

1 ADAM GORDON
United States Attorney
2 ALYSSA SANDERSON
Assistant U.S. Attorney
3 California Bar No. 353398
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-7634
Facsimile: (619) 546-7751
6 Email: Alyssa.sanderson@usdoj.gov

7 Attorneys for Respondents

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

10 ONORES DE JESUS MEJIA IRIARTE,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE, *et al.*,

14 Respondents.
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Case No.: 3:25-cv-03138-BAS-AHG

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

1 **I. INTRODUCTION**

2 Petitioner Onores De Jesus Mejia Iriarte has filed a habeas petition and motion
3 for a temporary restraining order. For the reasons set forth below, the Court should deny
4 Petitioner’s requests for relief and dismiss the petition.

5 **II. FACTUAL BACKGROUND**

6 Petitioner is a native and citizen of Honduras. On October 5, 2011, Petitioner was
7 ordered removed from United States to Honduras, and subsequently, on October 13,
8 2011, Petitioner was removed to Honduras. Decl. of Rosendo Martinez (“Martinez
9 Decl.”) ¶ 3. On January 26, 2014, Petitioner was reencountered and apprehended by
10 ICE and subsequently removed to Honduras. *Id.* ¶ 4. Petitioner, on March 23, 2019, was
11 once again reencountered and apprehended by ICE. *Id.* ¶ 5. Shortly after, Petitioner was
12 released from ICE custody under an order of supervision dated March 29, 2019. *Id.*

13 On January 10, 2023, the Department of Homeland Security (“DHS”) reinstated
14 Petitioner’s prior removal order to Honduras. *Id.* ¶ 6. On January 28, 2025, Petitioner
15 was apprehended by ICE to effectuate her removal order. *Id.* ¶ 7. Petitioner expressed
16 fear of returning to Honduras and was placed in withholding only proceedings. *Id.* On
17 September 30, 2025, Petitioner was granted Withholding of Removal under the
18 Immigration and Nationality Act (“INA”) by an immigration judge. *Id.* ¶ 8; Ex. 1.

19 In her withholding only proceedings, after DHS notified Petitioner of its intent to
20 seek removal to Mexico, Petitioner moved to prevent removal to Mexico. *Id.* ¶ 9; Ex. 2
21 at 2. An immigration judge, on October 9, 2025, denied Petitioner’s motion to reopen,
22 finding that the motion was improperly brought in withholding only proceedings,
23 *specific to Honduras*, and instead should be properly brought in the underlying removal
24 case. *Id.*; Ex. 2 at 2.

25 On October 16, 2025, Petitioner was referred to U.S. Immigration and Citizen
26 Services (“USCIS”) for a third country fear screening as to Mexico, which was
27 conducted on October 20, 2025. Martinez Decl. ¶ 10; ECF No. 1 ¶ 12. A USCIS asylum
28 officer found that Petitioner did not establish a fear claim under the Convention Against

1 Torture (“CAT”). ICE Enforcement and Removal Operations (“ERO”), on November
2 19, 2025, attempted to remove Petitioner to Mexico; however, the Mexican government
3 refused her entry. Martinez Decl. ¶ 10; *See* Ex. 3. ERO will no longer seek removal to
4 Mexico. Martinez Decl. ¶ 10.

5 Since Petitioner’s re-detention, ERO has been actively working as expeditiously
6 as possible to locate a third country for resettlement and to effectuate Petitioner’s
7 removal to a third country. *Id.* ¶ 11.

8 III. ARGUMENT

9 Petitioner’s motion should be denied because she has not established that she is
10 entitled to interim injunctive relief. Petitioner cannot establish that she is likely to
11 succeed on the underlying merits, there is no showing of irreparable harm, and the
12 equities do not weigh in her favor.

13 In general, the showing required for a temporary restraining order is the same as
14 that required for a preliminary injunction. *See Stuhlbarg Int’l Sales Co., Inc. v. John D.*
15 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
16 temporary restraining order, a plaintiff must “establish that he is likely to succeed on
17 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
18 relief, that the balance of equities tips in his favor, and that an injunction is in the public
19 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
20 *Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a “substantial case for
21 relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
22 When “a plaintiff has failed to show the likelihood of success on the merits, we need
23 not consider the remaining three [*Winter* elements].” *Garcia v. Google, Inc.*, 786 F.3d
24 733, 740 (9th Cir. 2015) (citations omitted).

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

1 (1985).

2 **A. Petitioner Has Not Shown Likelihood of Success on the Merits**

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

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

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

25 The Supreme Court also held that the detention could exceed six months: “This
26 6-month presumption, of course, does not mean that every alien not removed must be
27 released after six months. To the contrary, an alien may be held in confinement until it
28 has been determined that there is no significant likelihood of removal in the reasonably

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

10 Petitioner is subject to a final, executable order of removal, which means that she
11 has no right to remain in the United States. She has a temporary right not to be
12 repatriated to Honduras, but she has no right to not be resettled in a third country.
13 Moreover, prior to this Court’s Order issued on November 20, 2025, ECF No. 6,
14 Petitioner had no right to not be resettled in Mexico. Petitioner argues that an
15 “immigration judge declined to designate Mexico as a country of removal, finding
16 DHS’s designation was violative of [Petitioner’s] due process rights to notice.” ECF
17 No. 1 ¶ 10. However, Petitioner has failed to set forth evidence of this claim; and
18 instead, from Respondents’ records, it appears an immigration judge denied Petitioner’s
19 motion to reopen her withholding only proceedings to prevent removal to Mexico,
20 finding that the motion was improperly brought in these proceedings, *specific to*
21 *Honduras*, and instead should be properly brought in the underlying removal case. Ex.
22 2.

23 The record, however, is clear that Petitioner was given a third country fear
24 screening as to Mexico on October 20, 2025, ECF No. 1 ¶ 12, and that an asylum officer
25 found that she did not establish a fear claim under CAT, Martinez Decl. ¶ 10. Moreover,
26 Petitioner was given notice of ICE’s intent to remove her to Mexico. *See* Ex. 3. Thus,
27 ICE was within its authority to remove her to Mexico.

28 ICE has long-standing authority to remove noncitizens and resettle them in third

1 countries where removal to the country designated in the final order is “impracticable,
2 inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b)
3 (outlining framework for designation). Accordingly, noncitizens like Petitioner, who
4 have received protection against removal to the designated country (either withholding
5 of removal under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and
6 resettled in third countries.

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

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

24 *Id.* Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen
25 to a country of designation or an alternative country per Section 1231(b)(2)(D), the
26 Secretary may, in her discretion, remove the noncitizen to any country listed in
27 subparagraphs (E)(i) through (E)(vi). To effectuate Petitioner’s removal to a third
28 country, ERO has actively searched for a third country for resettlement, as evidenced
by its prior attempt to remove her to Mexico. ERO continues to work as expeditiously
as possible to locate a third country for resettlement and to effectuate Petitioner’s
removal to a third country. Martinez Decl. ¶ 11.

To the extent Petitioner challenges the execution of her removal order, such

1 challenges are barred by 8 U.S.C. § 1252(g). Petitioner bears the burden of establishing
2 that this Court has subject matter jurisdiction over her claims. *See Ass’n of Am. Med.*
3 *Coll. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000); *Finley v. United States*,
4 490 U.S. 545, 547–48 (1989). Courts lack jurisdiction over any claim or cause of action
5 arising from any decision to commence or adjudicate removal proceedings or execute
6 removal orders. *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and
7 *notwithstanding any other provision of law* (statutory or nonstatutory), *including*
8 *section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and
9 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on
10 behalf of any alien arising from the decision or action by the Attorney General to
11 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
12 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
13 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
14 attention upon, and make special provision for, judicial review of the Attorney
15 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
16 execut[ing] removal orders”—which represent the initiation or prosecution of various
17 stages in the deportation process.”). A challenge to the execution of her [or Petitioner’s]
18 removal order necessarily arises “from the decision or action by the Attorney General
19 to . . . execute removal orders,” over which Congress has explicitly foreclosed district
20 court jurisdiction. 8 U.S.C. § 1252(g).

21 Lastly, Petitioner’s claim that she may not be removed to a third country without
22 adequate notice and an opportunity to be heard is subject to ongoing litigation, with the
23 Supreme Court staying an injunction imposed by a district court ordering the
24 government to provide notice and an opportunity to be heard like that requested here.
25 *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given the Supreme
26 Court’s reversal of that injunction, Respondents’ position is that imposition of a similar
27 injunction would be reversed here. Moreover, as already shown, when a third country
28 is identified, Petitioner will be provided notice and an opportunity to be heard.

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

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

14 Petitioner suggests that being subjected to allegedly unjustified detention itself
15 constitutes irreparable injury.¹ But this argument “begs the constitutional questions
16 presented in her petition by assuming that petitioner has suffered a constitutional
17 injury.” *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover,
18 Petitioner’s “loss of liberty” is “common to all [noncitizens] seeking review of their
19 custody or bond determinations.” *See Resendiz v. Holder*, 2012 WL 5451162, at *5
20 (N.D. Cal. Nov. 7, 2012). She faces the same alleged irreparable harm as any habeas
21 corpus petitioner in immigration custody, and she has not shown extraordinary
22 circumstances warranting a mandatory preliminary injunction.

23 Importantly, the purpose of civil detention is facilitating removal, and the
24 government is working to timely remove Petitioner. Here, because Petitioner’s alleged
25 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor
26 of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at
27

28 ¹ Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

1 *10 (N.D. Cal. Dec. 24, 2018).

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

3 It is well settled that “the public interest in enforcement of the immigration laws
4 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
5 1981) (collecting cases); *see Nken*, 556 U.S. at 436 (“There is always a public interest
6 in prompt execution of removal orders: The continued presence of an alien lawfully
7 deemed removable undermines the streamlined removal proceedings [the Illegal
8 Immigration Reform and Immigrant Responsibility Act of 1996] established, and
9 permits and prolongs a continuing violation of United States law.”) (simplified). And
10 ultimately, “the balance of the relative equities ‘may depend to a large extent upon the
11 determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v. Kane*, Case
12 No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012)
13 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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

18 **IV. CONCLUSION**

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

21 DATED: November 21, 2025

22 Respectfully submitted,

23 ADAM GORDON
24 United States Attorney

25 s/ Alyssa Sanderson
26 ALYSSA SANDERSON
27 Assistant United States Attorney
28 Attorney for Respondents