UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHANTHAN CHHOT	CIVIL ACTION NO. 3:25CV1172
VERSUS	JUDGE DOUGHTY
KEITH DEVILLE, ET AL	MAGISTRATE JUDGE MCCLUSKY

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Respectfully submitted,

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RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

NOW INTO COURT, through undersigned counsel, comes Respondents, Brian Acuna and Todd Lyons, who respectfully move this Court to deny Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 3), for the following reasons:

BACKGROUND

On August 15, 2025, Petitioner, Chanthan Chhot, filed a Petition for Writ of Habeas Corpus (Doc. 1) and a Motion for Temporary Restraining Order (Doc. 3). An Amended Petition for Writ of Habeas Corpus was filed on August 18, 2025 (Doc. 5). On August 19, 2025, this Court ordered that Respondents respond to the Motion for Temporary Restraining Order (Doc. 3) by 12:00 p.m. CST on August 21, 2025 (Doc. 7). As set forth more fully herein, Respondents submit that Petitioner is not entitled to a restraining order and that the Motion should be denied.

Petitioner is a native and citizen of Cambodia and entered the United States on or about December 11, 1984 as a refugee.[1] On March 10, 2003, the Department of Homeland Security ("DHS") served Petitioner with a Notice to Appear and charged him with removability under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony.[2] On October 29, 2004, Petitioner was ordered to be removed from

[1] Exhibit "A" – Declaration of Charles Ward at ¶ 3.
[2] *Id.* at ¶ 4.

the United States.[3] On December 24, 2004, Enforcement and Removal Operations ("ERO") conducted a Post Order Custody Review ("POCR").[4] On January 26, 2005, the New Orleans ERO Field Office Director ("FOD") authorized Petitioner's release on an Order of Supervision.[5] On February 3, 2005, Petitioner was released from ICE custody and served with an Order of Supervision and Release Notification.[6]

On May 5, 2025, Petitioner was served with a Notice of Revocation of Release and taken into ICE custody.[7] The Notice of Revocation of Release states, in pertinent part, that (1) "ICE has determined that you can be removed from the United States pursuant to the outstanding order of removal against you," (2) "ICE has determined the purpose of your release has been served and it is appropriate to enforce the removal order," (3) "[y]our conduct also indicates that release is no longer appropriate

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[3] *Id.* at ¶ 5; *see also* Petitioner's Motion (Doc. 3) at Exhibit 2, Sub-Ex C – Order of the Immigration Judge.

[4] *Id.* at ¶ 6. Petitioner alleges that, in November 2024, Immigration and Customs Enforcement ("ICE") "formally requested that the Royal Government of Cambodia ("RGC") repatriate Mr. Chhot, pursuant to a recently negotiated agreement between the United States and the RGC, but the RGC declined to do so." Doc. 3-1 at p. 7. In support of this, Petitioner cites to (1) a November 9, 2004 letter from ICE to the Royal Embassy of Cambodia in which ICE requests travel documents on behalf of Petitioner, (2) the Order of Supervision issued to Petitioner on February 3, 2005, and (3) a "Memorandum between the Government of the United States and the Royal Government of Cambodia," which Petitioner asks the court to take judicial notice of pursuant to Fed. R. Evid. 201. The Memorandum was obtained from a sealed declaration filed in the record of *Nak Kim Chhoeun, et al. v. David Marin, et al*, No. 17-CV-1898, in the U.S. District Court for the Central District of California. The November 9, 2004 letter does not reference such Memorandum nor is the Memorandum an appropriate "fact" for judicial notice under Fed. R. Evid. 201.

[5] *Id.* at ¶ 6.

[6] *Id.* at ¶ 7; *see also* Petitioner's Motion (Doc. 3) at Exhibit 2, Sub-Ex E – Order of Supervision and Release Notification.

[7] *Id.* at ¶ 8.

as you were convicted of disorderly conduct in Fall River, MA on May 20, 2013," and (4) "pursuant to 8 C.F.R. § 241.4, you are to remain in ICE custody at this time."[8] On May 28, 2025, ERO submitted a travel document request to the Consulate of Cambodia via mail and the Electronic Travel Document ("ETD") system.[9]

In his Petition for Habeas (Doc. 5), Petitioner claims that his current detention is unlawful because "ICE has no reason to believe that Mr. Chhot's circumstances vis-à-vis the RGC has meaningfully changed and that the RGC or any other foreign government is likely to accept Chhot for repatriation."[10] He further alleges that his supervised release was "improperly revoked" because "ICE had no reason to believe that Chhot's 2013 misdemeanor conviction [for disorderly conduct] bore any meaningful relationship to [his] ability or willingness to prospectively comply with the terms of his revoked supervised release."[11] He seeks a "judicial order requiring [his] release from such custody and reinstating [his] improperly revoked administrative order of supervision."[12]

In his Motion for Temporary Restraining Order (Doc. 3), Petitioner seeks "a judicial order requiring ICE to keep Chhot within the Western District of Louisiana while the above-captioned Petition is litigated." Petitioner alleges that he is likely to succeed on the merits of his claims for reinstatement of his supervised release

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[8] Petitioner's Motion (Doc. 3) at Exhibit 2, Sub-Ex G – Notice of Revocation of Release.
[9] Exhibit "A" – Declaration of Charles Ward at ¶ 9. *See also* Petitioner's Motion (Doc. 3) at Exhibit 2, Sub-Ex F – May 28, 2025 Letter to Royal Embassy of Cambodia.
[10] Doc. 5 at ¶ 35.
[11] *Id.* at ¶¶ 33, 43.
[12] *Id.* at ¶ 43.

because (1) ICE "continues to have no fact-based reason, specific to Chhot, to believe that it can effect [his] removal in the reasonably foreseeable future" and (2) that his "misdemeanor conviction bears no relationship to ICE's ability to supervise the conditions of Chhot's release."[13] Petitioner further alleges that he faces a substantial threat of irreparable harm "that would result if ICE were to respond to the above-captioned Petition by spiriting Chhot off to avoid the scrutiny of this Court (or any other court) and removing Chhot to a country where he is likely to be persecuted or tortured."[14] Petitioner's arguments for a temporary restraining order are without merit, and the Motion should be denied.

LAW AND ARGUMENT

I. This Court Lacks Subject Matter Jurisdiction to Review or Interfere with Execution of a Final Order of Removal or Revocation of Supervised Release

Petitioner does challenge that he is under a final order of removal; instead, he challenges Respondents' ability to effectuate that order and the revocation of his supervised release. Such claims are jurisdictionally barred. The jurisdiction of federal courts is presumptively limited.[15] Courts "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree."[16] Relevant to this case is the Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Several of the IIRIRA's provisions—as well as provisions of the REAL ID Act of 2005,

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[13] Doc. 3-1 at pp. 9-15.
[14] *Id.* at p. 14.
[15] *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).
[16] *Id.* (internal citations omitted).

which refined IIRIRA's judicial review scheme—deprive this Court of jurisdiction over this matter.

8 U.S.C. § 1252(g) deprives the Court of jurisdiction to review claims arising from the three discrete actions identified in § 1252(g), including the execution of removal orders.[17] Congress spoke clearly and emphatically providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas and mandamus.[18] Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas reviews under 28 U.S.C. § 2241 of claims relating to a decision to "execute" a final order of removal.[19] Circuit courts of appeals that have addressed the issue have held that § 1252(g) eliminates subject matter jurisdiction over habeas challenges, including constitutional claims, to an arrest or detention for the purposes of executing a final order of removal.[20]

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[17] Specifically, 8 U.S.C § 1252(g) provides: "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."

[18] 8 U.S.C. § 1252(g).

[19] *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 482 (1999).

[20] *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding that it lacked jurisdiction over noncitizen's habeas challenge to the exercise of discretion to execute his removal order); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a

Furthermore, the REAL ID Act's amendments to Section 1252(b)(9) provide that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provision, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section."[21] Accordingly, "the sole and exclusive means for judicial review" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings."[22] Thus, Congress divested district courts of jurisdiction over such matters and vested review in only the courts of appeals, and these provisions sweep more broadly than § 1252(g) to make clear the Court lacks jurisdiction to hear this challenge to Petitioner's

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removal order."); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide whether to execute a removal order includes the discretion to decide when to do it" and that "[b]oth are covered by the statute"); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (§ 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Elgharib v. Napolitano*, 600 F.3d 597, 602 (6th Cir. 2010) ("[A] natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution." (quoting 8 U.S.C. § 1252(g))); *see also Duamutef v. INS*, 386 F.3d 172, 181-82 & n.8 (2d Cir. 2004) (holding that district court lacked mandamus jurisdiction due to § 1252(g) to compel ICE to take custody over state prisoner and execute final removal order, but declining to address whether § 1252(g) barred habeas claims); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal based claims and remanding with instructions to dismiss those claims); *see also Westley v. Harper*, Civ. Action No. 25-229, 2025 WL 592788, at *4–6 (E.D. La. Feb. 24, 2025) (rejecting petitioner's argument that *Zadvydas* challenges are not precluded by Section 1252(g)).

[21] 8 U.S.C. § 1252(b)(9).

[22] 8 U.S.C. §§ 1252(a)(5), (b)(2).

detention, which is an action taken as part of the process of removing Petitioner from the United States.

The injunctive relief prayed for by Petitioner that he not be removed from the Western District of Louisiana, which would essentially amount to a stay of his removal, clearly falls outside of this Court's jurisdiction.[23] Additionally, the revocation of Petitioner's supervised release and subsequent detention "'arise from' the decision to execute the removal order" and were "a necessary prelude to securing Petitioner for [his] removal."[24] As such, the Court lacks jurisdiction over Petitioner's claims related to such actions.

II. Petitioner Cannot Establish the Elements Necessary for Injunctive Relief

Even if jurisdiction can be established, which is denied, Petitioner nevertheless fails to demonstrate that he is entitled to the injunctive relief sought. A temporary restraining order or preliminary injunction is an "*extraordinary remedy* never awarded as of right."[25] A party seeking a TRO must show: (1) a substantial likelihood

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[23] *See Westley*, 2025 WL 592788, at *4 (citing *Idokogi v. Ashcroft*, 66 F. App'x 526, at *1 (5th Cir. 2003)); *see also Barrios v. Ripa, et al*, No. 1:25-CV-22644, 2025 WL 2280485, at *5 (S.D. Fla. Aug. 8, 2025) ("Petitioner requests that the Court enjoin Respondents from transferring him to another district. ... The Court lacks subject matter jurisdiction to grant this relief.") (citing 8 U.S.C. § 1252(a)(2)(B); *Calla-Collado v. Att'y Gen. of the U.S.*, 663 F.3d 680, 685 (3d Cir. 2011); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999)).

[24] *See Westley*, 2025 WL 592788, at *4-5 (citing *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2010); *Lopez v. Prendes*, 2012 WL 3024209, at *1-2 (N.D. Tex. June 27, 2012), *adopted*, 2012 WL 3024750 (N.D. Tex. July 24, 2012); *see also Barrios,* 2025 WL 2280485, at *5 ("[T]he Court finds that it does not have jurisdiction over Respondents' decision to revoke Petitioner's OSUP or their determination of where to detain Petitioner.").

[25] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (emphasis added).

of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of the injunction will not disserve the public interest.[26] A movant must demonstrate at least some injury for a preliminary injunction to issue.[27] The balance of equities and public interest factors merge when the Government is the opposing party,[28] and a court "'should pay particular regard for the public consequences'" of injunctive relief.[29] Failure to demonstrate any one of these elements requires denial of preliminary relief.[30] The same standard applies to both temporary restraining orders and to preliminary injunctions.[31] Plaintiff is not entitled to a restraining order or injunctive relief because he cannot satisfy even one of the required showings.

A. Petitioner Cannot Establish a "Likelihood of Success" on the Merits of his Petition for Habeas

i. Petitioner's Revocation of Supervised Release Pursuant to 8 C.F.R. § 241.4 is Valid

Petitioner argues that he is likely to succeed on the merits of his habeas petition, which seeks his release and reinstatement of his revoked supervised release, primarily because "without a fact-based reason to believe that it could remove [him]

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[26] *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)).
[27] *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)).
[28] *See Nken v. Holder*, 556 U.S. 418, 435 (2009).
[29] *Winter*, 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)).
[30] *Allied Mktg. Grp., Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir. 1989).
[31] *Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009) (quoting *Chaplaincy*, 599 F. Supp. 2d 1, 3, n. 2 (D.D.C. 2009)).

from the United States, ICE had no lawful basis to continue his immigration detention."[32] He claims that ICE could only "resume [his] immigration detention to enforce [his] removal order ... because the agency had determined [his] removal from the United States had become significantly likely to occur in the reasonably foreseeable future or because [his] arrest was necessary to enforce the conditions of his release."[33] In support of this argument, Petitioner repeatedly cites to 8 C.F.R. § 241.13(i) and claims that this regulation requires "(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."[34] However, the revocation of Petitioner's supervised release was made under 8 C.F.R. § 241.4 – not 8 C.F.R. § 241.13.

8 C.F.R. § 241.4 governs custody reviews and supervised release after the expiration of the initial removal period and allows ICE to decide whether to continue detention or release an individual under supervision. ICE can revoke supervised release and return the person to custody under § 241.4(I). In contrast, 8 C.F.R. § 241.13 is a very different process that only applies when a detainee affirmatively demonstrates removal is "not significantly likely to occur in the reasonably foreseeable future." To invoke § 241.13, a detainee must affirmatively submit a "written request" to the Headquarters Post-Order Detention Unit with evidence

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[32] Doc. 3-1 at p. 10.
[33] *Id.*
[34] *Id.* at p. 11 (quoting *Kong v. U.S.*, 62 F. 4th 608, 619-20 (1st Cir. 2023) (involved claim under the Federal Torts Claim Act for false arrest – not immigration habeas or injunctive relief).

showing that removal is not significantly likely in the reasonably foreseeable future, which, if accepted, can trigger a more formal review process.[35]

Petitioner's Notice of Revocation of Release expressly states that "pursuant to 8 C.F.R. § 241.4, you are to remain in ICE custody at this time."[36] There is no evidence or indication of Petitioner sought any "written request" under 8 C.F.R. § 241.13. 8 C.F.R. § 241.4(l)(2) permits the government to terminate supervision if "revocation is in the public interest" or when the revoking official finds one of the following: "(i) [t]he purposes of release have been served; (ii) [t]he alien violates any condition of release; (iii) [i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) [t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." The Notice of Revocation provided to Petitioner indicates (1) "ICE has determined that you can be removed from the United States pursuant to the outstanding order of removal against you," (2) "ICE has determined the purpose of your release has been served and it is appropriate to enforce the removal order," and (3) "[y]our conduct also indicates that release is no longer appropriate as you were convicted of disorderly conduct in Fall River, MA on May 20, 2013."[37] The foregoing qualifies Petitioner for revocation under 8 C.F.R. § 241.4(I), and there is no further "burden to show a significant likelihood that the alien may be removed" in order to initiate such revocation as argued by Petitioner.[38]

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[35] 8 C.F.R. §§ 241.13(d)(1)–(2); 241.13(e)(1)–(2).
[36] Petitioner's Motion (Doc. 3) at Exhibit 2, Sub-Ex G.
[37] *Id.*
[38] Petitioner cites to *Hernandez Escalante v. Noem*, 2025 WL 2206113, *3 (E.D. Tex. Aug. 2, 2015), but that case involved and cited to 8 C.F.R. § 241.13. *See Westley*, 2025

ii. *Zadvydas* Does Not Entitled Petitioner to Release

In the same way that 8 C.F.R. § 241.13 has not been invoked in this case, *Zadvydas v. Davis*, 533 U.S. 678 (2001) is also inapplicable. In *Zadvydas,* the Supreme Court held that "an alien's post-removal-period detention [is limited] to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention."[39] "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."[40] The Supreme Court identified six months as a presumptively reasonable period of post-order detention but made clear that the presumption does not mean that all aliens not ordered removed must be released after six months. For an alien to establish a prima facie claim for habeas relief under *Zadvydas*, the alien must first establish that he has been in post-order custody for more than six months at the time the habeas petition is filed.[41] Then, the alien must provide a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.[42]

WL 592788, at *8 (Held no jurisdiction to review claims related to revocation under 8 C.F.R. § 241.4 but further found that "revocation was in the public interest because the public has an interest in the enforcement of lawfully issued removal orders, and §§ 241.4(l)(2)(i) and (iii) were satisfied because the purpose of the release under the OSUP (caring for Petitioner's medical condition) was served, to ICE's knowledge at the time, and it was appropriate to enforce the removal order." The *Westley* court further noted that 8 C.F.R. § 241.13 was inapplicable (n. 62)). *See also Alam v. Nielsen*, 312 F. Supp. 3d 574, 581 (S.D. Tex. 2018) (applying § 241.4, and not § 241.13); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (same).

[39] 553 U.S. at 689.

[40] *Id.* at 699.

[41] *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011).

[42] *Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006) ("The alien bears the initial burden of proof in showing that no such likelihood of removal exists. In the instant case, Andrade has offered nothing beyond his conclusory statements

Petitioner cannot establish that he has been in post-order custody for more than six months when he was detained for the revocation of supervised release in May 2025.[43] Furthermore, Petitioner argues, on one hand, that ICE does not have "reason to believe that it could remove Mr. Chhot from the United States," but on the other hand, he alleges a substantial threat of irreparable harm as he "expects ICE to attempt to justify his ongoing detention by seeking [his] removal to a third country."[44] The allegation of such "irreparable harm" essentially undercuts the relief he seeks in habeas that his detention is unlawful without a likelihood of removal. Petitioner does not establish a likelihood of success on the merits for his habeas claim when he is being detained pursuant to revocation under 8 C.F.R. § 241.4, and the government has requested travel documents to Cambodia to effectuate his removal there. Petitioner, who is subject to a final order of removal, is in the process of being removed and, as such, is not entitled to habeas relief or release.

iii. Petitioner's Misdemeanor Conviction and Revocation Discretion Under 8 C.F.R. § 241.4 are Sufficient to Revoke his Supervised Release

Petitioner further argues that the misdemeanor conviction from 2013 is an insufficient or improper basis for revocation of his supervised release because it

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suggesting that he will not be immediately removed to Cape Verde following resolution of his appeals. His constitutional claim is meritless."); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("Therefore, in order to state a claim under *Zadvydas*, the alien must not only show the post-removal order detention in excess of six months but must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."); *Khan v. Fasano*, 194 F.Supp.2d 1134, 1136 (S.D. Cal. 2001).

[43] Exhibit "A" – Declaration of Charles Ward at ¶ 8.

[44] Doc. 3-1 at pp. 10, 16.

"bears no relationship to ICE's ability to supervise the conditions of Chhot's release."[45] Petitioner claims that "the substantial time lapse between this relatively minor violation of the Order and [his] detention eviscerated any nexus between such detention and the purpose of revocation – i.e., to deter or prevent [him] from committing more crimes."[46] But no such "nexus" is necessary for a revocation of supervised release pursuant to 8 C.F.R. § 241.4(I), which provides grounds for revocation, including where "the alien violates any condition of release" or simply where "it is appropriate to enforce a removal order."[47] The regulation further directs officials to consider "criminal conduct and criminal convictions" and "other criminal history" without imposing any temporal limitation.[48]

The Order of Supervision in this case required Petitioner to "not commit any crimes while on this Order of Supervision,"[49] which he failed to comply with. Petitioner attempts to liken his supervised release to "all regimes of supervised release ... designed to achieve exclusively 'forward-looking ends,'" but supervised release as part of criminal sentencing/probation in the cases cited by Petitioner is not the same as immigration supervised release. Unlike criminal probation, orders of supervision in immigration are not designed as a substitute for incarceration in a rehabilitative sentence. Instead, they function as an interim measure while arranging removal. Any violation of the law can violate the conditions of such release

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[45] Doc. 3-1 at p. 13.
[46] *Id.* at p. 15.
[47] 8 C.F.R. §§ 241.4(l)-(2).
[48] 8 C.F.R. § 241.4(f).
[49] Petitioner's Motion (Doc. 3) at Exhibit 2, Sub-Ex E – Order of Supervision.

and trigger revocation under 8 C.F.R. § 241.4(I)(1). Furthermore, revocation can be pursued at any time under 8 C.F.R. § 241.4(I)(2) at the "discretion" of a revoking official where "the purposes of release have been served" or "it is appropriate to enforce a removal order." Therefore, the age and/or nature of the misdemeanor conviction is irrelevant, and Petitioner cannot establish a likelihood of success on the merits for his habeas petition on such grounds.

b. Petitioner Cannot Establish Irreparable Harm

Petitioner cannot establish irreparable harm, which is an essential element for a TRO. First, transfer to another facility or district would not affect this Court's jurisdiction over Petitioner's habeas petition. Jurisdiction attaches upon filing and is not lost simply because ICE transfers a detainee to another district.[50] Thus, Petitioner will not be prejudiced if he is moved to another facility or district.

Second, Petitioner's speculative fears of removal to a "third country" do not amount to irreparable harm. Petitioner alleges ICE could "respond to the above-captioned Petition by spiriting [him] off to avoid the scrutiny of this Court (or any other court) and removing [him] to a country where he is likely to be persecuted or tortured."[51] Despite Petitioner's contention that he was "told [] that ICE will try to deport [him] to another county if Cambodia cannot take [him]," ICE has only indicated that travel documents have been requested from Cambodia at this time.[52]

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[50] *See Ex parte Endo*, 323 U.S. 283, 306 (1944).
[51] Doc. 3-1 at p. 14.
[52] Petitioner's Motion (Doc. 3) at Exhibit 1 – Declaration of Chhot, ¶ 13; Exhibit "A" – Declaration of Charles Ward at ¶ 9.

There is no indication that Petitioner will be or is in the process of being removed to any other country. Absent concrete evidence that removal to another country is imminent, there is no basis for extraordinary relief. Speculative injury is not irreparable injury.[53]

Third, Petitioner's detention and removal alone do not constitute irreparable harm.[54] Congress has expressly authorized post-order detention under 8 U.S.C. § 1231(a), and detention pursuant to statute cannot be deemed per se irreparable injury. Petitioner's allegations of irreparable harm are without merit, and his request for injunctive relief should be denied for that reason.

c. Balance of Equities / Public Interest

Finally, Petitioner cannot satisfy the third and fourth elements for injunctive relief. When the government is a party, the balance of equities and the public interest merge.[55] Here, the equities weigh heavily against an injunction. Congress has determined that individuals subject to a final order of removal are to be detained under 8 U.S.C. § 1231(a) to ensure the effectiveness of the removal process. Furthermore, individuals under supervised released but still subject to a final removal order may have such release revoked under 8 C.F.R. § 241.4(I) in order to effectuate their removal. Allowing Petitioner to remain at large or to stay any transfer

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[53] *Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with… the extraordinary remedy of injunction.") (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).
[54] *See Nken*, 556 U.S. at 129 ("Although removal is a serious burden for many aliens, that burden alone cannot constitute the requisite irreparable injury.").
[55] *Id. at* 435.

or removal during the pendency of his habeas petition undermines that statutory framework and frustrates ICE's ability to enforce removal orders. The public interest in the prompt and orderly execution of removal orders outweighs Petitioner's speculative claims of harm.

III. Fed. R. Civ. Proc. 65 Requirement for Bond

Pursuant to Federal Rule of Civil Procedure 65(c), "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained."[56] A bond posted for preliminary injunction is viewed as a contract in which "the court and Petitioner 'agree' to the bond amount as the 'price' of a wrongful injunction."[57] As a result of the posting of the bond, a presumption arises that damages will be awarded from those posted bond amounts later for defendants "to receive compensation for their damages in cases where it is later determined that a party was wrongfully enjoined."[58]

The risk of harm here is not insubstantial, and if the Court grants preliminary injunctive relief despite the arguments presented in opposition thereto, Respondents request that the Court require Petitioner to post security during the pendency of the

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[56] Fed. R. Civ. P. 65(c); *see also Continuum Co., Inc. v. Incepts, Inc.* 873 F.2d 801, 803 (5th Cir. 1989).
[57] *Id.*
[58] *Id.*

Court's order, in the event it is later determined that Respondents were wrongfully enjoined.

CONCLUSION

Based on the forgoing, Respondents respectfully request that the Court DENY Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,

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