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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS,

Petitioner,

v.

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

Respondents.

Case No.: 25-cv-02866-JES-VET

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. As the petition and motion assert the same claims and relief, Respondents respectfully respond to both herein for the sake of judicial efficiency. 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, who unlawfully entered the United States in 1988, and less than two years later, was convicted of murder and sentenced to twenty-seven years in prison. Exh. 1 at 1–3; ECF No. 1 at 27.[1] On June 8, 2021, an

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

Immigration Judge ordered him removed to Cuba. Exh. 2. On July 27, 2021, Immigration and Customs Enforcement (ICE) released Petitioner from immigration custody because it was unable to repatriate him to Cuba. *See* Declaration of Martin Parsons ("Parsons Decl.") at ¶ 6.

On September 22, 2025, ICE re-detained Petitioner for purposes of executing his removal order. *See id.* at ¶ 7. At that time, Petitioner was served a Form I-200, Warrant for Arrest of Alien and a formal Notice of Revocation of Release. *See* Exhs. 3, 4. Petitioner was also shown a Form I-205, Warrant of Removal/Deportation and a Form I-294, Warning to Alien Ordered Removed or Deported. *See* Exhs. 5, 6.

Since his re-detention, ICE has been working diligently to effectuate his removal. *See* Decl. at ¶ 8. After repatriation efforts to Cuba proved unsuccessful, ICE identified Mexico as a third country where Petitioner may be removed. *Id.* at ¶¶ 9–10. Upon receiving the government of Mexico's agreement to accept Petitioner, ICE notified Petitioner that he was being removed to Mexico. *Id.* at ¶¶ 11–12. ICE drove Petitioner to the Mexico border to effectuate his third country resettlement, but its removal efforts were thwarted by Petitioner's refusal to comply. *Id.* at ¶ 13. Petitioner was thereafter returned to ICE custody. *See id.* ICE is actively working to identify another third country for Petitioner's resettlement. *Id.* at ¶ 14. And according to the declaring officer, "barring further noncompliance with removal efforts by Petitioner, there is a high likelihood of Petitioner's removal to a third country in the near future." *Id.* at ¶ 15.

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 has not established that he is likely to succeed on the underlying merits of his claims because he is properly detained under 8 U.S.C. § 1231.

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, Petitioner has been detained a total of three months post-final order of removal. Even assuming the 90-day statutory removal period has run, Petitioner's 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. *See* Parsons Decl. at ¶¶ 8–9. The Cuban government did not accept Petitioner for removal. *Id.* at ¶ 9 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.").

Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued Petitioner's third country resettlement to Mexico. *See* Parsons Decl. at ¶¶ 10–11. Mexico agreed to accept Petitioner. *Id.* at ¶ 11. Petitioner was notified and driven to the Mexico border for removal. *Id.* at ¶ 12. Petitioner did not express a fear of being removed to Mexico but refused to willingly depart. *Id.* at ¶ 13. He was thus deemed a "failure to comply." *Id.* As such, Petitioner's attempt at showing that there is no likelihood of removal while he refused to cooperate should thus be given no weight. *See, e.g.*, *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (holding that the government could continue to detain the petitioner because it successfully completed

his travel arrangements and "was not removed at those times solely because of his own refusal to cooperate").

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. This record does not support such a finding. Again, Petitioner's three-month detention is within the presumptively reasonable period authorized under *Zadvydas*. And his removal would have been effectuated but for his noncompliance. Further, ICE attests that it continues to actively pursue third country removal and "barring further noncompliance with removal efforts by Petitioner, there is a high likelihood of Petitioner's removal to a third country in the near future." Parsons Decl. at ¶ 15. *See also Diouf*, 542 F.3d at 1233 (explaining that a showing 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).

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.

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

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. ECF No. 1 at 8–11 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). But Petitioner was served a Warrant for Arrest of Alien and a formal Notice of Revocation of Release, informing him that his Order of Supervision was being revoked for changed circumstances, at the time of his arrest. *See* Exhs. 3, 4. Petitioner was also provided at

that time a Warrant of Removal/Deportation and a Warning to Alien Ordered Removed or Deported. *See* Exhs. 5, 6.

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. *See* ECF No. 1 at 27. He also knew that although he was released in 2021, he was under an Order of Supervision that could be revoked. *See id.* And as demonstrated above, in September 2025, ICE had, and continues to have, authority to detain Petitioner based on the presumptively reasonable period of detention under *Zadvydas* and its determination that they could effectuate his removal promptly. Thus, 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.

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

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 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 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); *accord Morales Sanchez*, No. 5:25cv02530 AB DTB, at *4 (finding that 8 C.F.R. §§ 241.13(i)(1)–(2) and 241.4 "do not create independent substantive rights that override the statutory grant of detention authority.")

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). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. "Issuing 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." *Id.*

Here, Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, No. C 12-04850 WHA, 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 Petitioners' 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 reasons stated herein, 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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