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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 CARLOS ALBERTO IZQUIERDO
12 MATOS,

13 Petitioner,

14
15 v.

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

18 Respondents.
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Case No.: 25-cv-2979-BJC-BLM

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

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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 Cuba. *See* ECF No. 1 at 2; Ex. 1.¹ He was convicted of robbery in 1992, and sale or transportation for sale of dangerous drugs in 2003. Ex. 1 at 2. On May 28, 2008, an immigration judge ordered him removed to Cuba. Ex. 2. On September 12, 2008, Immigration and Customs Enforcement (ICE) released Petitioner from immigration custody because it was unable to repatriate him to Cuba. *See* Declaration of Marcus Vera (“Vera Decl.”) ¶ 5.

On July 11, 2025, ICE re-detained Petitioner for purposes of executing his removal order. *See id.* ¶ 7. At that time, Petitioner was served a Form I-200, Warrant for Arrest of Alien. *See* Ex. 3. Petitioner was also shown a Form I-205, Warrant of Removal/Deportation. *See* Ex. 4.

Since his re-detention, ICE has been working diligently to effectuate his removal. *See* Vera Decl. ¶ 9. After repatriation efforts to Cuba proved unsuccessful, ICE identified Mexico as a third country where Petitioner may be removed. *Id.* ¶¶ 10–11. Upon receiving the government of Mexico’s agreement to accept Petitioner, ICE notified Petitioner that he was being removed to Mexico. *Id.* ¶¶ 12–13. 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.* ¶ 14. Petitioner was

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

1 thereafter returned to ICE custody. *See id.* ICE is actively working to identify another
2 third country for Petitioner’s resettlement. *Id.* ¶ 15. And according to the declaring
3 officer, “barring further noncompliance with removal efforts by Petitioner, there is a
4 high likelihood of Petitioner’s removal to a third country in the near future.” *Id.* ¶ 16.

5 III. Argument

6 A. Claims and requests barred by 8 U.S.C. § 1252.

7 Petitioner bears the burden of establishing that this Court has subject matter
8 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
9 778–79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). To the
10 extent Petitioner’s claims arise from—or seek to enjoin—the decision to execute his
11 removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack
12 jurisdiction over any claim or cause of action arising from any decision to commence
13 or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
14 (“Except as provided in this section and *notwithstanding any other provision of law*
15 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
16 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have
17 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
18 decision or action by the Attorney General to commence proceedings, adjudicate cases,
19 or *execute removal orders* against any alien under this chapter.”) (emphasis added);
20 *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was
21 good reason for Congress to focus special attention upon, and make special provision
22 for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
23 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
24 the initiation or prosecution of various stages in the deportation process.”). In other
25 words, § 1252(g) removes district court jurisdiction over “three discrete actions that the
26 Attorney may take: her ‘decision or action’ to ‘commence proceedings, adjudicate
27 cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed).
28 Petitioner’s claims necessarily arise “from the decision or action by the Attorney

1 General to . . . execute removal orders,” over which Congress has explicitly foreclosed
2 district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
3 (“Notwithstanding any other provision of law, no court shall enjoin the removal of any
4 alien pursuant to a final order under this section unless the alien shows by clear and
5 convincing evidence that the entry or execution of such order is prohibited as a matter
6 of law.”). Accordingly, to the extent Petitioner’s claims arise from—or seek to enjoin—
7 the decision to execute his removal order, the Court should deny and dismiss those
8 claims for lack of jurisdiction under 8 U.S.C. § 1252.

9 **B. Petitioner fails to establish entitlement to interim injunctive relief.**

10 Alternatively, Petitioner’s motion should be denied because he has not
11 established that he is entitled to interim injunctive relief. Petitioner cannot establish that
12 he is likely to succeed on the underlying merits, there is no showing of irreparable harm,
13 and the equities do not weigh in his favor.

14 In general, the showing required for a temporary restraining order is the same as
15 that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D.*
16 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
17 temporary restraining order, a plaintiff must “establish that he is likely to succeed on
18 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
19 relief, that the balance of equities tips in his favor, and that an injunction is in the public
20 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
21 *Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a “substantial case for
22 relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
23 When “a plaintiff has failed to show the likelihood of success on the merits, we need
24 not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d
25 733, 740 (9th Cir. 2015).

26 The final two factors required for preliminary injunctive relief—balancing of the
27 harm to the opposing party and the public interest—merge when the Government is the
28 opposing party. *See Nken*, 556 U.S. at 435. “Few interests can be more compelling than

1 a nation’s need to ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611
2 (1985).

3 ***I. Petitioner is unlikely to succeed on the merits.***

4 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d
5 at 740. Petitioner cannot establish that he is likely to succeed on the underlying merits
6 of his claims because he is properly detained under 8 U.S.C. § 1231(a), and his
7 continued detention is not unconstitutionally indefinite.

8 *a. Petitioner’s detention is lawful, and he has not established that there*
9 *is no significant likelihood of removal in the reasonably foreseeable*
10 *future.*

11 An alien ordered removed must be detained for 90 days pending the
12 government’s efforts to secure the alien’s removal through negotiations with foreign
13 governments. *See* 8 U.S.C. § 1231(a)(2) (stating the Attorney General “shall detain” the
14 alien during the 90-day removal period). The statute “limits an alien’s post-removal
15 detention to a period reasonably necessary to bring about the alien’s removal from the
16 United States” and does not permit “indefinite detention.” *Zadvydas v. Davis*, 533 U.S.
17 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal
18 detention constitutes a “presumptively reasonable period of detention.” *Id.* at 683.
19 Release is not mandated after the expiration of the six-month period unless “there is no
20 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

21 In *Zadvydas*, the Supreme Court held: “[T]he habeas court must ask whether the
22 detention in question exceeds a period reasonably necessary to secure removal. It should
23 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
24 *assuring the alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added).
25 In so holding, the court recognized that detention is presumptively reasonable pending
26 efforts to obtain travel documents, because the noncitizen’s assistance is needed to
27 obtain the travel documents, and a noncitizen who is subject to an imminent, executable
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1 warrant of removal becomes a significant flight risk, especially if he or she is aware that
2 it is imminent.

3 The court also held that the detention could exceed six months: “This 6-month
4 presumption, of course, does not mean that every alien not removed must be released
5 after six months. To the contrary, an alien may be held in confinement until it has been
6 determined that there is no significant likelihood of removal in the reasonably
7 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
8 reason to believe that there is no significant likelihood of removal in the reasonably
9 foreseeable future, the Government must respond with evidence sufficient to rebut that
10 showing and that the noncitizen has the initial burden of proving that removal is not
11 significantly likely.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the
12 burden on the alien to show, after a detention period of six months, that there is ‘good
13 reason to believe that there is no significant likelihood of removal in the reasonably
14 foreseeable future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting
15 *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

16 Petitioner contends his removal is not reasonably foreseeable at this juncture,
17 given that (1) the government was unable to remove him to Cuba seventeen years ago,
18 and instead released him on an Order of Supervision; and (2) with his re-detention, he
19 was not provided an explanation for why he was re-detained or given travel documents.
20 He also complains of (3) alleged procedural deficiencies in his re-arrest, e.g., lack of a
21 revocation explanation or an informal interview. None of these arguments, however,
22 are sufficient to support his request for release from detention.

23 As an initial matter, Petitioner raises two distinct issues: (1) the agency’s reason
24 for revoking his release and his return to custody; and (2) whether his current detention
25 is unconstitutionally prolonged under the *Zadvydas* standard. The regulatory standard
26 for revocation—which is not the same as the constitutional standard—provides that
27 “The Service may revoke an alien’s release under this section and return the alien to
28 custody if, on account of changed circumstances, the Service determines that there is a

1 significant likelihood that the alien may be removed in the reasonably foreseeable
2 future.” 8 C.F.R. 241.13(i)(2). As discussed below, however, that is not the standard
3 governing whether detention is constitutional or not for purposes of a habeas claim.

4 Instead, whether Petitioner’s current detention is constitutional is governed by
5 the Supreme Court’s directives in *Zadvydas*. In that regard, Petitioner filed his Petition
6 on November 3, 2025—less than four months after he was re-detained. Petitioner claims
7 that because he was previously in immigration custody when he was ordered removed
8 in 2008, the government now has a burden to show that his *current* detention is
9 constitutional. But Petitioner fails to show that his total detention is in excess of the
10 constitutional period articulated in *Zadvydas*. Petitioner has been detained a total of
11 about eight months post-final order of removal. The Supreme Court in *Zadvydas*
12 instructed that this “presumption, of course, does not mean that every alien not removed
13 must be released after six months. To the contrary, an alien may be held in confinement
14 until it has been determined that there is no significant likelihood of removal in the
15 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. No such showing can be
16 made here.

17 Shortly after Petitioner was re-detained, ICE completed the process for his
18 repatriation to Cuba, but the repatriation was not successful. *See Vera Decl.* ¶¶ 9–10.
19 The Cuban government did not accept Petitioner for removal. *Id.* ¶ 10. Petitioner’s
20 contention that ICE is not entitled to pursue Petitioner’s removal to a third country under
21 8 U.S.C. § 1231(b) is thus unavailing. *See* 8 U.S.C. § 1231(b)(2)(C) (allowing for third
22 country removal where the petitioner’s country of designation is not willing to accept
23 him); § 1231(b)(2)(E) (allowing third country resettlement where removal to the
24 country designated in the final order is “impracticable, inadvisable, or impossible”).
25 Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued
26 Petitioner’s third country resettlement to Mexico. *See Vera Decl.* ¶¶ 11–12. Mexico
27 agreed to accept Petitioner. *Id.* ¶ 12. Petitioner was notified and driven to the Mexico
28 border for removal. *Id.* ¶ 13–14. Petitioner did not express a fear of being removed to

1 Mexico but refused to willingly depart. *Id.* ¶ 14. He was thus deemed a “failure to
2 comply.” *Id.* As such, Petitioner’s attempt at showing that there is no likelihood of
3 removal while he refused to cooperate should thus be given no weight. *See, e.g., Diouf*
4 *v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (holding that the government could
5 continue to detain the petitioner because it successfully completed his travel
6 arrangements and “was not removed at those times solely because of his own refusal to
7 cooperate”).

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

15 *b. Petitioner’s complaints about procedural deficiencies in his*
16 *re-detention do not establish a basis for habeas relief.*

17 Additionally, Petitioner claims that the agency failed to comply with its
18 regulations revoking Petitioner’s Order of Supervision. ECF No. 1 at 15–17. But
19 Petitioner was provided with written notice of the revocation of his release on
20 November 10, 2025. *See Ex. 5.* ICE also interviewed Petitioner regarding his detention
21 status. *See Ex. 6.*

22 But even assuming the agency’s compliance with the relevant regulations fell
23 short, Petitioner has not established prejudice nor a constitutional violation. *See Brown*
24 *v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“The mere failure of an agency to
25 follow its regulations is not a violation of due process.”); *United States v. Tatoyan*,
26 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that “[c]ompliance with ... internal
27 [customs] agency regulations is not mandated by the Constitution” (internal quotation
28 marks omitted)); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978)

1 (holding that *Accardi* “enunciate[s] principles of federal administrative law rather than
2 of constitutional law”). At the time of his re-detention, Petitioner knew he was subject
3 to a final order of removal. *See* ECF No. 1 at 2. He also knew, based on his Order of
4 Supervision, that although he was released in 2008, ICE would be continuing to make
5 efforts to execute his removal order. *See* Ex. 1 at 3. And as illustrated above, because
6 Respondents had, and continue to have, an evidentiary basis to determine there is a
7 likelihood that Petitioner will be removed to a third country, any challenge that
8 Petitioner would have raised under the regulations would have failed. *See, e.g., United*
9 *States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even
10 assuming that the judge had violated the rule by failing to inquire into the alien’s
11 background, any error was harmless because there was no showing that the petitioner
12 was qualified for relief from deportation).

13 Moreover, Petitioner does not have a protected liberty interest in remaining free
14 from detention where ICE has exercised its discretion under a valid removal order and
15 its regulatory authority. *See Moran v. U.S. Dep’t of Homeland Sec.*, 2020 WL 6083445,
16 at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners’ claim that § 241.4(l) was a
17 violation of their procedural due process rights and noting, “[the petitioners] fail to point
18 to any constitutional, statutory, or regulatory authority to support their contention that
19 they have a protected interest in remaining at liberty in the United States while they
20 have valid removal orders.”). “While the regulation provides the detainee some
21 opportunity to respond to the reasons for revocation, it provides no other procedural and
22 no meaningful substantive limit on this exercise of discretion as it allows revocation
23 “when, in the opinion of the revoking official ... [t]he purposes of release have been
24 served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release
25 would no longer be appropriate.” *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.
26 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing
27 §§ 241.4(l)(2)(i), (iv) (emphasis in original).

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1 As noted above, Petitioner received written notice of the reason ICE revoked his
2 Order of Supervision, as well as an informal interview. *See* Exs. 5, 6. Even assuming
3 the notice and interview were not in compliance with federal regulations, that allegation
4 does not entitle Petitioner to release. In *Ahmad v. Whitaker*, for example, the
5 government revoked the petitioner’s release but did not provide him an informal
6 interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018),
7 *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued
8 the revocation of his release was unlawful because, he contended, the federal
9 regulations prohibited re-detention without, among other things, an opportunity to be
10 heard. *Id.* In rejecting his claim, the court held that although the regulations called for
11 an informal interview, petitioner could not establish “any actionable injury from this
12 violation of the regulations” because the government had procured a travel document
13 for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe*
14 *v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the
15 ICE detainee petitioner had not received a timely interview following her return to
16 custody, there was “no apparent reason why a violation of the regulation ... should
17 result in release.” *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The
18 court elaborated, “[I]t is difficult to see an actionable injury stemming from such a
19 violation. Doe is not challenging the underlying justification for the removal order....
20 Nor is this a situation where a prompt interview might have led to her immediate
21 release—for example, a case of mistaken identity.” *Id.*

22 The same is true here. Whatever procedural deficiencies or delays may have
23 occurred, they do not warrant Petitioner’s release, and indeed could be cured by means
24 well short of release. *See Morales Sanchez v. Bondi*, No. 5:25cv02530 AB DTB, at
25 *4 (C.D. Cal. Oct. 3, 2025) (“While the regulations cited by Petitioner, 8 C.F.R.
26 §§ 241.13(i)(1)–(2) and 241.4, establish procedural safeguards—including the
27 requirements that revocation be based on a condition of release violation or on a
28 significant likelihood of removal, and that the noncitizen receive notice and an informal

1 interview—they do not create independent substantive rights that override the statutory
2 grant of detention authority.”) (citing *Jane Doe I v. Nielsen*, 357 F. Supp. 3d 972, 1000
3 (N.D. Cal. 2018) (concluding that agency rules must prescribe substantive law, not
4 merely procedural or policy guidance, to be enforceable)).

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

7 **2. Irreparable harm has not been shown.**

8 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
9 “immediate threatened injury.” *Caribbean Marine Services Co., Inc. v. Baldrige*, 844
10 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v.*
11 *Nat’l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a
12 “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And
13 detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021
14 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*,
15 No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, “[i]ssuing a
16 preliminary injunction based only on a possibility of irreparable harm is inconsistent
17 with [the Supreme Court’s] characterization of injunctive relief as an extraordinary
18 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to
19 such relief.” *Winter*, 555 U.S. at 22.

20 Petitioner suggests that being subjected to unjustified detention itself constitutes
21 irreparable injury.² But this argument “begs the constitutional questions presented in
22 [his] petition by assuming that [P]etitioner has suffered a constitutional injury.” *Cortez*
23 *v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner’s
24 “loss of liberty” is “common to all [noncitizens] seeking review of their custody or bond
25 determinations.” *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal.

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27 ² Detention is different than removal. But a removal is also not an inherently irreparable
28 injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

1 Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus
2 petitioner in immigration custody, and he has not shown extraordinary circumstances
3 warranting a mandatory preliminary injunction.

4 Importantly, the purpose of civil detention is facilitating removal, and the
5 government is working to timely remove Petitioner. Here, because Petitioner’s alleged
6 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor
7 of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861,
8 at *10 (N.D. Cal. Dec. 24, 2018).

9 **3. Balance of equities does not tip in Petitioner’s favor.**

10 It is well settled that “the public interest in enforcement of the immigration laws
11 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C.
12 Cir. 1981) (collecting cases); *see Nken*, 556 U.S. at 436 (“There is always a public
13 interest in prompt execution of removal orders: The continued presence of an alien
14 lawfully deemed removable undermines the streamlined removal proceedings [the
15 Illegal Immigration Reform and Immigrant Responsibility Act] established, and permits
16 and prolongs a continuing violation of United States law.”) (simplified). And ultimately,
17 “the balance of the relative equities ‘may depend to a large extent upon the
18 determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v. Kane*, Case
19 No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012)
20 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

21 Here, as explained above, Petitioner cannot succeed on the merits of his claims
22 and the public interest in the prompt execution of removal orders is significant. The
23 balancing of equities and the public interest thus weigh heavily against granting
24 equitable relief in this case.

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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: November 12, 2025

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