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DETAINED

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Sompathana NOBOUPHASAVANH
Petitioner-Plaintiff,

CASE NO.: '26CV3457 TWR MMP



vs.

WARDEN/OFFICER IN CHARGE,
current ICE detention facility;
SAN DIEGO FIELD OFFICE DIRECTOR,
U.S. Immigration and Customs Enforcement;
SENIOR OFFICIAL PERFORMING THE
DUTIES OF DIRECTOR,
U.S. Immigration and Customs Enforcement;
SECRETARY, U.S. Department of Homeland
Security;
U.S. Immigration and Customs Enforcement
and U.S. Department of Homeland Security,

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF;
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

**CHALLENGE TO UNLAWFUL RE-
DETENTION; REQUEST FOR
EMERGENCY STAY OF REMOVAL
AND TRANSFER**

Respondents-Defendants.

**PETITION FOR WRIT OF HABEAS CORPUS; EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER; REQUEST FOR ORDER TO
SHOW CAUSE WITHIN THREE DAYS**

1 Petitioner Sompathana Nobouphasavanh, also known as Sam Nobouphasavanh
2 (Ms. Nobouphasavanh"), petitions this Court for a writ of habeas corpus under 28
3 U.S.C. § 2241, declaratory and injunctive relief, and emergency temporary restraining
4 relief under Federal Rule of Civil Procedure 65 to remedy Respondents' unlawful civil
5 immigration detention of her after years of release, rehabilitation, and community
6 reintegration.
7

8 INTRODUCTION

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10 1. This case presents an urgent post-order detention and re-detention
11 challenge. Ms. Nobouphasavanh is a native and citizen of Laos, [REDACTED] who
12 has lived in the United States for approximately forty-five years. She entered the United
13 States as a refugee and was granted lawful permanent resident status in 1983.
14

15 2. The Government has known the core adverse facts for decades. In 1999,
16 Ms. Nobouphasavanh was convicted of a methamphetamine-related offense involving
17 the sale of crystal methamphetamine, was placed in removal proceedings, and received
18 a deportation order. But removal was not executed because Laos declined to accept her
19 return.
20

21 3. The record supplied to counsel also includes two San Diego County
22 criminal case-index entries associated with the name Nobouphasavanh, Sompathana,
23 birth year 1977: Case No. [REDACTED] filed in South County on October 2, 1998, and
24 Case No. [REDACTED] filed in San Diego on October 20, 1998. Those entries confirm
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1 that the Government's adverse criminal-history theory is old, known, and not a new
2 material change.

3 4. In 2009, Ms. Nobouphasavanh and her former husband were convicted in
4 federal court on charges relating to the distribution of methamphetamine. She served
5 approximately ten years in federal custody. Those facts are serious, and this Petition
6 does not minimize them. But they were completed criminal consequences, not a present
7 civil detention justification standing alone.
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10 5. After incarceration, Ms. Nobouphasavanh returned to the community and
11 built substantial equities. A public North America's Building Trades Unions profile
12 identifies her as Sam Nobouphasavanh, Tradeswomen Heroes Award Winner for
13 August 2021, an Ironworkers Local 229 apprentice, and a person who joined the
14 Apprenticeship Gladiator program in 2018, completed long hours of training,
15 volunteered extensively during COVID-19, and became respected by employers and
16 contractors.
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19 6. Ms. Nobouphasavanh also has two adult United States citizen children: a
20 thirty-three-year-old daughter and a twenty-year-old son. Her family, union ties, work
21 history, community service, and rehabilitation, all support release and sharply
22 undermine any claim that old convictions alone establish current danger or flight risk.
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25 7. The central due-process defect is that Respondents seek to detain or
26 continue detaining Ms. Nobouphasavanh based on facts that were known before she
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1 was released and permitted to live at liberty. Once the Government allows a person to
2 remain at liberty after a final removal order or after release from custody, it creates a
3 legitimate expectation that liberty will not be revoked without fair process and a
4 material change in circumstances.
5

6 8. The material-change requirement is especially strong here because her
7 removal to Laos was not possible after the 1999 deportation order. If Respondents
8 contend that circumstances have changed, they must identify the change: a travel
9 document, a renewed acceptance by Laos, a new violation of supervision, a new
10 conviction, or current individualized evidence that no conditions can protect the
11 community or ensure compliance. The existing record contains no such change.
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13

14 9. Under *Zadvydas v. Davis* and *Clark v. Martinez*, detention under 8 U.S.C.
15 § 1231(a)(6) is limited to a period reasonably necessary to effect removal. Once there
16 is a good reason to believe there is no significant likelihood of removal in the
17 reasonably foreseeable future, continued detention becomes unlawful unless the
18 Government rebuts that showing with evidence.
19
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21 10. The regulations reinforce the same rule. Under 8 C.F.R. § 241.13, if a
22 person under a final order shows good reason to believe removal is not significantly
23 likely in the reasonably foreseeable future, DHS must conduct a meaningful review. If
24 release was granted because removal was not reasonably foreseeable, revocation for
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1 removal requires changed circumstances showing a significant likelihood of removal
2 in the reasonably foreseeable future.

3 11. Respondents cannot treat civil immigration detention as additional
4 punishment for completed criminal sentences. Civil detention must be tied to a
5 legitimate regulatory purpose, supported by current evidence, and subject to
6 meaningful process. Here, years of release, rehabilitation, community service, union
7 work, family ties, and Laos' prior refusal to accept return all show that detention is
8 arbitrary unless Respondents prove a genuine, material, current change.
9

10
11 12. Immediate relief is necessary. Detention causes irreparable harm every
12 day. Transfer would frustrate counsel's access and this Court's jurisdiction. Removal,
13 if attempted before this Court can review custody, would defeat meaningful habeas
14 relief. The Court should issue an Order to Show Cause within three days, enter a TRO
15 preserving jurisdiction, stay removal and transfer, and order release or a
16 constitutionally adequate custody hearing with the Government bearing the burden of
17 proof.
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21 JURISDICTION

22 13. This action arises under the Constitution of the United States, 28 U.S.C.
23 §§ 1331, 2241, 2242, and 2243; Article I, § 9, cl. 2 of the United States Constitution;
24 the Fifth Amendment; the Immigration and Nationality Act ("INA"), including 8
25 U.S.C. § 1231; the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702 and 706;
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27

1 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; and the All Writs Act, 28
2 U.S.C. § 1651.

3 14. This Court has habeas jurisdiction because Ms. Nobouphasavanh is in the
4 Respondents' physical and legal custody, or is subject to restraints not shared by the
5 public generally, and she challenges the legality of that custody as contrary to the
6 Constitution, federal statutes, and governing regulations. 28 U.S.C. § 2241(c)(3); *Jones*
7 *v. Cunningham*, 371 U.S. 236, 240 (1963).
8
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10 15. Federal courts retain jurisdiction to review constitutional and legal
11 challenges to immigration detention. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003);
12 *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001). Jurisdiction-stripping provisions do
13 not bar habeas review of constitutional claims or questions of law concerning detention.
14 *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018).
15
16

17 16. This Petition does not ask the Court to reopen the final removal order or
18 to review a discretionary decision on the merits. It challenges current custody, the legal
19 authority for that custody, the absence of a meaningful post-order detention review, the
20 absence of a material-change showing, and the risk that transfer or removal will defeat
21 habeas jurisdiction.
22

23 17. Section 2243 requires expedited treatment. The Court must award the writ
24 or issue an order to show cause forthwith unless it appears from the petition that the
25 detained person is not entitled to relief. If an order to show cause issues, Respondents
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1 must make a return within three days unless, for good cause, the Court allows additional
2 time not exceeding twenty days.

3 18. The Court may grant declaratory and injunctive relief ancillary to habeas
4 when necessary to preserve jurisdiction and make habeas relief meaningful. 28 U.S.C.
5 § 1651(a); *Nken v. Holder*, 556 U.S. 418, 426-27 (2009); *Leiva-Perez v. Holder*, 640
6 F.3d 962, 966-68 (9th Cir. 2011).
7

8
9 **VENUE**

10 19. Venue is proper in the Southern District of California because Ms.
11 Nobouphasavanh has longstanding San Diego ties, the known criminal case-index
12 entries and community evidence are based in San Diego, and the San Diego Field
13 Office of ICE exercises custody, supervision, transfer, and removal authority affecting
14 her. 28 U.S.C. § 1391(e).
15

16 20. Respondents named in this action exercise legal and practical custody over
17 Ms. Nobouphasavanh through ICE and DHS. The Warden or Officer in Charge of the
18 ICE detention facility where she is held is her immediate physical custodian, and the
19 San Diego Field Office Director and national DHS/ICE officials are responsible for the
20 challenged detention, transfer, release, and removal decisions.
21

22 21. If Respondents contend that the immediate physical custodian is outside
23 this District due to transfer or facility designation, Petitioner respectfully requests
24 emergency preservation of this Court's jurisdiction and transfer to the proper district
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1 rather than dismissal. 28 U.S.C. §§ 1404(a), 1406(a), 1631; *Rumsfeld v. Padilla*, 542
2 U.S. 426, 443 (2004).

3 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2242, AND 2243**
4

5 22. Ms. Nobouphasavanh is in custody for purposes of 28 U.S.C. § 2241
6 because Respondents and their agents physically confine her in ICE custody and
7 exercise legal custody over her through DHS and ICE. Alternatively, if Respondents
8 claim she is detained under an order of supervision, parole, or comparable restraint,
9 those restraints are sufficient custody for habeas purposes because they are not shared
10 by the public generally.
11

12 23. Section 2242 requires the petition to allege facts concerning detention, the
13 custodian, and the claimed authority for custody. This Petition identifies the custodial
14 officials and alleges the facts showing that Ms. Nobouphasavanh's detention is
15 unlawful because removal to Laos has historically been unavailable, detention is based
16 on stale adverse facts, and Respondents have not shown a material change in
17 circumstances.
18

19 24. Section 2243 requires swift judicial action. The Court should issue the
20 writ or an order to show cause forthwith and require Respondents to certify the true
21 cause of detention within three days.
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1 25. Emergency relief is necessary because detention is ongoing, transfer
2 would impair counsel access and frustrate this Court's jurisdiction, and removal before
3 adjudication would prevent meaningful habeas review.
4

5 **PARTIES**

6 26. Petitioner Sompathana Nobouphasavanh, also known as Sam
7 Nobouphasavanh, is a native and citizen of Laos. Her Alien Registration Number is
8  She entered the United States as a refugee, became a lawful permanent
9 resident in 1983, and has resided in the United States for approximately forty-five
10 years.
11

12 27. Ms. Nobouphasavanh is the person whose liberty is restrained. She brings
13 this action to challenge Respondents' current civil immigration detention and to seek
14 release, a TRO to prevent transfer, and secure constitutionally adequate process.
15

16 28. Respondent Officer in Charge of Petitioner's ICE detention facility is
17 Petitioner's immediate physical custodian and is responsible for day-to-day
18 confinement. This Respondent is named in an official capacity.
19

20 29. Respondent San Diego Field Office Director, U.S. Immigration and
21 Customs Enforcement, exercises authority over local ICE custody, supervision,
22 transfer, release, and removal decisions affecting Petitioner and is named in an official
23 capacity.
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1 30. Respondent Senior Official Performing the Duties of Director of U.S.
2 Immigration and Customs Enforcement exercises authority over ICE detention policy
3 and the actions of subordinate ICE officials. This Respondent is named in an official
4 capacity.
5

6 31. Respondent Secretary of the U.S. Department of Homeland Security
7 exercises authority over DHS components, including ICE, and is named in an official
8 capacity.
9

10 32. Respondent ICE is the federal agency responsible for immigration arrest,
11 detention, custody classification, transfer, release decisions, supervision, and removal
12 operations affecting Petitioner.
13

14 33. Respondent DHS is the federal agency with authority over ICE and the
15 immigration enforcement actions challenged here. Respondents collectively hold
16 Petitioner in custody and are capable of providing the relief ordered by this Court.
17

18 **LEGAL FRAMEWORK**

19 **A. Post-order detention under 8 U.S.C. § 1231(a)(6) is limited by *Zadvydas* and**
20 ***Clark*.**
21

22 34. After a removal order becomes administratively final, 8 U.S.C. §
23 1231(a)(1) establishes a ninety-day removal period. During that period, detention is
24 generally mandatory. After the removal period, any continued detention of covered
25 noncitizens rests on 8 U.S.C. § 1231(a)(6).
26
27

1 35. Section 1231(a)(6) does not authorize indefinite detention. In *Zadvydas v.*
2 *Davis*, the Supreme Court construed § 1231(a)(6) to avoid serious constitutional
3 concerns and held that post-order detention is authorized only for a period reasonably
4 necessary to effect removal. 533 U.S. at 689, 699-701.

6 36. *Zadvydas* recognized six months as a presumptively reasonable period.
7 After that period, once the detained person provides good reason to believe there is no
8 significant likelihood of removal in the reasonably foreseeable future, the Government
9 must respond with evidence sufficient to rebut that showing. *Id.* at 701.

11 37. *Clark v. Martinez* confirms that the same statutory limitation applies
12 across the categories covered by § 1231(a)(6). 543 U.S. 371, 378, 386 (2005). The
13 Government therefore may not rely on criminal history alone to continue detention
14 when removal is not significantly likely in the reasonably foreseeable future.

16 38. The statutory exception in 8 U.S.C. § 1231(a)(1)(C), which can extend the
17 removal period where a person refuses or fails to cooperate in good faith with travel-
18 document efforts, does not apply on the present record. The known reason removal was
19 not executed is that Laos declined to accept Ms. Nobouphasavanh's return, not that she
20 obstructed removal.
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B. DHS regulations require meaningful post-order custody review and a changed-circumstances showing.

39. DHS regulations governing post-order custody recognize the *Zadvydas* limitation. 8 C.F.R. § 241.13 establishes special review procedures for detained noncitizens subject to final orders who provide good reason to believe there is no significant likelihood of removal to the country of removal, or to a third country, in the reasonably foreseeable future.

40. Under 8 C.F.R. § 241.13, the person may submit documentation supporting the assertion that removal is not significantly likely in the reasonably foreseeable future. The agency must respond in writing, consider relevant evidence, give the person an opportunity to respond to evidence on which the agency intends to rely, and issue a written decision based on the administrative record.

41. If DHS determines there is no significant likelihood of removal in the reasonably foreseeable future, the regulations require release under appropriate conditions absent special circumstances. 8 C.F.R. § 241.13(g)-(h).

42. Most importantly here, if DHS has released a person because removal was not significantly likely, revocation for removal requires changed circumstances. Under 8 C.F.R. § 241.13(i)(2), DHS may revoke release and return the person to custody only if, on account of changed circumstances, DHS determines there is a significant likelihood that the person may be removed in the reasonably foreseeable future.

1 43. Upon revocation, DHS must provide notice of the reasons for revocation
2 and promptly conduct an informal interview giving the person an opportunity to
3 respond and submit evidence that removal remains not significantly likely or that she
4 did not violate conditions. 8 C.F.R. § 241.13(i)(3).
5

6 **C. Due process protects a released person's continued liberty interest.**

7 44. The Fifth Amendment protects all persons within the United States from
8 arbitrary deprivations of liberty. *Zadvydas*, 533 U.S. at 693. Freedom from physical
9 restraint lies at the core of the liberty protected by due process. *Id.* at 690; *Foucha v.*
10 *Louisiana*, 504 U.S. 71, 80 (1992).
11

12 45. A person who has been released from custody has a protected continued-
13 liberty interest. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), recognized that release
14 from physical confinement creates a liberty interest whose termination inflicts a
15 grievous loss. *Young v. Harper*, 520 U.S. 143, 152 (1997), applied the same principle
16 to a pre-parole release program.
17

18 46. Federal courts have applied that principle in immigration custody cases.
19
20 *Saravia v. Sessions* required a prompt hearing before a neutral decisionmaker when
21 previously released immigrant youth were re-arrested based on alleged changed facts.
22 905 F.3d 1137 (9th Cir. 2018). *Ortega v. Bonnar* held that re-arrest after immigration
23 release implicated a due-process interest in remaining out of custody absent a material
24 change in circumstances. 415 F. Supp. 3d 963 (N.D. Cal. 2019).
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1 47. The material-change rule follows from basic fairness. If the Government
2 already knew the facts and still released the person, those same facts cannot later
3 become the reason for re-detention unless something material has changed. The change
4 must bear on a legitimate detention purpose: current danger, current flight risk, a
5 violation of release conditions, or a genuinely renewed likelihood of removal.
6

7 48. The *Mathews v. Eldridge* balancing test confirms the need for process.
8 Ms. Nobouphasavanh's liberty interest is weighty; the risk of error is high if DHS relies
9 on stale convictions while ignoring rehabilitation and Laos' refusal to accept return;
10 and the Government's legitimate interests can be protected through notice, a prompt
11 neutral review, and reasonable release conditions. 424 U.S. 319, 335 (1976).
12

13
14 **D. Temporary restraining relief is warranted to preserve habeas jurisdiction.**

15 49. A temporary restraining order (TRO) is appropriate where the movant
16 shows likelihood of success on the merits, likely irreparable harm, a balance of equities
17 favoring relief, and consistency with the public interest. *Winter v. Natural Res. Def.*
18 *Council, Inc.*, 555 U.S. 7, 20 (2008). Serious questions going to the merits may support
19 relief where the balance of hardships tips sharply in the movant's favor. *Alliance for*
20 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011).
21

22 50. A TRO is warranted where the petitioner shows serious legal questions,
23 irreparable injury, a favorable balance of equities, and public interest in lawful
24 procedures. *Nken*, 556 U.S. at 434; *Leiva-Perez*, 640 F.3d at 966-68.
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1 51. No bond should be required under Rule 65(c), or only nominal security
2 should be required, because the relief sought protects constitutional rights and habeas
3 jurisdiction, and Respondents face no monetary injury from complying with the
4 Constitution, statutes, regulations, and Court orders.
5

6 **FACTUAL BACKGROUND**

7 **A. Ms. Nobouphasavanh entered as a refugee, became a lawful permanent**
8 **resident, and has lived in the United States for decades.**
9

10 52. Ms. Nobouphasavanh is a native and citizen of Laos. She entered the
11 United States as a refugee and was granted lawful permanent resident status in 1983.
12

13 53. She has lived in the United States for approximately forty-five years. Her
14 adult life, family, community, and rehabilitation are centered in the United States.
15

16 54. She has two adult United States citizen children: a thirty-three-year-old
17 daughter and a twenty-year-old son. These ties weigh strongly in favor of release and
18 demonstrate incentive to comply with supervision and court requirements.
19

20 **B. The known adverse history is old, completed, and known to the Government.**

21 55. The San Diego County case-index material supplied to counsel identifies
22 two criminal case entries associated with the name Nobouphasavanh, Sompathana,
23 birth year 1977. The first entry is Case No. [REDACTED] filed October 2, 1998 in South
24 County. The second entry is Case No. [REDACTED] filed October 20, 1998 in San
25 Diego.
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1 56. The information supplied to counsel further states that, in 1999, Ms.
2 Nobouphasavanh was convicted of a methamphetamine-related offense involving the
3 sale of crystal methamphetamine. As a result, she was placed in removal proceedings
4 and received a deportation order.
5

6 57. Removal was not effected after the 1999 deportation order because Laos
7 declined to accept her return. That fact is critical: DHS has long known that the
8 practical barrier to removal was the receiving country's refusal, not a lack of completed
9 criminal punishment.
10

11 58. In 2009, Ms. Nobouphasavanh and her former husband were convicted in
12 federal court on charges relating to distribution of methamphetamine. She served
13 approximately ten years in federal custody.
14

15 59. The 1999 and 2009 criminal histories are serious. But they are not new.
16 They are completed criminal consequences, known to the Government, and predate her
17 later release, rehabilitation, apprenticeship, union membership, public recognition, and
18 community service.
19
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21 60. If Respondents rely on these old convictions to justify present detention,
22 they must explain why the same known facts that did not result in successful removal
23 or continued custody for decades suddenly justify detention now. Absent a material
24 change, the old record cannot carry the Government's burden.
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C. The record shows release, rehabilitation, employment, training, and public recognition.

61. After incarceration, Ms. Nobouphasavanh returned to the community. Public labor-community records identify her as Sam Nobouphasavanh, a Tradeswomen Heroes Award winner for August 2021.

62. The same record identifies her level of experience as apprentice, years in trade as three, union as Ironworkers, and local as 229.

63. The profile states that, after being incarcerated, she joined the Apprenticeship Gladiator program in 2018, completed long hours of training, and spent significant time volunteering, especially during COVID-19.

64. The profile further states that she became a sixth-period apprentice, is respected by employers and contractors, believes strongly in the union family, and continues to pass on her knowledge to others.

65. The nomination language describes her as strong, hard working, grounded, and a quick learner among her peers. Those facts are directly relevant to present danger, flight risk, rehabilitation, and whether less restrictive conditions are adequate.

66. Ms. Nobouphasavanh also has longstanding community ties. Those equities further demonstrate that she is not a person who should be detained based on stale facts without current individualized findings.

D. The current detention lacks a material changed-circumstances justification.

67. Respondents currently restrain Ms. Nobouphasavanh's liberty through ICE custody or DHS control. The current custody decision rests, on the available record, on the same adverse information already known to DHS: old San Diego case entries, the 1999 conviction and removal order, and the 2009 federal conviction.

68. The record supplied to counsel does not identify a new conviction, a new violent incident, a recent failure to appear, a violation of supervision, refusal to cooperate with travel documents, or any new agreement by Laos to accept her return.

69. The absence of a new removal pathway is decisive. Because Laos previously declined to accept Ms. Nobouphasavanh's return, Respondents must produce evidence showing that removal is now significantly likely in the reasonably foreseeable future. A mere hope that removal may someday become possible is not enough under *Zadvydas*, *Clark*, and 8 C.F.R. § 241.13.

70. The absence of current danger evidence is also decisive. Respondents cannot ignore years of work, training, union affiliation, family ties, volunteering, and public recognition while relying exclusively on old convictions for which criminal sentences were served.

71. Reasonable alternatives to detention can address any legitimate governmental concern, including release on an order of supervision, reporting, check-

1 ins, travel restrictions, electronic or telephonic monitoring if necessary, sponsor
2 placement with family, and continued cooperation with travel-document requests.

3
4 **ARGUMENT**

5 **I. The Court should issue the writ or an Order to Show Cause forthwith.**

6 72. The Petition states substantial habeas claims. Ms. Nobouphasavanh is
7 detained or restrained by federal immigration officials; she has a final removal order
8 that could not be executed because Laos declined to accept her return; she later lived
9 at liberty and rebuilt her life; and Respondents have not identified a material change
10 justifying renewed detention.
11

12 73. Section 2243 requires a prompt response. Respondents should be ordered
13 within three days to identify the precise statutory authority for custody, the date and
14 basis of detention, the custody-review history, any order of supervision or release
15 conditions, the alleged changed circumstances, and any evidence that Laos will issue
16 travel documents or accept her return in the reasonably foreseeable future.
17

18 74. Respondents should also produce the custody file, removal file, travel-
19 document communications, post-order custody reviews, notices of revocation, criminal
20 conviction records relied upon, and any risk assessment or memorandum used to justify
21 detention.
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II. Continued detention violates § 1231(a)(6), *Zadvydas*, and *Clark* because removal to Laos is not significantly likely in the reasonably foreseeable future.

75. The strongest fact in this case is practical impossibility or extreme uncertainty of removal. After the 1999 deportation order, Laos declined to accept Ms. Nobouphasavanh's return. That refusal prevented execution of the order despite the Government's knowledge of her criminal history.

76. When the receiving country will not accept return, detention loses its statutory purpose. *Zadvydas* held that where removal is not reasonably foreseeable, continued detention is no longer authorized by § 1231(a)(6). 533 U.S. at 699-701.

77. More than six months have long passed since the 1999 deportation order. Ms. Nobouphasavanh has good reason to believe removal is not significantly likely in the reasonably foreseeable future because Laos previously refused to accept her return and Respondents have identified no concrete change in that position.

78. The burden therefore shifts to Respondents to rebut that showing with evidence. Respondents must produce actual travel-document evidence, consular acceptance, or other reliable proof that removal to Laos or a third country is significantly likely in the reasonably foreseeable future.

79. Generalized assertions that DHS is pursuing removal, that old convictions are serious, or that removal may become possible at some unspecified future date do

1 not satisfy *Zadvydas*. The prospect for removal must be reasonable under the
2 circumstances, not speculative.

3 80. If Respondents assert that § 1231(a)(1)(C) extends the removal period,
4 they must prove noncooperation. The existing record shows the opposite: removal
5 failed because Laos declined to return, not because Ms. Nobouphasavanh prevented
6 the issuance of documents.
7

8
9 **III. Due process prohibits re-detention after release without notice, a neutral**
10 **review, and proof of a material change in circumstances.**

11 81. Ms. Nobouphasavanh lived at liberty after the Government could not
12 remove her. That period of liberty, work, family life, and community integration
13 created a legitimate expectation that the Government would not revoke her freedom
14 based on the same facts it already knew.
15

16 82. A released person's liberty interest is not erased by immigration status or
17 old criminal history. *Morrissey and Young* establish that release from physical custody
18 creates protected liberty. *Saravia* and *Ortega* apply that principle in immigration re-
19 detention contexts.
20

21 83. The Government therefore must show a material change in circumstances.
22 In a post-order Laos case, a material change would include proof that Laos has now
23 agreed to accept her, proof of a valid travel document, proof of a new violation of
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1 release conditions, proof of noncooperation, or current evidence that no reasonable
2 conditions can address danger or flight risk.

3 84. Respondents have not identified any such change. The 1999 conviction,
4 the 2009 federal conviction, and the 1998 case-index entries were known or knowable
5 long before the current detention. Stale facts cannot become changed circumstances
6 merely because DHS has decided to rely on them again.
7

8 85. Due process requires notice of the reasons for detention, disclosure of the
9 evidence, a meaningful opportunity to respond, access to counsel, a neutral
10 decisionmaker, and consideration of alternatives to detention. Without those
11 safeguards, the risk of erroneous deprivation is unacceptably high.
12

13 86. The *Mathews* factors favor Petitioner. Her private interest is freedom from
14 physical detention and family/community disruption; the risk of error is high because
15 Respondents appear to rely on old facts while ignoring rehabilitation and removal
16 infeasibility; and the Government's interests can be met through release conditions and
17 a lawful custody review.
18

19 **IV. The old criminal history does not establish current danger or a lawful basis**
20 **for civil detention.**
21

22 87. Petitioner acknowledges the seriousness of the 1999 and 2009 drug-
23 related convictions. But the civil detention question is not whether the past conduct
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1 was serious. The question is whether detention now is reasonably related to a legitimate
2 regulatory purpose and supported by current individualized evidence.

3 88. Completed criminal sentences cannot be converted into indefinite civil
4 immigration detention. *Zadvydas* specifically involved individuals with criminal
5 histories, yet the Supreme Court still required a statutory limit where removal was not
6 reasonably foreseeable.
7

8 89. Current evidence cuts against detention. Ms. Nobouphasavanh completed
9 federal custody, joined the Apprenticeship Gladiator program in 2018, trained for long
10 hours, volunteered during COVID-19, became an Ironworkers Local 229 apprentice,
11 was respected by employers and contractors, and received public Tradeswomen Heroes
12 recognition in 2021.
13

14 90. Her two adult United States citizen children, union ties, community ties
15 and rehabilitation show strong incentives to comply with supervision and no reason to
16 treat detention as the only available tool.
17

18 91. Respondents must consider less restrictive alternatives. An order of
19 supervision, check-ins, reporting, travel-document cooperation, stable sponsor
20 placement, and other conditions can address any legitimate concerns without physical
21 detention.
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25 **V. Respondents' actions are arbitrary, capricious, contrary to law, and without**
26 **observance of required procedure.**
27

1 92. The APA requires courts to hold unlawful and set aside agency action that
2 is arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to
3 constitutional right, in excess of statutory authority, or without observance of procedure
4 required by law. 5 U.S.C. § 706(2)(A)-(D).

6 93. Respondents acted contrary to law by detaining Ms. Nobouphasavanh
7 beyond the time reasonably necessary to effect removal without showing that removal
8 to Laos is significantly likely in the reasonably foreseeable future.

10 94. Respondents acted without observance of procedure required by law by
11 failing to provide the meaningful review required by 8 C.F.R. §§ 241.4 and 241.13,
12 including notice, an opportunity to respond, a written decision grounded in the record,
13 and a changed-circumstances showing if release was revoked because removal
14 supposedly became foreseeable.

16 95. Respondents acted arbitrarily by failing to consider key aspects of the
17 problem: Laos' refusal to accept return, the age of the adverse facts, the completion of
18 criminal sentences, rehabilitation, community service, union affiliation, family ties,
19 and alternatives to detention.

22 96. A rational custody decision must connect current facts to present
23 detention. The current record contains no rational connection between decades-old and
24 completed events and a present need for civil detention.

VI. A TRO staying removal and transfer is necessary to prevent irreparable harm and preserve jurisdiction.

97. Petitioner is likely to succeed, or at minimum raises serious questions, on her *Zadvydas*, due process, APA, and regulatory claims. The record shows a final order that could not be executed because Laos declined return, years of release and rehabilitation, and no identified material change.

98. Irreparable harm is immediate. Loss of physical liberty is irreparable. Transfer would impair counsel access and evidence gathering. Removal would likely defeat meaningful habeas review and deprive this Court of the ability to decide whether detention is lawful before the consequences become irreversible.

99. The balance of equities favors Petitioner. She seeks only preservation of the status quo, a lawful custody review, and release or supervision under reasonable conditions. Respondents suffer no cognizable harm from being required to comply with the Constitution and governing regulations.

100. The public interest favors lawful immigration enforcement, individualized custody decisions, accurate post-order review, preservation of habeas jurisdiction, and release under reasonable conditions when detention is not legally necessary.

101. The Court should therefore stay removal, prohibit transfer outside the District or to a location that frustrates counsel access absent advance notice and Court approval, and require Respondents to show cause within three days.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1231(a)(6), *Zadvydas*, and *Clark* - Unlawful Post-Order Detention

102. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

103. Section 1231(a)(6), as construed by *Zadvydas* and *Clark*, authorizes post-order detention only for a period reasonably necessary to effect removal.

104. Ms. Nobouphasavanh has good reason to believe there is no significant likelihood of removal to Laos in the reasonably foreseeable future because Laos previously declined to accept her return and Respondents have identified no material change in that position.

105. Respondents' continued detention violates § 1231(a)(6), *Zadvydas*, and *Clark* unless Respondents prove that removal is significantly likely in the reasonably foreseeable future.

106. The Court should issue the writ and order Ms. Nobouphasavanh released under reasonable conditions of supervision.

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COUNT TWO

**Violation of the Fifth Amendment - Re-Detention Without Due Process or
Material Changed Circumstances**

107. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

108. The Fifth Amendment prohibits Respondents from depriving any person of liberty without due process of law.

109. By releasing or allowing Ms. Nobouphasavanh to live at liberty after the Government knew her criminal history and after Laos declined return, Respondents created a legitimate expectation that she would remain at liberty absent a material change in circumstances and fair process.

110. Respondents violated due process by detaining or continuing to detain her based on stale facts without notice, a neutral hearing, disclosure of evidence, an opportunity to respond, and proof of a material change bearing on danger, flight risk, violation of release conditions, noncooperation, or likelihood of removal.

111. The Court should declare the detention unconstitutional and order release or a constitutionally adequate custody hearing at which the Government bears the burden of proof.

COUNT THREE

**Violation of the APA and 8 C.F.R. §§ 241.4 and 241.13 - Failure to Provide
Lawful Post-Order Custody Review**

112. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

113. The APA requires courts to hold unlawful agency action that is arbitrary, capricious, an abuse of discretion, contrary to law, contrary to constitutional right, in excess of statutory authority, or without observance of procedure required by law. 5 U.S.C. § 706(2)(A)-(D).

114. Respondents were required to comply with 8 C.F.R. §§ 241.4 and 241.13 before continuing detention under a final order where removal is not significantly likely in the reasonably foreseeable future.

115. If Respondents revoked release because removal allegedly became foreseeable, 8 C.F.R. § 241.13(i)(2)-(3) required changed circumstances, notice of reasons, a prompt opportunity to respond, and consideration of evidence that removal remains not significantly likely.

116. Respondents' failure to provide those procedures is arbitrary, capricious, contrary to law, and without observance of required procedure.

COUNT FOUR

Violation of the Fifth Amendment - Arbitrary Civil Detention and Failure to Consider Alternatives

117. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

118. Civil immigration detention may not be punitive. It must be reasonably related to a legitimate regulatory purpose such as ensuring appearance or protecting the community.

119. Respondents have not made a lawful current individualized finding that Ms. Nobouphasavanh presents a danger or flight risk that cannot be addressed through reasonable conditions.

120. Respondents failed to give meaningful weight to rehabilitation, Ironworkers Local 229 ties, Apprenticeship Gladiator training, volunteer service, family ties, and the availability of supervision conditions.

121. Detention under these circumstances is excessive, arbitrary, and unconstitutional.

COUNT FIVE

All Writs Act, Rule 65, and Habeas Authority - Stay of Removal and Transfer

122. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

1 123. The All Writs Act authorizes this Court to issue all writs necessary or
2 appropriate in aid of its jurisdiction. 28 U.S.C. § 1651(a). Rule 65 authorizes temporary
3 restraining relief to prevent irreparable harm.

4
5 124. Removal or transfer before this Court adjudicates the legality of custody
6 would frustrate habeas jurisdiction, impair counsel access, and risk irreparable harm.

7
8 125. Petitioner satisfies the *Winter*, *Nken*, and *Leiva-Perez* standards because
9 she raises serious and likely meritorious legal questions, faces irreparable harm, and
10 seeks relief consistent with the public interest.

11 126. The Court should stay removal and transfer pending further order.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner respectfully requests that this Court grant the following
15 relief:

- 16
17 (1) Assume jurisdiction over this matter;
18 (2) Issue an Order to Show Cause requiring Respondents to show cause within three
19 days why the writ should not be granted;
20 (3) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6),
21 *Zadvydas v. Davis*, *Clark v. Martinez*, the *Fifth Amendment*, the APA, and 8 C.F.R. §§
22 241.4 and 241.13;
23
24 (4) Declare that Respondents may not detain or re-detain Petitioner based on facts
25 known before release, absent fair process and a material change in circumstances;
26
27

1 (5) Declare that Respondents must produce reliable evidence that removal to Laos
2 or a third country is significantly likely in the reasonably foreseeable future before
3 continuing detention under § 1231(a)(6);
4

5 (6) Issue a writ of habeas corpus ordering Respondents to release Petitioner from
6 custody under reasonable conditions of supervision;
7

8 (7) In the alternative, order Respondents to provide a prompt constitutionally
9 adequate custody hearing or post-order custody review before a neutral decisionmaker,
10 with the Government bearing the burden to justify detention by clear and convincing
11 evidence;
12

13 (8) Order Respondents to produce the full custody file, removal file, travel-
14 document communications, post-order custody-review records, release or supervision
15 records, revocation records, and all evidence relied upon to justify detention;
16

17 (9) Issue a Temporary Restraining Order staying Petitioner's removal from the
18 United States pending further order of this Court;
19

20 (10) Issue a Temporary Restraining Order prohibiting Respondents from transferring
21 Petitioner outside this District, or to any location that would frustrate counsel access or
22 this Court's jurisdiction, without advance notice to counsel and leave of Court;
23

24 (11) Require Respondents to preserve all custody, removal, travel-document,
25 supervision, criminal-history, release, transfer, and communications records
26 concerning Petitioner;
27

1 (12) Set no bond under Rule 65(c), or only nominal bond, because the requested relief
2 protects constitutional rights and imposes no monetary harm on Respondents;

3 (13) Grant such other and further relief as the Court deems just, equitable, and proper.
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6 Dated: June 9, 2026

Respectfully submitted,

7
8 //s// Mario Portugal

9 _____
10 Mario Portugal,
11 Attorney for Petitioner
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