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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

MIGUEL CABRERA-TRILLO,

Petitioner,

v.

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

Respondents.

Case No.: 25-cv-02865-CAB-MSB

**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 [1]

Petitioner is a citizen and national of Cuba. *See* ECF No. 1 at 2. On May 7, 1980, Petitioner entered the United States as a refugee at Key West, Florida. *See* Declaration of Hugo I. Lara Ramirez (Ramirez Decl.) ¶ 3. On an unknown date after May 19, 1981, in Los Angeles, California, Petitioner adjusted his status retroactively to that of Lawful Permanent Resident (CU6-Cuban Refugee) effective to May 19, 1980. *Id.* Petitioner was later convicted of a felony offense of transportation, selling of a controlled substance (to wit: rock cocaine) in violation of California Health and Safety Code section 11352(a). *See* Ramirez Decl. ¶ 4; *see also* ECF No. 1 at 2. Petitioner was placed in exclusion proceedings before an immigration judge, and on November 7, 1997, an immigration judge ordered Petitioner excluded from the United States and deported to Cuba. *See* Ramirez Decl. ¶¶ 5, 6. Petitioner was subsequently released from immigration custody on an Order of Supervision. *Id.* at ¶ 7.

On August 29, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to execute his administratively final removal order to Cuba. *Id.* at ¶ 8. At that time, he was shown a Form I-200, Warrant of Arrest of Alien. *Id.* 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. *Id.* Petitioner also was provided with a Notice of

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

Revocation of Release, dated August 29, 2025, which states that his Order of Supervision has been revoked because of changed circumstances in his case. *Id.* at ¶ 9

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. Ramirez Decl. ¶ 10. 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. *Id.* at ¶ 11. On October 24, 2025, ICE International Operations Division made that request to the Government of Cuba. *Id.* On October 31, 2025, ERO was informed that the Government of Cuba declined to accept Petitioner for repatriation. *Id.* Since 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. *Id.* at ¶ 12. Should a third country accept the Petitioner, the Petitioner will be notified of this third country. *Id.* If the Petitioner claims fear of return to this third country, he will be referred for a reasonable fear interview with an asylum officer. *Id.*

## III. Legal Standard for Interim Relief

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 n.7 (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). Plaintiffs must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011). The likely success on the merits "is the most important" *Winter* factor. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). So, when a plaintiff has failed to show the likelihood of success on the merits, the court need not consider the remaining factors. *Id.*

The final two factors required for interim injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). "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).

## IV. Argument

Petitioner's motion should be denied because he has not established that he is entitled to interim injunctive relief. Petitioner has not established 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.

### A. 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.

#### 1. Petitioner's Post-Removal Order Detention is Within the Six-Month Period Found Presumptively Reasonable Under *Zadvydas* and a Travel Document is Not a Prerequisite to Detention

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 under subsection (a)(1)). 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 701. 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.*

Here, even assuming the 90-day statutory removal period has run, Petitioner's post-removal order detention is within the six-month period that *Zadvydas* found to be presumptively reasonable. *See* 533 U.S. at 701. The Supreme Court in *Zadvydas* also instructed that this "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. No such showing can be made here.

Shortly after Petitioner was re-detained, ICE completed the process for his repatriation to Cuba, but the repatriation was not successful. The Cuban government did not accept Petitioner for removal. Petitioner's contention that ICE is not entitled to pursue Petitioner's removal to a third country under 8 U.S.C. § 1231(b) is thus unavailing. *See* 8 U.S.C. § 1231(b)(2)(C) (allowing for third country removal where the petitioner's country of designation is not willing to accept him); § 1231(b)(2)(E) (allowing third country resettlement where removal to the country designated in the final order is "impracticable, inadvisable, or impossible.").

Moreover, Petitioner's request that Respondents be enjoined from re-detaining Petitioner unless and until they obtain a travel document for his removal finds no home in *Zadvydas*. The Supreme Court explained: "[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 *Zadvydas* 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 removal is imminent.

Additionally, the Supreme Court was clear that the Constitution prevents only "indefinite" or "potentially permanent" detention. *Zadvydas*, 533 U.S. at 696, 699. It

would be premature to reach a contrary conclusion before permitting ICE an opportunity to complete its present, diligent efforts to effect removal. As courts in this district have found, "evidence 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), ECF No. 25 at 8 (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 Sereke v. DHS*, Case No. 19-cv-1250-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").

Lastly, Petitioner's claim that he 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.

**2. Petitioner's Regulatory Violation Claims Do Not Establish a Basis for Habeas Relief**

Additionally, Petitioner claims that the agency failed to comply with its regulations for revoking his Order of Supervision. But Petitioner was served a Warrant for Arrest of Alien and a formal Notice of Release Revocation, informing him that his Order of Supervision was being revoked for changed circumstances, at the time of his

arrest. Petitioner was also provided at that time a Warrant of Removal/Deportation and a Warning to Alien Ordered Removed or Deported.

But even assuming the agency's compliance with the 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) ("Compliance 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 removal and had no right to remain in the United States. He also knew that although he was previously released, he was under an Order of Supervision that could be revoked. Any challenge Petitioner would have made during an informal interview after his re-detention 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, the regulations addressing revocation of release here do not provide substantive rights that override the statutory detention authority. *See Morales Sanchez v. Bondi*, No. 5:25cv02530 AB DTB, at *4 (C.D. Cal. Oct. 3, 2025) ("While the regulations cited by Petitioner, 8 C.F.R. §§ 241.13(i)(1)–(2) and 241.4, establish procedural safeguards—including the requirements that revocation be based on a condition of release violation or on a significant likelihood of removal, and that the noncitizen receive notice and an informal interview—they do not create independent substantive rights that override the statutory grant of detention authority.") (citing *Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) (concluding that agency

rules must prescribe substantive law, not merely procedural or policy guidance, to be enforceable)).

Petitioner also 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.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing claim that § 241.4(l) was a violation of the petitioners' procedural due process rights and noting that they "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."). Although the regulation provides detainees 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, the purposes of release have been served or the conduct of the alien, *or any other circumstance*, indicates that release would no longer be appropriate.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (citing §§ 241.4(l)(2)(i), (iv)) (simplified and emphasis in original).[2]

As mentioned above, Petitioner received written notice of the reason ICE revoked his Order of Supervision, and while it is unclear whether Petitioner's conversations with ICE officers to date amount to an informal interview under the regulations, the alleged noncompliance with 8 C.F.R. § 241.13 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. *See* No. C18-287-JLR-BAT, 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 that the revocation of his release was unlawful because the regulations prohibited re-detention without, among

[2] This case was abrogated on other grounds as recognized by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

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 district court held that even if the 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." No. CV 18-11363-FDS, 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. Petitioner does not challenge his removal order, nor could he. And again, ICE has been working expeditiously to effectuate his removal. 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. *See Morales Sanchez v. Bondi*, No. 5:25cv02530 AB DTB, at *4 (C.D. Cal. Oct. 3, 2025) ("While the regulations cited by Petitioner, 8 C.F.R. §§ 241.13(i)(1)–(2) and 241.4, establish procedural safeguards—including the requirements that revocation be based on a condition of release violation or on a significant likelihood of removal, and that the noncitizen receive notice and an informal interview—they do not create independent substantive rights that override the statutory grant of detention authority.") (citing *Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) (concluding that agency rules must prescribe substantive law, not merely procedural or policy guidance, to be enforceable)).

Based on the foregoing, Petitioner cannot show entitlement to habeas relief and has thus failed to demonstrate a likelihood of success on the underlying merits.

**B. 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'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 asserted irreparable harm as any habeas corpus petitioner in immigration custody and has not shown extraordinary circumstances warranting interim relief—especially here, where Petitioner is subject to a final, executable order of removal and has no right to remain in the United States. Indeed, the purpose of civil detention in this case is to facilitate Petitioner's removal and the government is working to promptly remove him. 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); *see Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021) (finding that detention alone is not an irreparable injury).

**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 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: November 4, 2025

Respectfully submitted,

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