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

10 HIEN NGOC HUYNH,

11 Petitioner,

12 v.

13 KRISTI NOEM, *et al.*,

14 Respondents.

Case No. 25-cv-3601-LL-AHG

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

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1 **I. Introduction**

2 Petitioner Hien Ngoc Huynh has filed a habeas petition and a motion for
3 temporary restraining order. ECF Nos. 1, 2. On December 19, 2025, the Court issued a
4 briefing schedule and issued a limited injunction. ECF No. 4. For purposes of judicial
5 efficiency, given the petition and motion for temporary restraining order assert the same
6 claims and seek the same relief, Respondents respectfully respond to both the petition
7 and motion herein. For the reasons set forth below, the Court should deny Petitioner’s
8 request for interim relief and dismiss the petition.

9 **II. Factual and Procedural Background**

10 Petitioner is a citizen and national of Vietnam. *See* Declaration of Deportation
11 Officer Jason Cole (Cole Decl.) at ¶ 3. On November 7, 1984, Petitioner was lawfully
12 admitted to the United States and subsequently granted lawful permanent resident
13 status. *Id.* at ¶ 4. On September 12, 2002, Petitioner was convicted of conspiracy to
14 commit vehicle theft in violation of Cal. Pen. Code § 182(a)(1) and Cal. Veh. Code §
15 10851 and sentenced to serve two years in prison. *Id.* at ¶ 5. Based on his conviction,
16 removal proceedings were commenced against him. ECF No. 1 Exhibit A, at ¶ 3. On
17 December 7, 2004, an immigration judge ordered Petitioner removed to Vietnam. *Id.* at
18 Cole Decl. at ¶ 6. The removal order became final on that date. *Id.* On January 27, 2005,
19 Petitioner was released from state criminal custody into U.S. Immigration and Customs
20 Enforcement (ICE) custody for ICE to effectuate the removal order to Vietnam. *Id.* at ¶
21 7. On June 1, 2005, Petitioner was released from ICE custody on an order of supervision
22 due to ICE’s inability to remove Petitioner to Vietnam. *Id.* at ¶ 8.

23 On November 13, 2025, Petitioner was re-detained by ICE. ECF No. 1, Exhibit
24 A, at ¶ 6 (Declaration of Hien Ngoc Huynh stating he was arrested on November 13,
25 2025).¹ On November 13, 2025, Petitioner was served with a Notice of Revocation of
26 Release and provided an informal interview to respond to the revocation of his order of

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28 ¹ The Cole Declaration states Petitioner was arrested on November 12, 2025 but that appears to be a typographical error. The I-213 from Petitioner’s arrest states he was detained by ICE on November 13, 2025 around 7:55AM that morning.

1 supervised release. *See* Exhibit 2 (Notice of Revocation of Release); Exhibit 3 (Alien
2 Informal Interview). The Notice of Revocation of Release stated, among other things,
3 that “[t]his letter is to inform you that your order of supervision has been revoked” and
4 that the Petitioner would be detained by ICE. Exhibit 2. The document also stated that
5 this decision was “made based on a review of your official alien file and a determination
6 that there are changed circumstances in your case.” *Id.* Specifically, the document
7 continued that “ICE has determined that you can be expeditiously removed from the
8 United States pursuant to the outstanding order of removal against you,” and referenced
9 the Petitioner’s 2007 final order of removal. *Id.* The notice erroneously stated that he
10 was granted withholding of removal and that his case was under review for removal to
11 an alternative country. *Id.*²

12 Since Petitioner’s re-detention, ICE has worked diligently to effectuate
13 Petitioner’s removal to Vietnam. Cole Decl. at ¶ 10. On December 3, 2025, ICE
14 submitted a request for a travel document to the Vietnamese government. *Id.* at ¶ 12.
15 The request remains pending. *Id.* ICE routinely obtains travel documents for
16 Vietnamese citizens, including those who immigrated to the United States prior to 1995.
17 *Id.* at ¶ 13. Once ICE receives a travel document for Petitioner, his removal can be
18 effectuated promptly. *Id.* at ¶ 14.

19 As context, ICE has removed Vietnamese citizens to Vietnam as recently as this
20 month. *Id.* at ¶ 11. In fiscal years 2019 through 2024, ICE removed less than 100
21 individuals per year to Vietnam.³ In contrast, in fiscal year 2025, ICE removed at least
22 587 Vietnamese citizens to Vietnam, and of those 587 removed, 324 were Vietnamese
23 citizens who immigrated to the United State before July 1995, like Petitioner. *Id.* at ¶
24 10.

25 _____
26 ² Petitioner was not granted withholding of removal, and ICE is not seeking to remove
Petitioner to a third country.

27 ³ *See* ICE Annual Report Fiscal Year 2024, at p. 102,
28 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last visited Dec. 29,
2025) (reporting removals from 2019 through 2024 in the range of 15 to 93 individuals
per year).

1 **III. Argument**

2 **A. Claims and requests barred by 8 U.S.C. § 1252.**

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

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

9 In general, the showing required for a temporary restraining order is the same as
10 that required for a preliminary injunction. *See Stuhlberg Int'l Sales Co., Inc. v. John D.*
11 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
12 temporary restraining order, a petitioner must "establish that he is likely to succeed on
13 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
14 relief, that the balance of equities tips in his favor, and that an injunction is in the public
15 interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
16 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a "substantial
17 case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.
18 2011). When "a plaintiff has failed to show the likelihood of success on the merits,
19 [courts] need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*,
20 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary
21 injunctive relief—balancing of the harm to the opposing party and the public interest—
22 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. "Few
23 interests can be more compelling than a nation's need to ensure its own security." *Wayte*
24 *v. United States*, 470 U.S. 598, 611 (1985).

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

26 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at
27 740. Here, Petitioner argues that his re-arrest and detention warrant habeas relief
28 because: (1) ICE violated its own regulations, ECF No. 1 at 5–8 (Petitioner's first claim

1 for relief; (2) his detention runs afoul of the Supreme Court’s holding in *Zadvyd*
2 *Davis*, 533 U.S. 678, 689 (2001), ECF No. 1 at 9–10 (Petitioner’s second claim for
3 relief); and (3) there is good reason to believe that there is no significant likelihood of
4 removal in the reasonably foreseeable future, ECF No. 1 at 11–13 (Petitioner’s third
5 claim of relief). But Petitioner cannot establish that he is likely to succeed on the
6 underlying merits of those claims because he is properly detained under 8 U.S.C.
7 § 1231(a) and the applicable agency regulations.

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

11 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
12 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found
13 to be unlawfully present in the United States and a final order of removal has been
14 entered, the government ordinarily secures the alien’s removal during a subsequent 90-
15 day statutory “removal period.” 8 U.S.C. § 1231(a)(1). The statute provides that the
16 Attorney General “shall detain” the alien during this removal period. 8 U.S.C.
17 § 1231(a)(2).

18 The Supreme Court held in *Zadvyd* that when removal is not accomplished
19 during the 90-day removal period, the statute “limits an alien’s post-removal-period
20 detention to a period reasonably necessary to bring about the alien’s removal from the
21 United States” and does not permit “indefinite detention.” *Zadvyd*, 533 U.S. at 689.
22 The Supreme Court has held that six months constitutes a “presumptively reasonable
23 period of detention.” *Id.* at 701. Courts have repeatedly declined to grant habeas relief
24 where the presumptively reasonable six-month period has not yet elapsed. *See*
25 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
26 2025) (“The government is entitled to its six-month presumptive period before
27 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*
28 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July

1 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
2 been detained for more than six months. Petitioner has been in detention since May 29,
3 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations
4 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
5 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
6 the release based on changed circumstances, “the revocation would merely restart the
7 90-day removal period, not necessarily the presumptively reasonable six-month
8 detention period under *Zadvydas*”).

9 Even after the period of presumptive reasonableness has run, release is not
10 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the
11 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
12 Supreme Court instructed, “the habeas court must ask whether the detention in question
13 exceeds a period reasonably necessary to secure removal. It should measure
14 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
15 *alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added). In so holding,
16 the Supreme Court recognized that detention is presumptively reasonable pending
17 efforts to obtain travel documents, because the noncitizen’s assistance is often needed
18 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
19 executable warrant of removal becomes a significant flight risk, especially if he or she
20 is aware that it is imminent.

21 The Supreme Court also instructed that detention could exceed six months: “This
22 6-month presumption, of course, does not mean that every alien not removed must be
23 released after six months. To the contrary, an alien may be held in confinement until it
24 has been determined that there is no significant likelihood of removal in the reasonably
25 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
26 reason to believe that there is no significant likelihood of removal in the reasonably
27 foreseeable future, the Government must respond with evidence sufficient to rebut that
28 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the

1 alien to show, after a detention period of six months, that there is ‘good reason to believe
2 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
3 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
4 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

5 Here, as it relates to his second and third claim of relief, Petitioner contends that
6 his current detention runs afoul of *Zadvydas* and that there is no significant likelihood
7 of removal in the reasonably foreseeable future. Even if Petitioner’s total time in
8 detention, including time between January 27, 2005 through June 1, 2005, has exceeded
9 the six months of presumptive reasonableness, his claims still fails at the next step
10 because he cannot meet his burden to establish “that there is no significant likelihood
11 of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Petitioner
12 was re-detained for removal on November 13, 2025, after ICE had been successfully
13 obtaining travel documents for Vietnamese citizens who immigrated to the United
14 States before 1995 and removing them. Cole Decl. ¶¶ 9–13. And even *before* Petitioner
15 filed his Petition, ICE submitted the request to obtain Petitioner’s travel documents to
16 the Vietnam government on December 3, 2025. *Id.* ¶ 12. Once ICE receives his travel
17 document, he can be removed promptly as ICE has routine flights to Vietnam. *Id.* ¶¶ 13–
18 14. There appears to be no bar against Petitioner’s removal to Vietnam, and the
19 Government is currently arranging to effectuate his removal.

20 It is true that that twenty years ago the government was unable to remove
21 Petitioner to Vietnam, as with other similarly situated individuals, because the prior
22 political relationship between the United States and Vietnam prevented their removals.
23 That produced significant litigation from detainees who argued that they could not be
24 removed to their home nations due to the lack of cooperation, and so their detentions
25 were indefinite. But this specific barrier to removal has been obviated. This issue was
26 exhaustively addressed in more recent litigation addressing detainees facing removal to
27 Vietnam. In 2020, the *Trinh* court explained the then-current state of affairs:

28 The parties now agree that Vietnam does not maintain a blanket policy of

1 refusing to repatriate pre-1995 immigrants. ... Instead, Vietnam now
2 considers each request from ICE on a case-by-case basis. ICE frequently
3 requests travel documents from Vietnam for pre-1995 immigrants, and
4 Vietnam issues them in a non-negligible portion of cases. ... Petitioners do
5 not appear to dispute that once Vietnam issues a travel document, removal
6 becomes significantly likely, rendering class members unable to meet their
7 initial burden under *Zadvydas*.

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

9 Petitioner may complain that the Government did not already obtain his travel
10 documents before taking him back into detention. But *Zadvydas* does not require the
11 Government to pre-arrange a noncitizen's removal travel before detaining them. The
12 constitutional standard is whether there is "a significant likelihood of removal" in the
13 "reasonably foreseeable future." The law does not require that "every [noncitizen] not
14 removed must be released after six months." *Zadvydas*, 533 U.S. at 701. Instead, the
15 Supreme Court was clear that the Constitution prevents only "indefinite" or "potentially
16 permanent" detention. *Id.* at 689–91. Courts properly deny *Zadvydas* claims under such
17 circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1
18 (W.D. Wash. April 2, 2008) (denying *Zadvydas* petition); *Nicia v. ICE Field Office Dir.*,
19 No. C13-0092-RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding
20 petitioner "failed to satisfy his burden of showing that there is no significant likelihood
21 of his removal in the reasonably foreseeable future").

22 That Petitioner does not yet have a specific date of anticipated removal does not
23 make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222,
24 1233 (9th Cir. 2008) (explaining that a demonstration of "no significant likelihood of
25 removal in the reasonably foreseeable future" would include a country's refusal to
26 accept a noncitizen or that removal is barred by our own laws). On the contrary, as
27 courts have found, "evidence of progress, albeit slow progress, in negotiating a
28 petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows
unreasonably lengthy." Exhibit 4, *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB, ECF

1 No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner’s one year and four-
2 month detention does not violate *Zadvydas* given respondent’s production of evidence
3 showing governments’ negotiations are in progress and there is reason to believe that
4 removal is likely in the foreseeable future); *see also Marquez v. Wolf*, No. 20-cv-1769-
5 WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition
6 because “Respondents have set forth evidence that demonstrates progress and the
7 reasons for the delay in Petitioner’s removal”); Exhibit 5, *Sereke v. DHS*, Case No. 19-
8 cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019) (“[T]he record at
9 this stage in the litigation does not support a finding that there is no significant
10 likelihood of Petitioner’s removal in the reasonably foreseeable future.”).

11 Petitioner’s continued detention is thus not unconstitutionally prolonged under
12 *Zadvydas*.

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

15 Petitioner’s first claim for relief—that ICE failed to comply with its regulations
16 revoking Petitioner’s order of supervision—is also deficient.

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

27 *Upon revocation*, the alien will be notified of the reasons for revocation of
28 his or her release or parole. The alien will be afforded an initial informal
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. § 214.4(*l*) (emphasis added).

4 Here, specifically, Petitioner claims that his detention is lawful because of these
5 alleged procedural defects: (i) “ICE did not identify a proper reason under the
6 regulations to-retain” him and “there was apparently no determination before or at his
7 arrest that there are ‘changed circumstances’ such that there is a ‘significant likelihood
8 that [Petitioner] may be removed in the reasonably foreseeable future”; (ii) “ICE did
9 not notify [Petitioner] of the reasons for his re-detention upon revocation of release”;
10 and (iii) Petitioner “does not believe he received an informal interview where an officer
11 explained the purported ‘changed circumstances’ underlying his revocation.” ECF No.
12 1 at 9.

13 None of these arguments warrant relief. First, ICE provided Petitioner with
14 Notice of Revocation of Release, *see* Cole Decl. at ¶ 9, which stated, among other
15 things, that “[t]his letter is to inform you that your order of supervision has been
16 revoked” and that the Petitioner would be detained by ICE. *See* Exhibit 2 (Notice of
17 Revocation of Release). The document also stated that this decision was “made based
18 on a review of your official alien file and a determination that there are changed
19 circumstances in your case.” *Id.* The document continued that “ICE has determined that
20 you can be expeditiously removed from the United States pursuant to the outstanding
21 order of removal against you,” and referenced Petitioner’s 2007 final order of removal.
22 *Id.* Petitioner was personally served with the Notice of Revocation of Release, and he
23 signed the proof of service on November 13, 2025. Exhibit 2. Thus, Petitioner was
24 notified of the reasons for revocation (i.e., changed circumstances in that ICE has
25 determined that he could be removed expeditiously).

26 On the date he was re-detained, Petitioner was also promptly provided an
27 opportunity to respond to the revocation of release. *See* Cole Decl. at ¶ 9; Exhibit 3
28 (Alien Informal Interview). ICE conducted an informal interview that same date, during

1 which time Petitioner was afforded an opportunity to respond to the reasons for the
2 revocation of his order of supervision. At the interview, Petitioner did not make any
3 verbal statements or submit anything in writing as to why his release should not be
4 revoked or why ICE could not promptly effectuate his removal. *See* Exhibit 3.

5 In any event, there *are* changed circumstances here—namely, ICE’s revived
6 ability to obtain travel documents from the Vietnamese government and to schedule
7 routine removal flights to Vietnam. For example, in fiscal year 2025, ICE removed at
8 least 587 Vietnamese citizens to Vietnam, the majority of whom immigrated to the
9 United States before July 1995. Cole Decl. ¶¶ 10–14. This is in stark contrast to prior
10 fiscal years 2019 through 2024, during which time ICE removed less than 100
11 individuals per fiscal year to Vietnam.⁴ The sudden surge of repatriations of less than
12 100 individuals per fiscal year to 587 persons per fiscal year supports the assertion that
13 “ICE has determined that [Petitioner] can be expeditiously removed from the United
14 States[.]” *See* Exhibit 2.

15 These facts undermine Petitioner’s claim, because even if the agency failed to
16 provide Petitioner with “advance notice” of the revocation or otherwise failed to follow
17 any procedures (which there is no evidence of), Petitioner cannot establish that he was
18 prejudiced by those omissions nor that a constitutional level violation has occurred. *See*
19 *Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“[T]he mere failure of an
20 agency to follow its regulations is not a violation of due process.”); *United States v.*
21 *Tatoyan*, 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that “[c]ompliance with . . .
22 internal [customs] agency regulations is not mandated by the Constitution”) (simplified);
23 *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978)
24 (holding that *Accardi* “enunciate[s] principles of federal administrative law rather than
25 of constitutional law”).

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27 ⁴ *See* ICE Annual Report Fiscal Year 2024, at p. 102,
28 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last visited Dec. 29, 2025) (reporting removals from 2019 through 2024 in the range of 15 to 93 individuals per year).

1 For example, in *Ahmad v. Whitaker*, the government revoked the petitioner’s
2 release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-
3 JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and*
4 *recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner
5 argued the revocation of his release was unlawful because, he contended, the federal
6 regulations prohibited re-detention without, among other things, an opportunity to be
7 heard. *Id.* at *5. In rejecting his claim, the court held that although the regulations called
8 for an informal interview, petitioner could not establish “any actionable injury from this
9 violation of the regulations given that ICE had procured a travel document and
10 scheduled [petitioner’s] removal.” *Id.* Similarly, in *Doe v. Smith*, the court held that
11 even if an ICE detained petitioner had not received a timely interview following her
12 return to custody, there was “no apparent reason why a violation of the regulation, even
13 assuming it occurred, should result in release.” *Doe v. Smith*, No. 18-11363-FDS, 2018
14 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, “it is difficult to see
15 an actionable injury stemming from such a violation. Doe is not challenging the
16 underlying justification for the removal order. . . . Nor is this a situation where a prompt
17 interview might have led to her immediate release—for example, a case of mistaken
18 identity.” *Id.*

19 As for the third claim regarding pre-1995 Vietnamese immigrations, the Cole
20 Declaration makes clear that ICE, in fiscal year 2025, successfully obtained travel
21 documents for Vietnamese citizens who immigrated to the United States prior to 1995,
22 like Petitioner. *See* ¶ 10.

23 And because Respondents had, and continue to have, an evidentiary basis to
24 conclude there is a significant likelihood that Petitioner will be removed to Vietnam in
25 the reasonably foreseeable future, any challenge that Petitioner would have raised
26 would have failed. Because Petitioner cannot show prejudice under these
27 circumstances, any alleged violation of agency regulations does not warrant release
28 here. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion*

1 *amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the
2 regulation provides the detainee some opportunity to respond to the reasons for
3 revocation, it provides no other procedural and no meaningful substantive limit on this
4 exercise of discretion as it allows revocation ‘when, in the opinion of the revoking
5 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,
6 or *any other circumstance*, indicates that release would no longer be appropriate.”)
7 (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec’y of*
8 *Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“[V]iolations of procedural regulations
9 should be upheld if there is no significant possibility that the violation affected the
10 ultimate outcome of the agency’s action.” (citation omitted)); *United States v.*
11 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations
12 requiring that an arrested alien be advised of his right to speak to his consul was not
13 prejudicial and thus not a ground for challenging the conviction); *United States v.*
14 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
15 the judge had violated the rule by failing to inquire into the alien’s background, any
16 error was harmless because there was no showing that the petitioner was qualified for
17 relief from deportation).

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

19 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
20 “immediate threatened injury.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d
21 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm’n v. National Football*
22 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of
23 irreparable harm is insufficient. *Winter*, 555 U.S. at 22. And detention alone is not an
24 irreparable injury. See *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D.
25 Wash. Feb. 19, 2021). Further, “[i]ssuing a preliminary injunction based only on a
26 possibility of irreparable harm is inconsistent with [the Supreme Court’s]
27 characterization of injunctive relief as an extraordinary remedy that may only be
28

1 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555
2 U.S. at 22.

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

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

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

18 It is well settled that “the public interest in enforcement of the immigration laws
19 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
20 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public
21 interest in prompt execution of removal orders: The continued presence of an alien
22 lawfully deemed removable undermines the streamlined removal proceedings [the
23 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and
24 permits and prolongs a continuing violation of United States law.”) (simplified).
25 Moreover, “ultimately the balance of the relative equities ‘may depend to a large extent
26 upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
27 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13,
28 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

1 Indeed, ensuring Petitioner remains in ICE custody is even more critical as ICE
2 prepares to remove him, given the risk that Petitioner evade ICE or otherwise attempts
3 to abscond. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (“The
4 risk of a detainee absconding also inevitably escalates as the time for removal becomes
5 more imminent.”). Here, as explained above, Petitioner cannot succeed on the merits
6 of his claims, and the public interest in the prompt execution of removal orders is
7 significant. The balancing of equities and the public interest thus weigh heavily against
8 granting equitable relief in this case.

9 **IV. Conclusion**

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

13 Dated: December 29, 2025

14 Respectfully submitted,

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16 United States Attorney

17 *s/ Robbin O. Lee*
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20 Attorneys for Respondents
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