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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 ADONIS CONSTANTINOVICI,

12 Petitioner,

13 v.

14 PAMELA BONDI; et al.,

15 Respondents.

Case No.: 25-cv-2405-RBM-AHG

**RESPONDENTS' RESPONSE IN
OPPOSITION TO PETITIONERS'
HABEAS PETITION AND
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

I. Introduction

Petitioner has filed a habeas petition and an emergency motion for temporary restraining order. 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 Romania. On December 17, 1990, Petitioner was admitted into the United States as a lawful permanent resident. On April 17, 2001, an immigration judge ordered Petitioner removed to Romania. Petitioner was subsequently released from immigration custody on an Order of Supervision. On August 21, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Romania. *See* Exhibit 1.¹ ICE is currently preparing a travel document (TD) request in order to effectuate Petitioner's removal to Romania. Declaration of Denise E. Barroga (Barroga Decl.) at ¶¶ 8-10. ICE is routinely obtaining TDs from Romania and is able to arrange travel itineraries to execute final orders of removal for Romanian citizens. *Id.* at ¶ 11. Once Petitioner's TD is obtained, ICE will arrange for his removal to Romania. *Id.* at ¶ 13. ICE is not seeking to remove Petitioner to a third country and has agreed to keep Petitioner in this district during the pendency of this habeas matter. *Id.* at ¶¶ 8, 14.

III. Argument

A. Petitioner's Claims Regarding Transfer and Third Countries Present No Case or Controversy

The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). "Absent a real and

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

1 immediate threat of future injury there can be no case or controversy, and thus no Article
2 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
3 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
4 *Earth, Inc. v. Laidlow Env’t Servs., Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit
5 brought to force compliance, it is the plaintiff’s burden to establish standing by
6 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
7 behavior will likely occur or continue, and that the threatened injury if certainly
8 impending.”). At the “irreducible constitutional minimum,” standing requires that
9 Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the
10 challenged action of the United States and (3) likely to be redressed by a favorable
11 decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

12 Here, Respondents are not seeking to remove Petitioner to a third country and
13 have agreed to keep Petitioner in this district during the pendency of this habeas matter.
14 *See Barroga Decl.* at ¶¶ 8, 14. As such, there is no controversy concerning transfer and
15 third country resettlement for the Court to resolve. Federal courts do not have
16 jurisdiction “to give opinion upon moot questions or abstract propositions, or to declare
17 principles or rules of law which cannot affect the matter in issue in the case before it.”
18 *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). “A claim is moot
19 if it has lost its character as a present, live controversy.” *Rosemere Neighborhood Ass’n*
20 *v. U.S. Env’t Prot. Agency*, 581 F.3d 1169, 1172-73 (9th Cir. 2009). The Court therefore
21 lacks jurisdiction over Petitioner’s claims concerning transfer and third country
22 resettlement because there is no live case or controversy. *See Powell v. McCormack*,
23 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

24 **B. Petitioner’s Claims and Requests are Barred by 8 U.S.C. § 1252**

25 Petitioner bears the burden of establishing that this Court has subject matter
26 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
27 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a
28 threshold matter, Petitioner’s claims are jurisdictionally barred under 8 U.S.C.

§ 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *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.”). In other words, § 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). 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). The Court should deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

C. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief

Alternatively, Petitioner’s motion should be denied because he has not established that he is entitled to interim injunctive relief. Petitioner cannot establish that he is likely to succeed on the underlying merits, there is no showing of irreparable harm, and the equities do not weigh in his favor. In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th

1 Cir. 2001). To prevail on a motion for a temporary restraining order, a plaintiff must
2 “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable
3 harm in the absence of preliminary relief, that the balance of equities tips in his favor,
4 and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*,
5 555 U.S. 7, 20 (2008); see *Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must
6 demonstrate a “substantial case for relief on the merits.” *Leiva-Perez v. Holder*, 640
7 F.3d 962, 967-68 (9th Cir. 2011). When “a plaintiff has failed to show the likelihood of
8 success on the merits, we need not consider the remaining three [*Winter* factors].”
9 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

10 The final two factors required for preliminary injunctive relief—balancing of the
11 harm to the opposing party and the public interest—merge when the Government is the
12 opposing party. See *Nken*, 556 U.S. at 435. The Supreme Court has specifically
13 acknowledged that “[f]ew interests can be more compelling than a nation’s need to
14 ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); see also
15 *United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd.*
16 *v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v.*
17 *Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963,
18 966 (9th Cir. 2002) (movant seeking injunctive relief “must show either (1) a probability
19 of success on the merits and the possibility of irreparable harm, or (2) that serious legal
20 questions are raised and the balance of hardships tips sharply in the moving party’s
21 favor.”) (quoting *Andrieu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

22 **1. No Likelihood of Success on the Merits**

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

26 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
27 final order of removal is governed by 8 U.S.C. § 1231(a), which provides that “the
28 Attorney General shall remove the alien from the United States within a period of 90

1 days,” and “[i]f the alien does not leave or is not removed within the removal period,
2 the alien, pending removal, shall be subject to supervision under regulations prescribed
3 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. §
4 1231(a)(6). An Order of Supervision may be issued under 8 C.F.R. § 241.4, and the
5 order may be revoked under section 241.4(l)(2)(iii) where “appropriate to enforce a
6 removal order or to commence removal proceedings against an alien.” *See also* 8 C.F.R.
7 § 241.5 (Conditions of release after removal period). It is also provided in 8 C.F.R. §
8 241.13(i)(2) that the Order of Supervision may be revoked to effect a removal due to
9 changed circumstances, particularly where ICE has determined that there is a significant
10 likelihood of removal in the reasonably foreseeable future.

11 Here, ICE revoked Petitioner’s Order of Supervision for the purpose of executing
12 his final order of removal. *See* Exhibit 1; Barroga Decl. at ¶ 7. Moreover, Respondents
13 are working expeditiously to acquire the necessary travel document in order to
14 effectuate Petitioner’s removal to Romania. Petitioner has not met his burden of
15 rebutting the presumptively reasonable period of detention.

16 An alien ordered removed must be detained for 90 days pending the
17 government’s efforts to secure the alien’s removal through negotiations with foreign
18 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien
19 during the 90-day removal period); *see also* *Zadvydas v. Davis*, 533 U.S. 678, 683
20 (2001). The statute “limits an alien’s post-removal detention to a period reasonably
21 necessary to bring about the alien’s removal from the United States” and does not permit
22 “indefinite detention.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a
23 six-month period of post-removal detention constitutes a “presumptively reasonable
24 period of detention.” *Id.* at 683; *see also* *Clark v. Martinez*, 543 U.S. 371, 377 (2005)
25 (“[T]he presumptive period during which the detention of an alien is reasonably
26 necessary to effectuate his removal is six months...”); *Lema v. INS*, 341 F.3d 853, 856
27 (9th Cir. 2003). Release is not mandated after the expiration of the six-month period
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1 unless “there is no significant likelihood of removal in the reasonably foreseeable
2 future.” *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

3 In *Zadvydas*, the Supreme Court held that “the habeas court must ask whether the
4 detention in question exceeds a period reasonably necessary to secure removal. It should
5 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
6 *assuring the alien’s presence at the moment of removal.*” *Zadvydas v. Davis*, 533 U.S.
7 at 699 (emphasis added). The Court in *Zadvydas* therefore recognized that detention is
8 presumptively reasonable pending efforts to obtain travel documents, because the
9 noncitizen’s assistance is needed to obtain the travel documents, and a noncitizen who
10 is subject to an imminent, executable warrant of removal becomes a significant flight
11 risk, especially if he or she is aware that it is imminent.

12 The Court in *Zadvydas* also held that the detention could exceed six months:
13 “This 6-month presumption, of course, does not mean that every alien not removed must
14 be released after six months. To the contrary, an alien may be held in confinement until
15 it has been determined that there is no significant likelihood of removal in the
16 reasonably foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien
17 provides good reason to believe that there is no significant likelihood of removal in the
18 reasonably foreseeable future, the Government must respond with evidence sufficient
19 to rebut that showing and that the noncitizen has the initial burden of proving that
20 removal is not significantly likely.” *Id.*

21 In recent cases involving re-detention to effect removal, courts have recognized
22 that ICE has a presumptively reasonable period of six months to obtain travel
23 documents. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D.
24 Md. July 22, 2025) (“The government is entitled to its six-month presumptive period
25 before Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue”);
26 *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D.
27 Fla. July 17, 2025) (“The Court finds that the Petition is premature because Petitioner
28 has not been detained for more than six months. Petitioner has been in detention since

1 May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.”);
2 *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July
3 8, 2025) (“Because Grigorian has been in custody for fifteen days, his detention does
4 not violate the implicit six-month period read into the post-removal-period detention
5 statute under *Zadvydas*.”). *Cf. Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL
6 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV
7 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) (“Nhean’s 90-day
8 removal period began to run on October 12, 2010, when his removal order became final,
9 and he was released after 91 days of custody to supervised release on January 11, 2011.
10 Nhean was transferred back into ICE custody on August 26, 2016. Nhean’s detention
11 was presumptively reasonable for an additional 90 days (six months in total)”); *cited in*
12 *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19,
13 2018); *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 Accordingly, Petitioner cannot show entitlement to relief.

19 **2. Irreparable Harm Has Not Been Shown**

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

1 with [the Supreme Court’s] characterization of injunctive relief as an extraordinary
2 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to
3 such relief.” *Winter*, 555 U.S. at 22. Here, because Petitioner’s alleged harm “is
4 essentially inherent in detention, the Court cannot weigh this strongly in favor of”
5 Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D.
6 Cal. Dec. 24, 2018).

7 **3. Balance of Equities Does Not Tip in Petitioners’ Favor**

8 It is well settled that the public interest in enforcement of the United States’
9 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S.
10 543, 551-58 (1976); *Blackie’s House of Beef*, 659 F.2d at 1221 (“The Supreme Court
11 has recognized that the public interest in enforcement of the immigration laws is
12 significant.”) (citing cases); *see also Nken*, 556 U.S. at 435 (“There is always a public
13 interest in prompt execution of removal orders: The continued presence of an alien
14 lawfully deemed removable undermines the streamlined removal proceedings IIRIRA
15 established, and permits and prolongs a continuing violation of United States law.”)
16 (internal quotation omitted). Moreover, “[u]ltimately the balance of the relative equities
17 ‘may depend to a large extent upon the determination of the [movant’s] prospects of
18 success.’” *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL
19 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770,
20 778 (1987)). Here, as explained above, Petitioner cannot succeed on the merits of hi
21 claims. The balancing of equities and the public interest weigh heavily against granting
22 Petitioner equitable relief.

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V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the application for a temporary restraining order and dismiss this action for lack of a basis for the habeas claims.

DATED: September 19, 2025

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