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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 MONNATHY L. NAMBOUNMY,

14 Petitioner,

15 v.
16

17 GREGORY J. ARCHAMBEAULT,
Enforcement and Removal Operations,
18 San Diego Field Office Director, U.S.
Immigration and Customs Enforcement
19 Operations; *et al.*,
20

21 Respondents.
22

Case No. 25-cv-03172-JO-SBC

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

Date: November 24, 2025
Time: 12:00 p.m.
Judge: Hon. Jinsook Ohta

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1 **I. INTRODUCTION**

2 Petitioner Monnathy L. Nambounmy has filed a habeas petition and a motion for
3 temporary restraining order. ECF Nos. 1, 3. On November 17, 2025, the Court set a
4 hearing on Petitioner’s habeas petition for November 24, 2025. ECF No. 2. For purposes
5 of judicial efficiency, given the petition and motion for temporary restraining order
6 assert the same claims and seek the same relief, Respondents respectfully respond to
7 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 Laos. ECF No. 3-4, Declaration of
11 Monnathy L. Nambounmy (“Nambounmy Decl.”) at ¶ 2. Petitioner entered the United
12 States as a refugee in 1981, and soon after he became a lawful permanent resident. *Id.*
13 at ¶¶ 3, 5. On August 9, 2001, an immigration judge ordered Petitioner removed to Laos
14 following his conviction of attempted second degree murder. *Id.* at ¶¶ 7, 12; Declaration
15 of Ryan Robert Dale Smith (“Smith Decl.”) at ¶ 4. Petitioner was subsequently released
16 from immigration custody on an order of supervision on November 15, 2001, pending
17 removal to Laos because the government was unable to obtain a travel document to
18 Laos. Nambounmy Decl. at ¶ 13; Smith Decl. at ¶ 5. Petitioner acknowledges that,
19 following his order of removal, he has been convicted of other additional criminal
20 activity. ECF No. 1 at ¶ 36 (alleging ICE re-detained him in March 2005 after conviction
21 of attempted burglary), ¶ 38 (alleging his last criminal conviction was in 2014).

22 On July 30, 2025, Immigration and Customs Enforcement (ICE) re-detained
23 Petitioner to execute his removal to Laos. Smith Decl. at ¶ 6.

24 On August 18, 2025, ICE’s Enforcement and Removal Operations (ERO)
25 submitted a travel document request for Petitioner to the Laos Unit of ERO’s Removal
26 and International Operations (RIO). *Id.* at ¶ 7.

27 On September 10, 2025, Petitioner filed a petition for writ of habeas corpus
28 pursuant to 28 U.S.C. § 2241 in the United States District Court for the District of

1 Arizona, Case No. 25-cv-03294-DJH (ASB). ECF No. 1 at ¶ 43; Smith Decl. at ¶ 8. On
2 October 3, 2025, ICE released Petitioner from immigration detention in response to a
3 court order granting in part Petitioner’s habeas petition. ECF No. 1 at ¶ 43; Nambounmy
4 Decl. at ¶ 23; Smith Decl. at ¶ 9.

5 On October 15, 2025, ERO received a travel document from Laos, dated October
6 8, 2025, authorizing Petitioner’s removal to Laos for a 90-day period from the date of
7 issuance, that is, by January 6, 2026. Smith Decl. at ¶ 10.

8 On October 31, 2025, ICE issued a Form I-200, Warrant for Arrest of Alien, for
9 Petitioner’s arrest, finding probable cause to believe that Petitioner is removable from
10 the United States. *Id.* at ¶ 11, Ex. A (Form I-200, Warrant for Arrest of Alien).

11 On October 31, 2025, ICE re-detained Petitioner to execute his removal order to
12 Laos. Smith Decl. at ¶ 12. At the time of his re-detention, ICE served Petitioner with
13 the Form I-200, Warrant for Arrest of Alien, dated October 31, 2025. *Id.*

14 On October 31, 2025, ICE provided Petitioner with a Notice of Revocation of
15 Release, which Petitioner signed, providing Petitioner with formal notice of the reason
16 for revocation of his order of supervision. *Id.* at ¶ 13, Ex. B (Notice of Revocation of
17 Release). In the Notice of Revocation of Release, ICE informed Petitioner of the
18 changed circumstances of his case:

19 ICE has determined that you can be expeditiously removed from the
20 United States pursuant to the outstanding order of removal against you. On
21 October 8, 2025 ICE obtained a travel document for your removal to Laos
22 that is valid for 90 days. ICE is actively working on confirming a flight for
your removal to Laos within the next week.

23 Smith Decl., Ex. B.

24 On October 31, 2025, ICE also conducted an informal interview with Petitioner
25 regarding his detention status. Smith Decl. at ¶ 14, Ex. C (Alien Informal Interview
26 Upon Revocation of Order of Supervision).

27 On October 31, 2025, ICE also issued a Form I-213, Record of
28 Deportable/Inadmissible Alien, pertaining to Petitioner. Smith Decl. at ¶ 15, Ex. D

1 (Form I-213, Record of Deportable/Inadmissible Alien).

2 ICE is not seeking to remove Petitioner to a third country. Smith Decl. at ¶ 16.
3 According to the declaring officer’s experience, “there is a high likelihood of
4 Petitioner’s removal to Laos in the near future,” and she is “aware of no reason that
5 would prevent or delay Petitioner’s removal to Laos during the 90-day validity of
6 Petitioner’s travel document.” *Id.* at ¶¶ 18–19. ERO is actively working to remove
7 Petitioner to Laos. *Id.* at ¶ 17. ERO is currently in the process of identifying a flight to
8 Laos for Petitioner’s removal. *Id.* ERO anticipates the flight will be identified soon and
9 that removal will occur no later than December 3, 2025. *Id.*

10 ICE has been routinely obtaining travel documents for Laos citizens. *Id.* at ¶ 20.
11 Compared to fiscal year 2024, where ICE removed no Laotian citizens, ICE removed
12 177 Laotian citizens to Laos in fiscal year 2025 (as of September 8, 2025). *Id.* at ¶ 21.
13 ICE is routinely obtaining travel documents for Laotian citizens and effectuating
14 removal flights to Laos. *Id.* Since the start of fiscal year 2026 on October 1, 2025, ICE
15 has removed 111 Laotian citizens to Laos, most recently on November 4, 2025. *Id.*

16 **III. ARGUMENT**

17 **A. Because Petitioner’s Claims Regarding Third Countries Are Unfounded,** 18 **this Court Lacks Jurisdiction Over Petitioner’s Second and Third Claims** 19 **for Relief, Which Are Also Barred by the Doctrine of Res Judicata.**

20 The Constitution limits federal judicial power to designated “cases” and
21 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*
22 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present
23 a “case” or “controversy” within the meaning of Article III). “Absent a real and
24 immediate threat of future injury there can be no case or controversy, and thus no Article
25 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
26 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
27 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a
28 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by

1 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
2 behavior will likely occur or continue, and that the threatened injury is certainly
3 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing
4 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
5 traceable to the challenged action of the United States and (3) likely to be redressed by
6 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

7 Here, Petitioner’s second claim for relief seeks an order preventing his removal
8 to a third country without adequate notice and an opportunity to contest such removal,
9 and his third claim for relief seeks an order preventing his removal to a third country as
10 part of Respondents’ allegedly “punitive banishment policy.” ECF No. 1 at ¶¶ 94–102.
11 But Respondents are not seeking to remove Petitioner to a third country and are instead
12 working to promptly remove Petitioner to Laos. Smith Decl. at ¶¶ 10, 16–19. Indeed,
13 *prior to Petitioner’s most recent re-detention*, ICE obtained a travel document
14 authorizing Petitioner’s removal to Laos with 90 days, and ICE informed Petitioner of
15 this changed circumstances on the day he was re-detained. *Id.* at ¶¶ 10, 12–13, Ex. B
16 (Notice of Revocation of Release).¹ As such, there is no controversy concerning third-
17 country resettlement for this Court to resolve. Federal courts do not have jurisdiction
18 “to give opinions upon moot questions or abstract propositions, or to declare principles
19 or rules of law which cannot affect the matter in issue in the case before it.” *Church of*
20 *Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations and
21

22 ¹ In the context of Petitioner’s prior habeas action in the District of Arizona, the
23 government also informed Petitioner on October 22, 2025, that “[o]n October 15, 2025,
24 ERO received a travel document from Laos for the Petitioner.” ECF No. 3-3 at pp. 156
25 – 57 (Declaration of Ricardo Cumplido at ¶ 13). Incredibly, Petitioner argues that
26 “[t]here is no direct evidence that Laos has or will issue travel documents for Mr.
27 Nambounmy, only a vague statement in a declaration.” ECF No. 1 at ¶ 92. But there is
28 nothing vague about the declarant’s statement, made under penalty of perjury, that ERO
“received a travel document from Laos for the Petitioner.” In any event, the undersigned
counsel is prepared to provide the Court with a copy of the travel document for *in camera*
review at the hearing on November 24, 2025.

1 citations omitted). “A claim is moot if it has lost its character as a present, live
2 controversy.” *Am. Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir.
3 1997) (citation omitted). The Court therefore lacks jurisdiction over Petitioner’s second
4 and third claims concerning third-country resettlement because there is no live case or
5 controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *Murphy v. Hunt*,
6 455 U.S. 478, 481 (1982).

7 Additionally, the Court should deny Petitioner’s second and third claims
8 concerning third-country resettlement under the doctrine of res judicata. Res judicata
9 applies when an “earlier suit . . . (1) involved the same ‘claim’ or cause of action as the
10 later suit, (2) reached a final judgment on the merits, and (3) involved identical parties
11 or privies.” *Sidhu v. Flecto Co.*, 279 F.3d 896, 900 (9th Cir. 2002). Here, Petitioner
12 asserted the same third-country removal claims in his recent habeas action in the District
13 of Arizona, and the court in that case denied the claims as speculative. *See Exhibit A,*
14 *Nambounmy v. Cantu*, Case No. 25-cv-03294-DJH-ASB, ECF No. 1 at ¶¶ 88–96 (D.
15 Ariz. Sept. 10, 2025); *Exhibit B, Nambounmy v. Cantu*, Case No. 25-cv-03294-DJH-
16 ASB, ECF No. 13 at ¶¶ 1:24–28 (D. Ariz. Oct. 2, 2025) (“Petitioner’s claim regarding
17 third country removal, at this juncture, is speculative.”).

18 **B. Claims and Requests Barred by 8 U.S.C. § 1252.**

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

1 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
2 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
3 attention upon, and make special provision for, judicial review of the Attorney
4 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
5 execut[ing] removal orders”—which represent the initiation or prosecution of various
6 stages in the deportation process.”) (quoting 8 U.S.C. § 1252(g)). In other words,
7 section 1252(g) removes district court jurisdiction over “three discrete actions that the
8 Attorney General may take: her ‘decision or action’ to ‘commence proceedings,
9 adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis
10 removed). Here, Petitioner’s claims necessarily arise “from the decision or action by
11 the Attorney General to . . . execute removal orders,” over which Congress has explicitly
12 foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
13 (“Notwithstanding any other provision of law, no court shall enjoin the removal of any
14 alien pursuant to a final order under this section unless the alien shows by clear and
15 convincing evidence that the entry or execution of such order is prohibited as a matter
16 of law.”). Accordingly, to the extent Petitioner’s claims arise from—or seek to enjoin—
17 the decision to execute his removal order, the Court should deny and dismiss those
18 claims for lack of jurisdiction under 8 U.S.C. § 1252.

19 **C. Petitioner Fails to Establish Entitlement to a Restraining Order.**

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

25 In general, the showing required for a temporary restraining order is the same as
26 that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D.*
27 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
28 temporary restraining order, a petitioner must “establish that he is likely to succeed on

1 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
2 relief, that the balance of equities tips in his favor, and that an injunction is in the public
3 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
4 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a “substantial
5 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.
6 2011). When “a plaintiff has failed to show the likelihood of success on the merits,
7 [courts] need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*,
8 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary
9 injunctive relief—balancing of the harm to the opposing party and the public interest—
10 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few
11 interests can be more compelling than a nation’s need to ensure its own security.” *Wayte*
12 *v. United States*, 470 U.S. 598, 611 (1985).

13 **1. Petitioner is Unlikely to Succeed on the Merits**

14 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at
15 740. Here, apart from his non-justiciable claims of potential third-country removal,
16 Petitioner argues that his re-arrest and detention warrant habeas relief because: (1) ICE
17 violated its own regulations; and (2) they ran afoul of the Supreme Court’s holding in
18 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). ECF No. 1 at ¶¶ 85–93. But Petitioner
19 cannot establish that he is likely to succeed on the underlying merits of his claims
20 because he is properly detained under 8 U.S.C. § 1231(a) and the applicable agency
21 regulations.

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

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

1 day statutory “removal period.” 8 U.S.C. § 1231(a)(1). The statute provides that the
2 Attorney General “shall detain” the alien during this removal period. 8 U.S.C.
3 § 1231(a)(2).

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

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

1 *alien's presence at the moment of removal.*" *Id.* at 699 (emphasis added). In so holding,
2 the Supreme Court recognized that detention is presumptively reasonable pending
3 efforts to obtain travel documents, because the noncitizen's assistance is often needed
4 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
5 executable warrant of removal becomes a significant flight risk, especially if he or she
6 is aware that it is imminent.

7 The Supreme Court also instructed that detention could exceed six months: "This
8 6-month presumption, of course, does not mean that every alien not removed must be
9 released after six months. To the contrary, an alien may be held in confinement until it
10 has been determined that there is no significant likelihood of removal in the reasonably
11 foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good
12 reason to believe that there is no significant likelihood of removal in the reasonably
13 foreseeable future, the Government must respond with evidence sufficient to rebut that
14 showing." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the
15 alien to show, after a detention period of six months, that there is 'good reason to believe
16 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
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 even if Petitioner's total time in detention since November 2001 does exceed the six
20 months of presumptive reasonableness, his claim still fails at the next step because he
21 cannot meet his burden to establish "that there is no significant likelihood of removal
22 in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Petitioner was re-
23 detained on October 31, 2025, after ICE had been successfully obtaining travel
24 documents for Laotian citizens and routinely effectuating removals to Laos, and after
25 ICE had obtained a travel document authorizing Petitioner's removal to Laos. Smith
26 Decl. at ¶¶ 10, 20–21; *see Louangmilith v. Noem*, No. 25-cv-2502-JES-MSB, 2025 WL
27 2881578, at *4 (S.D. Cal. Oct. 9, 2025) (acknowledging the government's recent receipt
28

1 of a travel document from Laos for a detainee in this district).² On August 18, 2025,
2 ERO submitted a travel document request pertaining to Petitioner to the Laos Unit of
3 ERO’s Removal and International Operations (RIO), and on October 15, 2025, ICE
4 received a travel document from Laos, dated October 8, 2025, authorizing Petitioner to
5 travel to Laos between October 8, 2025, and January 6, 2026. Smith Decl. at ¶¶ 7, 10.
6 ERO is actively working to remove Petitioner to Laos. *Id.* at ¶ 17. ERO is currently in
7 the process of identifying a flight to Laos for Petitioner’s removal, and ERO anticipates
8 the flight will be identified soon and that removal will occur no later than December 3,
9 2025. *Id.*

10 Based on the foregoing efforts, ICE attests “there is a high likelihood of
11 Petitioner’s removal to Laos in the near future,” and ICE does not anticipate any delays
12 in “Petitioner’s removal to Laos during the 90-day validity of Petitioner’s travel
13 document.” *Id.* at ¶¶ 18–19. ICE’s confidence in effectuating Petitioner’s removal to
14 Laos is further based on ICE’s current ability to do so. Compared to fiscal year 2024,
15 where ICE removed no Laotian citizens, ICE removed 177 Laotian citizens to Laos in
16 fiscal year 2025 (as of September 8, 2025), and since the start of fiscal year 2026, ICE
17 has removed 111 Laotian citizens to Laos, most recently on November 4, 2025. *Id.* at
18 ¶ 21.

19 Thus, Petitioner not only fails to meet his burden, but Respondents have
20 affirmatively shown that there is a significant likelihood of Petitioner’s removal to Laos
21 in the reasonably foreseeable future. Indeed, ICE anticipates Petitioner’s removal will
22

23 _____
24 ² ICE has also recently obtained travel documents from Laos for the petitioners in
25 several other cases in this district. *See Yang v. Warden et al.*, Case No. 25-cv-02371-
26 JES-AHG, ECF No. 8-1 at ¶ 7 (ICE declaration dated October 9, 2025, confirming
27 travel document from Laos); *Khambounheuang v. Noem et al.*, Case No. 25-cv-02575-
28 JO-SBC, ECF No. 16-1 at ¶ 8 (ICE declaration dated October 17, 2025, confirming
travel document from Laos); *Truong v. Noem et al.*, Case No. 25-cv-02597-JES-MMP,
ECF No. 7-1 at ¶ 12 (ICE declaration dated October 7, 2025, confirming travel
document from Laos).

1 occur no later than December 3, 2025. Smith Decl. at ¶ 17.

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

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

28 ////

1 Petitioner’s continued detention is thus not unconstitutionally prolonged under
2 *Zadvydas*.

3 **b. Petitioner’s complaints about procedural defects in his re-**
4 **detention do not establish a basis for habeas relief.**

5 Petitioner’s argument that ICE failed to comply with its regulations revoking
6 Petitioner’s order of supervision is also deficient.

7 A noncitizen who is not removed within the removal period may be released from
8 ICE custody “pending removal . . . subject to supervision under regulations prescribed
9 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.
10 § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the
11 order may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a
12 removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
13 ICE may also revoke the order of supervision where, “on account of changed
14 circumstances, [ICE] determines that there is a significant likelihood that the alien may
15 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
16 regulations further provide:

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

21 8 C.F.R. § 241.4(l)(1) (emphasis added).

22 Here, Petitioner claims that his detention is unlawful because the agency failed
23 to comply with its regulations *before* re-detaining him. ECF No. 1 at ¶ 88. Specifically,
24 Petitioner argues that “Respondents were required to provide Mr. Nambounmy pre-
25 deprivation notice and a hearing before re-detaining him,” and that “ICE had no
26 authority under the detention statute or the Constitution to re-detain Mr. Nambounmy
27
28

1 again without first obtaining a travel document and a travel date.” *Id.* at ¶¶ 88, 91.³
2 Notably, the regulations do not require written notice, advance notice, an advanced
3 interview, nor for DHS to obtain a travel date prior to re-detention, nor to prove to the
4 satisfaction of a petitioner that changed circumstances are present.⁴ Petitioner also
5 argues that the government has not provided him a copy of the travel document. *Id.* at
6 ¶ 44. He cites no authority requiring that ICE provide a removable alien with a copy of
7 the travel document before re-detaining the individual to effectuate their removal, nor
8 could he because no such authority exists.

9 Yet it is clear that there *are* changed circumstances here—namely, ICE’s revived
10 ability to obtain travel documents from the Laotian government and to schedule routine
11 removal flights to Laos, as well as ICE’s receipt of a travel document authorizing
12 Petitioner’s travel to Laos. Smith Decl. at ¶¶ 10, 20–21. These facts are fatal to
13 Petitioner’s claim. And even if Petitioner’s alleged regulatory failures actually amount
14 to a regulatory violation, Petitioner cannot establish that he was prejudiced by those
15 omissions nor that a constitutional-level violation has occurred. *See Brown v. Holder*,
16 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its
17 regulations is not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174,
18 1178 (9th Cir. 2007) (holding that “[c]ompliance with . . . internal [customs] agency
19 regulations is not mandated by the Constitution”) (simplified); *Bd. of Curators of Univ.*
20 *of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s]

21 _____
22 ³ ICE provided Petitioner with a Notice of Revocation of Release and an informal
23 interview on October 31, 2025—the same day that ICE re-detained him. Smith Decl. at
24 ¶¶ 12–14, Ex. B (Notice of Revocation of Release), Ex. C (Alien Informal Interview
Upon Revocation of Order of Supervision).

25 ⁴ 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 principles of federal administrative law rather than of constitutional law”).

2 Here, at the time of his re-detention, Petitioner knew he was subject to a final
3 order of removal to Laos. *See* Nambounmy Decl. at ¶¶ 12–13. He does not challenge
4 that order in this lawsuit or offer any indication that he intends to do so. Petitioner also
5 was informed of the reason for his re-detention when he was served with and signed the
6 Notice of Revocation of Release on October 31, 2025. *See* Smith Decl. at ¶ 13, Ex. B
7 (Notice of Revocation of Release). And because Respondents had, and continue to have,
8 an evidentiary basis to conclude there is a significant likelihood that Petitioner will be
9 removed to Laos in the reasonably foreseeable future, any challenge that Petitioner
10 would have raised to the revocation prior to or after his re-detention would have failed.⁵
11 Because Petitioner cannot show prejudice under these circumstances, the alleged
12 violation of agency regulations does not warrant release here. *See, e.g., Rodriguez v.*
13 *Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other*
14 *grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the regulation provides the detainee
15 some opportunity to respond to the reasons for revocation, it provides no other
16 procedural and no meaningful substantive limit on this exercise of discretion as it allows
17 revocation ‘when, in the opinion of the revoking official . . . [t]he purposes of release
18 have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates
19 that release would no longer be appropriate.’”) (emphasis in original) (citing 8 C.F.R.
20 §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec’y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir.
21 1981) (“violations of procedural regulations should be upheld if there is no significant
22 possibility that the violation affected the ultimate outcome of the agency’s action”
23 (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980)

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26 ⁵ At his informal interview on October 31, 2025, Petitioner responded to ICE’s reasons
27 for revocation of his release by relying on his wife’s medical condition. *See* Smith Decl.
28 at Ex. C (Alien Informal Interview Upon Revocation of Order of Supervision).
Petitioner cannot demonstrate that this situation makes his detention unlawful, or that
he is entitled to habeas relief.

1 (INS' failure to follow regulations requiring that an arrested alien be advised of his right
2 to speak to his consul was not prejudicial and thus not a ground for challenging the
3 conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978)
4 (holding that even assuming that the judge had violated the rule by failing to inquire
5 into the alien's background, any error was harmless because there was no showing that
6 the petitioner was qualified for relief from deportation).

7 In short, ICE provided Petitioner with a Notice of Revocation of Release and
8 conducted an informal interview on the day ICE re-detained him. Smith Decl. at ¶¶ 12–
9 14. Prior to Petitioner's re-detention, ICE obtained a travel document authorizing
10 Petitioner's removal to Laos on or before January 6, 2026, and ICE expects Petitioner's
11 removal to Laos to occur in the reasonably foreseeable future, specifically, no later than
12 December 3, 2025. *Id.* at ¶¶ 10, 17. Petitioner is thus unlikely to succeed on the merits
13 of his claim that ICE's alleged failure to follow agency regulations merits his release.

14 **2. Petitioner Has Not Shown Irreparable Harm.**

15 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
16 "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d
17 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm'n v. National Football*
18 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of
19 irreparable harm is insufficient. *Winter*, 555 U.S. at 22. And detention alone is not an
20 irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D.
21 Wash. Feb. 19, 2021). Further, "[i]ssuing a preliminary injunction based only on a
22 possibility of irreparable harm is inconsistent with [the Supreme Court's]
23 characterization of injunctive relief as an extraordinary remedy that may only be
24 awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555
25 U.S. at 22.

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1 Petitioner suggests that being subjected to allegedly unjustified detention itself
2 constitutes irreparable injury.⁶ But this argument “begs the constitutional questions
3 presented in [his] petition by assuming that [P]etitioner has suffered a constitutional
4 injury.” *Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal.
5 April 5, 2019). Moreover, Petitioner’s “loss of liberty” is “common to all aliens seeking
6 review of their custody or bond determinations.” *Resendiz v. Holder*, No. C 12–04850
7 WHA, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged
8 irreparable harm as any habeas corpus petitioner in immigration custody, and he has not
9 shown extraordinary circumstances warranting a temporary restraining order.

10 Importantly, the purpose of civil detention is facilitating removal, and the
11 government is working to promptly remove Petitioner. Here, because Petitioner’s
12 alleged harm “is essentially inherent in detention, the Court cannot weigh this strongly
13 in favor of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL
14 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

15 **3. The Balance of Equities Does Not Tip in Petitioner’s Favor.**

16 It is well settled that “the public interest in enforcement of the immigration laws
17 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
18 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public
19 interest in prompt execution of removal orders: The continued presence of an alien
20 lawfully deemed removable undermines the streamlined removal proceedings [the
21 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and
22 permits and prolongs a continuing violation of United States law.”) (simplified).
23 Moreover, “ultimately the balance of the relative equities ‘may depend to a large extent
24 upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
25 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13,

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27
28 ⁶ Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken*, 556 U.S. at 435.

1 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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

6 **IV. CONCLUSION**

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

10 DATED: November 20, 2025

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