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

10 TAI TRUONG,

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of the  
Department of Homeland Security, *et al.*,

14 Respondents.  
15  
16  
17

Case No. 25-cv-3189-JES-MMP

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

28

1 **I. Introduction**

2 Petitioner Tai Truong has filed a habeas petition and a motion for temporary  
3 restraining order. ECF Nos. 1, 3. On November 18, 2025, the Court issued an order to  
4 show cause as to why the petition should not be granted. ECF No. 5. For purposes of  
5 judicial efficiency, given the petition and motion for temporary restraining order assert  
6 the same claims and seek the same relief, Respondents respectfully respond to both the  
7 petition and motion herein. For the reasons set forth below, the Court should deny  
8 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. *See* ECF No. 1 at 1; *see also* Ex. 1 at  
11 3.<sup>1</sup> In 1979, Petitioner arrived in the United States as a refugee and subsequently  
12 adjusted his status to that of a lawful permanent resident. *See* ECF No. 1 at 1. In 1996,  
13 he was convicted of forced oral copulation in violation of California law and sentenced  
14 to 15 years to life in prison. Ex. 1 at 3; Declaration of Ryan Robert Dale Smith (“Smith  
15 Decl.”) ¶ 4.

16 On December 1, 2015, an Immigration Judge found Petitioner removable as an  
17 alien convicted of an aggravated felony and ordered him removed to Laos. Ex. 2 at 1.  
18 On March 4, 2016, Petitioner was released from ICE custody under an order of  
19 supervision because ICE was unable to repatriate him to Laos at that time. *See* Smith  
20 Decl. ¶ 6. On July 12, 2025, ICE re-detained Petitioner for purposes of executing his  
21 final order of removal. *Id.* ¶ 7; *see also* Ex. 3.

22 To effectuate Petitioner’s removal to Laos, ICE Enforcement and Removal  
23 Operations (ERO) must acquire a travel document and schedule a flight for Petitioner.  
24 *See* Smith Decl. ¶ 14. ERO worked expeditiously to effectuate Petitioner’s removal. *Id.*  
25 ¶ 8. On September 16, 2025, ERO obtained a travel document, and Petitioner was  
26 nominated for a charter flight to Laos. *Id.*

27 \_\_\_\_\_  
28 <sup>1</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 On October 1, 2025, Petitioner filed a habeas corpus petition and a motion for a  
2 temporary restraining order. *See Truong v. Noem et al*, Case No. 25-cv-02597-JES-  
3 MMP (S.D. Cal.). On October 3, 2025, the District Court ordered that “Petitioner shall  
4 not be removed from this District unless and until the Court orders otherwise.” *Id.* at  
5 ECF No. 4. On October 10, 2025, the Court ordered Petitioner released from custody.  
6 *See id.*, ECF No. 10. Petitioner was released the same day. Smith Decl. ¶ 10.

7 On October 24, 2025, ICE re-detained Petitioner to execute his removal order to  
8 Laos. *Id.* ¶ 11. Petitioner was scheduled for a charter flight to remove him to Laos on  
9 November 4, 2025, but the removal could not be completed as scheduled. *Id.* ¶ 12.  
10 Petitioner’s travel document from Laos expired on November 6, 2025. *Id.* ¶ 13. On  
11 November 6, 2025, ERO submitted a new travel document request to its Removal and  
12 International Operations (RIO) division. *Id.* ¶ 15. The declaring officer is “aware of no  
13 barrier to the consulate’s re-issuance of a travel document for Petitioner.” *Id.* ¶ 16. On  
14 November 19, 2025, RIO submitted a request to the Laotian Embassy and the declaring  
15 officer anticipates a response from the Laotian Embassy during the week of November  
16 24, 2025. *Id.* ¶ 15. Once a travel document is re-issued for Petitioner, his removal can  
17 be effected promptly. *Id.* ¶ 18.

### 18 III. Argument

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

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

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

20 **B. Petitioner fails to establish entitlement to a restraining order.**

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

26 \_\_\_\_\_  
27 <sup>2</sup> Respondents also respectfully request that the Court lift its stay of Petitioner’s  
28 removal, ECF No. 5 at 2, so that removal efforts can be accomplished as expeditiously  
as possible.

1 In general, the showing required for a temporary restraining order is the same as  
2 that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D.*  
3 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a  
4 temporary restraining order, a petitioner must “establish that he is likely to succeed on  
5 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
6 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
7 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*  
8 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a “substantial  
9 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.  
10 2011). When “a plaintiff has failed to show the likelihood of success on the merits,  
11 [courts] need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*,  
12 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary  
13 injunctive relief—balancing of the harm to the opposing party and the public interest—  
14 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few  
15 interests can be more compelling than a nation’s need to ensure its own security.” *Wayte*  
16 *v. United States*, 470 U.S. 598, 611 (1985).

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

18 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at  
19 740. Here, Petitioner argues that his re-arrest and detention warrant habeas relief  
20 because they run afoul of the Supreme Court’s holding in *Zadvydas v. Davis*, 533 U.S.  
21 678, 689 (2001). ECF No. 1 at 4–5. But Petitioner cannot establish that he is likely to  
22 succeed on the underlying merits of this claim because he is properly detained under  
23 8 U.S.C. § 1231(a).

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

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 even if Petitioner’s total time in detention since December 2015 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 for removal on October 24, 2025, after ICE had secured a travel document for  
24 Petitioner and scheduled him on a charter flight for removal to Laos. Smith Decl. ¶¶ 11–  
25 12. Although Petitioner’s removal did not proceed as scheduled and his travel document  
26 has expired, ICE has taken steps to get his travel document re-issued and expects a  
27 response from the Laotian Embassy the week of November 24, 2025. *Id.* ¶ 15. Once a  
28 new travel document is issued for Petitioner, his removal can be effected promptly as

1 ICE has routine flights to Laos. *Id.* ¶¶ 17–18. There is no bar against Petitioner’s  
2 removal to Laos, and the government is currently arranging for that removal. *Id.* ¶¶ 16,  
3 18.

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

22 Petitioner’s continued detention is thus not unconstitutionally prolonged under  
23 *Zadvydas*.

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

25 To prevail on his request for interim injunctive relief, Petitioner must demonstrate  
26 “immediate threatened injury.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d  
27 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm’n v. National Football*  
28 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of

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

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

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

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

23 It is well settled that “the public interest in enforcement of the immigration laws  
24 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.  
25 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public  
26

27 <sup>3</sup> Detention is different than removal. But a removal is also not an inherently irreparable  
28 injury. *See Nken*, 556 U.S. at 435.

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

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

13 **IV. Conclusion**

14 For the foregoing reasons, Respondents respectfully request that the Court deny  
15 Petitioner’s motion for a temporary restraining order and dismiss Petitioner’s habeas  
16 petition.<sup>4</sup>

17  
18 Dated: November 21, 2025

19 Respectfully submitted,

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22 s/ Kelly A. Reis  
23 KELLY A. REIS  
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25 Attorneys for Respondents

26 <sup>4</sup> Because the record shows that Petitioner is not entitled to habeas relief, there is no  
27 need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465,  
28 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise  
precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).