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

10 PATRIS LABULO¹,
11 Petitioner,
12 v.
13 KRISTI NOEM, Secretary of the
Department of Homeland Security, et al.,
14 Respondents.

Case No. 25-cv-03602-BAS-SBC

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

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28 ¹ Petitioner's filings indicate his last name is "Labulo." However, the government's records pertaining to him indicate his last name is "Lobulo."

1 **I. INTRODUCTION**

2 Petitioner has filed a habeas petition and motion for a temporary restraining
3 order. ECF Nos. 1, 2. For purposes of judicial efficiency, given the petition and motion
4 assert the same claims and seek the same relief, Respondents respectfully respond to
5 both the petition and motion herein. For the reasons set forth below, the Court should
6 deny Petitioner’s requests for relief and dismiss the petition.

7 **II. FACTUAL BACKGROUND**

8 Petitioner was born in 1989 in the region that was part of Sudan but is now the
9 separate country of South Sudan. Declaration of La’Shaniece Wilson (“Wilson Decl.”)
10 at ¶ 4. Petitioner is a native and citizen of South Sudan. *Id.*; Declaration of Patris Labulo
11 (“Labulo Decl.”) at ¶ 1.² Petitioner was admitted to the United States in or about 2005
12 as a Lawful Permanent Resident. Wilson Decl. at ¶ 5. On October 3, 2019, Petitioner
13 was convicted of assault with a deadly weapon in violation of California Penal Code §
14 245(a)(1) and was sentenced to a term of imprisonment of three years. *Id.* at ¶ 6; Exhibit
15 1 (Form I-213, Record of Deportable/Inadmissible Alien).³ On August 5, 2020,
16 Petitioner was taken into ICE custody and served with a Notice to Appear charging
17 removability under INA § 237(a)(2)(A)(iii) (8 U.S.C. § 1227(a)(2)(A)(iii)) for having
18 been convicted of an aggravated felony. Wilson Decl. at ¶ 7; Exhibit 2 (Notice to
19 Appear).

20 On May 25, 2021, an immigration judge ordered Petitioner removed to Sudan,
21 and South Sudan in the alternative. *Id.* at ¶ 8. The immigration judge denied withholding
22 of removal, denied deferral of removal under the Convention Against Torture (CAT) to
23 Sudan, but granted deferral of removal under CAT to South Sudan. *Id.* Petitioner filed
24 an appeal. On November 10, 2021, the Board of Immigration Appeals (BIA) dismissed
25 the appeal related to CAT protection but remanded to the immigration judge for a new

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27 ² Petitioner’s declaration is found at pages 16–18 of ECF No. 1.

28 ³ The attached Exhibits 1–6 are true copies, with redactions of private and confidential information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel.

1 decision on the application for withholding of removal. *Id.*; Exhibit 3 (BIA Opinion).

2 On January 12, 2022, the immigration judge denied withholding of removal and
3 ordered Petitioner removed to Sudan, and South Sudan in the alternative. Wilson Decl.
4 at ¶ 9; Exhibit 4 (Order of the Immigration Judge). The immigration judge denied
5 deferral of removal under CAT to Sudan but granted deferral of removal under CAT to
6 South Sudan. Wilson Decl. at ¶ 9; Exhibit 4. Petitioner filed an appeal. On May 10,
7 2022, the BIA dismissed the appeal, making the removal order final. Wilson Decl. at
8 ¶ 9; Exhibit 5 (BIA Opinion). On October 19, 2022, following a Post Order Custody
9 Review decision, Petitioner was released on bond and enrolled in the Alternatives to
10 Detention (ATD) program. Wilson Decl. at ¶ 10.

11 On August 18, 2025, Petitioner was taken into custody by ICE after he caused a
12 disturbance at the ICE office. *Id.* at ¶ 11; Exhibit 6 (Form I-213, Notice of
13 Deportable/Inadmissible Alien). Petitioner was not provided a notice of revocation of
14 release or an informal interview. Wilson Decl. at ¶ 11.

15 On September 10, 2025, ICE sent a travel document request to ERO Removal
16 and International (RIO) headquarters for review. *Id.* at ¶ 12. On September 30, 2025,
17 the Embassy of Sudan advised that Petitioner is not a citizen of Sudan but will revisit
18 the request if Petitioner can provide a Sudanese social security number. *Id.*

19 On October 1, 2025, ERO contacted RIO to seek a third country for removal. *Id.*
20 at ¶ 13. On October 9, 2025, October 31, 2025, November 7, 2025, and November 28,
21 2025, ERO requested updates on finding a third country. *Id.* at ¶ 14. ERO is pending
22 further response from RIO on identifying a third country for removal. *Id.* at ¶ 15. Should
23 ERO identify a third country for removal, Petitioner will be notified in writing of the
24 third country at least 24 hours prior to removal. *Id.* at ¶ 16. If Petitioner claims a fear of
25 removal to the identified country, he will be referred to an asylum officer for processing
26 of the fear-based claim. *Id.*

27 When a third country is identified for resettlement, standard ICE guidance and
28 procedures provide that an ICE officer will provide written notice to the removable alien

1 of the intended third country removal. *Id.* at ¶ 17. The written notice identifies the
2 country to which ICE intends to remove the alien. *Id.* ICE will generally wait at least
3 24 hours following service of the Notice of Removal before effectuating removal. *Id.*
4 In exigent circumstances, ERO may execute a removal order six or more hours after
5 service of the Notice of Removal as long as the alien is provided reasonable means and
6 opportunity to speak with an attorney prior to removal. *Id.*

7 “ICE continues to diligently seek to identify a third country for Petitioner’s
8 removal and believes there is a significant likelihood of removal to a third country in
9 the reasonably foreseeable future.” *Id.* at ¶ 18.

10 III. ARGUMENT

11 A. Claims and Requests Barred by 8 U.S.C. § 1252.

12 Petitioner bears the burden of establishing that this Court has subject matter
13 jurisdiction over his claims. *See Ass’n of Am. Med. Colls. v. United States*, 217 F.3d
14 770, 778–79 (9th Cir. 2000). To the extent Petitioner’s claims arise from—or seek to
15 enjoin—the decision to execute his removal order, they are jurisdictionally barred under
16 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and
17 *notwithstanding any other provision of law* (statutory or nonstatutory), *including*
18 *section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and
19 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on
20 behalf of any alien arising from the decision or action by the Attorney General to
21 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
22 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
23 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
24 attention upon, and make special provision for, judicial review of the Attorney
25 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
26 execut[ing] removal orders”—which represent the initiation or prosecution of various
27 stages in the deportation process.”) (quoting 8 U.S.C. § 1252(g)). In other words, section
28 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney

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

12 **B. Petitioner Fails to Establish Entitlement to a Restraining Order.**

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

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

1 733, 740 (9th Cir. 2015). The final two factors required for preliminary injunctive
2 relief—balancing of the harm to the opposing party and the public interest—merge
3 when the Government is the opposing party. *See Nken*, 556 U.S. at 435. “Few interests
4 can be more compelling than a nation’s need to ensure its own security.” *Wayte v.*
5 *United States*, 470 U.S. 598, 611 (1985).

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

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

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

13 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
14 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
15 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
16 (2022). The INA provides that an alien ordered removed must be detained for 90 days
17 pending the government’s efforts to secure the alien’s removal through negotiations
18 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
19 detain” the alien during the 90-day removal period under subsection (a)(1)).

20 Section 1231(a)(6) “authorizes further detention if the Government fails to
21 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
22 Detention authority under this statute, however, is limited to “a period reasonably
23 necessary to bring about the alien’s removal from the United States” and “does not
24 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
25 period of post-removal detention constitutes a “presumptively reasonable period of
26 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
27 period unless “there is no significant likelihood of removal in the reasonably foreseeable
28 future.” *Id.*

1 If an individual ordered removed “is not removed to his or her country of choice
2 or citizenship, he or she shall be removed to any of the . . . countries” listed in 8 U.S.C.
3 § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007). The
4 enumerated countries are:

- 5 (i) The country from which the alien was admitted to the United States
- 6 (ii) The country in which is located the foreign port from which the alien
7 left for the United States or for a foreign territory contiguous to the United
8 States.
- 9 (iii) A country in which the alien resided before the alien entered the
10 country from which the alien entered the United States.
- 11 (iv) The country in which the alien was born.
- 12 (v) The country that had sovereignty over the alien's birthplace when the
13 alien was born.
- 14 (vi) The country in which the alien’s birthplace is located when the alien
15 is ordered removed.

16 *Id.* (quoting 8 U.S.C. § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
17 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
18 country whose government will accept the alien into that country.’” *Id.* (quoting 8
19 U.S.C. § 1231(b)(2)(E)(vii)).

20 Here, Petitioner was granted deferral of removal under CAT to South Sudan—
21 his country of citizenship and one of the two countries to which the immigration judge
22 ordered him removed. *See* Wilson Decl. at ¶ 8; Exhibit 4. While Petitioner was not
23 granted deferral of removal under CAT to Sudan, to date Sudan has not agreed to accept
24 Petitioner. *See* Wilson Decl. at ¶ 11. Apart from South Sudan and Sudan, there appears
25 to be no other country that would meet the definitions under subsections (i) through
26 (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No.
27 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) (“A
28 prisoner bears the burden of demonstrating that ‘he is in custody in violation of the
Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C. § 2241(c)(3),
brackets omitted). Because removal to the above enumerated countries is
“impracticable, inadvisable, or impossible,” ICE may remove Petitioner to a third

1 country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

2 Recent developments in international relations between the United States and
3 several other countries have made probable ICE’s removal of immigrants, like
4 Petitioner, that it previously was unable to remove to third countries. Against this
5 backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues to
6 detain Petitioner for purposes of enforcing his removal order to a third country. *See*
7 *Wilson Decl.* at ¶¶ 13–18.

8 Since Petitioner’s order of removal, ICE has worked as expeditiously as possible
9 to effectuate his resettlement, initially in Sudan, and more recently in a third country.
10 On September 10, 2025, ICE sent a travel document request to RIO headquarters for
11 review. *Id.* at ¶ 12. On September 30, 2025, the Embassy of Sudan advised that
12 Petitioner is not a citizen of Sudan but will revisit the request if Petitioner can provide
13 a Sudanese social security number. *Id.* On October 1, 2025, ERO contacted RIO to seek
14 a third country for removal. *Id.* at ¶ 13. Local ERO has since been regularly seeking
15 updates from RIO on whether it has identified a country where Petitioner may be
16 removed. *Id.* at ¶ 14. Although RIO is still in the process of identifying countries that
17 may be willing to accept Petitioner for removal, the record reflects that ICE is working
18 diligently and “believes there is a significant likelihood of removal to a third country in
19 the reasonably foreseeable future.” *Id.* at ¶ 18; *see also Zadvydas*, 533 U.S. at 700
20 (instructing district courts “to listen with care when the Government’s foreign policy
21 judgments, including, for example, the status of repatriation negotiations, are at issue,
22 and to grant the Government appropriate leeway when its judgments rest upon foreign
23 policy expertise.”).

24 As courts in this district have found, “evidence of progress, albeit slow progress,
25 in negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
26 detention grows unreasonably lengthy.” Exhibit 7, *Kim v. Ashcroft*, Case No. 02-cv-
27 1524-J-LAB, ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner’s
28 one year and four-month detention does not violate *Zadvydas* given respondent’s

1 production of evidence showing governments’ negotiations are in progress and there is
2 reason to believe that removal is likely in the foreseeable future); *see also Marquez v.*
3 *Wolf*, No. 20-cv-1769-WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020)
4 (denying petition because “Respondents have set forth evidence that demonstrates
5 progress and the reasons for the delay in Petitioner’s removal”); Exhibit 8, *Sereke v.*
6 *DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019)
7 (“[T]he record at this stage in the litigation does not support a finding that there is no
8 significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”).

9 **b. Procedural defects do not require release from detention.**

10 Petitioner also challenges the manner of his re-detention, claiming that
11 Respondents failed to provide him a notice of revocation of release or an informal
12 interview. *See* ECF No. 1 at ¶¶ 4:9–7:7. Respondents acknowledge that Petitioner was
13 not provided a notice of revocation or informal interview after he was re-detained after
14 causing a disturbance at an ICE office. *See* Wilson Decl. at ¶ 11. These facts, however,
15 do not warrant release.

16 A noncitizen who is not removed within the removal period may be released from
17 ICE custody “pending removal . . . subject to supervision under regulations prescribed
18 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.
19 § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the
20 order may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a
21 removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
22 ICE may also revoke the order of supervision where, “on account of changed
23 circumstances, [ICE] determines that there is a significant likelihood that the alien may
24 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
25 regulations further provide:

26 Upon revocation, the alien will be notified of the reasons for revocation of
27 his or her release or parole. The alien will be afforded an initial informal
28 interview promptly after his or her return to Service custody to afford the

1 alien an opportunity to respond to the reasons for revocation stated in the
2 notification.

3 8 C.F.R. § 241.4(I)(1).

4 Even if the agency failed to follow its own regulations, Petitioner cannot establish
5 that he was prejudiced by these acts or omissions. *See Brown v. Holder*, 763 F.3d 1141,
6 1148–50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its regulations is
7 not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th
8 Cir. 2007) (holding that “[c]ompliance with . . . internal [customs] agency regulations
9 is not mandated by the Constitution”) (simplified); *Bd. of Curators of Univ. of Mo. v.*
10 *Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s] principles of
11 federal administrative law rather than of constitutional law”).

12 Indeed, “whether his challenge is framed in constitutional or regulatory terms,
13 [Petitioner] must demonstrate how he was prejudiced by the alleged error.” *Reynoso*
14 *Perez v. Garland*, No. 20-72326, 2023 WL 154961, at *1 (9th Cir. 2023) (quoting
15 *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018) (“As a general rule, an
16 individual may obtain relief for a due process violation only if he shows that the
17 violation caused him prejudice, meaning the violation potentially affected the outcome
18 of the immigration proceeding.”)).

19 Consider the case in *Thurton v. Garland*, No. 20-73025, 2021 WL 4690959 (9th
20 Cir. Oct. 7, 2021). There, the petitioner alleged that the Department of Homeland
21 Security (DHS) violated due process when DHS violated its own regulation, arguing
22 that he should have been granted 10 days to file a response to a Notice of Intent to Issue
23 a Final Administrative Deportation Order. The government failed to provide him an
24 opportunity to respond, and it conceded that this was a procedural error. *Id.* at *1.
25 Nevertheless, on appeal, the Ninth Circuit held that the petitioner had “not demonstrated
26 how he was prejudiced by the error,” and therefore concluded that the agency’s error
27 was harmless. *Id.* (citing *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir.
28 1979)).

1 This logic applies with equal force here. In his petition, Petitioner fails to advance
2 any facts or any argument demonstrating what actual prejudice, if any, he allegedly
3 suffered because he was not provided a notice of revocation of release or provided an
4 informal interview after he was detained for the purposes of removal. Even now, with
5 the assistance of counsel and an opportunity to make his case, Petitioner has not
6 presented the information he would have disclosed to immigration officials that would
7 have impacted ICE's decision to detain him for purposes of removal. He has therefore
8 failed to carry his burden demonstrating a significant possibility that any violation
9 affected the ultimate outcome of the agency's action, namely, re-detaining Petitioner
10 and facilitating his removal. And because Respondents had, and continue to have, an
11 evidentiary basis to conclude there is a likelihood that Petitioner will be removed in the
12 reasonably foreseeable future, any challenge that Petitioner would have raised to the
13 revocation prior to or after his re-detention would have failed.

14 Because Petitioner cannot show prejudice under these circumstances, the alleged
15 violation of agency regulations does not warrant the relief he seeks. *See, e.g., Rodriguez*
16 *v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on*
17 *other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the
18 detainee some opportunity to respond to the reasons for revocation, it provides no other
19 procedural and no meaningful substantive limit on this exercise of discretion as it allows
20 revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release
21 have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates
22 that release would no longer be appropriate.'" (emphasis in original) (citing 8 C.F.R.
23 §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec'y of Labor*, 641 F.2d 801, 804 n.4 (9th Cir.
24 1981) ("violations of procedural regulations should be upheld if there is no significant
25 possibility that the violation affected the ultimate outcome of the agency's action"
26 (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980)
27 (INS' failure to follow regulations requiring that an arrested alien be advised of his right
28 to speak to his consul was not prejudicial and thus not a ground for challenging the

1 conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978)
2 (holding that even assuming that the judge had violated the rule by failing to inquire
3 into the alien’s background, any error was harmless because there was no showing that
4 the petitioner was qualified for relief from deportation).

5 In his petition, Petitioner cites various decisions within this district for the
6 proposition that ICE’s failure to follow its own regulations should result in an automatic
7 release from detention. *See* ECF No. 1 at 9:14–22. Most of these cases, however, do not
8 discuss prejudice or harmless error. Should this Court apply a prejudice and harmless
9 error standard, Respondents contend that release under a habeas petition is not the
10 appropriate remedy. *See Karki v. Raycraft*, No. 2:25-cv-13186, 2025 WL 3516782, at
11 *6–7 (E.D. Mich. Dec. 8, 2025) (dismissing habeas action premised on a lack of notice
12 and informal interview because “any deprivation of process by the Government’s
13 failure to follow *its regulatory procedures is harmless* and the Court cannot justify
14 ordering Karki’s release.”) (emphasis added).

15 2. Petitioner Has Not Shown Irreparable Harm.

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

1 Petitioner suggests that being subjected to allegedly unjustified detention itself
2 constitutes irreparable injury.⁴ 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 timely remove Petitioner. Here, because Petitioner’s alleged
12 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor
13 of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL 7474861, at *10
14 (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 *Nken*, 556 U.S. at 436 (“There is always a public interest
19 in prompt execution of removal orders: The continued presence of an alien lawfully
20 deemed removable undermines the streamlined removal proceedings IIRIRA
21 established, and permits and prolongs a continuing violation of United States law.”)
22 (simplified). And ultimately, “the balance of the relative equities ‘may depend to a large
23 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna*
24 *v. Kane*, Case No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz.
25 Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

26
27
28 ⁴ Detention is different than removal. But a removal is also not an inherently irreparable injury. See *Nken*, 556 U.S. at 435.

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

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court should deny Petitioner's request for
7 injunctive relief and dismiss the petition.

8
9 Dated: December 30, 2025

10 Respectfully submitted,

11 ADAM GORDON
12 United States Attorney

13 *s/ Matthew Riley*
14 MATTHEW RILEY
15 Assistant United States Attorney
16 Attorney for Respondents
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