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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALAIN SAYVONGSA,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Case No.: 3:25-cv-02867-AGS-DEB

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

I. INTRODUCTION

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

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Laos. *See* Ex. E at 1.[1] On July 16, 1999, an immigration judge ordered Petitioner removed to Laos following his conviction on crimes relating to carjacking. ECF No. 1 at 4. Petitioner was subsequently released from immigration custody on an Order of Supervision ("OSUP") on February 24, 2000, because the government was unable to obtain a travel document to Laos. *See* Decl. of Jason Cole ("Cole Decl.") ¶ 5. In the years since his removal, Petitioner has been convicted of other offenses. *See* Ex. E at 3.

Meanwhile, Immigration and Customs Enforcement ("ICE") is now regularly obtaining travel documents from Laos and arranging travel itineraries to execute final orders of removal for Laotian citizens. Cole Decl. ¶ 18. ICE has removed several Laotian citizens to Laos as recently as October 22, 2025. *Id.* On October 7, 2025, ICE re-detained Petitioner. *Id.* ¶ 8. That same day, ICE issued a Form I-200, Warrant for Arrest of Alien, pertaining to Petitioner, in order to effectuate his removal to Laos. *Id.*; Ex. A. Petitioner also received and acknowledged a Form I-205, Warrant of Removal/Deportation. *Id.* ¶ 9; Ex. B at 2. On October 7, 2025, ICE provided Petitioner with Notice of Revocation of Release, *see id.* ¶ 10; Ex. C, and, on October 28, 2025, a specific informal interview regarding the revocation of his order of supervision, *see id.* ¶ 11; Ex. D.

On October 17, 2025, ICE Enforcement and Removal Operations ("ERO") submitted a travel document ("TD") request for Petitioner to the Laos Unit of ERO's

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel. Unless otherwise indicated, page citations herein refer to the ECF-generated page numbers stamped at the top of each ECF-filed document.

Removal and International Operations ("RIO"). *Id.* ¶ 14. The TD request remains pending. Once Petitioner's travel document is obtained, ICE will arrange for his removal to Laos. *Id.* ¶ 13. ICE is not seeking to remove Petitioner to a third country. *Id.* ¶ 12. According to the declaring officer's experience, "there is a significant likelihood of Petitioner's removal" in the foreseeable future. *Id.* ¶ 15.

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 a 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 Laos. *See* Cole Decl. ¶¶ 12-16. 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 General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or

action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *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

Petitioner has not established entitlement to interim injunctive relief. Petitioner has failed to show a likelihood of success on the underlying merits, a showing of irreparable harm, and that the equities tip in his favor. Thus, Petitioner's motion should be denied.

In general, the showing required for a temporary restraining order ("TRO") 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 TRO, 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); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). Petitioner 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* elements]." *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, however, "can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470

U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977).

The Ninth Circuit also has a "serious questions" test which dictates that "serious questions going to the merits and a hardship balance that tips sharply toward the petitioner can support issuance of an injunction, assuming the other two elements of the Winter test are also met." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Thus, under the serious questions test, a TRO can be granted if there is a likelihood of irreparable injury to the petitioner, serious questions going to the merits, the balance of hardships tips in favor of the petitioner, and the injunction is in the public interest. *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).

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 ninety (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, on multiple occasions, to remove him to Laos, 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 or given travel documents. He also complains of alleged procedural deficiencies in his re-arrest, *e.g.*, lack of 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 23, 2025. Petitioner argues that *Zadvydas* created a grace period of 180 days from the date he was ordered removed by the immigration judge. Therefore, he argues that the grace period expired in January 2000 because he was ordered removed in July 1999. ECF No. 1 at 13.

These arguments, however, rely on an inaccurate characterization of the *Zadvydas* standard. It is therefore important to emphasize how the Supreme Court actually ruled and what the exact constitutional standard is:

> After this six-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 Laos in the reasonably foreseeable future. He was re-detained for removal in October 2025, after ICE had been successfully obtaining TDs for Laotian citizens and routinely effectuating removals to Laos. Cole Decl. ¶¶ 8, 17-18; *see Louangmilith v. Noem*, No. 25-cv-2502-JES-MSB, 2025 2881578, at *4 (S.D. Cal. Oct. 9, 2025) (acknowledging the government's recent receipt of a travel document from Laos for a detainee in this district).[2] ICE began to prepare Petitioner's TD request soon after his re-detention and submitted the completed request. Cole Decl. ¶¶ 13-14. ICE now expects to receive Petitioner's TD in the near future. *Id.* ¶ 15. Once ICE receives Petitioner's TD, he can be removed promptly, as ICE has routine flights to Laos. *Id.* ¶ 18. For this reason, ICE has found that there is a significant likelihood of Petitioner's removal to Laos in the near future. *Id.* ¶ 15. 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 Laos, and the government is currently arranging for that removal.

Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 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.*, No. C13-0092-RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his burden of

[2] ICE has also recently obtained travel documents from Laos for petitioners in several other cases in this district. *See Yang v. Warden et al.*, Case No. 25-cv-02371-JES-AHG, ECF No. 8-1 at ¶ 7 (ICE declaration dated October 9, 2025, confirming travel document from Laos); *Khambounheuang v. Noem et al.*, Case No. 25-cv-02575-JO-SBC, ECF No. 16-1 at ¶ 8 (ICE declaration dated October 17, 2025, confirming travel document from Laos); *Truong v. Noem et al.*, Case No. 25-cv-02597-JES-MMP, ECF No. 7-1 at ¶ 12 (ICE declaration dated October 7, 2025, confirming travel document from Laos); *Thammavongsa v. Noem et al.*, Case No. 25-cv-02836-JO-AHG, ECF No. 10-2 at ¶ 14 (ICE declaration dated October 28, 2025, confirming travel document from Laos).

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 unconstitutionally 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). On the contrary, 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*, 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*, 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").

Petitioner's continued detention is thus not unconstitutionally prolonged under *Zadvydas*.

b. Petitioner's Complaints About Procedural Deficiencies in His Re-detention Do Not Establish a Basis for Habeas Relief

Petitioner's first claim for relief—that ICE failed to comply with its own regulations before re-detaining Petitioner—also fails. ECF 1 at 8-11.

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 section 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 regulation further provides:

> *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 8-11. Specifically, Petitioner argues that "there are no changed circumstances that justify re-detaining him," ECF No. 2 at 7, and he states he was not provided with "advance notice" of the revocation or given an informal interview, ECF No. 1 at 10. Notably, the regulations do not require written notice, advance notice, an advanced interview, nor for DHS to prove to the satisfaction of a petitioner that changed circumstances are present.[3]

Yet it is clear that there are changed circumstances here—namely, ICE's revived ability to obtain travel documents from the Laotian government and to schedule routine removal flights to Laos. Cole Decl. at ¶ 18. That fact alone is fatal to Petitioner's claim, because even if the agency had failed to provide Petitioner with "advance notice" of the revocation (which the regulations do not require), 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*

[3] 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).

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* "enunciate[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. No. 6928540, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted by* 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 removal was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the district court 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*, No. 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.*

So too here. At the time of his re-detention, Petitioner knew he was subject to a final order of removal to Laos. *See* ECF No. 1 at 4. He does not challenge that order in this lawsuit or offer any indication that he intends to do so. Petitioner also had reason to know, based on his OSUP, that although he was released from detention (most

recently in 2015), ICE would continue its efforts to obtain a travel document to effectuate his removal to Laos. And because Respondents had, and continue to have, an evidentiary basis to conclude there is a significant likelihood that Petitioner will be removed to Laos in the reasonably foreseeable future, any challenge that Petitioner would have raised to the revocation prior to his re-detention would have failed. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *op. 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 consulate 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).

Thus, whatever procedural deficiencies or delays may have occurred, they do not warrant Petitioner's release and, indeed, could be cured by means other than release. Petitioner does not challenge his removal order, nor could he. ICE has provided Petitioner with a Notice of Revocation of Release and conducted an informal interview. Exs. C, D. ICE's ERO is awaiting response to its request for Petitioner's TD and expects the removal of Petitioner to Laos to occur in the reasonably foreseeable future. *See* Cole

Decl. ¶¶ 13-14.

Because Petitioner has not established success on the merits of his first claim for relief, he cannot show entitlement to release.

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.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury. But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, No. 19-cv-00754-PJH, 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*, No. C 12-04850 WHA, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting a mandatory preliminary injunction.

Importantly, the purpose of 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 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*, 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.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the motion for temporary restraining order and dismiss the habeas petition.

DATED: October 29, 2025

Respectfully submitted,

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s/ Alyssa Sanderson
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