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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

YAN SUN,

Petitioner,

v.

JESUS ROCHA, in his official capacity as Acting Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement; *et al.*,

Respondents.

Case No.: 25-cv-3127-CAB-MSB

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

I. Introduction

Petitioner Yan Sun has filed a habeas petition and a motion for temporary restraining order. ECF Nos. 1, 2. On November 17, 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 the People's Republic of China. *See* ECF No. 1 at ¶ 16; *see also* Ex. 1 at 1.[1] Petitioner was admitted into the United States in 2009 as a nonimmigrant J-1 exchange visitor with authorization to temporarily remain in the United States. Declaration of Rosendo Martinez (Martinez Decl.) ¶ 3. Petitioner remained in the United States past the date she was authorized to as an exchange visitor. *Id.* ¶ 4. Petitioner was charged with removability from the United States and entered immigration proceedings. *Id.* ¶ 4. On May 11, 2018, Petitioner was ordered removed by an immigration judge. Ex. 2. The immigration judge denied Petitioner's asylum application but granted withholding of removal. *Id.* On July 18, 2018, Petitioner was released from immigration custody on an Order of Supervision. Martinez Decl. ¶ 6.

On August 20, 2025, pursuant to a warrant, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect her removal. *See* Ex. 3. At the time of her re-detention for removal, ICE officers showed Petitioner a Form I-200 Warrant for Arrest of Alien and a Form I-205 Warrant of Removal/Deportation. *See* Exs. 3, 4. At that time Petitioner also was provided with a Notice of Custody Determination, which stated that she will be detained. Ex. 5. An immigration judge reviewed

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

Petitioner's custody status on October 10, 2025, but the immigration judge found he did not have jurisdiction because she is detained under 8 U.S.C. § 1231(a). *See* Ex. 6. On November 20, 2025, ICE provided Petitioner with a notice of revocation of release. Ex. 7. Petitioner was afforded an informal interview the same day. *See* Ex. 8.

III. Argument

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

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over her 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 her 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 her removal order, the Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C. § 1252.

B. 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 she is entitled to a temporary restraining order. She cannot show that she is likely to succeed on the underlying merits of her habeas petition, she has not demonstrated irreparable harm, and the equities do not weigh in her 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 plaintiff must "establish that [she] is likely to succeed on the merits, that [she] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] 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). Plaintiffs 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* 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. Petitioner cannot establish that she is likely to succeed on the underlying merits of her claims because she is properly detained under 8 U.S.C. § 1231(a), and her continued detention is not unconstitutionally indefinite.

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

Since Petitioner's re-detention, ICE Enforcement and Removal Operations (ERO) has worked diligently to effectuate Petitioner's removal to a third country as expeditiously as possible. *See* Martinez Decl. ¶ 8.

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).

Petitioner is subject to a final, executable order of removal, which means that she has no right to remain in the United States. ICE has long-standing authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens like Petitioner who have been granted withholding of removal for their country of designation may be removed and resettled in third countries.

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

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the 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. Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen to a country of designation or an alternative country in subparagraph (D), the Secretary may, in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i) through (E)(vi).

To effectuate Petitioner's removal to a third country, on September 10, 2025, ERO submitted a request to its Removal Management Division to identify a third country for Petitioner's removal. *See* Martinez Decl. ¶ 8. That request remains pending. *Id.* Petitioner may argue that the government is still working to locate a third country for resettlement and that it did not already locate a third country for resettlement before taking her back into custody. But *Zadvydas* does not require the government to pre-arrange a noncitizen's removal before detaining them.

On this record, Petitioner cannot sustain her burden, and it would be premature to conclude otherwise before permitting ICE an opportunity to complete its diligent efforts to effect her removal. Evidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy. *See, e.g.*, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (slip op.) ("The 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."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 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").

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

injunction would be reversed here. Moreover, ICE attests that if a third country is identified, "ICE will provide Petitioner with written notice of this third country. If Petitioner claims a fear of removal to the identified country, she will be referred to an asylum officer for processing of the fear-based claims." Martinez Decl. ¶ 9.

Based on the foregoing, Petitioner cannot prevail on her *Zadvydas* and third country removal claims.

b. Petitioner's complaints about procedural defects in her re-detention do not establish a basis for habeas relief.

Petitioner's first claim for relief—that ICE violated the Due Process Clause and failed to comply with its regulations when it revoked 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. § 241.4(*l*) (emphasis added).

But even assuming the agency's compliance with the relevant regulations fell short, Petitioner has not established prejudice nor a constitutional violation. *See Brown*

v. Holder, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("The 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" (internal quotation marks omitted)); *Bd. of Curators of Univ. of Mo. v. Horowitz,* 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunicate[s] principles of federal administrative law rather than of constitutional law"). And a failure to comply with federal regulations would not entitle Petitioner to release. For example, 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.*

Moreover, Petitioner does not have a protected liberty interest in remaining free from detention where ICE has exercised its discretion under a valid removal order and its regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[the petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders."). "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." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.

2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010) (citing §§ 241.4(l)(2)(i), (iv)) (emphasis in original).

At the time of her re-detention, Petitioner knew she was subject to a final order of removal to China. *See* Martinez Decl. ¶ 5; ECF No. 1 at ¶¶ 22–25. She does not challenge her removal order, nor could she. *See supra* Section III.A. Petitioner was informed of the reason for her re-detention when she was served with the Form I-205, Warrant of Removal/Deportation. *See* Ex. 4. Petitioner also was provided notice of revocation of her release and afforded an informal interview on November 20, 2025. *See* Exs. 7, 8. 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 is thus unlikely to succeed on the merits of her claim that ICE's alleged failure to follow agency regulations merits her release.

2. Petitioner has not shown irreparable harm.

To prevail on her request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See 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), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 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 unjustified detention itself constitutes irreparable injury.[2] But this argument "begs the constitutional questions presented in [her] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). She faces the same alleged irreparable harm as any habeas corpus

[2] 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).

petitioner in immigration custody, and she has not shown extraordinary circumstances warranting a mandatory preliminary injunction.

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. 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 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] established, and permits and prolongs a continuing violation of United States law.") (simplified). And 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*, Case No. C 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 her claims and the public interest in the prompt execution of removal orders is significant. The balancing of equities and the public interest thus weigh against granting equitable relief in this case.

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IV. CONCLUSION

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

DATED: November 21, 2025

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s/ *Kelly A. Reis*
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