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

**Sompathana NOBOUPHASAVANH,  
Petitioner-Plaintiff,**

**CASE NO.: 26-cv-3457-TWR-MMP**

**vs.**

**PETITIONER'S EMERGENCY  
MOTION FOR TEMPORARY  
RESTRAINING  
ORDER**

**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,**

**REQUEST FOR EMERGENCY  
STAY OF REMOVAL AND  
TRANSFER**

**Respondents-Defendants.**

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

Petitioner Sompathana Nobouphasavanh, also known as Sam Nobouphasavanh (Ms. Nobouphasavanh"), petitions this Court for declaratory and injunctive relief, and emergency temporary restraining relief under Federal Rule of Civil Procedure 65 to protect her from the ongoing threat of imminent deportation. Following the denial without prejudice of Petitioner's temporary restraining order, Petitioner's daughter was told to bring luggage for her mother's flight to Laos, meaning that Respondents appear to be actively processing her for removal.

For these reasons, Petitioner renews her motion for a temporary restraining order, enjoining Respondents from removing her out of this district.

**I. INTRODUCTION**

This case presents an urgent post-order detention and re-detention challenge. Ms. Nobouphasavanh is a native and citizen of Laos,  who has lived in the United States for approximately forty-five years. She entered the United States as a refugee and was granted lawful permanent resident status in 1983. Ms. Nobouphasavanh's daughter was advised to bring luggage for Ms. Nobouphasavanh to an ICE facility on June 9, 2026, and communications with Immigration and Customs Enforcement (ICE) provided indications that she is actively being processed to be removed from the country.

1 The Government has known the core adverse facts for decades. In 1999, Ms.  
2 Nobouphasavanh was convicted of a methamphetamine-related offense involving the  
3 sale of crystal methamphetamine, was placed in removal proceedings, and received a  
4 deportation order. But removal was not executed because Laos declined to accept her  
5 return.  
6

7 The record supplied to counsel also includes two San Diego County criminal  
8 case-index entries associated with the name Nobouphasavanh, Sompathana, birth year  
9 1977: Case No. [REDACTED], filed in South County on October 2, 1998, and Case No.  
10 [REDACTED] filed in San Diego on October 20, 1998. Those entries confirm that the  
11  
12 Government's adverse criminal-history theory is old, known, and not a new material  
13 change.  
14

15 In 2009, Ms. Nobouphasavanh and her former husband were convicted in federal  
16 court on charges relating to the distribution of methamphetamine. She served  
17 approximately ten years in federal custody. Those facts are serious, and this Petition  
18 does not minimize them. But they were completed criminal consequences, not a present  
19 civil detention justification standing alone.  
20  
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22 After incarceration, Ms. Nobouphasavanh returned to the community and built  
23 substantial equities. A public North America's Building Trades Unions profile  
24 identifies her as Sam Nobouphasavanh, Tradeswomen Heroes Award Winner for  
25 August 2021, an Ironworkers Local 229 apprentice, and a person who joined the  
26 Apprenticeship Gladiator program in 2018, completed long hours of training,  
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28

1 volunteered extensively during COVID-19, and became respected by employers and  
2 contractors.

3 Ms. Nobouphasavanh also has two adult United States citizen children: a thirty-  
4 three-year-old daughter and a twenty-year-old son. Her family, union ties, work  
5 history, community service, and rehabilitation, all support release and sharply  
6 undermine any claim that old convictions alone establish current danger or flight risk.  
7

8  
9 The central due-process defect is that Respondents seek to detain or continue  
10 detaining Ms. Nobouphasavanh based on facts that were known before she was  
11 released and permitted to live at liberty. Once the Government allows a person to  
12 remain at liberty after a final removal order or after release from custody, it creates a  
13 legitimate expectation that liberty will not be revoked without fair process and a  
14 material change in circumstances.  
15

16  
17 The material-change requirement is especially strong here because her removal  
18 to Laos was not possible after the 1999 deportation order. If Respondents contend that  
19 circumstances have changed, they must identify the change: a travel document, a  
20 renewed acceptance by Laos, a new violation of supervision, a new conviction, or  
21 current individualized evidence that no conditions can protect the community or ensure  
22 compliance. The existing record contains no such change.  
23

24  
25 Under *Zadvydas v. Davis* and *Clark v. Martinez*, detention under 8 U.S.C. §  
26 1231(a)(6) is limited to a period reasonably necessary to effect removal. Once there is  
27 a good reason to believe there is no significant likelihood of removal in the reasonably  
28

1 foreseeable future, continued detention becomes unlawful unless the Government  
2 rebuts that showing with evidence.

3       The regulations reinforce the same rule. Under 8 C.F.R. § 241.13, if a person  
4 under a final order shows good reason to believe removal is not significantly likely in  
5 the reasonably foreseeable future, DHS must conduct a meaningful review. If release  
6 was granted because removal was not reasonably foreseeable, revocation for removal  
7 requires changed circumstances showing a significant likelihood of removal in the  
8 reasonably foreseeable future.  
9

10  
11       Respondents cannot treat civil immigration detention as additional punishment  
12 for completed criminal sentences. Civil detention must be tied to a legitimate regulatory  
13 purpose, supported by current evidence, and subject to meaningful process. Here, years  
14 of release, rehabilitation, community service, union work, family ties, and Laos' prior  
15 refusal to accept return all show that detention is arbitrary unless Respondents prove a  
16 genuine, material, current change.  
17

18  
19       Immediate relief is necessary. Detention causes irreparable harm every day.  
20 Transfer would frustrate counsel's access and this Court's jurisdiction. Removal, if  
21 attempted before this Court can review custody, would defeat meaningful habeas relief.  
22 The Court should issue an Order to Show Cause within three days, enter a TRO  
23 preserving jurisdiction, stay removal and transfer, and order release or a  
24 constitutionally adequate custody hearing with the Government bearing the burden of  
25 proof.  
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1 This action arises under the Constitution of the United States, 28 U.S.C. §§ 1331,  
2 2241, 2242, and 2243; Article I, § 9, cl. 2 of the United States Constitution; the Fifth  
3 Amendment; the Immigration and Nationality Act ("INA"), including 8 U.S.C. § 1231;  
4 the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702 and 706; the Declaratory  
5 Judgment Act, 28 U.S.C. §§ 2201 and 2202; and the All Writs Act, 28 U.S.C. § 1651.

7 This Court has habeas jurisdiction because Ms. Nobouphasavanh is in the  
8 Respondents' physical and legal custody, or is subject to restraints not shared by the  
9 public generally, and she challenges the legality of that custody as contrary to the  
10 Constitution, federal statutes, and governing regulations. 28 U.S.C. § 2241(c)(3); *Jones*  
11 *v. Cunningham*, 371 U.S. 236, 240 (1963).  
12

14 Federal courts retain jurisdiction to review constitutional and legal challenges to  
15 immigration detention. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v.*  
16 *Davis*, 533 U.S. 678, 687-88 (2001). Jurisdiction-stripping provisions do not bar habeas  
17 review of constitutional claims or questions of law concerning detention. *Jennings v.*  
18 *Rodriguez*, 583 U.S. 281, 295 (2018).  
19

21 This Petition does not ask the Court to reopen the final removal order or to  
22 review a discretionary decision on the merits. It challenges current custody, the legal  
23 authority for that custody, the absence of a meaningful post-order detention review, the  
24 absence of a material-change showing, and the risk that transfer or removal will defeat  
25 habeas jurisdiction.  
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1 Section 2243 requires expedited treatment. The Court must award the writ or  
2 issue an order to show cause forthwith unless it appears from the petition that the  
3 detained person is not entitled to relief. If an order to show cause issues, Respondents  
4 must make a return within three days unless, for good cause, the Court allows additional  
5 time not exceeding twenty days.  
6

7 The Court may grant declaratory and injunctive relief ancillary to habeas when  
8 necessary to preserve jurisdiction and make habeas relief meaningful. 28 U.S.C. §  
9 1651(a); *Nken v. Holder*, 556 U.S. 418, 426-27 (2009); *Leiva-Perez v. Holder*, 640  
10 F.3d 962, 966-68 (9th Cir. 2011).  
11  
12

## 13 II. LEGAL FRAMEWORK

14 After a removal order becomes administratively final, 8 U.S.C. § 1231(a)(1)  
15 establishes a ninety-day removal period. During that period, detention is generally  
16 mandatory. After the removal period, any continued detention of covered noncitizens  
17 rests on 8 U.S.C. § 1231(a)(6).  
18

19 Section 1231(a)(6) does not authorize indefinite detention. In *Zadvydas v. Davis*,  
20 the Supreme Court construed § 1231(a)(6) to avoid serious constitutional concerns and  
21 held that post-order detention is authorized only for a period reasonably necessary to  
22 effect removal. 533 U.S. at 689, 699-701.  
23  
24

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

3       *Clark v. Martinez* confirms that the same statutory limitation applies across the  
4 categories covered by § 1231(a)(6). 543 U.S. 371, 378, 386 (2005). The Government  
5 therefore may not rely on criminal history alone to continue detention when removal is  
6 not significantly likely in the reasonably foreseeable future.  
7

8       The statutory exception in 8 U.S.C. § 1231(a)(1)(C), which can extend the  
9 removal period where a person refuses or fails to cooperate in good faith with travel-  
10 document efforts, does not apply on the present record. The known reason removal was  
11 not executed is that Laos declined to accept Ms. Nobouphasavanh's return, not that she  
12 obstructed removal.  
13

14       DHS regulations governing post-order custody recognize the *Zadvydas*  
15 limitation. 8 C.F.R. § 241.13 establishes special review procedures for detained  
16 noncitizens subject to final orders who provide good reason to believe there is no  
17 significant likelihood of removal to the country of removal, or to a third country, in the  
18 reasonably foreseeable future.  
19

20       Under 8 C.F.R. § 241.13, the person may submit documentation supporting the  
21 assertion that removal is not significantly likely in the reasonably foreseeable future.  
22 The agency must respond in writing, consider relevant evidence, give the person an  
23 opportunity to respond to evidence on which the agency intends to rely, and issue a  
24 written decision based on the administrative record.  
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1 If DHS determines there is no significant likelihood of removal in the reasonably  
2 foreseeable future, the regulations require release under appropriate conditions absent  
3 special circumstances. 8 C.F.R. § 241.13(g)-(h).  
4

5 Most importantly here, if DHS has released a person because removal was not  
6 significantly likely, revocation for removal requires changed circumstances. Under 8  
7 C.F.R. § 241.13(i)(2), DHS may revoke release and return the person to custody only  
8 if, on account of changed circumstances, DHS determines there is a significant  
9 likelihood that the person may be removed in the reasonably foreseeable future.  
10

11 Upon revocation, DHS must provide notice of the reasons for revocation and  
12 promptly conduct an informal interview giving the person an opportunity to respond  
13 and submit evidence that removal remains not significantly likely or that she did not  
14 violate conditions. 8 C.F.R. § 241.13(i)(3).  
15

16 The Fifth Amendment protects all persons within the United States from  
17 arbitrary deprivations of liberty. *Zadvydas*, 533 U.S. at 693. Freedom from physical  
18 restraint lies at the core of the liberty protected by due process. *Id.* at 690; *Foucha v.*  
19 *Louisiana*, 504 U.S. 71, 80 (1992).  
20

21 A person who has been released from custody has a protected continued-liberty  
22 interest. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), recognized that release from  
23 physical confinement creates a liberty interest whose termination inflicts a grievous  
24 loss. *Young v. Harper*, 520 U.S. 143, 152 (1997), applied the same principle to a pre-  
25 parole release program.  
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1 Federal courts have applied that principle in immigration custody cases. *Saravia*  
2 *v. Sessions* required a prompt hearing before a neutral decisionmaker when previously  
3 released immigrant youth were re-arrested based on alleged changed facts. 905 F.3d  
4 1137 (9th Cir. 2018). *Ortega v. Bonnar* held that re-arrest after immigration release  
5 implicated a due-process interest in remaining out of custody absent a material change  
6 in circumstances. 415 F. Supp. 3d 963 (N.D. Cal. 2019).  
7

8  
9 The material-change rule follows from basic fairness. If the Government already  
10 knew the facts and still released the person, those same facts cannot later become the  
11 reason for re-detention unless something material has changed. The change must bear  
12 on a legitimate detention purpose: current danger, current flight risk, a violation of  
13 release conditions, or a genuinely renewed likelihood of removal.  
14

15 The *Mathews v. Eldridge* balancing test confirms the need for process. Ms.  
16 Nobouphasavanh's liberty interest is weighty; the risk of error is high if DHS relies on  
17 stale convictions while ignoring rehabilitation and Laos' refusal to accept return; and  
18 the Government's legitimate interests can be protected through notice, a prompt neutral  
19 review, and reasonable release conditions. 424 U.S. 319, 335 (1976).  
20

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

3 A TRO is warranted where the petitioner shows serious legal questions,  
4 irreparable injury, a favorable balance of equities, and public interest in lawful  
5 procedures. *Nken*, 556 U.S. at 434; *Leiva-Perez*, 640 F.3d at 966-68.

7 No bond should be required under Rule 65(c), or only nominal security should  
8 be required, because the relief sought protects constitutional rights and habeas  
9 jurisdiction, and Respondents face no monetary injury from complying with the  
10 Constitution, statutes, regulations, and Court orders.

### 11 **III. FACTUAL BACKGROUND**

14 Ms. Nobouphasavanh is a native and citizen of Laos. She entered the United  
15 States as a refugee and was granted lawful permanent resident status in 1983. She has  
16 lived in the United States for approximately forty-five years. Her adult life, family,  
17 community, and rehabilitation are centered in the United States. She has two adult  
18 United States citizen children: a thirty-three-year-old daughter and a twenty-year-old  
19 son. These ties weigh strongly in favor of release and demonstrate incentive to comply  
20 with supervision and court requirements.

23 The San Diego County case-index material supplied to counsel identifies two  
24 criminal case entries associated with the name Nobouphasavanh, Sompathana, birth  
25 year 1977. The first entry is Case No. SF131102, filed October 2, 1998 in South  
26 County. The second entry is Case No. SCD139616, filed October 20, 1998 in San  
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1 Diego. 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 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 In 2009, Ms. Nobouphasavanh and her former husband were convicted in federal  
12 court on charges relating to distribution of methamphetamine. She served  
13 approximately ten years in federal custody. The 1999 and 2009 criminal histories are  
14 serious. But they are not new. They are completed criminal consequences, known to  
15 the Government, and predate her later release, rehabilitation, apprenticeship, union  
16 membership, public recognition, and community service.  
17

18 If Respondents rely on these old convictions to justify present detention, they  
19 must explain why the same known facts that did not result in successful removal or  
20 continued custody for decades suddenly justify detention now. Absent a material  
21 change, the old record cannot carry the Government's burden.  
22  
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25 Undersigned counsel was appointed as pro bono counsel for Petitioner on June  
26 8, 2026, and since his appointment, he has since learned that ICE has been  
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28

1 communicating with Petitioner's daughter and is actively preparing for her imminent  
2 removal from this country.

#### 3 IV. ARGUMENT

4  
5 To obtain temporary and preliminary injunctive relief, Petitioner must  
6 demonstrate that (1) she is likely to succeed on the merits; (2) she is likely to suffer  
7 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips  
8 in her favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def.*  
9 *Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is a party, the balance of  
10 equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).  
11  
12

##### 13 A. Petitioner is Likely to Succeed on the Merits

14 Here, Petitioner is likely to succeed on the merits, since her release from  
15 custody, there have been no material change in circumstances, and she has not been  
16 provided an opportunity to be heard. Respondent is informed and believes that the  
17 Government will not be able to meet its burden to show a material change in  
18 circumstances warranting her re-detention.  
19  
20

##### 21 B. Petitioner Has Suffered or Will Continue to Suffer Irreparable Harm Absent 22 Emergency Injunctive Relief

23 Parties seeking preliminary injunctive relief must also show they are "*likely* to  
24 suffer irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 20.  
25 Irreparable harm is harm for which there is "no adequate legal remedy, such as an  
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1 award of damages.” *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068  
2 (9th Cir. 2014).

3       Petitioner currently is suffering and will suffer irreparable harm absent  
4 injunctive relief, as the Government is actively processing her for imminent removal  
5 notwithstanding the pendency of her habeas petition. Without immediate intervention  
6 from this Court, Defendants will proceed with removal efforts and may effectuate  
7 Petitioner’s deportation before her habeas claims are adjudicated, thereby depriving  
8 her of meaningful judicial review.  
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11       C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner’s  
12 Favor  
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14       The final two factors for injunctive relief, the balance of hardships and public  
15 interest, “merge when the Government is the opposing party.” *Nken v. Holder*, 556  
16 U.S. 418, 435 (2009). Here, Petitioner faces weight hardships. Respondents, by  
17 contrast, face  
18

19       Moreover, Respondents “cannot suffer harm from an injunction that merely  
20 ends an unlawful practice...” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.  
21 2013). The public interest is served by the faithful execution of the immigration laws,  
22 and that interest includes respect for protections Congress has enacted and to which  
23 the United States has committed itself by treaty. *Leiva-Perez v. Holder*, 640 F.3d 962,  
24 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not deliver  
25 [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S.  
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1 555, 576 (1992) (discussing “the public interest in Government observance of the  
2 Constitution and laws”).

3  
4 **V. CONCLUSION**

5 For the foregoing reasons, Petitioner requests that the Court grant preliminary  
6 injunctive relief, enjoining Respondents from removing her outside of this district  
7 during the pendency of this action.  
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9  
10 Dated: June 9, 2026,

Respectfully Submitted,

11  
12 //s// Mario Portugal

13 Mario Portugal,  
14 Attorney for Petitioner  
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