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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SARINEH GHARAKHAN,

Petitioner,

v.

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

Respondents.

Case No.: 25-cv-2879-DMS-AHG

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 purposes of judicial efficiency, given the petition and motion for temporary restraining order assert the same claims and seek the same relief, Respondents respectfully respond to both the petition and motion herein. 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 Iran who was granted legal permanent resident status in the United States. *See* ECF No. 1 at 1; Ex. 1.[1] She was later convicted of multiple criminal offenses, including robbery, burglary, larceny, and drug possession. Ex. 1 at 2–3. On October 1, 2018, Petitioner was ordered removed by an immigration judge. Ex. 2. The immigration judge denied Petitioner's asylum application but granted withholding of removal. *Id.* Petitioner was subsequently released from immigration custody on an Order of Supervision on October 2, 2018. Ex. 3. As a condition of her Order of Supervision, Petitioner agreed not to commit any crimes while on supervision. *Id.* The Order of Supervision stated that any violation of the conditions in the order may result in Petitioner being taken into ICE custody. *Id.*

On or around February 23, 2025, Petitioner was charged with a violation of California Health and Safety Code § 11395(b)(1), possession of a controlled substance. Declaration of Daniel Negrin (Negrin Decl.) ¶ 7. On February 23, 2025, pursuant to a warrant, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect her removal. *See* Ex. 4 (I-200 Warrant for Arrest). At the time of her re-detention for removal, Petitioner was shown by ICE officers a Form I-200, Warrant for Arrest of Alien. The next day, Petitioner was provided with a Notice of Custody Determination,

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

which stated that she will be detained. Ex. 5. Petitioner had the opportunity to request an immigration judge review her custody determination, but Petitioner affirmatively acknowledged receipt of the notification and declined immigration judge review of her custody determination. *Id.*

On October 21, 2025, ICE provided Petitioner with notice that her custody status will be reviewed on or about October 31, 2025. Ex. 6. The notice provides Petitioner the opportunity to submit documentation to be reviewed in support of her request for release. *Id.*

III. Argument

Petitioner's motion should be denied because she has not established that she is entitled to interim injunctive relief. Petitioner cannot establish that she is likely to succeed on the underlying merits of her habeas petition, there is no showing of irreparable harm, and the equities do not weigh in her 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 [she] is likely to succeed on the merits, that [she] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] 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).

A. 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 she is likely to succeed on the underlying merits of her claims because she is properly detained under 8 U.S.C. § 1231(a), and her continued detention is not unconstitutionally indefinite.

1. Petitioner's detention is lawful, and she has not established that there is no significant likelihood of removal in the reasonably foreseeable future.

ICE's position is that Petitioner is lawfully detained as there is a likelihood of removal to a third country. *See* Negrin Decl. ¶¶ 6–8, 11. Petitioner was ordered removed from the United States on October 1, 2018. Since her re-detention, ICE Enforcement and Removal Operations (ERO) has worked to effectuate Petitioner's removal as expeditiously as possible. *See* Negrin Decl. ¶ 11.

As an initial matter, Petitioner raises two distinct issues regarding her detention: (1) whether her current detention is unconstitutionally prolonged under the *Zadvydas* standard and (2) the agency's reason for revoking her release and her return to custody. The regulatory standard for revocation—which is not the same as the constitutional standard—provides that "[a]ny alien who has been released under an order of supervision . . . who violates any of the conditions of release may be returned to custody." 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 her Petition on October 24, 2025—eight months after she was detained. But Petitioner fails to show that her detention is in excess of the constitutional period articulated in *Zadvydas*.

The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Zadvydas v. Davis*, 533

U.S. 678, 683 (2001). But post-removal detention can 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).

The *Zadvydas* Court stated: "[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*." *Zadvydas*, 533 U.S. 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.

Petitioner is subject to a final, executable order of removal, which means that she has no right to remain in the United States. ICE has long-standing authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens like Petitioner, who has been granted

withholding of removal for their country of designation, may be removed and resettled in third countries.

Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall remove the noncitizen to any of the following countries:

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.
> (vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

Id. Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen to a country of designation or an alternative country in subparagraph (D), the Secretary may, in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i) through (E)(vi).

To effectuate Petitioner's removal to a third country, "[o]n August 15, September 18, and October 8, 2025, ERO sent requests to ERO's Removal Management Division for third country removal." Negrin Decl. ¶ 11. Petitioner may argue that the government is still working to locate a third country for resettlement and that it did not already locate a third country for resettlement before taking her back into custody. But *Zadvydas* does not require the government to pre-arrange a noncitizen's removal before arresting them.

On this record, Petitioner cannot sustain her burden, and it would be premature to conclude otherwise before permitting ICE an opportunity to complete its diligent efforts to effect her 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").

Lastly, Petitioner's claim that she may not be removed to a third country without adequate notice and an opportunity to be heard is subject to ongoing litigation, with the Supreme Court staying an injunction imposed by a district court ordering the government to provide notice and an opportunity to be heard like that requested here. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given the Supreme Court's reversal of that injunction, Respondents' position is that imposition of a similar injunction would be reversed here.

Based on the foregoing, Petitioner cannot prevail on her *Zadvydas* and third country removal claims.

2. Petitioner's complaints about procedural deficiencies in her 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 8–11. But Petitioner was provided with written notice of her custody determination the day after her arrest and provided an opportunity to have her custody determination reviewed by an immigration judge. *See* Ex. 5. Such notice and opportunity to be heard satisfies the requirements under the relevant regulations.

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 her re-detention, Petitioner knew she was subject to a final order of removal. *See* ECF No. 1 at 2. She also knew, based on her Order of Supervision, that she could not to commit any crimes while on supervision or she may be taken back into ICE custody. *See* Ex. 3 at 3. Because Petitioner's arrest put her in violation of the conditions of her Order of Supervision, 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 ICE's custody determination and an opportunity to be heard by an immigration judge. *See* Ex. 5. Even assuming the notice was 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. She does not challenge her removal order, nor could she.[2] ICE

[2] To the extent Petitioner challenges the execution of her removal order, such challenges are barred by 8 U.S.C. § 1252(g). Petitioner bears the burden of establishing that this

provided Petitioner with Notice of Custody Determination and is reviewing Petitioner's custody status on or around October 31, 2025.

B. Irreparable harm has not been shown.

To prevail on her 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

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Court has subject matter jurisdiction over her 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). 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."). A challenge to the execution of her removal order necessarily arises "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).

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.[3] But this argument "begs the constitutional questions presented in [her] 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). She faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and she 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).

C. 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

[3] 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).

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 her 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.

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 30, 2025

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