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

11 SAMIR PAUDEL,  
12  
13 Petitioner,  
14 v.  
15 KRISTI NOEM, *et al.*,  
16 Respondents.

Case No.: 3:25-cv-03174-AGS-BLM  
**RESPONDENTS' RETURN IN  
OPPOSITION TO PETITIONER'S  
HABEAS PETITION AND  
OPPOSITION TO PETITIONER'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

1 **I. INTRODUCTION**

2 Petitioner Samir Paudel has filed a habeas petition pursuant to 28 U.S.C. § 2241  
3 and a motion for temporary restraining order asserting that his detention is unlawfully  
4 prolonged and that there is no significant likelihood of removal in the reasonably  
5 foreseeable future. However, Respondents have secured a travel document for  
6 Petitioner and removal is expected to be effectuated within the next week. Accordingly,  
7 the Court should deny Petitioner’s requests for relief and dismiss the petition.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 Petitioner is a citizen and national of Nepal. ECF No. 1 at 3. On December 10,  
10 2024, Petitioner unlawfully entered the United States without inspection. Decl. of Ryan  
11 Robert Dale Smith (“Smith Decl.”) ¶ 4. The Department of Homeland Security (“DHS”)  
12 determined that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and  
13 placed him in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). *Id.*; Ex. 1.

14 Pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a U.S.  
15 Citizenship and Immigration Services asylum officer to determine whether he had a  
16 credible fear of persecution or torture if removed to Nepal. *Id.* ¶ 5. The interview  
17 resulted in a negative determination. *Id.* On March 11, 2025, pursuant to 8 U.S.C.  
18 § 1225(b)(1)(B), an immigration judge reviewed and affirmed the asylum officer’s  
19 determination. *Id.* ¶ 6.

20 ICE has worked expeditiously to effectuate Petitioner’s removal to Nepal. *Id.* ¶  
21 8. On October 27, 2025, ICE’s Enforcement and Removal Operations (“ERO”)  
22 submitted a travel document request for Petitioner to ERO’s Removal and International  
23 Operations. *Id.* On November 26, 2025, ERO obtained a travel document for Petitioner  
24 from the Nepalese government. *Id.* ¶ 9. ERO has tentatively scheduled a removal flight  
25 to occur no later than December 7, 2025. *Id.*

26 **III. ARGUMENT**

27 **A. Petitioner’s Third-Country Removal Claims Are Unfounded**

28 The Constitution limits federal judicial power to designated “cases” and

1 “controversies.” U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*,  
2 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a  
3 “case” or “controversy” within the meaning of Article III). “Absent a real and  
4 immediate threat of future injury there can be no case or controversy, and thus no Article  
5 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-  
6 BAS-MDD, 2015 WL 8515412, at \*3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*  
7 *Earth, Inc. v. Laidlow Env’t Servs., Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit  
8 brought to force compliance, it is the plaintiff’s burden to establish standing by  
9 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful  
10 behavior will likely occur or continue, and that the threatened injury if certainly  
11 impending.”). At the “irreducible constitutional minimum,” standing requires that a  
12 plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the  
13 challenged action of the United States and (3) likely to be redressed by a favorable  
14 decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

15 Here, Respondents are not seeking to remove Petitioner to a third country and  
16 instead are working to timely remove Petitioner to Nepal. *See* Smith Decl. ¶¶ 7-9. As  
17 such, there is no controversy concerning third country resettlement for the Court to  
18 resolve. Federal courts do not have jurisdiction “to give opinions upon moot questions  
19 or abstract propositions, or to declare principles or rules of law which cannot affect the  
20 matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*,  
21 506 U.S. 9, 12 (1992). “A claim is moot if it has lost its character as a present, live  
22 controversy.” *Rosemere Neighborhood Ass’n v. U.S. Env’t Prot. Agency*, 581 F.3d  
23 1169, 1172-73 (9th Cir. 2009). The Court therefore lacks jurisdiction over Petitioner’s  
24 claims concerning third country resettlement because there is no live case or  
25 controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v.*  
26 *Hunt*, 455 U.S. 478, 481 (1982).

27 **B. Petitioner’s Claims and Requests are Barred by 8 U.S.C. § 1252**

28 Petitioner bears the burden of establishing that this Court has subject matter

1 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,  
2 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). To the  
3 extent Petitioner’s claims arise from—or seek to enjoin—the decision to execute his  
4 removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack  
5 jurisdiction over any claim or cause of action arising from any decision to commence  
6 or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)  
7 (“Except as provided in this section and *notwithstanding any other provision of law*  
8 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*  
9 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have  
10 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the  
11 decision or action by the Attorney General to commence proceedings, adjudicate cases,  
12 or *execute removal orders* against any alien under this chapter.”) (emphasis added);  
13 *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was  
14 good reason for Congress to focus special attention upon, and make special provision  
15 for, judicial review of the Attorney General’s discrete acts of “commenc[ing]  
16 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent  
17 the initiation or prosecution of various stages in the deportation process.”). In other  
18 words, § 1252(g) removes district court jurisdiction over “three discrete actions that the  
19 Attorney General may take: her ‘decision or action’ to ‘commence proceedings,  
20 adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis  
21 removed).

22 Petitioner’s claims necessarily arise “from the decision or action by the Attorney  
23 General to . . . execute removal orders,” over which Congress has explicitly foreclosed  
24 district court jurisdiction. 8 U.S.C. § 1252(g); *see* 8 U.S.C. § 1252(f)(2)  
25 (“Notwithstanding any other provision of law, no court shall enjoin the removal of any  
26 alien pursuant to a final order under this section unless the alien shows by clear and  
27 convincing evidence that the entry or execution of such order is prohibited as a matter  
28 of law.”). Accordingly, to the extent Petitioner’s claims arise from, or seek to enjoin,

1 the decision to execute his removal order, the Court should deny and dismiss those  
2 claims for lack of jurisdiction under 8 U.S.C. § 1252.

3 **C. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

4 Petitioner has not established entitlement to interim injunctive relief. Petitioner  
5 has failed to show a likelihood of success on the underlying merits, a showing of  
6 irreparable harm, and that the equities tip in his favor. Thus, Petitioner’s motion should  
7 be denied.

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

20 The final two factors required for preliminary injunctive relief—balancing of the  
21 harm to the opposing party and the public interest—merge when the government is the  
22 opposing party. *See Nken*, 556 U.S. at 435. Few interests, however, “can be more  
23 compelling than a nation’s need to ensure its own security.” *Wayte v. United States*, 470  
24 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79  
25 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977).

26 The Ninth Circuit also has a “serious questions” test which dictates that “serious  
27 questions going to the merits and a hardship balance that tips sharply toward the  
28 petitioner can support issuance of an injunction, assuming the other two elements of the

1 Winter test are also met.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32  
2 (9th Cir. 2011). Thus, under the serious questions test, a TRO can be granted if there is  
3 a likelihood of irreparable injury to the petitioner, serious questions going to the merits,  
4 the balance of hardships tips in favor of the petitioner, and the injunction is in the public  
5 interest. *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).

6 **1. No Likelihood of Success on the Merits**

7 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at  
8 740. Here, apart from his non-justiciable claim of potential third-country removal,  
9 Petitioner argues that his detention runs afoul of the Supreme Court’s holding in  
10 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). ECF No. 1 at 7-9. Petitioner, however,  
11 cannot establish success on the merits of his claim because he is properly detained under  
12 8 U.S.C. § 1231(a) and his removal will likely occur in the reasonably foreseeable  
13 future.

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

24 In *Zadvydas*, the Supreme Court held: “[T]he habeas court must ask whether the  
25 detention in question exceeds a period reasonably necessary to secure removal. It should  
26 measure reasonableness primarily in terms of the statute’s basic purpose, namely,  
27 *assuring the alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added).  
28 In so holding, the Court recognized that detention is presumptively reasonable pending

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

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

18 In the present case, Petitioner has failed to meet his burden to establish “that there  
19 is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,  
20 533 U.S. at 701. Petitioner claims his removal is not reasonably foreseeable at this  
21 juncture given that (1) the government, for the past eight months, has been unable to  
22 remove him; and (2) since detaining Petitioner in December 2024, ICE allegedly has  
23 not been diligent in trying to remove him. ECF No. 1 at 8-9. Petitioner is misguided.

24 ERO has worked expeditiously to effectuate Petitioner’s removal to Nepal. *See*  
25 Smith Decl. ¶ 8. ERO has successfully obtained a travel document for Petitioner and  
26 has tentatively scheduled a removal flight. *Id.* ¶ 9. Based on these efforts, Petitioner will  
27 be removed to Nepal in the near future. Indeed, Petitioner is likely to be removed to  
28 Nepal *this week*. *Id.* Petitioner not only fails to meet his burden, but Respondents have

1 affirmatively shown that there is a significant likelihood of Petitioner’s removal to  
2 Nepal in the reasonably foreseeable future.

3 Thus, because Petitioner cannot establish a violation under *Zadvydas*, the Petition  
4 must be denied.<sup>1</sup>

5 **2. Irreparable Harm Has Not Been Shown**

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

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

25 \_\_\_\_\_  
26 <sup>1</sup> Petitioner, in the alternative, requests a bond hearing under the Due Process Clause.  
27 ECF No. 1 at 10-11. The Court need not to reach this issue as Petitioner has failed to  
28 establish that his removal is unlikely to occur in the reasonably foreseeable future.

<sup>2</sup> Detention is different than removal. But a removal is also not an inherently irreparable  
injury. *See Nken*, 556 U.S. at 435.

1 shown extraordinary circumstances warranting a temporary restraining order.

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

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

8       It is well settled that “the public interest in enforcement of the immigration laws  
9 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.  
10 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public  
11 interest in prompt execution of removal orders: The continued presence of an alien  
12 lawfully deemed removable undermines the streamlined removal proceedings [the  
13 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and  
14 permits and prolongs a continuing violation of United States law.”) (simplified).  
15 Moreover, “ultimately the balance of the relative equities ‘may depend to a large extent  
16 upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*  
17 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at \*4 (D. Ariz. Dec. 13,  
18 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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

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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 DATED: December 1, 2025

6 Respectfully submitted,

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