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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SANG XI,

Petitioner,

v.

KRISTI NOEM; *et al.*,

Respondents.

Case No. 26-cv-0175-TWR-SBC

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

I. INTRODUCTION

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

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II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Vietnam. Declaration of Deportation Officer Ramon Meraz (Meraz Decl.) at ¶ 3. Petitioner entered the United States as a refugee in 1989, and soon after he became a lawful permanent resident. ECF 1 at p. 1, *Id.* at ¶ 4. On June 3, 1997, Petitioner was convicted of domestic battery in violation of California Penal Code (CPC) §243(e)(1) and willful infliction of corporal injury in violation of CPC §273.5(a). Meraz Decl. at ¶ 5. On or about July 22, 1997, Immigration and Customs Enforcement (ICE) issued a Notice to Appear alleging removability pursuant to Immigration and Nationality Act (INA) §237(a)(2)(E)(i) as an alien convicted of a crime of domestic violence. *Id.* at ¶ 6. On March 25, 1998, an Immigration Judge ordered Petitioner removed to Vietnam. *Id.* at ¶ 8. Petitioner appealed the order and the Board of Immigration Appeals dismissed the appeal on September 29, 2000. *Id.* On September 18, 2001, Petitioner was convicted of possession of controlled substances for sale in violation of California Health and Safety Code (CHSC) §11378 and possession of a firearm in violation of CPC §1201(c)(1). *Id.* at ¶ 9. On June 14, 2022, Petitioner was convicted of selling amphetamine in violation of CHSC §11351. *Id.* at ¶ 12. After each instance where Petitioner committed a criminal offense, he was subsequently released in to ICE custody and then released from ICE custody on bond or an Order of Supervision as the result of an inability to obtain a travel document to Vietnam. *Id.* at ¶¶ 6, 7, 10, 11, 13, 14.

On December 19, 2025, ICE re-detained Petitioner to execute his removal to Vietnam. *Id.* at ¶ 15. On the same day, ICE provided Petitioner with a Notice of Revocation of Release, which Petitioner signed, providing Petitioner with formal notice of the reason for revocation of his order of supervision. *Id.;* Exhibit (Exh.) 1 (Notice of Revocation of Release). In the Notice of Revocation of Release, ICE informed Petitioner of the changed circumstances of his case:

> ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. ICE will request a travel document from the country of Vietnam, and you

will be removed to Vietnam on the next available removal flight. *Id.*

During the informal interview, Petitioner indicated that he wanted to return to Vietnam. Exh. 2 (Alien Informal Interview). At the time of his re-detention, ICE served Petitioner with the Form I-200, Warrant for Arrest of Alien, dated December 19, 2025. Exh. 3 (I-200).

ICE is not seeking to remove Petitioner to a third country. Meraz Decl. at ¶ 16. According to the declaring officer's experience, Petitioner's "removal can be effectuated promptly." *Id.* at ¶ 21. ICE is actively working to remove Petitioner to Vietnam. *Id.* at ¶ 17.

ICE has been routinely obtaining travel documents for Vietnamese citizens. *Id.* at ¶¶ 18, 19, 20. Since February 2025, ICE has removed about 699 Vietnamese citizens. *Id.* at ¶ 19. About half of the removals were of individuals who immigrated to the United States before July 1995 and as recently as December 2025. *Id.* at ¶¶ 19, 20.

III. ARGUMENT

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

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). To the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special

attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process.") (quoting 8 U.S.C. § 1252(g)). In other words, section 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Here, Petitioner's claims necessarily arise "from the decision or action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2) ("Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law."). Accordingly, to the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, the Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C. § 1252.

B. Petitioner's detention is lawful, and he has not established that there is no significant likelihood of removal in the reasonably foreseeable future.

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

The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the

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

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

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

Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But even if Petitioner's total time in detention since his initial detention in July 1997 does exceed the six months of presumptive reasonableness, his claim still fails at the next step because he cannot meet his burden to establish "that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Petitioner was re-detained on December 19, 2025, after ICE had been successfully obtaining travel documents for Vietnamese citizens and routinely effectuating removals to Vietnam for almost 10 months. Meraz Decl. at ¶¶ 17-19. ICE is actively working to remove Petitioner to Vietnam. *Id.* at ¶ 17. It is true that that 29 years ago the government was not able to remove Petitioner to Vietnam, as with other similarly situated individuals, because the prior political relationship between the United States and Vietnam prevented their removals. That produced significant litigation from detainees who argued that they could not be removed to their home nations due to the lack of cooperation, and so their detentions were indefinite. But that barrier to removal was removed. This issue was exhaustively addressed in more recent litigation addressing

detainees facing removal to Vietnam. In 2020, the *Trinh* court explained the then-current state of affairs:

> The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. . . . Instead, Vietnam now considers each request from ICE on a case-by-case basis. ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. . . .
>
> Petitioners do not appear to dispute that once Vietnam issues a travel document, removal becomes significantly likely, rendering class members unable to meet their initial burden under *Zadvydas*.

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

Based on the foregoing efforts, ICE attests that Petitioner will be removed promptly after the receipt of a travel document from Vietnam. *Id.* at ¶ 20. ICE's confidence in effectuating Petitioner's removal to Vietnam is further based on ICE's current ability to do so. ICE has removed 699 Vietnamese citizens in fiscal year 2025, and since the start of fiscal year 2026, ICE has removed more Vietnamese citizens as recently as December 2025. *Id.* at ¶¶ 20-21.

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

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

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

Petitioner's continued detention is thus not unconstitutionally prolonged under *Zadvydas*.

C. <u>Petitioner's complaints about procedural defects in his re-detention do not establish a basis for habeas relief.</u>

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

A noncitizen who is not removed within the removal period may be released from ICE custody "pending removal . . . subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the

order may be revoked under 8 C.F.R. § 241.4(*l*)(2)(iii) where "appropriate to enforce a removal order." *See also* 8 C.F.R. § 241.5 (conditions of release after removal period). ICE may also revoke the order of supervision where, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). The regulations further provide:

> *Upon revocation*, the alien will be notified of the reasons for revocation of 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 alien an opportunity to respond to the reasons for revocation stated in the notification.

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

It is clear that there *are* changed circumstances here—namely, ICE's revived ability to obtain travel documents from the Vietnamese government and to schedule routine removal flights to Vietnam, as well as ICE's receipt of travel documents authorizing travel to Vietnam. Meraz Decl. at ¶¶ 18-20. These facts are fatal to Petitioner's claim. And even if Petitioner's alleged regulatory failures actually amount to a regulatory violation, Petitioner cannot establish that he was prejudiced by those omissions nor that a constitutional-level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("[T]he mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that "[c]ompliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (simplified); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunciate[s] principles of federal administrative law rather than of constitutional law").

Here, at the time of his re-detention, Petitioner knew he was subject to a final order of removal to Vietnam. *See* Declaration of Sang Xi. at ¶ 3. He does not challenge that order in this lawsuit or offer any indication that he intends to do so. Petitioner also was informed of the reason for his re-detention when he was served with and signed the

Notice of Revocation of Release on December 19, 2025. *See* Meraz Decl. at ¶ 15, Ex. 1 (Notice of Revocation of Release). And because Respondents had, and continue to have, an evidentiary basis to conclude there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future, any challenge that Petitioner would have raised to the revocation prior to or after his re-detention would have failed.[1] Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant release here. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("violations of procedural regulations should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire

[1] At his informal interview on October 31, 2025, Petitioner responded to ICE's reasons for revocation of his release by relying on his wife's medical condition. *See* Smith Decl. at Ex. C (Alien Informal Interview Upon Revocation of Order of Supervision). Petitioner cannot demonstrate that this situation makes his detention unlawful, or that he is entitled to habeas relief.

into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

In short, ICE provided Petitioner with a Notice of Revocation of Release and conducted an informal interview on the day ICE re-detained him. Meraz Decl. at ¶ 15. ICE expects Petitioner's removal to Vietnam to occur promptly after receipt of a travel document. *Id.* at ¶ 21. Petitioner is thus unlikely to succeed on the merits of his claim that ICE's alleged failure to follow agency regulations merits his release.

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

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

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

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

IV. CONCLUSION

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

DATED: January 26, 2026

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