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

12 PHUONG VAN PHAN,

13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary, U.S.  
16 Department of Homeland Security;  
PAMELA BONDI, Attorney General,  
17 TODD LYONS, Acting Director,  
18 Immigration and Customs Enforcement;  
JESUS ROCHA, Acting Field Office  
19 Director, San Diego Field Office,  
20 CHRISTOPHER LAROSE, Warden at  
Otay Mesa Detention Center,

21  
22 Respondents.  
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Case No.: 25-cv-2997-JES-KSC

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

1 **I. Introduction**

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

5 **II. Factual and Procedural Background**

6 Petitioner is a citizen and national of Vietnam. On December 19, 1984, Petitioner  
7 was admitted into the United States as a refugee. Ex. 1 (I-213) at 4. Following his  
8 admission into the United States, Petitioner was convicted of a serious crime on at least  
9 four separate occasions: April 18, 1991 (vehicle theft), September 20, 1993 (burglary),  
10 December 31, 1997 (making a false report), and September 4, 2001 (burglary). *Id.*  
11 Petitioner was placed into removal proceedings and ordered removed by an immigration  
12 judge on May 6, 2002. *Id.*

13 Petitioner subsequently self-removed to Mexico on June 19, 2014, but he re-  
14 entered the United States the same day claiming fear. *Id.* Petitioner was again placed  
15 into removal proceedings. On September 4, 2024, an immigration judge ordered  
16 Petitioner removed from the United States to Vietnam. *Id.*; Ex. 2 (IJ order of September  
17 4, 2014) at 1. Petitioner was released from immigration custody on an Order of  
18 Supervision (OSUP) on December 8, 2014. Ex. 3.

19 On September 4, 2025, Immigration and Customs Enforcement (ICE) served  
20 Petitioner with a Notification of Revocation of Release and re-detained Petitioner to  
21 effect his removal to Vietnam. *See* Ex. 4 (Notice of Revocation of Release). While in  
22 detention, Petitioner was served with an amended version of Notification of Revocation  
23 of Release on November 10, 2025. *See* Ex. 5. An ICE official also informally  
24 interviewed Petitioner on November 10, 2025. Ex. 5 at 3.

25 ICE is routinely obtaining a travel documents (TD) from Vietnam and is able to  
26 arrange travel itineraries to execute final orders of removal for Vietnamese citizens.  
27 Declaration of Deportation Officer Jason Cole (Cole Decl.) at ¶ 14. ICE has worked  
28 expeditiously to prepare and submit a TD request to effectuate Petitioner’s removal to

1 Vietnam. *Id.* at ¶ 9. Once Petitioner’s TD is obtained, ICE will arrange for his removal  
2 to Vietnam. *See Id.* at ¶ 17. ICE is not seeking to remove Petitioner to a third country.  
3 *Id.* at ¶ 8. According to the declaring officer’s experience, “[o]nce a travel document is  
4 issued for Petitioner, his removal [to Vietnam] can be effected promptly.” *Id.* at ¶ 17.

### 5 III. Argument

#### 6 A. Petitioner’s Claims Regarding Third Countries Are Unfounded

7 The Constitution limits federal judicial power to designated “cases” and  
8 “controversies.” U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*,  
9 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a  
10 “case” or “controversy” within the meaning of Article III). “Absent a real and  
11 immediate threat of future injury there can be no case or controversy, and thus no Article  
12 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-  
13 BAS-MDD, 2015 WL 8515412, at \*3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*  
14 *Earth, Inc. v. Laidlow Env’t Servs., Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit  
15 brought to force compliance, it is the plaintiff’s burden to establish standing by  
16 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful  
17 behavior will likely occur or continue, and that the threatened injury if certainly  
18 impending.”). At the “irreducible constitutional minimum,” standing requires that  
19 Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the  
20 challenged action of the United States and (3) likely to be redressed by a favorable  
21 decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

22 Here, Respondents are not seeking to remove Petitioner to a third country and  
23 instead are working to timely remove Petitioner to Vietnam. *See Cole Decl.* at ¶¶ 8, 10.  
24 As such, there is no controversy concerning third country resettlement for the Court to  
25 resolve. Federal courts do not have jurisdiction “to give opinion upon moot questions  
26 or abstract propositions, or to declare principles or rules of law which cannot affect the  
27 matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*,  
28 506 U.S. 9, 12 (1992). “A claim is moot if it has lost its character as a present, live

1 controversy.” *Rosemere Neighborhood Ass’n v. U.S. Env’t Prot. Agency*, 581 F.3d  
2 1169, 1172-73 (9th Cir. 2009). The Court therefore lacks jurisdiction over Petitioner’s  
3 claims concerning third country resettlement because there is no live case or  
4 controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v.*  
5 *Hunt*, 455 U.S. 478, 481 (1982).

6 **B. Petitioner’s Claims and Requests are 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). As a  
10 threshold matter, Petitioner’s claims are jurisdictionally barred under 8 U.S.C.  
11 § 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any  
12 decision to commence or adjudicate removal proceedings or execute removal orders.  
13 *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and *notwithstanding any*  
14 *other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or*  
15 *any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court  
16 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising  
17 from the decision or action by the Attorney General to commence proceedings,  
18 adjudicate cases, or *execute removal orders* against any alien under this chapter.”)  
19 (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483  
20 (1999) (“There was good reason for Congress to focus special attention upon, and make  
21 special provision for, judicial review of the Attorney General’s discrete acts of  
22 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—  
23 which represent the initiation or prosecution of various stages in the deportation  
24 process.”). In other words, § 1252(g) removes district court jurisdiction over “three  
25 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence  
26 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482  
27 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action  
28 by the Attorney General to . . . execute removal orders,” over which Congress has

1 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should  
2 deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C.  
3 § 1252.

4 **C. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

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

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

21 The final two factors required for preliminary injunctive relief—balancing of the  
22 harm to the opposing party and the public interest—merge when the Government is the  
23 opposing party. *See Nken*, 556 U.S. at 435. “Few interests can be more compelling than  
24 a nation’s need to ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611  
25 (1985).

1           **1. No Likelihood of Success on the Merits**

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

5           **a. Petitioner’s Detention is Lawful and He Has Not Established**  
6           **That There is No Significant Likelihood of Removal in the**  
7           **Reasonably Foreseeable Future**

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

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

27           The court also held that the detention could exceed six months: “This 6-month  
28 presumption, of course, does not mean that every alien not removed must be released

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

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

19         As an initial matter, Petitioner conflates two distinct issues: (1) the agency’s  
20 reason for revoking his release and his return to custody; and (2) whether his current  
21 detention is unconstitutionally prolonged under the *Zadvydas* standard. The regulatory  
22 standard for revocation—which is not the same as the constitutional standard—provides  
23 that “[t]he Service may revoke an alien’s release under this section and return the  
24 alien to custody if, on account of changed circumstances, the Service determines that  
25 there is a significant likelihood that the alien may be removed in the reasonably  
26 foreseeable future.” 8 C.F.R. 241.13(i)(2). As discussed below, however, that is not the  
27 standard governing whether detention is constitutional or not for purposes of a habeas  
28 claim.

1           Instead, whether Petitioner’s current detention is constitutional is governed by  
2 the Supreme Court’s directives in *Zadvydas*. In that regard, Petitioner filed his Petition  
3 on November 1, 2025. Petitioner argues that *Zadvydas* created a grace period of 180  
4 days from the date he was ordered removed by the immigration judge. Therefore, he  
5 argues that the grace period expired in March 2015 because he was ordered removed in  
6 September 2014. ECF No. 1 at 12.

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

10           After this 6–month period, once the alien provides good reason to believe  
11 that there is no significant likelihood of removal in the reasonably  
12 foreseeable future, the Government must respond with evidence sufficient to  
13 rebut that showing. And for detention to remain reasonable, as the period of  
14 prior postremoval confinement grows, what counts as the “reasonably  
15 foreseeable future” conversely would have to shrink. This 6–month  
16 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.

17 *Zadvydas*, 533 U.S. at 701. Thus, the noncitizen “may be held in confinement until it  
18 has been determined that there is *no significant likelihood of removal in the reasonably*  
19 *foreseeable future.*” *Id.* (bold italic emphasis added).

20           Here, there is certainly a significant likelihood that Petitioner will be removed to  
21 Vietnam in the reasonably foreseeable future. He was re-detained for removal in  
22 September 2025, after ICE had been successfully obtaining TDs for Vietnamese citizens  
23 who immigrated to the United States before 1995 and removing them. Cole Decl. at ¶¶  
24 13-16. ICE began to prepare Petitioner’s TD request soon after his re-detention and  
25 submitted the completed request, including identifying documents that Vietnam  
26 requires to issue a TD. *See Id.* at ¶ 11. ICE is aware of no barrier to Vietnam’s issuance  
27 of a travel document for Petitioner. *Id.* at ¶ 12. Once ICE receives Petitioner’s TD, he  
28

1 can be removed promptly as ICE has routine flights to Vietnam. *Id.* at ¶¶ 16-17. The  
2 fact that Petitioner filed his Petition soon after his re-detention does not mean there is  
3 “no significant likelihood” that he will be removed “in the reasonably foreseeable  
4 future.” To the contrary, as recognized by *Zadvydas*, it takes some amount of time to  
5 remove people who are arrested pursuant to a final removal order. There is no bar  
6 against Petitioner’s removal to Vietnam, and the government is currently arranging for  
7 that removal.

8 Effectuating his removal is thus affirmatively likely, just as the Vietnamese  
9 petitioner’s removal was likely in the *Zadvydas* challenge case of *Huynh v. Semaia, et*  
10 *al.*, 2:24-cv-10901-MRA-DFM, recently filed in the Central District of California,  
11 where the Vietnamese citizen was efficiently and timely removed, mooted the case,  
12 which was stayed (pending the removal, with updates on its status) and then dismissed.

13 It is true that eleven years ago the government was not able to remove Petitioner  
14 to Vietnam, as with other similarly situated individuals, because the prior political  
15 relationship between the United States and Vietnam prevented their removals. That  
16 produced significant litigation from detainees who argued that they could not be  
17 removed to their home nations due to the lack of cooperation, and so their detentions  
18 were indefinite. But that barrier to removal was removed. This issue was exhaustively  
19 addressed in more recent litigation addressing detainees facing removal to Vietnam. In  
20 2020, the *Trinh* court explained the then-current state of affairs:

21 The parties now agree that Vietnam does not maintain a blanket policy of  
22 refusing to repatriate pre-1995 immigrants. ... Instead, Vietnam now  
23 considers each request from ICE on a case-by-case basis. (*Id.*) ICE  
24 frequently requests travel documents from Vietnam for pre-1995  
25 immigrants, and Vietnam issues them in a non-negligible portion of cases.  
26 ..... Petitioners do not appear to dispute that once Vietnam issues a travel  
document, removal becomes significantly likely, rendering class members  
unable to meet their initial burden under *Zadvydas*.

27 *Trinh, supra*, 466 F. Supp. 3d at 1090.

1 Petitioner may complain that the government is still awaiting his travel  
2 documents after he filed his Petition and TRO Application—and that it did not already  
3 obtain such documents before taking him back into detention. But *Zadvydas* does not  
4 require the government to pre-arrange a noncitizen’s removal travel before arresting  
5 them, which would often be extremely difficult if not impossible. The constitutional  
6 standard is whether there is “a significant likelihood of removal” in the “reasonably  
7 foreseeable future”—not whether a removal will occur “imminently.” The law does not  
8 require that “every [noncitizen] not removed must be released after six months.”  
9 *Zadvydas*, 533 U.S. at 701. Instead, the Supreme Court was clear that the Constitution  
10 prevents only “indefinite” or “potentially permanent” detention. *Id.* at 689–91.

11 Courts therefore properly deny *Zadvydas* claims under such circumstances. *See*  
12 *Malkandi v. Mukasey*, 2008 WL 916974, at \*1 (W.D. Wash. Apr. 2, 2008) (denying  
13 *Zadvydas* petition where petitioner had been detained more than 14 months post-final  
14 order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at \*3 (W.D. Wash. May 28,  
15 2013)(holding petitioner “failed to satisfy his burden of showing that there is no  
16 significant likelihood of his removal in the reasonably foreseeable future” where he had  
17 been detained more than seven months post-final order). That Petitioner does not yet  
18 have a specific date of anticipated removal does not make his detention indefinite. *See*  
19 *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (explaining that a demonstration  
20 of “no significant likelihood of removal in the reasonably foreseeable future” would  
21 include a country’s refusal to accept a noncitizen or that removal is barred by our own  
22 laws).

23 Further, Petitioner’s case does not implicate the impossibility of repatriation in  
24 *Zadvydas*. *Zadvydas* was stateless, and both countries to which he potentially could  
25 have been deported (the country where he was born and the country of which his parents  
26 were citizens) refused to accept him because he was not a citizen. *See id.*, at 684. The  
27 deportation of the other petitioner in *Zadvydas*, Ma, was prevented, because there was  
28 no repatriation agreement at that time between the United States and Cambodia. *Id.* at

1 685. Here, Petitioner is a Vietnamese citizen, ICE submitted the necessary documents  
2 for a TD to Vietnam, Vietnam is routinely issuing TDs at ICE's request, and ICE is  
3 routinely removing Vietnamese citizens to Vietnam. Thus, ICE is actively working to  
4 effect Petitioner's removal to Vietnam and his continued detention is not  
5 unconstitutionally indefinite.

6 On this record, Petitioner cannot sustain his burden, and it would be premature  
7 to reach that conclusion before permitting ICE an opportunity to complete its diligent  
8 efforts to effect his removal. "[E]vidence of progress, albeit slow progress, in  
9 negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's  
10 detention grows unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB)  
11 slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month  
12 detention does not violate *Zadvydas* given respondent's production of evidence showing  
13 governments' negotiations are in progress and there is reason to believe that removal is  
14 likely in the foreseeable future) [Exs. 22-30.]; *see also Sereke v. DHS*, Case No.  
15 19cv1250 WQH AGS, ECF No. 5 at \*5 (S.D. Cal. Aug. 15, 2019) ("the record at this  
16 stage in the litigation does not support a finding that there is no significant likelihood  
17 of Petitioner's removal in the reasonably foreseeable future.") [Exs. 31-35.]; *Marquez*  
18 *v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at \*3 (denying petition  
19 because "Respondents have set forth evidence that demonstrates progress and the  
20 reasons for the delay in Petitioner's removal").

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

23 Additionally, Petitioner claims that the agency failed to comply with its  
24 regulations revoking Petitioner's Order of Supervision. ECF No. 1 at 8-11.

25 But even assuming the agency's compliance with the relevant regulations fell  
26 short, Petitioner has not established prejudice. *See Cmty. Legal Servs. in E. Palo Alto v.*  
27 *United States Dep't of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 921 (N.D. Cal.  
28 2025) (To establish an APA claim under the *Accardi* doctrine, Plaintiffs must show both

1 that (1) the Government violated its own regulations, and (2) Plaintiffs suffer substantial  
2 prejudice as a result of that violation.”). At the time of his re-detention, Petitioner knew  
3 he was subject to a final order of removal to Vietnam. *See* ECF No. 1-1 at ¶ 2. He also  
4 knew that although he was released in 2014, ICE would be continuing to make efforts  
5 to obtain a travel document to execute his removal to Vietnam. *See* ECF No. 1-1 at ¶¶ 3-  
6 4. And as illustrated above because Respondents had, and continue to have, an  
7 evidentiary basis to determine there is a significant likelihood that Petitioner will be  
8 removed to Vietnam in the reasonably foreseeable future, any challenge that Petitioner  
9 would have raised under the regulations would have failed. *See, e.g., United States v.*  
10 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that  
11 the judge had violated the rule by failing to inquire into the alien’s background, any  
12 error was harmless because there was no showing that the petitioner was qualified for  
13 relief from deportation).

14 Moreover, Petitioner does not have a protected liberty interest in remaining free  
15 from detention where ICE has exercised its discretion under a valid removal order and  
16 its regulatory authority. *See Moran v. U.S. Dep’t of Homeland Sec.*, 2020 WL 6083445,  
17 at \*9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners’ claim that § 241.4(l) was a  
18 violation of their procedural due process rights and noting, “[Petitioners] fail to point to  
19 any constitutional, statutory, or regulatory authority to support their contention that they  
20 have a protected interest in remaining at liberty in the United States while they have  
21 valid removal orders.”). “While the regulation provides the detainee some opportunity  
22 to respond to the reasons for revocation, it provides no other procedural and no  
23 meaningful substantive limit on this exercise of discretion as it allows revocation  
24 “when, in the opinion of the revoking official ... [t]he purposes of release have been  
25 served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release  
26 would no longer be appropriate.” *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.  
27 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§  
28 241.4(l)(2)(i), (iv) (emphasis in original).

1 At the time of his re-detention for removal on September 4, 2025, Petitioner was  
2 served with a Notification of Revocation of Release. *See* Ex. 4 (Notice of Revocation  
3 of Release). While in detention, Petitioner was served with an amended Notification of  
4 Revocation of Release on November 10, 2025. *See* Ex. 5. An ICE official also  
5 informally interviewed Petitioner on November 10, 2025. Ex. 5 at 3.

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

25 The same is true here. Whatever procedural deficiencies or delays may have  
26 occurred, they do not warrant Petitioner’s release, and on November 10, 2025, ICE re-  
27 notified Petitioner and provided him an informal interview thereby curing any possible  
28 deficiencies. Petitioner does not challenge his removal order—nor could he. With

1 Petitioner’s removal highly likely to occur in the reasonably foreseeable future, no  
2 purpose would be served by this Court’s ordering his release—other than frustrating  
3 “the statute’s basic purpose, namely, assuring the alien’s presence at the moment of  
4 removal.” *Zadvydas*, 533 U.S. at 699. Petitioner is thus unlikely to succeed on the merits  
5 of his claim that ICE’s alleged failure to follow agency regulations merits his release.

6 **2. Irreparable Harm Has Not Been Shown**

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

19 Petitioner suggests that being subjected to unjustified detention itself constitutes  
20 irreparable injury.<sup>1</sup> But this argument “begs the constitutional questions presented in  
21 [his] petition by assuming that [P]etitioner has suffered a constitutional injury.” *Cortez*  
22 *v. Nielsen*, 2019 WL 1508458, at \*3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner’s  
23 “loss of liberty” is “common to all [noncitizens] seeking review of their custody or bond  
24 determinations.” *See Resendiz v. Holder*, 2012 WL 5451162, at \*5 (N.D. Cal. Nov. 7,  
25 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in  
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28 <sup>1</sup> Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

1 immigration custody, and he has not shown extraordinary circumstances warranting a  
2 mandatory preliminary injunction.

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

8       **3. Balance of Equities Does Not Tip in Petitioners’ Favor**

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

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

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**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 12, 2025

Respectfully submitted,

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