release where the government failed to produce evidence of any efforts to removal beyond one request over three months prior).

Petitioner's detention has exceeded the authorized 180 day period, and since Thailand, his country of birth has refused to recognize him as a citizen or national (exhibit 7), he has good reasons to believe that his deportation is not reasonably foreseeable. *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *4 (C.D. Cal. June 25, 2025).

Petitioner has been detained for more than 180 days and has good reason to believe that his removal is not reasonably foreseeable. As such, he is likely to prevail on this claim.

2. Petitioner is Likely to Succeed on the Merits of his Due Process Claim

Petitioner is also likely to prevail on his claim that his detention violates Due Process. "Freedom from imprisonment-from government custody, detention, or other forms of physical restrain-

lies at the heart of the liberty that the [due process clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed. 2d 653 (2001). See *Young v. Harper*, 520 U.S. 143, 147, 149, 152-53, 117 S. Ct. 1148, 137 L. Ed. 2d 270 (1997) (holding that a pre-parolee released to "reduce prison overcrowding" enjoy a protected liberty interest). It is well-established that the liberty interest that arises upon release is "inherent in the Due Process Clause." *Pruitt v. Heimgartner*, 620 F. App'x 653, 657 (10th Cir. 2015) (quoting *Boutwell v. Keating*, 399 F.3d 1203, 1212 (10th Cir. 2005)) (emphasis in Pruitt).

"Petitioner has a liberty interest in his continued release on bond." *Guillermo M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025). Petitioner's detention has exceeded the presumptively reasonable six-month period, and there is no significant likelihood of his removal in the reasonably foreseeable future. As such, Petitioner is clearly likely to prevail on his claim that his detention has become indefinite, violating his right to due process.

B. PETITIONER WILL SUFFER IRREPARABLE HARM AND THE EQUITIES TIP IN PETITIONER'S FAVOR

The Ninth Circuit has recognized the "irreparable harms imposed on anyone subject to immigration detention including "subpar medical and psychiatric care in ICE detention facilities" and "the economic burden imposed on detainees and their families as a result of detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Moreover, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' " *Melendez v. Arpaio*, F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice Procedure, § 2948.1 (2d ed. 2004)). The Ninth Circuit has also noted

that "unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." Hernandez, 872 F.3d at 999. Petitioner has been detained for more than six months, and has been separated from his United States citizen family. He clearly establishes irreparable harm.

The balance of the equities and public interest analysis merge when the government is the opposing party, as it is the case in this action. See *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing Nken v. Holder, 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that Petitioner seeks to protect constitutionally protected liberty. See *Meza v. Bonnar*, No. 18-CV-02708-BFL, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) ("Given the low risk of Petitioner's causing harm to others or fleeing, such expenditure in her case would not benefit the public absent a material change in circumstances.") "Just as the public has an interest in the orderly and efficient administration of this county's immigration laws, [ ] the public has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cla. Aug. 23, 2020). On the other hand, "the burden on Respondents in releasing Petitioner from detention is minimal, especially considering Petitioner's compliance with the requirements of the Order of Supervision..." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *6 (E.D. Cal. July 16, 2025). Further, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,' " and that "[s]upervised release programs cost much less by comparison. ..." Hernandez, 872 F.3d at 996. Therefore, the *Winter* factors weigh in favor of a grant of a temporary restraining order and preliminary injunction.

C. NO BOND IS NECESSARY

The Court has discretion to set the amount of security required for a temporary restraining order or preliminary injunction under Rule 65(c), if any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Indeed, " '[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.'" *Id.* (quoting *Jorgensen v. Cassidy*, 30 F.3d 906, 919 (9th Cir. 2003)).

Here, it is unlikely any harm will come to Respondents as a result of a grant of temporary relief and Respondents will incur or zero financial costs. Petitioner asks the Court to exercise its discretion to waive the bond requirement.

PRAYER FOR RELIEF

Petitioner prays that this Court grant the following relief:

1) Grant this request for a temporary restraining order and order Respondents to release him immediately released from ICE Custody;

2) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of the Director of the Los Angeles ICE Field Office during the pendency of these proceedings and while Petitioner remains in Respondents' custody; and

3) Petitioner additionally requests the Court to enjoin the Immigration authorities from continue harassing Petitioner and forbid them to re-detain Petitioner unless they have obtained a legal travel document for Petitioner.

Respectfully Submitted and Signed this 23rd day of December, 2025

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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY THAT ON 12/23/2025 , I SERVED A COPY OF PETITIONER'S EX PARTE APPLICATION for Temporary Restraining Order and Order to Show Cause: Preliminary Injunction; and declaration of Petitioner, by the USPS mail to the following individual:

Daniel A. Beck, Assistant United States Attorney Deputy Chief, Complex and Defensive Litigation Section United States Attorney's Office, Central District of California, 300 N. Los Angeles Street, Suite 7516, Los Angeles, CA 90012.

Respectfully Submitted and Signed this 23rd day of December, 2025

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WORD COUNT CERTIFICATION

Petitioner certifies that this memorandum contains 2755 words, which complies with the word limit of L.R. 11-6.1.

Respectfully Submitted and Signed this 23rd day of December, 2025

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