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

11 OUNONG SAYSANAVONG,

12
13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary of the
16 Department of Homeland Security, et al.,

17 Respondents.
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Case No. 25-cv-03624-CAB-DEB

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

I. INTRODUCTION

Petitioner Ounong Saysanavong has filed a habeas petition and a motion for temporary restraining order. ECF Nos. 1, 2. On December 17, 2025, the Court denied Petitioner’s *ex parte* motion for temporary restraining order, notified the parties that it intends to “consolidate the TRO with a determination on the merits under Rule 65(a)(2)” of the Federal Rules of Civil Procedure, and ordered Respondents to respond to the petition and motion. ECF No. 4. For the reasons set forth below, the Court should deny Petitioner’s request for interim relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Laos. ECF No. 1-2, Declaration of Ounong Saysanavong (“Saysanavong Decl.”) at ¶ 1; Declaration of Jason Cole (“Cole Decl.”) at ¶ 3.¹ Petitioner entered the United States as a refugee in 1981, and soon after he became a lawful permanent resident. *Id.* at ¶ 2. On March 31, 2003, Petitioner was convicted of possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1). Cole Decl. at ¶ 5. He was sentenced to 78 months in prison. *Id.* On June 12, 2008, Petitioner was served with a Notice to Appear charging removability under INA § 237(a)(2)(A)(iii) (8 U.S.C. § 1227(a)(2)(A)(iii)) in that he was convicted of an aggravated felony and under INA § 237(a)(2)(B)(i) (8 U.S.C. § 1227(a)(2)(B)(i)) for having been convicted of a controlled substance violation. *Id.* at ¶ 6. Petitioner was released from custody on August 27, 2008, and taken into Immigration and Customs Enforcement (ICE) custody that same day. *Id.* at ¶¶ 5, 7. On September 22, 2008, an immigration judge ordered Petitioner removed to Laos. *Id.* at ¶ 8, Ex. A (Order of the Immigration Judge). On December 18, 2008, Petitioner was released from immigration custody on an Order of Supervision pending removal to Laos because the government was unable to remove him to Laos at that time. Saysanavong

¹ The English version of Petitioner’s declaration is found at both pages 4–5 and 10–11 of ECF No. 1.

1 Decl. at ¶ 6; Cole Decl. at ¶ 9.

2 On November 12, 2025, ICE re-detained Petitioner as it had determined that
3 Petitioner could be expeditiously removed from the United States to Laos pursuant to
4 the outstanding order of removal. Cole Decl. at ¶ 10. That same day, ICE provided
5 Petitioner with a Notice of Revocation of Release, which Petitioner signed, providing
6 Petitioner with formal notice of the reason for revocation of his order of supervision.
7 *Id.* at ¶ 10, Ex. B (Notice of Revocation of Release). In the Notice of Revocation of
8 Release, ICE informed Petitioner of the changed circumstances of his case:

9 ICE has determined that you can be expeditiously removed from the
10 United States pursuant to the outstanding order of removal against you.
11 ICE is now able to obtain valid travel documents for removal to Laos and
12 will be working on obtaining travel documents and a removal flight to
Laos.

13 Cole Decl., Ex. B.

14 On November 12, 2025, ICE also conducted an informal interview with
15 Petitioner regarding his detention status. Cole Decl. at ¶ 10, Ex. C (Alien Informal
16 Interview Upon Revocation of Order of Supervision).

17 ICE is not seeking to remove Petitioner to a third country. Cole Decl. at ¶ 11.
18 Since Petitioner's re-detention in November 2025, ICE has worked diligently to
19 effectuate his removal to Laos. *Id.* at ¶ 12. On December 8, 2025, ICE Enforcement and
20 Removal Operations (ERO) received a travel document from the Embassy of the Lao
21 People's Democratic Republic, dated December 8, 2025, authorizing Petitioner's
22 removal to Laos for a 90-day period from the date of issuance, that is, by March 8, 2026.
23 *Id.* at ¶ 13. ERO then began the process of finding and booking a removal flight for the
24 Petitioner. *Id.* ERO anticipates the flight will be identified soon and that removal will
25 occur in January 2026. *Id.*

26 ICE does not anticipate any delays in Petitioner's removal to Laos during the 90-
27 day validity of Petitioner's travel document, except for the possibility of delay due to
28 the Court's order dated December 17, 2025, prohibiting Petitioner's transfer outside of

1 the Southern District of California pending the Court’s resolution of Petitioner’s
2 petition. *Id.* at ¶ 14.

3 **III. ARGUMENT**

4 **A. Because Petitioner’s Claim Regarding Third Countries Is Unfounded, This**
5 **Court Lacks Jurisdiction Over Petitioner’s Third Claim for Relief.**

6 The Constitution limits federal judicial power to designated “cases” and
7 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*
8 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present
9 a “case” or “controversy” within the meaning of Article III). “Absent a real and
10 immediate threat of future injury there can be no case or controversy, and thus no Article
11 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
12 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
13 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a
14 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by
15 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
16 behavior will likely occur or continue, and that the threatened injury is certainly
17 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing
18 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
19 traceable to the challenged action of the United States and (3) likely to be redressed by
20 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

21 Here, Petitioner’s third claim for relief seeks an order preventing his removal to
22 a third country without adequate notice and an opportunity to contest such removal.
23 ECF No. 1 at 21:24–25:10. But Respondents are not seeking to remove Petitioner to a
24 third country and are instead working to promptly remove Petitioner to Laos. Cole Decl.
25 at ¶¶ 11–14. Indeed, *prior to Petitioner’s filing of this action*, ICE obtained a travel
26 document authorizing Petitioner’s removal to Laos with 90 days. *Id.* at ¶ 13. As such,
27 there is no controversy concerning third-country resettlement for this Court to resolve.
28 Federal courts do not have jurisdiction “to give opinions upon moot questions or

1 abstract propositions, or to declare principles or rules of law which cannot affect the
2 matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*,
3 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). “A claim is moot if it
4 has lost its character as a present, live controversy.” *Am. Rivers v. Nat’l Marine*
5 *Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted). The Court
6 therefore lacks jurisdiction over Petitioner’s third claim concerning third-country
7 resettlement because there is no live case or controversy. *See Powell v. McCormack*,
8 395 U.S. 486, 496 (1969); *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

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

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

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

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

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

16 In general, the showing required for a temporary restraining order is the same as
17 that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D.*
18 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
19 temporary restraining order, a petitioner must “establish that he is likely to succeed on
20 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
21 relief, that the balance of equities tips in his favor, and that an injunction is in the public
22 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
23 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a “substantial
24 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.
25 2011). When “a plaintiff has failed to show the likelihood of success on the merits,
26 [courts] need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*,
27 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary
28 injunctive relief—balancing of the harm to the opposing party and the public interest—

1 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few
2 interests can be more compelling than a nation’s need to ensure its own security.” *Wayte*
3 *v. United States*, 470 U.S. 598, 611 (1985).

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

5 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at
6 740. Here, apart from his non-justiciable claim of potential third-country removal,
7 Petitioner argues that his re-arrest and detention warrant habeas relief because: (1) ICE
8 violated its own regulations; and (2) they ran afoul of the Supreme Court’s holding in
9 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). ECF No. 1 at 9:10–21:23. But Petitioner
10 cannot establish that he is likely to succeed on the underlying merits of his claims
11 because he is properly detained under 8 U.S.C. § 1231(a) and the applicable agency
12 regulations.

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

16 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
17 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found
18 to be unlawfully present in the United States and a final order of removal has been
19 entered, the government ordinarily secures the alien’s removal during a subsequent 90-
20 day statutory “removal period.” 8 U.S.C. § 1231(a)(1). The statute provides that the
21 Attorney General “shall detain” the alien during this removal period. 8 U.S.C.
22 § 1231(a)(2).

23 The Supreme Court held in *Zadvydas* that when removal is not accomplished
24 during the 90-day removal period, the statute “limits an alien’s post-removal-period
25 detention to a period reasonably necessary to bring about the alien’s removal from the
26 United States” and does not permit “indefinite detention.” *Zadvydas*, 533 U.S. at 689.
27 The Supreme Court has held that six months constitutes a “presumptively reasonable
28 period of detention.” *Id.* at 701. Courts have repeatedly declined to grant habeas relief

1 where the presumptively reasonable six-month period has not yet elapsed. *See*
2 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
3 2025) (“The government is entitled to its six-month presumptive period before
4 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*
5 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
6 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
7 been detained for more than six months. Petitioner has been in detention since May 29,
8 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations
9 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
10 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
11 the release based on changed circumstances, “the revocation would merely restart the
12 90-day removal period, not necessarily the presumptively reasonable six-month
13 detention period under *Zadvydas*”).

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

26 The Supreme Court also instructed that detention could exceed six months: “This
27 6-month presumption, of course, does not mean that every alien not removed must be
28 released after six months. To the contrary, an alien may be held in confinement until it

1 has been determined that there is no significant likelihood of removal in the reasonably
2 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
3 reason to believe that there is no significant likelihood of removal in the reasonably
4 foreseeable future, the Government must respond with evidence sufficient to rebut that
5 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
6 alien to show, after a detention period of six months, that there is ‘good reason to believe
7 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
8 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
9 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

10 Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But
11 even if Petitioner’s total time in detention since September 2008 does exceed the six
12 months of presumptive reasonableness, his claim still fails at the next step because he
13 cannot meet his burden to establish “that there is no significant likelihood of removal
14 in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. ICE has obtained a
15 travel document authorizing Petitioner’s to travel to Laos between December 8, 2025,
16 and March 8, 2026. Cole Decl. at ¶ 13. But for the Court’s order prohibiting Petitioner’s
17 removal during the pendency of this action, ICE would be actively working to schedule
18 a flight for Petitioner’s removal during the 90-day validity of the travel document. *Id.*
19 at ¶¶ 13–14.

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

23 Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi*
24 *v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April 2, 2008)
25 (denying *Zadvydas* petition where petitioner had been detained more than 14 months
26 post-final order); *Nicia v. ICE Field Office Dir.*, No. C13-0092-RSM, 2013 WL
27 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner “failed to satisfy his
28 burden of showing that there is no significant likelihood of his removal in the reasonably

1 foreseeable future” where he had been detained more than seven months post-final
2 order).

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

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

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

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

27 A noncitizen who is not removed within the removal period may be released from
28 ICE custody “pending removal . . . subject to supervision under regulations prescribed

1 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.
2 § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the
3 order may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a
4 removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
5 ICE may also revoke the order of supervision where, “on account of changed
6 circumstances, [ICE] determines that there is a significant likelihood that the alien may
7 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
8 regulations further provide:

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

13 8 C.F.R. § 241.4(l)(1) (emphasis added).

14 Here, Petitioner claims that his detention is unlawful because the agency failed
15 to comply with its regulations *before* re-detaining him. ECF No. 1 at 9:10. Notably, the
16 regulations do not require written notice, advance notice, an advanced interview, nor
17 for DHS to obtain a travel date prior to re-detention, nor to prove to the satisfaction of
18 a petitioner that changed circumstances are present.²

19 Petitioner also argues that “ICE did not identify a proper reason under the
20 regulations to re-detain” him, “there was apparently no determination before or at his
21 arrest that there are ‘changed circumstances’” such that there is a significant likelihood
22 of removal in the reasonably foreseeable future, “ICE did not notify [him] of the reasons
23 for his re-detention upon revocation of release,” and that he has not received an informal
24

25 ² There are obvious law enforcement reasons for not providing “advance” notice of a
26 re-detention before executing a warrant of removal, just as there is no requirement to
27 provide prior notice of execution of an arrest warrant. Providing such notice “creates a
28 risk that the alien will leave town before the delivery or deportation date.” *United States*
v. Gonzales & Gonzales Bonds & Ins. Agency, Inc., 103 F. Supp. 3d 1121, 1137 (N.D.
Cal. 2015).

1 interview. ECF No. 1 at 10:21–11:17. These arguments fail. First, ICE did inform
2 Petitioner of the reason for revoking his order of supervision. Specifically, on the day
3 ICE re-detained him, ICE provided Petitioner with a Notice of Revocation of Release,
4 which Petitioner signed, explaining the “changed circumstances” justifying revocation
5 as follows:

6 ICE has determined that you can be expeditiously removed from the
7 United States pursuant to the outstanding order of removal against you.
8 ICE is now able to obtain valid travel documents for removal to Laos and
9 will be working on obtaining travel documents and a removal flight to
Laos.

10 Cole Decl., Ex. B. This satisfies the standard set forth in 8 C.F.R. § 241.13(i)(2), which
11 authorizes Petitioner’s return to custody “if, on account of changed circumstances,
12 [ICE] determines that there is a significant likelihood that [Petitioner] may be removed
13 in the reasonably foreseeable future.” Second, ICE did provide him with an informal
14 interview on the day ICE re-detained him. Cole Decl., Ex. C. At that time, he informed
15 the Deportation Officer that he did not want to be detained due to his medical condition.
16 *See id.* He neither “respond[ed] to the reasons for revocation stated in the [Notice of
17 Revocation of Release]” nor “submit[ted] any evidence or information that he . . .
18 believes shows there is no significant likelihood he . . . be removed in the reasonably
19 foreseeable future,” which are the purposes of the informal interview. 8 C.F.R.
20 § 241.13(i)(3). Finally, Petitioner contends that “ICE has never presented [him] with
21 any travel documentation.” Saysanavong Decl. at ¶ 12. He cites no authority requiring
22 that ICE provide a removable alien with a copy of the travel document before or after
23 re-detaining the individual to effectuate their removal, nor could he because no such
24 authority exists. Petitioner is thus unable to demonstrate that ICE violated any
25 regulation governing his re-detention.

26 And even if Petitioner’s alleged regulatory failures actually amount to a
27 regulatory violation, Petitioner cannot establish that he was prejudiced by those
28 omissions nor that a constitutional-level violation has occurred. *See Brown v. Holder,*

1 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its
2 regulations is not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174,
3 1178 (9th Cir. 2007) (holding that “[c]ompliance with . . . internal [customs] agency
4 regulations is not mandated by the Constitution”) (simplified); *Bd. of Curators of Univ.
5 of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s]
6 principles of federal administrative law rather than of constitutional law”).

7 Here, at the time of his re-detention, Petitioner knew he was subject to a final
8 order of removal to Laos. *See Saysanavong Decl.* at ¶¶ 5–6. He does not challenge that
9 order in this lawsuit or offer any indication that he intends to do so. Petitioner also was
10 informed of the reason for his re-detention when he was served with and signed the
11 Notice of Revocation of Release on November 12, 2025. *See Cole Decl.* at ¶ 12, Ex. B
12 (Notice of Revocation of Release). And because Respondents had, and continue to have,
13 an evidentiary basis to conclude there is a significant likelihood that Petitioner will be
14 removed to Laos in the reasonably foreseeable future, any challenge that Petitioner
15 would have raised to the revocation prior to or after his re-detention would have failed.
16 Because Petitioner cannot show prejudice under these circumstances, the alleged
17 violation of agency regulations does not warrant release here. *See, e.g., Rodriguez v.*
18 *Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other*
19 *grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the regulation provides the detainee
20 some opportunity to respond to the reasons for revocation, it provides no other
21 procedural and no meaningful substantive limit on this exercise of discretion as it allows
22 revocation ‘when, in the opinion of the revoking official . . . [t]he purposes of release
23 have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates
24 that release would no longer be appropriate.”) (emphasis in original) (citing 8 C.F.R.
25 §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec’y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir.
26 1981) (“violations of procedural regulations should be upheld if there is no significant
27 possibility that the violation affected the ultimate outcome of the agency’s action”
28 (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980)

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

7 In short, ICE provided Petitioner with a Notice of Revocation of Release and
8 conducted an informal interview on the day ICE re-detained him. Cole Decl. at ¶ 10.
9 Within weeks of Petitioner's re-detention, ICE obtained a travel document authorizing
10 Petitioner's removal to Laos on or before March 8, 2026, and ICE expects Petitioner's
11 removal to Laos to occur in the reasonably foreseeable future, specifically, in January
12 2026. *Id.* at ¶¶ 13–14. Petitioner is thus unlikely to succeed on the merits of his claim
13 that ICE's alleged failure to follow agency regulations merits his release.

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

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

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

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

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

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

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

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

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

6 **IV. AN EVIDENTIARY HEARING IS NOT NEEDED**

7 Because the record shows that Petitioner is not entitled to habeas relief, there is
8 no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S.
9 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise
10 precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).

11 **V. CONCLUSION**

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

15 DATED: December 23, 2025

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