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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DUNG QUOC NGUYEN,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, et al.,

Respondents.

Case No.: 25-cv-2791-BAS-KSC

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

I. Introduction

Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. Factual and Procedural Background[1]

Petitioner is a native of the Philippines and a citizen of Vietnam by virtue of his birth in a Filipino refugee camp to Vietnamese citizen parents. On January 16, 1984, Petitioner entered the United States as child of a refugee. On June 17, 2008, an Immigration Judge ordered Petitioner's removal to Vietnam, along with an alternative order of removal to the Philippines. On July 8, 2011, Petitioner was released on an Order of Supervision. On March 15, 2011, Petitioner was convicted of Distribution of Controlled Substances. On September 18, 2025, ICE issued a Form I-200, Warrant for Arrest of Alien, pertaining to Petitioner, in order to effectuate his removal to Vietnam. Ex. 1. On September 18, 2025, ICE re-detained Petitioner. On September 23, 2025, Petitioner was served with the Form I-200, Warrant for Arrest of Alien. That same day, Petitioner also received a Form I-205, Warrant of Removal/Deportation, Ex. 3. ICE provided Petitioner with notice of the reason for revocation of his order of supervision on October 29, 2025, and an informal interview concerning the revocation is scheduled for October 30, 2025. Declaration of David Townsend (Townsend Decl.) at ¶ 8; *see also* Ex. 4.

ICE is routinely obtaining travel documents (TD) from Vietnam and is able to arrange travel itineraries to execute final orders of removal for Vietnamese citizens. Townsend Decl. at ¶¶ 13-17. ICE has worked expeditiously to prepare and submit a TD request to effectuate Petitioner's removal to Vietnam. Id. at ¶¶ 10-14, 18. Once Petitioner's TD is obtained, ICE will arrange for his removal to Vietnam. Id. at ¶ 18.

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

ICE is not seeking to remove Petitioner to a third country. Townsend Decl. at ¶ 10. According to the declaring officer's experience, "there is a significant likelihood of removal to Vietnam in the near future." Id. at ¶ 19.

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 Vietnam. *See* Townsend Decl. at ¶¶ 10-14, 18. 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); *see* 8 U.S.C.

§ 1252(f)(2) ("Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law."). 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).

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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 Vietnam seventeen 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, nor was he 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 conflates 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 "[t]he 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 20, 2025. Petitioner argues that *Zadvydas* created a grace period of six months from the date he was ordered removed by the immigration judge. Therefore, he argues that the grace period expired in December 2008 because he was ordered removed in June 2008. ECF No. 1 at 11. He further argues that he was detained for "a total of 7 months" after he was ordered removed. *Id.* at 12. Thus, he argues that he has been detained for more than six months, cumulatively. *Id.*

These arguments, however, rely on an inaccurate characterization the *Zadvydas* standard. It is therefore 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 Vietnam in the reasonably foreseeable future. He was re-detained for removal in September 2025, after ICE had been successfully obtaining TDs for Vietnamese citizens who immigrated to the United States before 1995 and removing them. Townsend Decl. at ¶¶ 6, 13-16.[2] ICE began to prepare Petitioner's TD request soon after his re-detention,

[2] The government has recently received travel documents from Vietnam for similarly situated petitioners in this district. *See, e.g., Ngo v. Noem*, No. 25cv2739-TWR-MMP,

including obtaining Petitioner's foreign identity documents that Vietnam requires to issue a TD. *Id.*at ¶ 12. ICE now expects to receive Petitioner's TD in the near future. *Id.* at ¶¶ 11-19. Once ICE receives Petitioner's TD, he can be removed promptly, as ICE has routine flights to Vietnam. *Id.* at ¶¶ 17-18. For this reason, ICE has found that there is a significant likelihood of Petitioner's removal to Vietnam in the near future. *Id.* at ¶ 19. The fact that Petitioner filed his Petition soon after his re-detention does not mean there is "no significant likelihood" that he will be removed "in the reasonably foreseeable future." To the contrary, as recognized by *Zadvydas*, it takes some amount of time to remove people who are arrested pursuant to a final removal order. There is no bar against Petitioner's removal to Vietnam, and the government is currently arranging for that removal.

Effectuating his removal is thus affirmatively likely, just as the Vietnamese petitioner's removal was likely in the *Zadvydas* challenge case of *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM, recently filed in the Central District of California, where the Vietnamese citizen was efficiently and timely removed, mooting the case, which was stayed (pending the removal, with updates on its status) and then dismissed.

It is true that seventeen years ago the government was not able to remove Petitioner to Vietnam, as with other similarly situated individuals, because the prior political relationship between the United States and Vietnam prevented their removals. That produced significant litigation from detainees who argued that they could not be removed to their home nations due to the lack of cooperation, and so their detentions were indefinite. But that barrier to removal was removed. This issue was exhaustively addressed in more recent litigation addressing detainees facing removal to Vietnam. In 2020, the *Trinh* court explained the then-current state of affairs:

> The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. … Instead, Vietnam now

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ECF No. 10 (S.D. Cal. Oct. 23, 2025); *Tran v. Noem*, No. 25cv2391-BTM-BLM, ECF No. 12 (S.D. Cal. Oct. 23, 2025).

> considers each request from ICE on a case-by-case basis. (*Id.*) ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. ..... Petitioners do not appear to dispute that once Vietnam issues a travel document, removal becomes significantly likely, rendering class members unable to meet their initial burden under *Zadvydas*.

Trinh, *supra*, 466 F. Supp. 3d at 1090.

Petitioner may complain that the government is still awaiting his travel documents after he filed his Petition and TRO Application—and that it did not already obtain such documents 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"—not whether a removal will occur "imminently." The law does not require that "every [noncitizen] not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. 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 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 Vietnamese citizen, ICE is collecting the necessary documents to obtain a TD to Vietnam, Vietnam is routinely issuing TDs at ICE's request, and ICE is routinely removing Vietnamese citizens to Vietnam. Thus, ICE is actively working to effect Petitioner's removal to Vietnam 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); *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."); *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 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. 1 at 8-10.

A noncitizen who is not removed within the removal period may be released from ICE custody "pending removal . . . subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the order may be revoked under 8 C.F.R. § 241.4(*l*)(2)(iii) where "appropriate to enforce a removal order." *See also* 8 C.F.R. § 241.5 (conditions of release after removal period). ICE may also revoke the order of supervision where, "on account of changed circumstances, [ICE] 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). The regulations further provide:

> *Upon revocation*, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly *after* his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.

8 C.F.R. § 214.4(*l*) (emphasis added).

Here, Petitioner claims that his detention is unlawful because the agency failed to comply with its regulations *before* re-detaining him. ECF No. 1 at 8:1-10:9. Specifically, Petitioner argues that ICE did not identify any "changed circumstances" to justify re-detaining him, ICE did not inform him of the reasons for re-detaining him and/ or provide him an opportunity to be heard, and he was not given an informal interview. *Id.* 8:1-10:9.[3] Notably, the regulations do not require written notice, advance

[3] ICE provided Petitioner with a Notice of Revocation of Release on October 29, 2025, and an informal interview is scheduled for October 30, 2025. Townsend Decl. at ¶ 8.

notice, an advanced interview, nor for DHS to prove to the satisfaction of a petitioner that changed circumstances are present.[4]

Yet it is clear that there are changed circumstances here—namely, ICE's revived ability to obtain travel documents from the Vietnamese government and to schedule routine removal flights to Vietnam. Townsend Decl. at ¶¶ 13-17. These facts are fatal to Petitioner's claim, because even if the agency had failed to provide Petitioner with "advance notice" of the revocation, or neglected to conduct the informal interview before the filing of the petition, Petitioner could not establish that he was prejudiced by those omissions nor that a constitutional level violation has occurred. *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").

For example, in *Ahmad v. Whitaker*, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation 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.* at *5. In rejecting his claim, the court held that although the regulations called

[4] There are obvious law enforcement reasons for not providing "advance" notice of a re-detention before executing a warrant of removal, just as there is no requirement to provide prior notice of execution of an arrest warrant. Providing such notice "creates a risk that the alien will leave town before the delivery or deportation date." *United States v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.*, 103 F. Supp. 3d 1121, 1137 (N.D. Cal. 2015).

for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations given that ICE had procured a travel document and scheduled [petitioner's] removal." *Id.* Similarly, in *Doe v. Smith*, the court held that even if ICE detained petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "it 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.*

So too here. At the time of his re-detention, Petitioner knew he was subject to a final order of removal to Vietnam. *See* ECF No. 1 at 26, ¶ 4 (First Declaration of Dung Quoc Nguyen). He also knew that, although he was released in 2008, ICE would be continuing to make efforts to obtain a travel document to execute his removal to Vietnam. *See* ECF No. 1 at ¶ 8. 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 Vietnam in the reasonably foreseeable future, any challenge that Petitioner would have raised under the regulations would have failed. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("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.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("violations of procedural regulations should be

upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *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.").

Thus, 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. Petitioner does not challenge his removal order—nor could he. Finally, ICE has begun the process of collecting Petitioner's foreign identity documents, in order to obtain Petitioner's travel document from the Vietnamese embassy, and expects the removal of the Petitioner to Vietnam to occur in the reasonably foreseeable future. *See* Townsend Decl., ¶ 19.

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.

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).

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.

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 29, 2025

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s/ Stephanie A. Sotomayor
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