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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BOUANGERN PHOUTTHAVONG,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No.: 26-cv-00583-LL-DDL

RETURN TO HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner Bouangern Phoutthavong has filed a habeas petition and motion for a temporary restraining order. As the petition and motion assert the same claims and relief, Respondents respond to both herein for the sake of judicial efficiency. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Laos. He was lawfully admitted to the United States on June 23, 1986. He adjusted status to a lawful permanent resident (LPR) retroactive to his admission date. Declaration of Hugo Lara Ramirez ("Ramirez Decl.") ¶ 3. On July 3, 2003, Petitioner was convicted of violating Cal. Pen. Code §§ 245(a)(1), assault with a deadly weapon, and 459, residential burglary. He was sentenced to 6 years imprisonment for both offenses. *Id.* ¶ 4. On May 14, 2011, Petitioner was transferred to Immigration and Customs Enforcement (ICE) custody following his release from criminal custody. He was issued a Notice to Appear (NTA) under Immigration and Nationality Act (INA) § 237(a)(2)(A)(iii), as an alien convicted of an aggravated felony. *Id.* ¶ 5.

Petitioner was ordered removed to Laos by an Immigration Judge on May 25, 2011. Both DHS and Petitioner waived appeal of the decision, and it became a final order of removal on this date. *Id.* ¶ 6. On August 1, 2011, Petitioner was released from ICE custody on an order of Supervision. *Id.* ¶ 7.

Petitioner reported to the ERO San Diego Field office on December 2, 2025, as requested. On that date, Petitioner was re-detained and advised that ERO intends to effectuate his removal to Laos and was issued a notice of revocation of release. He was not provided with an informal interview to respond to the re-detention decision. *Id.* ¶ 8.

On January 8, 2026, San Diego ERO submitted a request to ERO's Removal and International Operations (RIO) for assistance with obtaining a travel document (TD). *Id.* ¶ 9. RIO submitted the TD request to the attaché for Laos on January 23, 2026. *Id.*

The request remains pending. *Id.* ICE routinely obtains travel documents from the government of Laos and ERO has the necessary identity documents to obtain a TD. *Id.* ¶ 10. Once a TD is issued, a ERO will expeditiously effectuate Petitioner's removal to Laos. *Id.* ¶ 11.

III. ARGUMENT

An alien ordered removed must be detained for ninety (90) days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding, the Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is needed to obtain the travel documents, and a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is made aware that removal is imminent.

The Supreme Court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably

foreseeable future." *Id.* at 701. "After this 6-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 and that the noncitizen has the initial burden of proving that removal is not significantly likely." *Id.*

Here, Petitioner is subject to a final, executable order of removal, which means that he has no right to remain in the United States. He also has no right to prevent being removed to Laos specifically. ICE has long-standing authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens who have received protection against removal to the designated country (either withholding of removal under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and resettled in third countries. Here, however, Petitioner has received no such protection of removal to Laos, his country of citizenship. Since his re-detention 70 days ago, ICE has worked as expeditiously as possible to effectuate Petitioner's removal to Laos and will continue to do so once travel documents are received. Ramirez Decl. ¶¶ 10-11.

Here, the Petition should be denied. Petitioner brings this challenge 70 days into a new detention period that the Supreme Court held is presumed reasonable until the 6-month-mark. The Ninth Circuit has also emphasized, "*Zadvydas* places the burden on the alien to show, *after a detention period of six months*, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). Accordingly, Petitioner's detention in this case should be presumed reasonable until June 2026. *See Ali v. Barlow*, 446 F.Supp. 2d 604, 609–10 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas* six-month period had not

expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12–1392 DSF (FFM), 2012 WL 6111358, at *4–5 (C.D. Cal. Nov. 5, 2012) (same); *Waraich v. Ashcroft*, No. CVF051036RECSMSHC, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Even if Petitioner's detention had exceeded six months in this case, he cannot show that there is no significant likelihood of removal in the reasonably foreseeable future. Plainly, Petitioner was re-detained after 14 years of release because there is finally a significant likelihood of removal. *See* Ramirez Decl. ¶ 7-10; *see also* ECF No. 1 at 4 (Petition). Because Petitioner has only been in custody for 70 days, and there is a significant likelihood of removal in the reasonably foreseeable future, it is premature for Petitioner to seek administrative or judicial review of this process. Evidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy. *See, e.g.*, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019) ("The record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal"). Here, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future and the Court should deny the petition.

As to the regulatory violation claims, Petitioner received written notice that he was being re-detained due to "changed circumstances" in his case. *See* Exhibit 1 (Notice of Revocation of Release). Furthermore, he was specifically notified that the changed circumstance was that "ICE is *now* able to obtain valid travel documents for removal to LAOS." *Id.* (emphasis added). However, even if the agency's compliance with the

regulations had fallen short, Petitioner has not established prejudice nor a constitutional violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("The mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th Cir.2007) ("Compliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (internal quotation marks omitted); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation). As Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant the relief he seeks. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation Co. v. Sec'y of Labor*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("violations of procedural regulations should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

IV. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's request for injunctive relief and dismiss the petition as premature under *Zadvydas*.

DATED: February 9, 2026

Respectfully submitted,

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s/ Hunter V. Norton
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