ADAM GORDON
United States Attorney
KELLY A. REIS
Assistant U.S. Attorney
California Bar No. 334496
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8767
Facsimile: (619) 546-7751
Email: kelly.reis@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHI NGUYEN,

Petitioner,

v.

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

Respondents.

Case No. 25-cv-3077-RBM-BJW

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

I. Introduction

Petitioner Chi Nguyen has filed a habeas petition and a motion for temporary restraining order. ECF Nos. 1, 1-4. On November 13, 2025, the Court issued an order to show cause as to why the petition should not be granted. ECF No. 4. 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 Vietnam. *See* Ex. 1 at 1; *see also* Declaration of Jason Cole (Cole Decl.) ¶ 3. On September 10, 1985, Petitioner was admitted into the United States as a refugee, and soon after he adjusted his status to that of a lawful permanent resident. Ex. 2 at 3. In 2007, Petitioner was convicted of rape by foreign object. *See id.* Thereafter, Petitioner was charged as removable from the United States and placed in removal proceedings. *See generally id.* On October 24, 2017, an immigration judge ordered Petitioner removed to Vietnam. *See* Ex. 3. Petitioner was released from ICE custody under an Order of Supervision on January 25, 2018, due to ICE's then-inability to effect Petitioner's removal. Cole Decl. ¶ 6.

On September 30, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Vietnam. *See* Ex. 7. At that time, Petitioner was served a Form I-200, Warrant for Arrest of Alien. *See* Ex. 4. Petitioner was also shown a Form I-205, Warrant of Removal/Deportation and a Form I-294, Warning to Alien Ordered Removed or Deported. *See* Exs. 5, 6. Petitioner was served a formal Notice of Revocation of Release on October 8, 2025. *See* Ex. 7. Petitioner was provided an informal interview on November 18, 2025. *See* Ex. 8.

ICE is routinely obtaining travel documents from Vietnam and able to arrange travel itineraries to execute final orders of removal for Vietnamese citizens, including those who immigrated to the United States before 1995, like Petitioner. Cole Decl.

¶¶ 13–16. ICE is working expeditiously to effectuate Petitioner's removal to Vietnam. *Id.* ¶ 10. ICE's Enforcement and Removal Operations submitted a travel document request for Petitioner to its Removal and International Operations unit for processing on October 30, 2025. *Id.* ¶ 11. On November 10, 2025, the travel document request was forwarded to the ICE Attaché for further processing and remains pending. *Id.* ¶ 12. Once Petitioner's travel document is obtained, ICE will arrange for his removal to Vietnam. *Id.* ¶ 18. ICE is not seeking to remove Petitioner to a third country. *Id.* ¶ 9.

III. Argument

A. Because Petitioner's claims regarding third countries are unfounded, this Court lacks jurisdiction over Petitioner's third claim for relief.

The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. 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. Laidlaw Envtl. Servs. (TOC), 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 is certainly impending.") (simplified)). At the "irreducible constitutional minimum," standing requires that a petitioner 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. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Here, Petitioner's third claim for relief alleges that "ICE's policies threaten his removal to a third country without adequate notice and an opportunity to be heard."

ECF No. 1 at 15. But Respondents are not seeking to remove Petitioner to a third country and are instead working to promptly remove Petitioner to Vietnam. *See* Cole Decl. ¶¶ 9–12. As such, there is no controversy concerning third-country resettlement for this Court to resolve. Federal courts do not have jurisdiction "to give opinions 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) (internal quotations and citations omitted). "A claim is moot if it has lost its character as a present, live controversy." *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted). 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); *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

B. Claims and requests 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. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). To the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). *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.") (quoting 8 U.S.C. § 1252(g)). In other words, section 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). Here, 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 also* 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."). Accordingly, to the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, the Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C. § 1252.

C. Petitioner fails to establish entitlement to a restraining order.

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

In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a temporary restraining order, a petitioner 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); *accord Nken v. Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least 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, [courts] need not consider the remaining three [*Winter* factors]." *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 can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985).

1. Petitioner is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Here, apart from his non-justiciable claim of potential third-country removal, Petitioner argues that his re-arrest and detention warrant habeas relief because: (1) ICE violated its own regulations, ECF No. 1 at 8–10 (Petitioner's first claim for relief); and (2) they ran afoul of the Supreme Court's holding in *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001), ECF No. 1 at 10–15 (Petitioner's second claim for relief). But Petitioner cannot establish that he is likely to succeed on the underlying merits of those claims because he is properly detained under 8 U.S.C. § 1231(a) and the applicable agency regulations.

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

ICE's authority to detain, release, and re-detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the government ordinarily secures the alien's removal during a subsequent 90-day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

//

The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that six months constitutes a "presumptively reasonable period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.") (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*").

Even after the period of presumptive reasonableness has run, release is not required under *Zadvydas* unless "there is *no* significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the Supreme Court instructed, "the 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 Supreme Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is often needed

to obtain the travel documents, and because 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 Supreme Court also instructed that 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." *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).

Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But we are still in the period of presumptive reasonableness because Petitioner has been in custody for less than a total of five months since the immigration judge entered a final order of removal. *See* Cole Decl. ¶¶ 5–7; Ex. 1 at 2. But even if Petitioner's total time in detention since October 2017 did exceed the six months of presumptive reasonableness, his claim still fails at the next step because he cannot meet his burden to establish "that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Petitioner was re-detained for removal on September 30, 2025, after ICE had been successfully obtaining travel documents for Vietnamese citizens who immigrated to the United States before 1995 and removing them. Cole Decl. ¶¶ 7, 13–15, 17. ICE began to prepare Petitioner's travel document request soon after his re-detention and submitted the request to ICE's Removal and International Operations unit on October 30, 2025. *Id.* ¶ 11. On November 10, 2025, the

travel document request was forward to the ICE Attaché for further processing and remains pending. *Id.* ¶ 12. Once ICE receives his travel document, he can be removed promptly as ICE has routine flights to Vietnam. *Id.* ¶¶ 16–17. There is no bar against Petitioner's removal to Vietnam, and the government is currently arranging for that removal.

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

> The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. . . . Instead, Vietnam now considers each request from ICE on a case-by-case basis. ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. . . .
>
> 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*.

Trinh v. Homan, 466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020) (citations omitted).

Petitioner may complain that the government did not already obtain his travel documents before taking him back into detention. *Zadvydas* does not require the government to pre-arrange a noncitizen's removal travel before arresting them, which would often be extremely difficult if not impossible. The constitutional standard is whether there is "a significant likelihood of removal" in the "reasonably foreseeable future." The law does not require that "every [noncitizen] not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. Instead, the Supreme Court was clear that

the Constitution prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91. Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Office Dir.*, No. C13–0092–RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his burden of 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, as courts in this district have found, "evidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB, ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner's one year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future); *see also Marquez v. Wolf*, No. 20-cv-1769-WQHBLM, 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"); *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019) ("[T]he 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.").

//

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

b. Petitioner's complaints about procedural defects 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 regulations revoking Petitioner's order of supervision—is also deficient.

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 8 C.F.R. § 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 regulations further provide:

> *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. Specifically, Petitioner argues that ICE did not identify any "changed circumstances" to justify re-detaining him, ICE did not inform him of the reasons for re-detaining him, and he was not given an informal interview. *Id.* at 9–10.[1] Notably, the regulations do not require

[1] ICE provided Petitioner with a formal Notice of Revocation of Release on October 8, 2025, about a week after he was re-detained. *See* Cole Decl. ¶ 8; Ex. 7 (Notice of

written notice, advance notice, an advanced interview, nor for DHS to prove to the satisfaction of a petitioner that changed circumstances are present.[2]

Yet it is clear that there *are* changed circumstances here—namely, ICE's revived ability to obtain travel documents from the Vietnamese government and to schedule routine removal flights to Vietnam. Cole Decl. ¶¶ 13–17. These facts are fatal to Petitioner's claim, because even if the agency had failed to provide Petitioner with "advance notice" of the revocation, or neglected to conduct the informal interview, Petitioner could not establish that he was prejudiced by those omissions nor that a constitutional level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("[T]he 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") (simplified); *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. *Ahmad v. Whitaker*, No. C18-27-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 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

---

Revocation of Release and Proof of Service). He was provided an informal interview on November 18, 2025. *See* Cole Decl. ¶ 8; Ex. 8 (Informal Interview Notes).

[2] 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).

heard. *Id.* at *5. 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 given that ICE had procured a travel document and scheduled [petitioner's] removal." *Id.* Similarly, in *Doe v. Smith*, the court held that even if an ICE detained petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "it 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 Vietnam. *See* Declaration of Chi Nguyen ¶ 2; ECF No. 1 at 1. He does not challenge that order in this lawsuit or offer any indication that he intends to do so. Petitioner was informed of the reason for his re-detention when he was served with the original Notice of Revocation of Release on October 8, 2025, and the Form I-205, Warrant of Removal/Deportation. *See* Cole Decl. ¶ 7; Ex. 5 (Form I-205, Warrant of Removal/Deportation); Ex. 7 (Notice of Revocation of Release). Petitioner also was afforded an informal interview on November 18, 2025. *See* Cole Decl. ¶ 8; Ex. 8 (Record of Informal Interview). And because Respondents had, and continue to have, an evidentiary basis to conclude there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future, any challenge that Petitioner would have raised to the revocation prior to or after his re-detention would have failed. Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant release here. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion 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) ("[V]iolations 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 consul 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 well short of release. Petitioner does not challenge his removal order, nor could he. *See supra* Section III.B. ICE's Enforcement and Removal Operations submitted its request for Petitioner's travel document to its Removal and International Operations, and the travel document request was forward to the ICE Attaché for further processing. Cole Decl. ¶¶ 11–12. ICE expects the removal of Petitioner to Vietnam to occur in the reasonably foreseeable future. *See id.* ¶¶ 16–18. With Petitioner's removal likely to occur in the reasonably foreseeable future, no purpose would be served by this Court's ordering his release—other thafn frustrating "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Petitioner is thus unlikely to succeed on the merits of his claim that ICE's alleged failure to follow agency regulations merits his release.

2. Petitioner has not shown irreparable harm.

To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *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). 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 allegedly unjustified detention itself constitutes irreparable injury.[3] 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. April 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all aliens seeking review of their custody or bond determinations." *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 temporary restraining order.

Importantly, the purpose of 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

[3] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken*, 556 U.S. at 435.

of Petitioner." *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

3. The balance of equities does not tip in Petitioner's 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 also 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 [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and permits and prolongs a continuing violation of United States law.") (simplified). Moreover, "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. CV 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.

D. An evidentiary hearing is not needed.

Because the record shows that Petitioner is not entitled to habeas relief, there is no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

//

//

//

//

//

IV. Conclusion

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

Dated: November 19, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Kelly A. Reis
KELLY A. REIS
Assistant United States Attorney

Attorneys for Respondents