ADAM GORDON
United States Attorney
JANET A. CABRAL
Assistant U.S. Attorney
California State Bar No. 168900
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8715
Facsimile: (619) 546-7751
Email: janet.cabral@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALI GHAFOURI,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA JO BONDI, Attorney General; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement; JESUS ROCHA, Acting Field Office Director, San Diego Field Office; CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No.: 25-cv-02675-RBM-BLM

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONERS' HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. Introduction

Petitioner has filed a habeas petition and an emergency motion for temporary restraining order. For the reasons set forth below, the Court should deny Petitioner's request for interim relief and dismiss the petition. Further, because the record shows that Petitioner is not entitled to habeas relief, there is no need for an evidentiary hearing in this matter.

II. Factual and Procedural Background

Petitioner is a citizen and national of Iran. On October 1, 1990, Petitioner was admitted into the United States as a lawful permanent resident. *See* Exhibit 1.[1]

On October 8, 1999, Petitioner was arrested for violating Cal. Health & Safety Code §§ 11378, Possession of a Controlled Substance for Sale, and 11360, Sell or Furnish Marijuana Hashish. He was convicted of both offenses on January 16, 2002. Declaration of David Townsend (Townsend Decl.) at ¶ 4. On April 11, 2002, Petitioner was detained by ICE following his release from criminal custody and placed in removal proceedings pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA), for having been convicted of an aggravated felony as defined under INA § 101(a)(43)(B), a drug trafficking offense. *Id.* at ¶ 5. On May 2, 2002, Petitioner was released from ICE custody on $25,000 bond pursuant to an immigration judge's order. *Id.* at ¶ 6.

On May 5, 2003, Petitioner was arrested by the San Diego Sherriff's office for violating Cal. Pen. Code §§ 484, Petty Theft and 182, Conspiracy to Commit a Crime. *Id.* at ¶ 7. He was transferred back to ICE custody on May 7, 2003, pending removal proceedings following his release from criminal custody. *Id.* at ¶ 8.

On June 5, 2003, an immigration judge ordered Petitioner removed to Iran. *See* Exhibit 2. Both parties waived appeal, therefore, the immigration judge's order became final on June 5, 2003. Townsend Decl. at ¶ 9. Pending a request for a travel document

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

to effectuate removal, Petitioner was transferred to the San Diego Sherriff's Department on August 18, 2003, pursuant to an outstanding warrant for arrest. *Id.* at ¶ 10.

On March 29, 2007, Petitioner was arrested by the San Diego Sherriff's Department based on a parole violation. *Id.* at ¶ 11. He was transferred to ICE April 12, 2007, following his release from criminal custody to effectuate the removal order. *Id.* at ¶ 12. Petitioner was released from ICE custody on May 2, 2007, under an order of supervision because ICE was unable to obtain a travel document. *Id.*

On July 10, 2008, Petitioner was arrested for violating Cal. Pen. Code §§ 459, Burglary and 496, Receiving Stolen Property, which resulted in convictions on September 23, 2008. *Id.* at ¶ 13. He was sentenced to serve 364 days for these offenses. *Id.* Petitioner was detained by ICE on March 10, 2009, following his release from criminal custody to effectuate the immigration judge's removal order. *Id.* at ¶ 14. On June 16, 2009, Petitioner was subsequently released from immigration custody on an Order of Supervision. *See* Exhibit 3.

On May 15, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Iran. *See* Exhibits 4-7. At the time of his re-detention for removal, Petitioner was shown by ICE officers a Form I-200, Warrant for Arrest of Alien, including a probable cause determination made in part based upon "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." Townsend Decl. at ¶ 16; *see also* Exhibit 5. That same day, with ICE officers, Petitioner signed a Form I-205, Warrant of Removal/Deportation, which explained that Petitioner is subject to removal. Townsend Decl. at ¶ 16; *see also* Exhibit 4. Petitioner was also served a Form I-294, Warning to Alien Ordered Removed or Deported, and he also refused to sign the Form I-286, Notice of Custody Determination, which provided that Petitioner would be detained by DHS. Townsend Decl. at ¶ 16; *see also* Exhibits 6-7. As indicated on Form I-213, Record of Deportable/Inadmissible Alien, Petitioner admitted that he does not

have legal documents to enter or reside in the United States. Townsend Decl. at ¶ 16; *see also* Exhibit 1.

ICE has obtained travel documents for Iranian citizens for cases that are submitted with identity documents. Townsend Decl. at ¶ 21. Recently, ICE has regularly removed individuals to Iran. *Id.* at ¶ 22; *see also ICE Fiscal Year 2024 Annual Report*, at 99 https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf. (ICE removed 27 Iranian citizens in FY 2024); *see also* https://www.ice.gov/statistics (ICE removed 11 Iranian citizens in FY 2025). ICE has removed at least one Iranian citizen to Iran as recently as October 2, 2025. Townsend Decl. at ¶ 22.

Since Petitioner was re-detained, ERO has worked expeditiously to effectuate Petitioner's removal to Iran; ICE is not seeking to remove Petitioner to a third country. *Id.* at ¶¶ 17-18. On May 21, 2025, San Diego Enforcement and Removal Operations submitted a travel document request to the Iranian embassy in Washington, D.C. *Id.* at ¶ 19. On September 12, 2025, San Diego ERO submitted a travel document request to the Detention and Deportation Officer (DDO) assigned to Iranian cases within ERO Headquarters, Removal and International Operations (RIO) for assistance obtaining a travel document. *Id.* at ¶ 20. The request remains pending. *Id.* In sun, ICE is confident it will obtain a travel document to effectuate Petitioner's removal to Iran. *Id.* at ¶ 21.

On October 10, 2025, ICE served a Notice of Revocation of Release upon Petitioner. Exhibit 8.

III. Argument

A. Petitioner's Claims Regarding Third Countries Are Unfounded

The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). "Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-

BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlow Env't Servs., Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury if certainly impending."). At the "irreducible constitutional minimum," standing requires that Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Here, Respondents are not seeking to remove Petitioner to a third country and instead are working to timely remove Petitioner to Iran. *See* Townsend Decl. at ¶¶ 17-24. As such, there is no controversy concerning third country resettlement for the Court to resolve. Federal courts do not have jurisdiction "to give opinion upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). "A claim is moot if it has lost its character as a present, live controversy." *Rosemere Neighborhood Ass'n v. U.S. Env't Prot. Agency*, 581 F.3d 1169, 1172-73 (9th Cir. 2009). The Court therefore lacks jurisdiction over Petitioner's claims concerning third country resettlement because there is no live case or controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

B. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders.

See 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

C. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief

Alternatively, Petitioner's motion should be denied because he has not established that he is entitled to interim injunctive relief. Petitioner cannot establish that he is likely to succeed on the underlying merits, there is no showing of irreparable harm, and the equities do not weigh in his favor.

In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a temporary restraining order, a plaintiff must "establish that he is likely to succeed on

the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. "Few interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985).

1. No Likelihood of Success on the Merits

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot establish that he is likely to succeed on the underlying merits of his claims because he is properly detained under 8 U.S.C. § 1231(a).

a. Petitioner's Detention is Lawful and He Has Not Established That There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

An alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683.

Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

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

The court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing and that the noncitizen has the initial burden of proving that removal is not significantly likely." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

Petitioner contends his removal is not reasonably foreseeable at this juncture, given that (1) the government was unable to remove him to Iran sixteen years ago, and instead released him on an OSUP; and (2) with his re-detention, he was not provided an explanation for why he was re-detained or given travel documents. He also complains

of (3) alleged procedural deficiencies in his re-arrest—e.g. lack of a revocation explanation or an informal interview. None of these arguments, however, are sufficient to support his request for release from detention via a motion for temporary restraining order.

As an initial matter, Petitioner mixes two different issues: (1) the agency's reason for revoking his release and his return to custody; and (2) whether his current detention is unconstitutionally prolonged under the *Zadvydas* standard. The regulatory standard for revocation—which is not the same as the constitutional standard—provides that "The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. 241.13(i)(2). As discussed below, however, that is not the standard governing whether detention is constitutional or not for purposes of a habeas claim.

Instead, whether Petitioner's current detention is constitutional is governed by the Supreme Court's directives in *Zadvydas*. In that regard, Petitioner filed his Petition on October 8, 2025—approximately five months after he was detained. Petitioner claims that because he was previously detained by ICE for over 180 days and that the government now has a burden to show that his *current* detention is constitutional relative to timely removing him to Iran. *See* ECF No. 1 at 23-24, ¶¶ 3-4.

It is important to emphasize how the Supreme Court actually ruled and what the exact constitutional standard is:

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Zadvydas, 533 U.S. at 701. Thus, the noncitizen "may be held in confinement until it has been determined that there is ***no significant likelihood of removal in the reasonably foreseeable future.***" *Id.* (bold italic emphasis added).

Here, there is certainly a significant likelihood that Petitioner will be removed to Iran in the reasonably foreseeable future. He was re-detained for removal in May 2025. Townsend Decl., ¶ 16. ICE submitted a travel document request to the Iranian embassy in Washington, D.C. on May 21, 2025, with the request submitted to the DDO assigned to Iranian cases within ERO Headquarters on September 12, 2025. *Id.* at ¶¶ 19-20. Once ICE received his TD, he can be removed promptly. *Id.* at ¶ 24. There is no bar against Petitioner's removal to Iran, and the government is currently arranging for that removal.

Zadvydas does not require the government to pre-arrange a noncitizen's removal travel before arresting them, which would often be extremely difficult if not impossible. The constitutional standard is whether there is "a significant likelihood of removal" in the "reasonably foreseeable future"—not whether a removal will occur "imminently," which Petitioner incorrectly suggests as a heightened substitute standard. Indeed, this Court affirmatively ordered that Petitioner *not be removed* pending resolution of the Petitioner, ECF No. 4 at 3; it would create a serious jurisdictional conflict if the government had to prove it would "imminently" remove a noncitizen who it had been ordered not to remove. The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, the Supreme Court was clear that the Constitution prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Courts therefore properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his burden of showing that there is no

significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order). That Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (explaining that a demonstration of "no significant likelihood of removal in the reasonably foreseeable future" would include a country's refusal to accept a noncitizen or that removal is barred by our own laws).

Further, Petitioner's case does not implicate the impossibility of repatriation in *Zadvydas*. Zadvydas was stateless, and both countries to which he potentially could have been deported (the country where he was born and the country of which his parents were citizens) refused to accept him because he was not a citizen. *See* 533 U.S. at 684. The deportation of the other petitioner in *Zadvydas*, Ma, was prevented, because there was no repatriation agreement at that time between the United States and Cambodia. *Id.* at 685. Here, Petitioner is an Iranian citizen, ICE submitted the necessary documents for a TD to Iran, Iran is routinely issuing TDs at ICE's request, and ICE is removing Iranian citizens to Iran. Townsend Decl. at ¶¶ 3-24. Thus, ICE is actively working to effect Petitioner's removal to Iran and his continued detention is not unconstitutionally indefinite.

On this record, Petitioner cannot sustain his burden, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its diligent efforts to effect his removal. "[E]vidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future) [Exs. 22-30.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this

stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.") [Exs. 31-35.]; *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

b. Petitioner's Complaints About Procedural Deficiencies in His Redetention Do Not Establish a Basis for Habeas Relief

Additionally, Petitioner claims that the agency failed to comply with its regulations revoking Petitioner's Order of Supervision. ECF No. 1 at 8–10.

But even assuming the agency's compliance with the relevant regulations fell short, Petitioner has not established prejudice. *See Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 921 (N.D. Cal. 2025) (To establish an APA claim under the *Accardi* doctrine, Plaintiffs must show both that (1) the Government violated its own regulations, and (2) Plaintiffs suffer substantial prejudice as a result of that violation."). At the time of his re-detention, Petitioner knew he was subject to a final order of removal to Iran. *See* ECF No. 1 at pp. 23-24, ¶¶ 2, 5. He also knew, that although he was previously released on an Order of Supervision, ICE would be continuing to make efforts to obtain a travel document to execute his removal to Iran. *Id.* at p. 23, ¶¶ 3-4. And as illustrated above because Respondents had, and continue to have, an evidentiary basis to determine there is a significant likelihood that Petitioner will be removed to Iran in the reasonably foreseeable future, any challenge that Petitioner would have raised under the regulations would have failed. *See, e.g.*, *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

Moreover, Petitioner does not have a protected liberty interest in remaining free from detention where ICE has exercised its discretion under a valid removal order and

its regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders."). "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation "when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original).

At the time of his re-detention for removal, Petitioner was shown by ICE officers a Form I-200, Warrant for Arrest of Alien, and with ICE officers Petitioner signed a Form I-205, Warrant of Removal/Deportation, and was Petitioner served a Form I-294, Warning to Alien Ordered Removed or Deported. It is unclear whether Petitioner's conversations with ICE officers to date amount to an informal interview, but even if they do not, the alleged lack of an interview does not entitle Petitioner to release. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably

foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

The same is true here. Whatever procedural deficiencies or delays may have occurred, they do not warrant Petitioner's release, and indeed could be cured by means well short of release. He does not challenge his removal order, nor could he. Finally, ICE submitted Petitioner's travel document request, and expects the removal of the Petitioner to Iran to occur in the reasonably foreseeable future. *See* Townsend Decl., ¶¶ 18-24.

2. Irreparable Harm Has Not Been Shown

To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury.[2] But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting a mandatory preliminary injunction.

Importantly, the purpose of this civil detention is facilitating removal and the government is working to timely remove Petitioner. Here, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of Petitioner." *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

3. Balance of Equities Does Not Tip in Petitioner's Favor

It is well settled that "the public interest in enforcement of the immigration laws is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (collecting cases); *see Nken*, 556 U.S. at 436 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (simplified). And ultimately, "the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987).

[2] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken*, 556 U.S. at 435.

Here, as explained above, Petitioner cannot succeed on the merits of his claims and the public interest in the prompt execution of removal orders is significant. The balancing of equities and the public interest thus weigh heavily against granting equitable relief in this case.

D. An Evidentiary Hearing is Not Needed

Because the record shows that Petitioner is not entitled to habeas relief, there is no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

IV. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny the application for a temporary restraining order and dismiss the habeas petition.

DATED: October 22, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Janet A. Cabral
Janet A. Cabral
Assistant United States Attorney
Attorney for Respondents

ADAM GORDON
United States Attorney
JANET A. CABRAL
Assistant U.S. Attorney
California State Bar No. 168900
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8715
Facsimile: (619) 546-7751
Email: janet.cabral@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

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ALI GHAFOURI,

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KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA JO BONDI, Attorney General; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement; JESUS ROCHA, Acting Field Office Director, San Diego Field Office; CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

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Case No.: 25-cv-02675-RBM-BLM

DECLARATION OF DAVID TOWNSEND

I, David Townsend, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am currently employed by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), as a Deportation Officer (DO) assigned to the Otay Mesa suboffice of the ICE ERO San Diego Field Office.

2. I have been employed by ICE as a law enforcement officer since February 2023. I have been serving as a DO since February 2023 and currently remain in that

position. As a DO, my responsibilities include case management of individuals detained by ICE at the Otay Mesa Detention Center in Otay Mesa, California. I have access to government databases and documentation relating to Petitioner, Ali Ghafouri (Petitioner). This declaration is based upon my personal knowledge and experience as a law enforcement officer and information provided to me in my official capacity as a SDDO for the Otay Mesa suboffice of the ICE ERO San Diego Field Office.

3. Petitioner is a citizen and national of Iran. On October 1, 1990, Petitioner was admitted into the United States as a lawful permanent resident.

4. On October 8, 1999, Petitioner was arrested for violating Cal. Health & Safety Code §§ 11378, Possession of a Controlled Substance for Sale, and 11360, Sell or Furnish Marijuana Hashish. He was convicted of both offenses on January 16, 2002.

5. On April 11, 2002, Petitioner was detained by ICE following his release from criminal custody and placed in removal proceedings pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA), for having been convicted of an aggravated felony as defined under INA § 101(a)(43)(B), a drug trafficking offense.

6. On May 2, 2002, Petitioner was released from ICE custody on $25,000 bond pursuant to an immigration judge's order.

7. On May 5, 2003, Petitioner was arrested by the San Diego Sherriff's office for violating Cal. Pen. Code §§ 484, Petty Theft and 182, Conspiracy to Commit a Crime.

8. He was transferred back to ICE custody on May 7, 2003, pending removal proceedings following his release from criminal custody.

9. On June 5, 2003, an immigration judge ordered Petitioner removed to Iran. Both parties waived appeal, therefore, the immigration judge's order became final on June 5, 2003.

10. Pending a request for a travel document to effectuate removal, Petitioner was transferred to the San Diego Sherriff's Department on August 18, 2003, pursuant

to an outstanding warrant for arrest.

11. On March 29, 2007, Petitioner was arrested by the San Diego Sherriff's Department based on a parole violation.

12. He was transferred to ICE April 12, 2007, following his release from criminal custody to effectuate the removal order. Petitioner was released from ICE custody on May 2, 2007, under an order of supervision because ICE was unable to obtain a travel document.

13. On July 10, 2008, Petitioner was arrested for violating Cal. Pen. Code §§ 459, Burglary and 496, Receiving Stolen Property, which resulted in convictions on September 23, 2008. He was sentenced to serve 364 days for these offenses.

14. Petitioner was detained by ICE on March 10, 2009, following his release from criminal custody to effectuate the immigration judge's removal order.

15. On June 16, 2009, Petitioner was released from ICE custody under an order of supervision because ICE was unable to obtain a travel document.

16. On May 15, 2025, ICE re-detained Petitioner to execute his removal order to Iran. At the time of his re-detention for removal, Petitioner was shown by ICE officers a Form I-200, Warrant for Arrest of Alien, including a probable cause determination made in part based upon "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." That same day, with ICE officers, Petitioner signed a Form I-205, Warrant of Removal/Deportation, which explained that Petitioner is subject to removal. Petitioner was also served a Form I-294, Warning to Alien Ordered Removed or Deported, and he also refused to sign the Form I-286, Notice of Custody Determination, which provided that Petitioner would be detained by DHS. As indicated on Form I-213, Record of Deportable/Inadmissible Alien, Petitioner admitted that he does not have legal documents to enter or reside in the United States.

17. ICE is not seeking to remove Petitioner to a third country.

18. To effectuate Petitioner's removal to Iran, ERO must acquire a travel document (TD) and schedule a flight for Petitioner. Since Petitioner was re-detained, ERO has worked expeditiously to effectuate Petitioner's removal to Iran. These removal efforts remain ongoing.

19. May 21, 2025, San Diego ERO submitted a TD request to the Iranian embassy in Washington DC. A copy of the Petitioner's Irania passport was included in the TD request.

20. On September 12, 2025, San Diego ERO submitted a travel document request to the Detention and Deportation Officer (DDO) assigned to Iranian cases withing ERO Headquarters, Removal and International Operations (RIO) for assistance obtaining a TD. The request remains pending

21. ICE has obtained TDs for Iranian citizens for cases that are submitted with identity documents. ICE submitted Petitioner's TD request with a copy of his Iranian passport and is confident ICE will obtain a TD to effectuate Petitioner's removal to Iran.

22. Recently, ICE has regularly removed individuals to Iran. *See ICE Fiscal Year 2024 Annual Report*, at 99 https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf. (ICE removed 27 Iranian citizens in FY 2024); *see also* https://www.ice.gov/statistics (ICE removed 11 Iranian citizens in FY 2025). ICE has removed at least one Iranian citizen to Iran as recently as October 2, 2025.

23. I am aware of no barrier to the consulate's issuance of a travel document for Petitioner.

24 Once a travel document is issued for Petitioner, his removal can be effected promptly.

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I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of October 2025.

David Townsend
Deportation Officer
San Diego Field Office