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

10 LIEM THAHN LAM,  
11 **Petitioner,**  
12 v.  
13 KRISTI NOEM, Secretary of the  
Department of Homeland Security, *et al.*,  
14 **Respondents.**  
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16  
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Case No. 25-cv-3141-CAB-MSB  
**RESPONDENTS' RETURN IN  
OPPOSITION TO PETITIONER'S  
HABEAS PETITION AND  
OPPOSITION TO PETITIONER'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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1 **I. Introduction**

2 Petitioner Liem Thanh Lam has filed a habeas petition and a motion for  
3 temporary restraining order. ECF Nos. 1, 3. On November 19, 2025, the Court issued  
4 an order to show cause as to why the petition should not be granted. ECF No. 4. For  
5 purposes of judicial efficiency, given the petition and motion for temporary restraining  
6 order assert the same claims and seek the same relief, Respondents respectfully respond  
7 to both the petition and motion herein. For the reasons set forth below, the Court should  
8 deny Petitioner’s request for interim relief and dismiss the petition.

9 **II. Factual and Procedural Background**

10 Petitioner is a citizen and national of Vietnam. *See* Ex. 1 at 1; *see also* Declaration  
11 of Liem Thanh Lam (Lam Decl.) ¶ 1, ECF No. 1 at 24. On April 28, 1986, Petitioner  
12 was admitted into the United States as a refugee, and soon after he adjusted his status  
13 to that of a lawful permanent resident. *See* Ex. 2 at 2; *see also* Lam Decl. ¶ 1. In 2008,  
14 Petitioner was convicted of conspiracy to conduct the affairs of an enterprise through a  
15 pattern of racketeering activity and sentenced to 21 months in custody. *See* Ex. 2.  
16 Thereafter, Petitioner was charged as removable from the United States and placed in  
17 removal proceedings. *See generally id.* On April 12, 2010, an immigration judge  
18 ordered Petitioner removed to Vietnam. *See* Ex. 3. Petitioner was released from ICE  
19 custody under an Order of Supervision on July 20, 2010, due to ICE’s then-inability to  
20 effect Petitioner’s removal. *See* Ex. 4; *see also* Declaration of Jason Cole (Cole Decl.)  
21 ¶ 6.

22 On October 22, 2025, Immigration and Customs Enforcement (ICE) re-detained  
23 Petitioner to effect his removal to Vietnam. *See* Ex. 6. At that time, Petitioner was  
24 served a Form I-200, Warrant for Arrest of Alien. *See* Ex. 5. Petitioner was also shown  
25 a Form I-205, Warrant of Removal/Deportation and a Form I-294, Warning to Alien  
26 Ordered Removed or Deported. *See* Exs. 6, 7. Petitioner was served a formal Notice of  
27 Revocation of Release at the time of his re-detention. *See* Ex. 8.

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1 ICE is routinely obtaining travel documents from Vietnam and able to arrange  
2 travel itineraries to execute final orders of removal for Vietnamese citizens, including  
3 those who immigrated to the United States before 1995, like Petitioner. Cole Decl.  
4 ¶¶ 13–16. ICE is working expeditiously to effectuate Petitioner’s removal to Vietnam.  
5 *Id.* ¶ 10. ICE’s Enforcement and Removal Operations submitted a travel document  
6 request to the Vietnam embassy on November 19, 2025. *Id.* ¶ 11. That request remains  
7 pending. *Id.* Once Petitioner’s travel document is obtained, ICE will arrange for his  
8 removal to Vietnam. *Id.* ¶ 17. ICE is not seeking to remove Petitioner to a third country.  
9 *Id.* ¶ 9.

### 10 III. Argument

#### 11 A. Because Petitioner’s claims regarding third countries are unfounded, this 12 Court lacks jurisdiction over Petitioner’s third claim for relief.

13 The Constitution limits federal judicial power to designated “cases” and  
14 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*  
15 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present  
16 a “case” or “controversy” within the meaning of Article III). “Absent a real and  
17 immediate threat of future injury there can be no case or controversy, and thus no  
18 Article III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-  
19 1774-BAS-MDD, 2015 WL 8515412, at \*3 (S.D. Cal. Dec. 11, 2015) (citing *Friends*  
20 *of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n  
21 a lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing  
22 by demonstrating that, if unchecked by the litigation, the defendant’s allegedly  
23 wrongful behavior will likely occur or continue, and that the threatened injury is  
24 certainly impending.”) (simplified)). At the “irreducible constitutional minimum,”  
25 standing requires that a petitioner demonstrate the following: (1) an injury in fact  
26 (2) that is fairly traceable to the challenged action of the United States and (3) likely to  
27 be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–  
28 61 (1992).

1 Here, Petitioner’s third claim for relief alleges that “ICE’s policies threaten his  
2 removal to a third country without adequate notice and an opportunity to be heard.”  
3 ECF No. 1 at 15. But Respondents are not seeking to remove Petitioner to a third  
4 country and are instead working to promptly remove Petitioner to Vietnam. *See Cole*  
5 *Decl.* ¶¶ 9–11. As such, there is no controversy concerning third-country resettlement  
6 for this Court to resolve. Federal courts do not have jurisdiction “to give opinions upon  
7 moot questions or abstract propositions, or to declare principles or rules of law which  
8 cannot affect the matter in issue in the case before it.” *Church of Scientology of Cal. v.*  
9 *United States*, 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). “A  
10 claim is moot if it has lost its character as a present, live controversy.” *Am. Rivers v.*  
11 *Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted).  
12 The Court therefore lacks jurisdiction over Petitioner’s claims concerning third-country  
13 resettlement because there is no live case or controversy. *See Powell v. McCormack*,  
14 395 U.S. 486, 496 (1969); *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

15 **B. Claims and requests barred by 8 U.S.C. § 1252.**

16 Petitioner bears the burden of establishing that this Court has subject matter  
17 jurisdiction over his claims. *See Ass’n of Am. Med. Colls. v. United States*, 217 F.3d  
18 770, 778–79 (9th Cir. 2000). To the extent Petitioner’s claims arise from—or seek to  
19 enjoin—the decision to execute his removal order, they are jurisdictionally barred under  
20 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and  
21 *notwithstanding any other provision of law* (statutory or nonstatutory), *including*  
22 *section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and  
23 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on  
24 behalf of any alien arising from the decision or action by the Attorney General to  
25 commence proceedings, adjudicate cases, or *execute removal orders* against any alien  
26 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,  
27 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special  
28 attention upon, and make special provision for, judicial review of the Attorney

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

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

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

22 In general, the showing required for a temporary restraining order is the same as  
23 that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D.*  
24 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a  
25 temporary restraining order, a petitioner must “establish that he is likely to succeed on  
26 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
27 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
28 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*

1 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a “substantial  
2 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.  
3 2011). When “a plaintiff has failed to show the likelihood of success on the merits,  
4 [courts] need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*,  
5 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary  
6 injunctive relief—balancing of the harm to the opposing party and the public interest—  
7 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few  
8 interests can be more compelling than a nation’s need to ensure its own security.” *Wayte*  
9 *v. United States*, 470 U.S. 598, 611 (1985).

10 ***I. Petitioner is unlikely to succeed on the merits.***

11 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at  
12 740. Here, apart from his non-justiciable claim of potential third-country removal,  
13 Petitioner argues that his re-arrest and detention warrant habeas relief because: (1) ICE  
14 violated its own regulations, ECF No. 1 at 7–10 (Petitioner’s first claim for relief); and  
15 (2) they ran afoul of the Supreme Court’s holding in *Zadvydas v. Davis*, 533 U.S. 678,  
16 689 (2001), ECF No. 1 at 10–15 (Petitioner’s second claim for relief). But Petitioner  
17 cannot establish that he is likely to succeed on the underlying merits of those claims  
18 because he is properly detained under 8 U.S.C. § 1231(a) and the applicable agency  
19 regulations.

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

23 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a  
24 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found  
25 to be unlawfully present in the United States and a final order of removal has been  
26 entered, the government ordinarily secures the alien’s removal during a subsequent 90-  
27 day statutory “removal period.” 8 U.S.C. § 1231(a)(1). The statute provides that the  
28

1 Attorney General “shall detain” the alien during this removal period. 8 U.S.C.  
2 § 1231(a)(2).

3 The Supreme Court held in *Zadvydas* that when removal is not accomplished  
4 during the 90-day removal period, the statute “limits an alien’s post-removal-period  
5 detention to a period reasonably necessary to bring about the alien’s removal from the  
6 United States” and does not permit “indefinite detention.” *Zadvydas*, 533 U.S. at 689.  
7 The Supreme Court has held that six months constitutes a “presumptively reasonable  
8 period of detention.” *Id.* at 701. Courts have repeatedly declined to grant habeas relief  
9 where the presumptively reasonable six-month period has not yet elapsed. *See*  
10 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at \*4 (D. Md. July 22,  
11 2025) (“The government is entitled to its six-month presumptive period before  
12 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*  
13 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at \*4 (S.D. Fla. July  
14 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not  
15 been detained for more than six months. Petitioner has been in detention since May 29,  
16 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations  
17 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at \*5 (D. Minn.  
18 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes  
19 the release based on changed circumstances, “the revocation would merely restart the  
20 90-day removal period, not necessarily the presumptively reasonable six-month  
21 detention period under *Zadvydas*”).

22 Even after the period of presumptive reasonableness has run, release is not  
23 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the  
24 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the  
25 Supreme Court instructed, “the habeas court must ask whether the detention in question  
26 exceeds a period reasonably necessary to secure removal. It should measure  
27 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*  
28 *alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added). In so holding,

1 the Supreme Court recognized that detention is presumptively reasonable pending  
2 efforts to obtain travel documents, because the noncitizen’s assistance is often needed  
3 to obtain the travel documents, and because a noncitizen who is subject to an imminent,  
4 executable warrant of removal becomes a significant flight risk, especially if he or she  
5 is aware that it is imminent.

6 The Supreme Court also instructed that detention could exceed six months: “This  
7 6-month presumption, of course, does not mean that every alien not removed must be  
8 released after six months. To the contrary, an alien may be held in confinement until it  
9 has been determined that there is no significant likelihood of removal in the reasonably  
10 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good  
11 reason to believe that there is no significant likelihood of removal in the reasonably  
12 foreseeable future, the Government must respond with evidence sufficient to rebut that  
13 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the  
14 alien to show, after a detention period of six months, that there is ‘good reason to believe  
15 that there is no significant likelihood of removal in the reasonably foreseeable future.’”  
16 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at  
17 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

18 Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But  
19 we are still in the period of presumptive reasonableness because Petitioner has been in  
20 custody for about four months since the immigration judge entered a final order of  
21 removal. *See* Cole Decl. ¶¶ 5–7; Exs. 3, 4. But even if Petitioner’s total time in detention  
22 since April 2010 did exceed the six months of presumptive reasonableness, his claim  
23 still fails at the next step because he cannot meet his burden to establish “that there is  
24 no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,  
25 533 U.S. at 701. Petitioner was re-detained for removal on October 22, 2025, after ICE  
26 had been successfully obtaining travel documents for Vietnamese citizens who  
27 immigrated to the United States before 1995 and removing them. Cole Decl. ¶¶ 7, 13–  
28 14, 16. ICE submitted Petitioner’s travel document request to the Vietnam embassy on

1 November 19, 2025. *Id.* ¶ 11. Once ICE receives his travel document, he can be  
2 removed promptly as ICE has routine flights to Vietnam. *Id.* ¶¶ 16–17. There is no bar  
3 against Petitioner’s removal to Vietnam, and the government is currently arranging for  
4 that removal.

5 It is true that that fifteen years ago the government was not able to remove  
6 Petitioner to Vietnam, as with other similarly situated individuals, because the prior  
7 political relationship between the United States and Vietnam prevented their removals.  
8 That produced significant litigation from detainees who argued that they could not be  
9 removed to their home nations due to the lack of cooperation, and so their detentions  
10 were indefinite. But that barrier to removal was removed. This issue was exhaustively  
11 addressed in more recent litigation addressing detainees facing removal to Vietnam. In  
12 2020, the *Trinh* court explained the then-current state of affairs:

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

18 Petitioners do not appear to dispute that once Vietnam issues a travel  
19 document, removal becomes significantly likely, rendering class members  
unable to meet their initial burden under *Zadvydas*.

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

21 Petitioner may complain that the government did not already obtain his travel  
22 documents before taking him back into detention. But *Zadvydas* does not require the  
23 government to pre-arrange a noncitizen’s removal travel before arresting them, which  
24 would often be extremely difficult if not impossible. The constitutional standard is  
25 whether there is “a significant likelihood of removal” in the “reasonably foreseeable  
26 future.” The law does not require that “every [noncitizen] not removed must be released  
27 after six months.” *Zadvydas*, 533 U.S. at 701. Instead, the Supreme Court was clear that  
28 the Constitution prevents only “indefinite” or “potentially permanent” detention. *Id.*

1 at 689–91. Courts properly deny *Zadvydas* claims under such circumstances. *See*  
2 *Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at \*1 (W.D. Wash.  
3 April 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more  
4 than 14 months post-final order); *Nicia v. ICE Field Office Dir.*, No. C13–0092–RSM,  
5 2013 WL 2319402, at \*3 (W.D. Wash. May 28, 2013) (holding petitioner “failed to  
6 satisfy his burden of showing that there is no significant likelihood of his removal in  
7 the reasonably foreseeable future” where he had been detained more than seven months  
8 post-final order).

9 That Petitioner does not yet have a specific date of anticipated removal does not  
10 make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222,  
11 1233 (9th Cir. 2008) (explaining that a demonstration of “no significant likelihood of  
12 removal in the reasonably foreseeable future” would include a country’s refusal to  
13 accept a noncitizen or that removal is barred by our own laws). On the contrary, as  
14 courts in this district have found, “evidence of progress, albeit slow progress, in  
15 negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s  
16 detention grows unreasonably lengthy.” *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB,  
17 ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner’s one year and  
18 four-month detention does not violate *Zadvydas* given respondent’s production of  
19 evidence showing governments’ negotiations are in progress and there is reason to  
20 believe that removal is likely in the foreseeable future); *see also Marquez v. Wolf*, No.  
21 20-cv-1769-WQHBLM, 2020 WL 6044080, at \*3 (S.D. Cal. Oct. 13, 2020) (denying  
22 petition because “Respondents have set forth evidence that demonstrates progress and  
23 the reasons for the delay in Petitioner’s removal”); *Sereke v. DHS*, Case No. 19-cv-  
24 1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019) (“[T]he record at this  
25 stage in the litigation does not support a finding that there is no significant likelihood  
26 of Petitioner’s removal in the reasonably foreseeable future.”).

27 Petitioner’s continued detention is thus not unconstitutionally prolonged under  
28 *Zadvydas*.



1 written notice, advance notice, an advanced interview, nor for DHS to prove to the  
2 satisfaction of a petitioner that changed circumstances are present.<sup>2</sup>

3 Yet it is clear that there *are* changed circumstances here—namely, ICE’s revived  
4 ability to obtain travel documents from the Vietnamese government and to schedule  
5 routine removal flights to Vietnam. Cole Decl. ¶¶ 12–16. These facts are fatal to  
6 Petitioner’s claim, because even if the agency had failed to provide Petitioner with  
7 “advance notice” of the revocation, or neglected to conduct the informal interview,  
8 Petitioner could not establish that he was prejudiced by those omissions nor that a  
9 constitutional level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–  
10 50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its regulations is not a  
11 violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.  
12 2007) (holding that “[c]ompliance with . . . internal [customs] agency regulations is not  
13 mandated by the Constitution”) (simplified); *Bd. of Curators of Univ. of Mo. v.*  
14 *Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s] principles of  
15 federal administrative law rather than of constitutional law”).

16 For example, in *Ahmad v. Whitaker*, the government revoked the petitioner’s  
17 release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-  
18 JLR-BAT, 2018 WL 6928540, at \*6 (W.D. Wash. Dec. 4, 2018), *report and*  
19 *recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner  
20 argued the revocation of his release was unlawful because, he contended, the federal  
21 regulations prohibited re-detention without, among other things, an opportunity to be  
22 heard. *Id.* at \*5. In rejecting his claim, the court held that although the regulations called  
23 for an informal interview, petitioner could not establish “any actionable injury from this

24 \_\_\_\_\_  
25 <sup>2</sup> There are obvious law enforcement reasons for not providing “advance” notice of a  
26 re-detention before executing a warrant of removal, just as there is no requirement to  
27 provide prior notice of execution of an arrest warrant. Providing such notice “creates a  
28 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).

1 violation of the regulations given that ICE had procured a travel document and  
2 scheduled [petitioner’s] removal.” *Id.* Similarly, in *Doe v. Smith*, the court held that  
3 even if an ICE detained petitioner had not received a timely interview following her  
4 return to custody, there was “no apparent reason why a violation of the regulation, even  
5 assuming it occurred, should result in release.” *Doe v. Smith*, No. 18-11363-FDS, 2018  
6 WL 4696748, at \*9 (D. Mass. Oct. 1, 2018). The court elaborated, “it is difficult to see  
7 an actionable injury stemming from such a violation. Doe is not challenging the  
8 underlying justification for the removal order. . . . Nor is this a situation where a prompt  
9 interview might have led to her immediate release—for example, a case of mistaken  
10 identity.” *Id.*

11 So too here. At the time of his re-detention, Petitioner knew he was subject to a  
12 final order of removal to Vietnam. *See* Declaration of Liem Thanh Lam ¶ 3; ECF No. 1  
13 at 1. He does not challenge that order in this lawsuit or offer any indication that he  
14 intends to do so. Petitioner was informed of the reason for his re-detention when he was  
15 served with the original Notice of Revocation of Release on October 22, 2025, and the  
16 Form I-205, Warrant of Removal/Deportation. *See* Cole Decl. ¶¶ 7, 8; Ex. 6 (Form I-  
17 205, Warrant of Removal/Deportation); Ex. 8 (Notice of Revocation of Release). And  
18 because Respondents had, and continue to have, an evidentiary basis to conclude there  
19 is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably  
20 foreseeable future, any challenge that Petitioner would have raised to the revocation  
21 prior to or after his re-detention would have failed. Because Petitioner cannot show  
22 prejudice under these circumstances, the alleged violation of agency regulations does  
23 not warrant release here. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.  
24 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir.  
25 2010) (“While the regulation provides the detainee some opportunity to respond to the  
26 reasons for revocation, it provides no other procedural and no meaningful substantive  
27 limit on this exercise of discretion as it allows revocation ‘when, in the opinion of the  
28 revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct

1 of the alien, or *any other circumstance*, indicates that release would no longer be  
2 appropriate.”) (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation*  
3 *Co. v. Sec’y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“[V]iolations of procedural  
4 regulations should be upheld if there is no significant possibility that the violation  
5 affected the ultimate outcome of the agency’s action.” (citation omitted)); *United States*  
6 *v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow  
7 regulations requiring that an arrested alien be advised of his right to speak to his consul  
8 was not prejudicial and thus not a ground for challenging the conviction); *United States*  
9 *v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming  
10 that the judge had violated the rule by failing to inquire into the alien’s background, any  
11 error was harmless because there was no showing that the petitioner was qualified for  
12 relief from deportation).

13 Thus, whatever procedural deficiencies or delays may have occurred, they do  
14 not warrant Petitioner’s release and indeed could be cured by means well short of  
15 release. Petitioner does not challenge his removal order, nor could he. *See supra*  
16 Section III.B. On November 19, 2025 ICE’s Enforcement and Removal Operations  
17 submitted its request for Petitioner’s travel document to the Vietnam embassy. Cole  
18 Decl. ¶ 11. ICE expects the removal of Petitioner to Vietnam to occur in the reasonably  
19 foreseeable future. *See id.* ¶¶ 15–17. With Petitioner’s removal likely to occur in the  
20 reasonably foreseeable future, no purpose would be served by this Court’s ordering his  
21 release—other than frustrating “the statute’s basic purpose, namely, assuring the alien’s  
22 presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. Petitioner is thus  
23 unlikely to succeed on the merits of his claim that ICE’s alleged failure to follow agency  
24 regulations merits his release.

25 **2. Petitioner has not shown irreparable harm.**

26 To prevail on his request for interim injunctive relief, Petitioner must demonstrate  
27 “immediate threatened injury.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d  
28 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm’n v. National Football*

1 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of  
2 irreparable harm is insufficient. *Winter*, 555 U.S. at 22. And detention alone is not an  
3 irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at \*3 (W.D.  
4 Wash. Feb. 19, 2021). Further, “[i]ssuing a preliminary injunction based only on a  
5 possibility of irreparable harm is inconsistent with [the Supreme Court’s]  
6 characterization of injunctive relief as an extraordinary remedy that may only be  
7 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555  
8 U.S. at 22.

9 Petitioner suggests that being subjected to allegedly unjustified detention itself  
10 constitutes irreparable injury.<sup>3</sup> But this argument “begs the constitutional questions  
11 presented in [his] petition by assuming that [P]etitioner has suffered a constitutional  
12 injury.” *Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at \*3 (N.D. Cal.  
13 April 5, 2019). Moreover, Petitioner’s “loss of liberty” is “common to all aliens seeking  
14 review of their custody or bond determinations.” *Resendiz v. Holder*, No. C 12–04850  
15 WHA, 2012 WL 5451162, at \*5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged  
16 irreparable harm as any habeas corpus petitioner in immigration custody, and he has not  
17 shown extraordinary circumstances warranting a temporary restraining order.

18 Importantly, the purpose of civil detention is facilitating removal, and the  
19 government is working to timely remove Petitioner. Here, because Petitioner’s alleged  
20 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor  
21 of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL 7474861, at \*10  
22 (N.D. Cal. Dec. 24, 2018).

23 **3. *The balance of equities does not tip in Petitioner’s favor.***

24 It is well settled that “the public interest in enforcement of the immigration laws  
25 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C.  
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28 <sup>3</sup> Detention is different than removal. But a removal is also not an inherently irreparable  
injury. *See Nken*, 556 U.S. at 435.

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

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

14 **D. An evidentiary hearing is not needed.**

15 Because the record shows that Petitioner is not entitled to habeas relief, there is  
16 no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S.  
17 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise  
18 precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).

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1 **IV. Conclusion**

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

5  
6 Dated: November 24, 2025

7 Respectfully submitted,

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9 United States Attorney

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

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