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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 TESHAY GEBREMDHIM HAGOS,

11 Petitioner,

12 v.

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

14 Respondents.
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Case No. 26-cv-150-JES-DEB

**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 Tesfay Gebremdhim Hagos has filed a habeas petition and a motion
3 for temporary restraining order. ECF Nos. 1, 2. On January 12, 2026, the Court issued
4 an order to show cause as to why the petition should not be granted. ECF No. 3. For
5 purposes of judicial efficiency, given the petition and motion for temporary restraining
6 order assert the same claims and seek the same relief, Respondents respectfully respond
7 to both the petition and motion herein. For the reasons set forth below, the Court should
8 deny Petitioner’s request for interim relief and dismiss the petition.

9 **II. Factual and Procedural Background¹**

10 Petitioner is a citizen and national of Eritrea. *See* First Declaration of Tesfay
11 Gebremdhim Hagos (Gebremdhim Hagos Decl.) ¶ 1, ECF No. 1-2 at 2; *see also* Ex. 1
12 at 1–2. On May 13, 2010, Petitioner applied for admission into the United States and
13 requested asylum. Ex. 1. Petitioner was placed in expedited removal proceedings under
14 8 U.S.C. § 1225(b)(1) and issued an Order of Expedited Removal under section
15 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). Ex. 2.
16 On June 3, 2010, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by
17 a U.S. Citizenship and Immigration Services asylum officer. Declaration of David
18 Townsend (Townsend Decl.) ¶¶ 3–4. That interview resulted in a negative
19 determination by the asylum officer. *Id.* ¶ 4. Pursuant to 8 U.S.C.
20 § 1225(b)(1)(B)(iii)(III), that negative determination was reviewed by an immigration
21 judge on June 16, 2010, and the immigration judge affirmed the asylum officer’s
22 determination. Ex. 3. This resulted in an administratively final order of removal to
23 Eritrea.² Townsend Decl. ¶ 4; 8 U.S.C. § 1225(b)(1)(C). The immigration judge

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25 ¹ The attached exhibits are true copies, with redactions of private information, of
documents obtained from ICE counsel.

26 ² Although Petitioner claims he has withholding of removal to Eritrea, *see* Gebremdhim
27 Hagos Decl. ¶ 1, the documents provided from ICE counsel and appended to this
28 response do not indicate Petitioner has been granted withholding from an immigration
judge.

1 returned the case to the Department of Homeland Security to remove Petitioner. Ex. 3;
2 8 C.F.R. § 1208.30(g)(2)(iv)(A). Petitioner was released from ICE custody under an
3 Order of Supervision on September 29, 2010. *See* Ex. 4; Townsend Decl. ¶ 5.

4 On November 13, 2025, Immigration and Customs Enforcement (ICE) re-
5 detained Petitioner to effect his removal to Eritrea. *See* Ex. 5; Townsend Decl. ¶ 6. At
6 that time, Petitioner was served a Form I-200, Warrant for Arrest of Alien. *See* Ex. 5.
7 Petitioner was served a formal Notice of Revocation of Release at the time of his re-
8 detention. *See* Ex. 6; Townsend Decl. ¶ 7. Petitioner also was afforded an informal
9 interview the same day. *See* Ex. 7; Townsend Decl. ¶ 7. The formal Notice of
10 Revocation of Release identified the changed circumstances justifying the revocation
11 of Petitioner’s release:

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

16 Ex. 6. ICE is routinely obtaining travel documents from Eritrea and able to arrange
17 travel itineraries to execute final orders of removal for Eritrean citizens. Townsend
18 Decl. ¶¶ 10–11. ICE is working expeditiously to effectuate Petitioner’s removal to
19 Eritrea. *Id.* ¶ 9. ICE’s Enforcement and Removal Operations is compiling a travel
20 document request for Petitioner and plans to submit the request to the Eritrea embassy
21 by January 19, 2026. *Id.* The declaring officer expects to obtain Petitioner’s travel
22 document within about a month from submission of the request. *Id.* Once Petitioner’s
23 travel document is obtained, ICE will promptly arrange for his removal to Eritrea. *Id.*
24 ¶ 13. ICE is not seeking to remove Petitioner to a third country. *Id.* ¶ 8.

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1 **III. Argument**

2 **A. Because Petitioner’s claims regarding third countries are unfounded, this**
3 **Court lacks jurisdiction over Petitioner’s third claim for relief.**

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

20 Here, Petitioner’s third claim for relief alleges that ICE’s policies threaten his
21 removal “to a third country without adequate notice and an opportunity to be heard.”
22 ECF No. 1 at 12. But Respondents are not seeking to remove Petitioner to a third
23 country and are instead working to promptly remove Petitioner to Eritrea. *See*
24 *Townsend Decl.* ¶¶ 8–9. As such, there is no controversy concerning third-country
25 resettlement for this Court to resolve. Federal courts do not have jurisdiction “to give
26 opinions upon moot questions or abstract propositions, or to declare principles or rules
27 of law which cannot affect the matter in issue in the case before it.” *Church of*
28 *Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations and

1 citations omitted). “A claim is moot if it has lost its character as a present, live
2 controversy.” *Am. Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir.
3 1997) (citation omitted). The Court therefore lacks jurisdiction over Petitioner’s claims
4 concerning third-country resettlement because there is no live case or controversy. *See*
5 *Powell v. McCormack*, 395 U.S. 486, 496 (1969); *Murphy v. Hunt*, 455 U.S. 478, 481
6 (1982).

7 **B. Claims and requests barred by 8 U.S.C. § 1252.**

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

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

8 **C. Petitioner fails to establish entitlement to a restraining order.**

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

14 In general, the showing required for a temporary restraining order is the same as
15 that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D.*
16 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
17 temporary restraining order, a petitioner must “establish that he is likely to succeed on
18 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
19 relief, that the balance of equities tips in his favor, and that an injunction is in the public
20 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
21 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a “substantial
22 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.
23 2011). When “a plaintiff has failed to show the likelihood of success on the merits,
24 [courts] need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*,
25 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary
26 injunctive relief—balancing of the harm to the opposing party and the public interest—
27 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few
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1 interests can be more compelling than a nation’s need to ensure its own security.” *Wayte*
2 *v. United States*, 470 U.S. 598, 611 (1985).

3 ***1. Petitioner is unlikely to succeed on the merits.***

4 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at
5 740. Here, apart from his non-justiciable claim of potential third-country removal,
6 Petitioner argues that his re-arrest and detention warrant habeas relief because: (1) ICE
7 violated its own regulations, ECF No. 1 at 6–8 (Petitioner’s first claim for relief); and
8 (2) they ran afoul of the Supreme Court’s holding in *Zadvydas v. Davis*, 533 U.S. 678,
9 689 (2001), ECF No. 1 at 8–12 (Petitioner’s second claim for relief). But Petitioner
10 cannot establish that he is likely to succeed on the underlying merits of those 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 Petitioner is properly detained under 8 U.S.C. § 1231(a), and his continued
17 detention is not unconstitutionally indefinite. Since Petitioner’s re-detention, ICE
18 Enforcement and Removal Operations (ERO) has worked diligently to effectuate
19 Petitioner’s removal to Eritrea. *See Townsend Decl.* ¶ 9.

20 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
21 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found
22 to be unlawfully present in the United States and a final order of removal has been
23 entered, the government ordinarily secures the alien’s removal during a subsequent 90-
24 day statutory “removal period.” 8 U.S.C. § 1231(a)(1). The statute provides that the
25 Attorney General “shall detain” the alien during this removal period. 8 U.S.C.
26 § 1231(a)(2).

27 The Supreme Court held in *Zadvydas* that when removal is not accomplished
28 during the 90-day removal period, the statute “limits an alien’s post-removal-period

1 detention to a period reasonably necessary to bring about the alien’s removal from the
2 United States” and does not permit “indefinite detention.” *Zadvydas*, 533 U.S. at 689.
3 The Supreme Court has held that six months constitutes a “presumptively reasonable
4 period of detention.” *Id.* at 701. Courts have repeatedly declined to grant habeas relief
5 where the presumptively reasonable six-month period has not yet elapsed. *See*
6 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
7 2025) (“The government is entitled to its six-month presumptive period before
8 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*
9 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
10 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
11 been detained for more than six months. Petitioner has been in detention since May 29,
12 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations
13 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
14 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
15 the release based on changed circumstances, “the revocation would merely restart the
16 90-day removal period, not necessarily the presumptively reasonable six-month
17 detention period under *Zadvydas*”).

18 Here, Petitioner was ordered removed on May 14, 2010. *See* Ex. 2. The
19 immigration judge affirmed USCIS’s negative credible fear finding on June 16, 2010,
20 which makes Petitioner’s removal order administratively final. *See* Ex. 3; Wilson Decl.
21 ¶ 4. Petitioner was released on an order of supervision on September 29, 2010. Ex. 4.
22 Petitioner was re-detained on November 13, 2025. *Id.* ¶ 12. Thus, Petitioner’s six-month
23 presumptively reasonable removal period will not end until approximately January 28,
24 2026. Courts have repeatedly declined to grant habeas relief where the presumptively
25 reasonable six-month period has not yet elapsed. *See Khalilova v. Smith*, No. 25-CV-
26 2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025) (denying similar habeas
27 petition brought on same grounds); *Ali v. Barlow*, 446 F. Supp. 2d 604, 609–10 (E.D.
28 Va. 2006) (finding habeas petition was unripe for review where *Zadvydas* six-month

1 period had not expired; dismissing petition without prejudice); *Gonzales v. Naranjo*,
2 No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich*
3 *v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same).

4 Even after the period of presumptive reasonableness has run, release is not
5 required under *Zadvydas* unless “there is no significant likelihood of removal in the
6 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). “After
7 this 6-month period, once the alien provides good reason to believe that there is no
8 significant likelihood of removal in the reasonably foreseeable future, the Government
9 must respond with evidence sufficient to rebut that showing.” *Id.* The Ninth Circuit has
10 emphasized, “*Zadvydas* places the burden on the alien to show, after a detention period
11 of six months, that there is ‘good reason to believe that there is no significant likelihood
12 of removal in the reasonably foreseeable future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059
13 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832,
14 840 (9th Cir. 2003). As the Supreme Court instructed, “the habeas court must ask
15 whether the detention in question exceeds a period reasonably necessary to secure
16 removal. It should measure reasonableness primarily in terms of the statute’s basic
17 purpose, namely, assuring the alien’s presence at the moment of removal.” *Zadvydas*,
18 533 U.S. at 699 (emphasis added). In so holding, the Supreme Court recognized that
19 detention is presumptively reasonable pending efforts to obtain travel documents,
20 because the noncitizen’s assistance is often needed to obtain the travel documents, and
21 because a noncitizen who is subject to an imminent, executable warrant of removal
22 becomes a significant flight risk, especially if he or she is aware that it is imminent.

23 Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But
24 Petitioner is still in the period of presumptive reasonableness because he has been in
25 custody for less than a total of six months since his order of removal became
26 administratively final. *See* Townsend Decl. ¶¶ 4–6; Exs. 2–4. But even if Petitioner’s
27 total time in detention since June 2010 did exceed the six months of presumptive
28 reasonableness, his claim still fails at the next step because he cannot meet his burden

1 to establish “that there is no significant likelihood of removal in the reasonably
2 foreseeable future.” *Zadvydas*, 533 U.S. at 701. Petitioner was re-detained for removal
3 on November 13, 2025, after ICE had been successfully obtaining travel documents for
4 Eritrean citizens and removing them. Townsend Decl. ¶¶ 10–11. ICE began to prepare
5 Petitioner’s travel document request soon after his re-detention and expects to submit
6 the request to the Eritrean government by January 19, 2026. *Id.* ¶ 9. Once ICE receives
7 his travel document, Petitioner can be removed promptly as ICE has routine flights to
8 Eritrea. *Id.* ¶¶ 11, 13. There is no bar against Petitioner’s removal to Eritrea, and the
9 government is currently arranging for that removal. *See id.* ¶¶ 9, 12.

10 Petitioner may complain that the government did not already obtain his travel
11 documents before taking him back into detention. *Zadvydas* does not require the
12 government to pre-arrange a noncitizen’s removal travel before arresting them, which
13 would often be extremely difficult if not impossible. The constitutional standard is
14 whether there is “a significant likelihood of removal” in the “reasonably foreseeable
15 future.” The law does not require that “every [noncitizen] not removed must be released
16 after six months.” *Zadvydas*, 533 U.S. at 701. Instead, the Supreme Court was clear that
17 the Constitution prevents only “indefinite” or “potentially permanent” detention. *Id.*
18 at 689–91. Courts properly deny *Zadvydas* claims under such circumstances. *See*
19 *Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash.
20 April 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more
21 than 14 months post-final order); *Nicia v. ICE Field Office Dir.*, No. C13–0092–RSM,
22 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner “failed to
23 satisfy his burden of showing that there is no significant likelihood of his removal in
24 the reasonably foreseeable future” where he had been detained more than seven months
25 post-final order).

26 That Petitioner does not yet have a specific date of anticipated removal does not
27 make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222,
28 1233 (9th Cir. 2008) (explaining that a demonstration of “no significant likelihood of

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

16 Petitioner’s continued detention is thus not unconstitutionally prolonged under
17 *Zadvydas*.

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

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

22 A noncitizen who is not removed within the removal period may be released from
23 ICE custody “pending removal . . . subject to supervision under regulations prescribed
24 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.
25 § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the
26 order may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a
27 removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
28 ICE may also revoke the order of supervision where, “on account of changed

1 circumstances, [ICE] determines that there is a significant likelihood that the alien may
2 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
3 regulations further provide:

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

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

9 Here, Petitioner claims that his detention is unlawful because the agency failed
10 to comply with its regulations *before* re-detaining him. ECF No. 1 at 5. Specifically,
11 Petitioner argues that ICE did not identify any “changed circumstances” to justify re-
12 detaining him, ICE did not inform him of the reasons for re-detaining him. *Id.* at 7–8.³
13 Notably, the regulations do not require written notice, advance notice, an advanced
14 interview, nor for DHS to prove to the satisfaction of a petitioner that changed
15 circumstances are present.⁴

16 Yet it is clear that there *were*, at the time of Petitioner’s detention, changed
17 circumstances—namely, ICE’s revived ability to obtain travel documents from the
18 Eritrean government and to schedule routine removal flights to Eritria. Townsend Decl.
19 ¶¶ 10–11. Those changed circumstances were identified in Petitioner’s formal Notice
20

21 ³ ICE provided Petitioner with a formal Notice of Revocation of Release on November
22 13, 2025, and interviewed him the same day. *See* Townsend Decl. ¶ 7; Ex. 6 (Notice of
23 Revocation of Release dated November 13, 2015, and Proof of Service); Ex. 7 (informal
interview notes).

24 ⁴ There are obvious law enforcement reasons for not providing “advance” notice of a
25 re-detention before executing a warrant of removal, just as there is no requirement to
26 provide prior notice of execution of an arrest warrant. Providing such notice “creates a
27 risk that the alien will leave town before the delivery or deportation date.” *United States*
28 *v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.*, 103 F. Supp. 3d 1121, 1137 (N.D.
Cal. 2015).

1 of Revocation of Release. Ex. 6. These facts are fatal to Petitioner’s claim, because even
2 if the agency had failed to provide Petitioner with “advance notice” of the revocation,
3 Petitioner could not establish that he was prejudiced by those omissions nor that a
4 constitutional level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–
5 50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its regulations is not a
6 violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.
7 2007) (holding that “[c]ompliance with . . . internal [customs] agency regulations is not
8 mandated by the Constitution”) (simplified); *Bd. of Curators of Univ. of Mo. v.*
9 *Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s] principles of
10 federal administrative law rather than of constitutional law”).

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

1 So too here. At the time of his re-detention, Petitioner knew he was subject to a
2 final order of removal. *See* Gebremdhim Hagos Decl. ¶ 2. He does not challenge that
3 order in this lawsuit or offer any indication that he intends to do so. Petitioner was
4 informed of the reason for his re-detention when he was served with the original Notice
5 of Revocation of Release on November 13, 2025, and the Form I-200, Warrant for
6 Arrest of Alien. *See* Townsend Decl. ¶¶ 6–7; Ex. 5 (Form I-200, Warrant for Arrest of
7 Alien); Ex. 6 (Notice of Revocation of Release). And because Respondents had, and
8 continue to have, an evidentiary basis to conclude there is a significant likelihood that
9 Petitioner will be removed to Eritrea in the reasonably foreseeable future, any challenge
10 that Petitioner would have raised to the revocation prior to or after his re-detention
11 would have failed. Because Petitioner cannot show prejudice under these
12 circumstances, the alleged violation of agency regulations does not warrant release here.
13 *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended*
14 *and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the regulation
15 provides the detainee some opportunity to respond to the reasons for revocation, it
16 provides no other procedural and no meaningful substantive limit on this exercise of
17 discretion as it allows revocation ‘when, in the opinion of the revoking official . . . [t]he
18 purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other*
19 *circumstance*, indicates that release would no longer be appropriate.’”) (emphasis in
20 original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec’y of Lab.*, 641
21 F.2d 801, 804 n.4 (9th Cir. 1981) (“[V]iolations of procedural regulations should be
22 upheld if there is no significant possibility that the violation affected the ultimate
23 outcome of the agency’s action.” (citation omitted)); *United States v. Hernandez-Rojas*,
24 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations requiring that an
25 arrested alien be advised of his right to speak to his consul was not prejudicial and thus
26 not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d
27 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the
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1 rule by failing to inquire into the alien’s background, any error was harmless because
2 there was no showing that the petitioner was qualified for relief from deportation).

3 Thus, whatever procedural deficiencies or delays may have occurred, they do
4 not warrant Petitioner’s release and indeed could be cured by means well short of
5 release. Petitioner does not challenge his removal order, nor could he. *See supra*
6 Section III.B. ICE’s Enforcement and Removal Operations is compiling compiled a
7 travel document request and expects to submit it by January 19. Townsend Decl. ¶ 9.
8 With Petitioner’s removal likely to occur in the reasonably foreseeable future, no
9 purpose would be served by this Court’s ordering his release—other than frustrating
10 “the statute’s basic purpose, namely, assuring the alien’s presence at the moment of
11 removal.” *Zadvydas*, 533 U.S. at 699. Petitioner is thus unlikely to succeed on the merits
12 of his claim that ICE’s alleged failure to follow agency regulations merits his release.

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

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

25 Petitioner suggests that being subjected to allegedly unjustified detention itself
26 constitutes irreparable injury.⁵ But this argument “begs the constitutional questions

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28 ⁵ Detention is different than removal. But a removal is also not an inherently irreparable
injury. *See Nken*, 556 U.S. at 435.

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

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

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

14 It is well settled that “the public interest in enforcement of the immigration laws
15 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
16 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public
17 interest in prompt execution of removal orders: The continued presence of an alien
18 lawfully deemed removable undermines the streamlined removal proceedings [the
19 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and
20 permits and prolongs a continuing violation of United States law.”) (simplified).
21 Moreover, “ultimately the balance of the relative equities ‘may depend to a large extent
22 upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
23 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13,
24 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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

3 **IV. Conclusion**

4 For the foregoing reasons, Respondents respectfully request that the Court deny
5 Petitioner’s motion for a temporary restraining order and dismiss Petitioner’s habeas
6 petition.⁶

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8 Dated: January 15, 2026

Respectfully submitted,

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12 s/ Kelly A. Reis
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14 Attorneys for Respondents
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26 ⁶ Because the record shows that Petitioner is not entitled to habeas relief, there is no
27 need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465,
28 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise
precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).