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

11 JEFFREY MUCHACHE NYAMWEYA,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, Senior
15 Warden, Otay Mesa Detention Center; *et*
16 *al.*,

17 Respondents.
18

Case No. 25-cv-03094-BJC-VET

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

Date: December 11, 2025
Time: 2:00 p.m.
Judge: Hon. Benjamin J. Cheeks

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1 **I. INTRODUCTION**

2 Petitioner has filed a habeas petition and motion for a temporary restraining
3 order. ECF Nos. 1, 3. For purposes of judicial efficiency, given the petition and motion
4 assert the same claims and seek the same relief, Respondents respectfully respond to
5 both the petition and motion herein. For the reasons set forth below, the Court should
6 deny Petitioner’s requests for relief and dismiss the petition.

7 **II. FACTUAL BACKGROUND**

8 Petitioner is a native and citizen of Kenya. ECF No. 1 at ¶¶ 8, 17; Declaration of
9 Leticia Rodriguez (“Rodriguez Decl.”) at ¶ 3. In December 1999, Petitioner entered the
10 United States on a non-immigrant student visa, but he subsequently overstayed his visa.
11 Rodriguez Decl. at ¶ 3.

12 In 2007, Petitioner was placed in removal proceedings, and he was released from
13 custody on bond on June 15, 2007. *Id.* at ¶ 4.

14 On July 23, 2008, an immigration judge ordered Petitioner removed from the
15 United States after he had been unlawfully residing in and working in the United States
16 without proper documentation. *Id.* at ¶ 5; ECF No. 1 at ¶ 20. At that time, the
17 immigration judge granted withholding of removal as to Kenya under the Immigration
18 and Nationality Act and under the Convention Against Torture (CAT). ECF No. 1 at
19 ¶ 20; Rodriguez Decl. at ¶ 5. Petitioner’s removal order became administratively final
20 on August 22, 2008. *See* 8 C.F.R. § 1003.39; 8 C.F.R. § 1241.1(c).

21 On November 4, 2025, ICE issued a Form I-200, Warrant for Arrest of Alien, for
22 Petitioner’s arrest, finding probable cause to believe that Petitioner is removable from
23 the United States. Rodriguez Decl. at ¶ 6, Ex. A. That same day, ICE detained Petitioner
24 to execute his removal to a third country. Rodriguez Decl. at ¶ 7. At the time of his
25 detention, ICE served Petitioner with the Form I-200, Warrant for Arrest of Alien. *Id.*

26 On November 4, 2025, ICE provided Petitioner with a Notice of Revocation of
27 Release, which Petitioner signed, providing Petitioner with formal notice of the reason
28 for revocation of his order of supervision. *Id.* at ¶ 8, Ex. B (Notice of Revocation of

1 Release). In the Notice of Revocation of Release, ICE informed Petitioner of the
2 changed circumstances of his case: “ICE has determined that you can be expeditiously
3 removed from the United States pursuant to the outstanding order of removal against
4 you.” Rodriguez Decl., Ex. B.

5 On November 4, 2025, ICE also conducted an informal interview with Petitioner
6 regarding his detention status. Rodriguez Decl. at ¶ 9, Ex. C (Alien Informal Interview
7 Upon Revocation of Order of Supervision).

8 On November 4, 2025, ICE also issued a Warrant of Removal/Deportation and a
9 Form I-213, Record of Deportable/Inadmissible Alien, pertaining to Petitioner.
10 Rodriguez Decl. at ¶¶ 10–11, Ex. D (Warrant of Removal/Deportation), Ex. E (Form I-
11 2013, Record of Deportable/Inadmissible Alien).

12 ERO is working diligently to locate a third country for resettlement to effectuate
13 Petitioner’s removal to a third country. Rodriguez Decl. at ¶ 12. Should a third country
14 accept Petitioner, ICE will provide Petitioner with written notice of this third country.
15 *Id.* If Petitioner claims a fear of removal to the identified country, he will be referred to
16 an asylum officer for processing of the fear-based claims. *Id.*

17 III. ARGUMENT

18 A. Claims and Requests Barred by 8 U.S.C. § 1252.

19 Petitioner bears the burden of establishing that this Court has subject matter
20 jurisdiction over his claims. *See Ass’n of Am. Med. Colls. v. United States*, 217 F.3d
21 770, 778–79 (9th Cir. 2000). To the extent Petitioner’s claims arise from—or seek to
22 enjoin—the decision to execute his removal order, they are jurisdictionally barred under
23 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and
24 notwithstanding any other provision of law (statutory or nonstatutory), including
25 section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and
26 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on
27 behalf of any alien arising from the decision or action by the Attorney General to
28 commence proceedings, adjudicate cases, or execute removal orders against any alien

1 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
2 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
3 attention upon, and make special provision for, judicial review of the Attorney
4 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
5 execut[ing] removal orders”—which represent the initiation or prosecution of various
6 stages in the deportation process.”) (quoting 8 U.S.C. § 1252(g)). In other words, section
7 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney
8 General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases,
9 or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Here,
10 Petitioner’s claims necessarily arise “from the decision or action by the Attorney
11 General to . . . execute removal orders,” over which Congress has explicitly foreclosed
12 district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
13 (“Notwithstanding any other provision of law, no court shall enjoin the removal of any
14 alien pursuant to a final order under this section unless the alien shows by clear and
15 convincing evidence that the entry or execution of such order is prohibited as a matter
16 of law.”). Accordingly, to the extent Petitioner’s claims arise from—or seek to enjoin—
17 the decision to execute his removal order, the Court should deny and dismiss those
18 claims for lack of jurisdiction under 8 U.S.C. § 1252.

19 **B. Petitioner Fails to Establish Entitlement to a Restraining Order.**

20 Alternatively, even if this Court determines that it has jurisdiction over
21 Petitioner’s claims, Petitioner has not established that he is entitled to a temporary
22 restraining order. He cannot show that he is likely to succeed on the underlying merits
23 of his habeas petition, he has not demonstrated irreparable harm, and the equities do not
24 weigh in his favor.

25 In general, the showing required for a temporary restraining order is the same as
26 that required for a preliminary injunction. *See Stuhlbarg Int’l Sales Co., Inc. v. John D.*
27 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
28 temporary restraining order, a plaintiff must “establish that he is likely to succeed on

1 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
2 relief, that the balance of equities tips in his favor, and that an injunction is in the public
3 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
4 *Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a “substantial case for
5 relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
6 When “a plaintiff has failed to show the likelihood of success on the merits, we need
7 not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d
8 733, 740 (9th Cir. 2015). The final two factors required for preliminary injunctive
9 relief—balancing of the harm to the opposing party and the public interest—merge
10 when the Government is the opposing party. *See Nken*, 556 U.S. at 435. “Few interests
11 can be more compelling than a nation’s need to ensure its own security.” *Wayte v.*
12 *United States*, 470 U.S. 598, 611 (1985).

13 **1. Petitioner is Unlikely to Succeed on the Merits.**

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

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

20 An alien ordered removed must be detained for 90 days pending the
21 government’s efforts to secure the alien’s removal through negotiations with foreign
22 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien
23 during the 90-day removal period). The statute “limits an alien’s post-removal detention
24 to a period reasonably necessary to bring about the alien’s removal from the United
25 States” and does not permit “indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678,
26 689 (2001). The Supreme Court has held that a six-month period of post-removal
27 detention constitutes a “presumptively reasonable period of detention.” *Id.* at 683.
28 Release is not mandated after the expiration of the six-month period unless “there is no

1 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

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

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

24 Here, Petitioner has been detained a total of less than three weeks post-final order
25 of removal. Even assuming the 90-day statutory removal period has run, Petitioner’s
26 detention is within the six-month period that *Zadvydas* found to be presumptively
27 reasonable. *See* 533 U.S. at 701. Courts have repeatedly declined to grant habeas relief
28 where the presumptively reasonable six-month period has not yet elapsed. *See*

1 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
2 2025) (“The government is entitled to its six-month presumptive period before
3 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue”); *Guerra-*
4 *Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
5 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
6 been detained for more than six months; *Ali v. Barlow*, 446 F. Supp. 2d 604, 609-10
7 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas* six-
8 month period had not expired; dismissing petition without prejudice); *Gonzales v.*
9 *Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same);
10 *Waraich v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19,
11 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020)
12 (“At no point did the *Zadvydas* Court preclude a noncitizen from challenging their
13 detention before the end of the presumptively reasonable six-month period.”).

14 *Zadvydas* does not require the government to pre-arrange a noncitizen’s removal
15 or have a travel document in hand before detaining them. *See Zadvydas*, 533 U.S. at
16 699 (emphasizing that the post-final order detention statute’s basic purpose is “assuring
17 the alien’s presence at the moment of removal.”); *see also Rodriguez Diaz v. Garland*,
18 53 F.4th 1189, 1208–09 (9th Cir. 2022) (“The risk of a detainee absconding . . .
19 inevitably escalates as the time for removal becomes more imminent.”).

20 As it stands, it would be premature to conclude that there is no significant
21 likelihood of removal in the reasonably foreseeable future before permitting ICE an
22 opportunity to complete its diligent efforts to effect Petitioner’s removal. As courts in
23 this district have found, “evidence of progress, albeit slow progress, in negotiating a
24 petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s detention grows
25 unreasonably lengthy.” Exhibit A, *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB, ECF
26 No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner’s one year and four-
27 month detention does not violate *Zadvydas* given respondent’s production of evidence
28 showing governments’ negotiations are in progress and there is reason to believe that

1 removal is likely in the foreseeable future); *see also* *Marquez v. Wolf*, No. 20-cv-1769-
2 WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition
3 because “Respondents have set forth evidence that demonstrates progress and the
4 reasons for the delay in Petitioner’s removal”); Exhibit B, *Sereke v. DHS*, Case No. 19-
5 cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019) (“the record at this
6 stage in the litigation does not support a finding that there is no significant likelihood
7 of Petitioner’s removal in the reasonably foreseeable future.”).

8 Moreover, Petitioner is subject to a final, executable order of removal, which
9 means that he has no right to remain in the United States. He has a temporary right not
10 to be repatriated to Kenya, but he has no right not to be resettled in a third country. ICE
11 has long-standing authority to remove noncitizens and resettle them in third countries
12 where removal to the country designated in the final order is “impracticable,
13 inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b)
14 (outlining framework for designation). Accordingly, noncitizens like Petitioner, who
15 have received protection against removal to the designated country (either withholding
16 of removal under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and
17 resettled in third countries.

18 Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall
19 remove the noncitizen to any of the following countries:

- 20 (i) The country from which the alien was admitted to the United States.
- 21 (ii) The country in which is located the foreign port from which the alien
22 left for the United States or for a foreign territory contiguous to the
23 United States.
- 24 (iii) A country in which the alien resided before the alien entered the country
25 from which the alien entered the United States.
- 26 (iv) The country in which the alien was born.
- 27 (v) The country that had sovereignty over the alien’s birthplace when the
28 alien was born.
- (vi) The country in which the alien’s birthplace is located when the alien is
ordered removed.
- (vii) If impracticable, inadvisable, or impossible to remove the alien to each
country described in a previous clause of this subparagraph, another
country whose government will accept the alien into that country.

Id.

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1 Accordingly, if the Secretary of Homeland Security is unable to remove a
2 noncitizen to a country of designation or an alternative country per section
3 1231(b)(2)(D), the Secretary may, in her discretion, remove the noncitizen to any
4 country listed in subparagraphs (E)(i) through (E)(vi). ERO is working diligently to
5 locate a third country for resettlement to effectuate Petitioner’s removal to a third
6 country. Rodriguez Decl. at ¶ 12. Should a third country accept Petitioner, ICE will
7 provide Petitioner with written notice of this third country. *Id.* If Petitioner claims a fear
8 of removal to the identified country, he will be referred to an asylum officer for
9 processing of the fear-based claims. *Id.*

10 **b. Petitioner’s complaints about procedural defects in his**
11 **detention do not establish a basis for habeas relief.**

12 Petitioner’s argument that ICE failed to comply with its regulations revoking
13 Petitioner’s order of supervision is also deficient.

14 A noncitizen who is not removed within the removal period may be released from
15 ICE custody “pending removal . . . subject to supervision under regulations prescribed
16 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.
17 § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the
18 order may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a
19 removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
20 ICE may also revoke the order of supervision where, “on account of changed
21 circumstances, [ICE] determines that there is a significant likelihood that the alien may
22 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
23 regulations further provide:

24 Upon revocation, the alien will be notified of the reasons for revocation of
25 his or her release or parole. The alien will be afforded an initial informal
26 interview promptly after his or her return to Service custody to afford the
27 alien an opportunity to respond to the reasons for revocation stated in the
notification.

28 8 C.F.R. § 241.4(l)(1).

1 Here, Petitioner claims that his detention is unlawful because the agency failed
2 to comply with its regulations before re-detaining him. ECF No. 1 at ¶ 88. Specifically,
3 Petitioner argues that ICE did not provide him notice of the reason for revocation or his
4 order of supervision, and that ICE did not provide a prompt interview. *See* ECF No. 4
5 at p. 6. The evidence says otherwise. ICE provided Petitioner with a Notice of
6 Revocation of Release and an informal interview on the same day that ICE detained
7 him. *See* Rodriguez Decl. at ¶¶ 7 – 9, Ex. B (Notice of Revocation of Release), Ex. C
8 (Alien Informal Interview Upon Revocation of Order of Supervision). To the extent
9 Petitioner argues his order of supervision was not revoked by the appropriate official,
10 his order of supervision was revoked pursuant to 8 C.F.R. § 241.13, which has no such
11 requirement

12 **B. Petitioner Has Not Shown Irreparable Harm**

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

25 Petitioner argues that he will suffer irreparable injury because his detention will
26 prevent him from attending scheduled medical appointments and surgery. *See* ECF No.
27 4 at p. 8. Respondents defer to the Court on whether Petitioner’s showing is sufficient
28 to establish irreparable injury.

1 **C. The Balance of Equities Does Not Tip in Petitioner’s Favor**

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

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

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court should deny Petitioner’s request for
18 injunctive relief and dismiss the petition.

19
20 DATED: November 24, 2025

21 Respectfully submitted,

22 ADAM GORDON
23 United States Attorney

24 s/ Matthew Riley
25 MATTHEW RILEY
26 Assistant United States Attorney
27 Attorney for Respondents
28