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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LOANI RODRIGUEZ-GUTIERREZ,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; et al.,

Respondents.

Case No.: 25-cv-2726-BAS-SBC

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

I. Introduction

Petitioner has filed a habeas petition and a 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.

II. Factual and Procedural Background

Petitioner is a citizen and national of Cuba. *See* ECF No. 1 at 2; Ex. 1.[1] On June 8, 1994, Petitioner was paroled into the United States as a Cuba–Haiti Parole Entrant. Declaration of Denise E. Barroga (Barroga Decl.) ¶ 3. He was later convicted of sale of cocaine and battery. Ex. 1 at 2. Petitioner was placed in exclusion proceedings before an immigration judge. *See* Ex. 1 at 2; Barroga Decl. ¶ 3. On February 9, 1996, an immigration judge ordered Petitioner excluded from the United States and deported to Cuba. *See* Ex. 1 at 2; Barroga Decl. ¶ 4. Petitioner was subsequently released from immigration custody on an Order of Supervision. *See* Barroga Decl. ¶ 5.

On May 29, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Cuba. Barroga Decl. ¶ 6. At that time, he was shown a Form I-200, Warrant of Arrest of Alien. *See* Ex. 2; Barroga Decl. ¶ 6. He also was served with a Form I-205, Warrant of Removal/Deportation; a Form I-294, Warning to Alien Ordered Removed or Deported; and a Form I-229(a), Warning for Failure to Depart. Exs. 3, 4, 5; Barroga Decl. ¶ 6. Petitioner also was provided with a Notice of Revocation of Release, dated May 29, 2025, which states that his Order of Supervision has been revoked because of changed circumstances in his case. Ex. 6. The notice states that "ICE has determined [Petitioner] can be expeditiously removed from the United States pursuant to the outstanding order of removal against [him]" and that "[his] case is under review by Cuba for the issuance of a travel document." Ex. 6. On October 17, 2025, ICE provided Petitioner with an individual interview regarding his detention status. *See* Ex. 7.

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

ICE is obtaining travel documents from Cuba and able to arrange travel itineraries to execute final orders of removal or deportation for Cuban citizens. Barroga Decl. ¶¶ 11–12. ICE is working to effectuate Petitioner's removal to Cuba. *See* Barroga Decl. ¶ 9. On October 27, 2025, ICE Enforcement and Removal Operations (ERO) San Diego requested that the ERO Removal and International Operations, Detention Operations Coordination Center nominate Petitioner for removal to Cuba. Barroga Decl. ¶ 9. That request remains pending. Barroga Decl. ¶ 9. Once Petitioner's nomination is approved, ICE will request that Cuba issue Petitioner a travel document and arrange for Petitioner's removal to Cuba. Barroga Decl. ¶ 10.

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 Comm. 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 Petitioner 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 Cuba. *See* Barroga Decl. ¶¶ 9–10.

As such, there is currently 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: her '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. Petitioner has 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), and his continued detention is not unconstitutionally indefinite.

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) (stating 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 Cuba twenty-five years ago, and instead released him on an Order of Supervision; 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.

As an initial matter, Petitioner raises two distinct 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 14, 2025—less than five months after he was detained. Petitioner claims that because he was previously in immigration custody when he was ordered deported in 1996, the government now has a burden to show that his *current* detention is constitutional relative to timely removing him to Cuba.

Petitioner fails to show that his total detention is in excess of the presumptively constitutional period articulated in *Zadvydas*. The Supreme Court held:

> 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.* (emphasis added).

Here, there is a likelihood that Petitioner will be removed to Cuba. He was re-detained for removal in May 2025, after ICE had been successfully obtaining travel documents for Cuba citizens. *See* Barroga Decl. ¶¶ 6, 11–12; *see also* Ex. 6. ERO San Diego has requested that ERO Removal and International Operations, Detention Operations Coordination Center nominate Petitioner for removal to Cuba. Barroga Decl. ¶ 9. Once Petitioner is nominated and the nomination is approved by Cuba, ICE will request Petitioner's travel document, and he can be removed to Cuba. *See* Barroga

Decl. ¶ 10. There is no bar against Petitioner's removal to Cuba, and the government is currently taking the steps to effectuate that removal. It is true that twenty-five years ago the government was not able to deport Petitioner to Cuba, as with other similarly situated individuals, because the prior political relationship between the United States and Cuba prevented their deportation. But that barrier to removal was removed, and the government has successfully removed thousands of Cuban citizens to Cuba in the last six years. *See* Barroga Decl. ¶ 12.

Petitioner may complain that the government is still going through the nomination process and that it did not already obtain such a nomination before taking him back into detention. But *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." 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) (Martinez, J.) (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) (Martinez, J.) (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 id.* 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 a Cuban citizen, ICE is going through the removal nomination process for Petitioner, and ICE has been removing Cuban citizens to Cuba. *See* Barroga Decl. ¶¶ 3, 9, 11–12. Thus, ICE is actively working to effect Petitioner's removal to Cuba 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. Evidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy. *See, e.g.*, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (slip op.) ("The record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

b. Petitioner's complaints about procedural deficiencies in his re-detention 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. 11 at 15–17. But Petitioner was provided with written notice of the revocation of his release at the time of his arrest. *See* Ex. 6. ICE also interviewed Petitioner regarding his detention status. *See* Ex. 7.

But even assuming the agency's compliance with the relevant regulations fell short, Petitioner has not established prejudice nor a constitutional violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("The mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th Cir.2007) (holding that "[c]ompliance with ... internal [customs] agency regulations is not mandated by the Constitution" (internal quotation marks omitted)); *Bd. of Curators of Univ. of Mo. v. Horowitz,* 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunicate[s] principles of federal administrative law rather than of constitutional law"). At the time of his re-detention, Petitioner knew he was subject to a final order of deportation to Cuba. *See* ECF No. 1 at 2. He also knew, based on his Order of Supervision, that although he was released in 1999, ICE would be continuing to make efforts to obtain a travel document to execute his deportation to Cuba. *See* Ex. 1 at 2. And as illustrated above, because Respondents had, and continue to have, an evidentiary basis to determine there is a likelihood that Petitioner will be removed to Cuba, 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, "[the 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).

As noted above, Petitioner received written notice of the reason ICE revoked his Order of Supervision, as well as an informal interview. *See* Exs. 6, 7. Even assuming the notice and interview were not in compliance with federal regulations, that allegation 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." *Doe v. Smith*, 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 deportation order, nor could he. ICE has provided Petitioner with Notice of Revocation of Release and conducted an informal interview. ICE has requested Petitioner be nominated for removal to Cuba and is working expeditiously to execute his removal to Cuba. *See* Barroga Decl. ¶ 9.

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. Nat'l 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.

[2] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

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 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 [the Illegal Immigration Reform and Immigrant Responsibility Act] 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)).

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.

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V. 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 27, 2025

ADAM GORDON
United States Attorney

s/ *Kelly A. Reis*
KELLY A. REIS
Assistant United States Attorney

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LOANI RODRIGUEZ-GUTIERREZ, Petitioner, v. KRISTI NOEM, Secretary of the Department of Homeland Security; et al., Respondents.	Case No.: 25-cv-2726-BAS-SBC **DECLARATION OF DENISE E. BARROGA**

I, Denise E. Barroga, 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 August 14, 2022 and serving as a DO since August 14, 2022. I currently remain serving 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, CA. This declaration is based on my personal knowledge and experience as a law enforcement officer and information provided to me in my official capacity as a DO for the Otay Mesa suboffice of the ICE ERO San Diego Field Office, as well as my review of government databases and documentation relating to Petitioner Loani Rodriguez-Gutierrez (Petitioner).

3. Petitioner is a native and citizen of Cuba who applied for admission to the United States on June 8, 1994. He was not then in possession of any documents entitling him to be admitted as an immigrant. Although he was subject to exclusion at the time of his application for admission, he was paroled into the United States as a Cuba–Haiti Parole entrant. He was thereafter placed into exclusion proceedings before an immigration judge.

4. On February 9, 1996, an immigration judge ordered that Petitioner be excluded from the United States and deported to Cuba.

5. On April 18, 1996, Petitioner was released by the Immigration and Naturalization Service (INS) on an Order of Recognizance. Petitioner was re-detained by INS on June 4, 1997. He was released on an Order of Supervision on March 17, 1998 and re-detained by INS on June 18, 1999. On July 7, 1999, Petitioner was released from INS custody under an Order of Supervision because INS was unable to repatriate him to Cuba at that time.

6. On May 29, 2025, ICE re-detained Petitioner to execute his administratively final exclusion order to Cuba. At that time, he was shown a Form I-200, Warrant of Arrest of Alien. He also was served with a Form I-205, Warrant of Removal/Deportation, and a Form I-294, Warning to Alien Ordered Removed or Deported.

7. ICE provided Petitioner with formal written notice of the reason for revocation of his order of supervision on May 29, 2025. On October 17, 2025, ICE conducted an informal interview with the Petitioner regarding his detention status.

8. To effectuate Petitioner's removal to Cuba, ERO must nominate him for repatriation to Cuba, obtain a Cuban travel document, and schedule a flight for Petitioner.

9. On October 27, 2025, ERO San Diego requested that ERO Removal and International Operations (HQRIO), Detention Operations Coordination Center (DOCC) nominate Petitioner for removal to Cuba. Cuba requires that DHS "nominate" deportable Cuban citizens who entered the United States on or before January 12, 2017, for removal on a case-by-case basis. That request is currently pending with DOCC.

10. Once Petitioner's nomination is approved by Cuba, ICE will request that Cuba issue a travel document for Cuba and arrange for his removal to Cuba.

11. ICE has been successfully obtaining travel documents for Cuban citizens.

12. From 2019 to 2024, ICE successfully removed 3,933 Cuban aliens to Cuba.

13. If ERO cannot obtain approval to remove the Petitioner to Cuba, ERO will work to locate a third country for resettlement to effect Petitioner's removal to a third country. Should a third country accept the Petitioner, the Petitioner will be notified of this third country. If the Petitioner claims fear of return to this third country, he will be referred for a reasonable fear interview with an asylum officer.

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

Executed on October 27, 2025, in Otay Mesa, California.

DENISE E BARROGA Digitally signed by DENISE E BARROGA Date: 2025.10.27 14:33:14 -07'00'

Denise E. Barroga
Deportation Officer
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement