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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HAI DUC VO,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No.: 3:25-cv-03031-JO-SBC

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

I. INTRODUCTION

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

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Vietnam. Decl. of Jason Cole ("Cole Decl.") ¶ 3. On April 30, 1981, Petitioner was admitted into the United States as a refugee. *Id.* Following criminal convictions, Petitioner was ordered removed on September 30, 1997 to Vietnam. *Id.* ¶ 4; Ex. 1. On May 15, 2000, Petitioner was released from Immigration and Customs Enforcement's ("ICE") custody under an order of supervision pending removal to Vietnam because the government had been unable to obtain a travel document from Vietnam. *Id.* ¶ 6.

On October 20, 2025, ICE re-detained Petitioner to effectuate his removal to Vietnam. *Id.* ¶ 7. At that time, Petitioner was given a Form I-205, Warrant of Removal/Deportation and a Form I-294, Warning to Alien Ordered Removed or Deported. *Id.* ¶¶ 7, 8; Exs. 2, 3. Petitioner also was served a formal Notice of Revocation of Release at the time of his re-detention. *Id.* ¶ 8; Ex. 4.

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. *Id.* ¶¶ 12-14, 16. ICE is working expeditiously to effectuate Petitioner's removal to Vietnam. *Id.* ¶ 10. ICE's Enforcement and Removal Operations ("ERO") is currently putting together a travel document request packet to submit to ERO Removal and International Operations to obtain a travel document to effectuate Petitioner's removal to Vietnam. *Id.* ¶ 11. Once Petitioner's travel document is obtained, ICE will arrange for his removal to Vietnam. *Id.* ¶ 17. ICE is not seeking to remove Petitioner to a third country. *Id.* ¶ 9.

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III. ARGUMENT

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

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

Here, Respondents are not seeking to remove Petitioner to a third country and instead are working to timely remove Petitioner to Vietnam. *See* Cole Decl. ¶¶ 9-11. As such, there is no controversy concerning third country resettlement for the Court to resolve. Federal courts do not have jurisdiction "to give opinion upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). "A claim is moot if it has lost its character as a present, live controversy." *Rosemere Neighborhood Ass'n v. U.S. Env't Prot. Agency*, 581 F.3d 1169, 1172-73 (9th Cir. 2009). The Court therefore lacks jurisdiction over Petitioner's claims concerning third country resettlement because there is no live case or

controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

B. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

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

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* 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 Interim Injunctive Relief

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

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

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. Few interests, however, "can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79

(1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977).

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

1. No Likelihood of Success on the Merits

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. 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

An alien ordered removed must be detained for ninety (90) days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas* 533 U.S. at 689. The

Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

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

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

Petitioner claims his removal is not reasonably foreseeable at this juncture given that (1) the government, for the past twenty-eight years, has been unable to deport him;

and (2) since detaining Petitioner in October 2025, ICE allegedly has not been diligent in trying to remove him. ECF No. 1 at 10-15. Petitioner's arguments, however, do not support his request for release from detention.

The constitutionality of Petitioner's current detention is governed by the Supreme Court's directives in *Zadvydas*. In that regard, Petitioner filed his petition on November 7, 2025. ECF No. 1. Petitioner argues that *Zadvydas* created a grace period of 180 days from the date he was ordered removed by the immigration judge. Therefore, he argues that the grace period expired in March 1998 because he was ordered removed in September 1997. *Id.* at 11.

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

> After this six-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

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

Here, there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future. He was re-detained for removal in October 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, 12-14, 16; *see Nguyen v. Noem*, No. 25-cv-2501-AGS-KSC, ECF Nos. 7, 9 (S.D. Cal. Nov. 14, 2025); *Ngo v. Noem*, No. 25-cv02739-TWR-MMP, ECF Nos. 10, 11 (S.D.

Cal. Oct. 23, 2025). ICE began to prepare Petitioner's travel document request soon after his re-detention. *Id.* ¶ 11. Once ICE receives Petitioner's travel document, he can be promptly removed, as ICE has routine flights to Vietnam. *Id.* ¶¶ 16-17. For this reason, ICE has found that there is a significant likelihood of Petitioner's removal to Vietnam in the near future. *Id.* The fact that Petitioner filed his petition soon after his re-detention does not mean there is "no significant likelihood" that he will be removed "in the reasonably foreseeable future." To the contrary, as recognized by *Zadvydas*, it takes some amount of time to remove people who are detained pursuant to a final removal order. There is no bar against Petitioner's removal to Vietnam, and the government is currently arranging for that removal.

It is true that the government had not been able to remove Petitioner to Vietnam, as with other similarly situated individuals, because of the prior political relationship between the United States and Vietnam. However, that barrier has been removed. This issue was exhaustively addressed in more recent litigation addressing detainees facing removal to Vietnam. In 2020, the district court in *Trinh v. Homan* 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*.

466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020) (cleaned up).

It is of no matter that the government re-detained Petitioner without travel documents in hand. Under *Zadvydas*, the government is not required to pre-arrange a noncitizen's removal travel before detaining them. Indeed, it would be extremely difficult to do so. The constitutional standard, and only issue before this Court, is whether there is a significant likelihood of removal in the reasonably foreseeable future;

not, however, the *imminent* future. A finding that requires Respondents to obtain travel documents before re-detaining noncitizens subject to final orders of removal transforms the *Zadvydas* standard into an imminent one and creates more obstacles to effectuate removal. Moreover, Respondents are not required to release every noncitizen detained longer than six months. *Zadvydas*, 533 U.S. at 701. The Constitution prevents only "indefinite" or "potentially permanent" detention, which is not the case here. *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. Apr. 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, No. C13-0092-RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his burden of 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*, 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.").

Thus, because Petitioner cannot establish a violation under *Zadvydas*, the Petition must be denied.

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

Petitioner's first claim for relief—that ICE failed to comply with its own regulations before re-detaining Petitioner—also fails. ECF 1 at 8-10.

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

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

8 C.F.R. § 214.4(l) (emphasis added).

Here, Petitioner claims that his detention is unlawful because the agency failed to comply with its regulations *before* re-detaining him. ECF No. 1 at 8-11. Specifically,

Petitioner argues that ICE failed to make a determination before or at his arrest of "changed circumstances" justifying his re-detention, and that, as of November 6, 2025, he was not provided with "advance notice" of the revocation or given an informal interview. *Id.* at 9-10. Notably, the regulations do not require written notice, advance notice, an advanced interview, nor for DHS to prove to the satisfaction of a petitioner that changed circumstances are present.[1]

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. ¶¶ 12-14, 16. These facts are fatal to Petitioner's claim, because even if the agency had failed to provide Petitioner with "advance notice" of the revocation, Petitioner has not established 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

[1] 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).

regulations prohibited re-detention without, among other things, an opportunity to be 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." 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* Cole Decl. ¶ 4; ECF No. 1 at 3. 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 Notice of Revocation of Release on October 20, 2025, and the Form I-205, Warrant of Removal/Deportation. *See* Cole Decl. ¶¶ 7-8; Exs. 1, 2. 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 ERO is working expeditiously to prepare a travel document request packet, and anticipates no barriers in obtaining a travel document for Petitioner. Cole Decl. ¶¶ 11, 15. With Petitioner's removal highly likely to occur in the reasonably foreseeable future, no purpose would be served by this Court's ordering his release—other than frustrating "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699.

Accordingly, Petitioner is unlikely to succeed on the merits of his claim that ICE's alleged failure to follow agency regulations merits his release.

2. Irreparable Harm Has Not Been Shown

To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine 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.[2] 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 of Petitioner." *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

3. Balance of Equities Does Not Tip in Petitioners' Favor

It is well settled that "the public interest in enforcement of the immigration laws is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 ("There is always a public

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

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.

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.[3]

DATED: November 18, 2025

Respectfully submitted,

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[3] 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.").