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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SISAWANG KHAMBOUNHEUANG,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA JO BONDI, Attorney General; TODD LYONS, Acting Director, Immigration and Customs Enforcement; JESUS ROCHA, Acting Field Office Director, San Diego Field Office; CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No. 25-cv-02575-JO-SBC

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

Date: October 9, 2025
Time: 9:30 a.m.
Judge: Hon. Jinsook Ohta

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I. INTRODUCTION

Petitioner seeks habeas relief and a temporary restraining order requiring his release from detention and preventing the government from removing him to a third country. This Court lacks subject matter jurisdiction under 8 U.S.C. § 1252 because his request indisputably "arise[s] from" an "action" or a "proceeding" brought in connection with his removal. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9), (g). Apart from the Court's lack of jurisdiction over Petitioner's claims, his petition should be denied because his concern about being removed to a third country is conjectural and hypothetical and is thus not justiciable, and because Petitioner is lawfully detained while Immigration and Customs Enforcement (ICE) finalizes his removal to Laos. For these same reasons, Petitioner does not meet his burden to show entitlement to preliminary injunctive relief. The Court should accordingly dismiss Petitioner's motion for temporary restraining order and deny his habeas petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Laos. Declaration of Sisawang Khambounheuang ("Khambounheuang Decl.") at ¶ 1.[1] In 1979, Petitioner arrived in the United States as a refugee and subsequently adjusted his status to that of a lawful permanent resident. *Id.* In 1996, he was convicted of assault in Kansas stemming from a shooting incident. *Id.* at ¶ 2. Subsequently, the Department of Homeland Security (DHS) placed Petitioner in removal proceedings, and on July 17, 2000, an immigration judge ordered Petitioner removed from the United States to Laos. Khambounheuang Decl. at ¶ 3; Declaration of Jason Cole ("Cole Decl.") at ¶ 4, Ex. A. In May 2002, Petitioner was released from ICE custody under an order of supervision pending removal to Laos. Khambounheuang Decl. at ¶ 4; Cole Decl. at ¶ 5, Ex. B.

On August 13, 2025, a Form I-200, Warrant for Arrest of Alien, was issued for Petitioner's arrest, finding probable cause to believe that Petitioner is removable from the United States. *Id.* at ¶ 6, Ex. C. On August 13, 2025, ICE re-detained Petitioner to

[1] Petitioner's declaration is found at pages 24–26 of ECF No. 1.

execute his removal order to Laos. *Id.* at ¶ 7, Ex. D. On July 24, 2025, ICE issued a Warrant of Removal/Deportation. *Id.* at ¶ 8, Ex. E.

ICE is not seeking to remove Petitioner to a third country. *Id.* at ¶ 9. To effectuate Petitioner's removal to Laos, ICE Enforcement and Removal Operations (ERO) must acquire a travel document and schedule a flight for Petitioner. Since Petitioner was re-detained, ERO has worked expeditiously to effectuate Petitioner's removal to Laos. *Id.* at ¶ 10. ERO has been diligently preparing a travel document request to send to the Laos embassy. *Id.* at ¶ 11. ERO has submitted the travel document request and it is pending adjudication. The travel document request will then be forwarded to the Laos embassy, at which point Laos has thirty days to issue the travel document. *Id.* at ¶ 12. ICE has been routinely obtaining travel documents for Laos citizens. *Id.* at ¶ 14. Compared to fiscal year 2024, where ICE removed no Laotian citizens, ICE removed 177 Laotian citizens to Laos in fiscal year 2025 (as of September 8, 2025). *Id.* at ¶ 15. In addition, ICE has received travel documents to remove 177 Laotian citizens to Laos in fiscal year 2026 (as of October 3, 2025). *Id.* Once a travel document is issued for Petitioner, his removal can be effectuated promptly. *Id.* at ¶ 16. ICE has flights to Laos scheduled every month, including one on October 22, 2025. *Id.* at ¶ 17.

On September 30, 2025, Petitioner commenced this action, seeking habeas relief: (1) ordering Respondents to prove there is significant likelihood of removal in the reasonably foreseeable future and, if they do not, ordering his release; and (2) prohibiting the government from removing him to a third country without notice and an opportunity to be heard. *See* ECF No. 1 at 20:2–7. Petitioner also filed a motion for a temporary restraining order to seeking: (1) reinstatement of Petitioner's release on supervision; and (2) prohibiting the government from removing him to a third country without notice and an opportunity to be heard. ECF No. 3.

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III. ARGUMENT

A. Petitioner's Claims Regarding Third Countries Are Not Justiciable.

"Pursuant to Article III of the U.S. Constitution, federal courts can only adjudicate live cases or controversies." *Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (citation omitted). Relevant here, "[r]ipeness is an Article III doctrine designed to ensure that courts adjudicate live cases or controversies and do not issue advisory opinions or declare rights in hypothetical cases." *Id.* (simplified). A case is ripe if it presents "issues that are 'definite and concrete, not hypothetical or abstract.'" *Id.* (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000)). "The constitutional component of the ripeness inquiry is often treated under the rubric of standing and, in many cases, ripeness coincides squarely with standing's injury in fact prong." *Thomas*, 220 F.3d at 1138. To meet standing's injury-in-fact prong, the petitioner "must demonstrate 'an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.'" *Bishop Paiute Tribe*, 863 F.3d at 1153 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Here, Respondents were not, and are not, seeking to remove Petitioner to a third country. *See* Cole Decl. at ¶ 9. There being no actual threat of third country removal to Petitioner, the issues raised in his petition concerning third countries (*see* ECF No. 1 at 16:18–19:24) are conjectural and hypothetical—not definite or concrete. Whether considering constitutional ripeness or standing, the analysis and conclusion here is the same: there is no live case or controversy or injury-in-fact concerning third country resettlement for the Court to resolve. *See Thomas*, 220 F.3d at 1140 (finding the case not ripe for judicial review and that plaintiff lacked standing where the record was "devoid of any threat—generalized or specific—directed toward [the plaintiffs]" and only a theoretical possibility of enforcement existed); *Bishop Paiute Tribe*, 863 F.3d at 1154 ("generalized threats of prosecution do not confer constitutional ripeness"). Because there is no live case or controversy or injury-in-fact concerning third country resettlement, the Court lacks authority to adjudicate the issue here. *See Thomas*, 220 F.3d at 1138 ("Our role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution.") (citing U.S. Const. art. III).

B. Petitioner's Claims and Requested Relief are 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); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. §§ 1252(g) and 1252(b)(9).

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o 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."); *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 may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Id.* at 485 n.9.

Here, Petitioner's habeas claims stem from the decision to execute his final order of removal. As such, they directly arise "from the decision or action by the Attorney

General to . . . *execute removal orders*," 8 U.S.C. § 1252(g) (emphasis added), over which Congress has explicitly foreclosed district court jurisdiction. Thus, Petitioner's claims are barred under 8 U.S.C § 1252(g), and the Court should dismiss the petition for lack of jurisdiction.

Moreover, "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added.) Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that section 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of *all*" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485 (emphasis in original); *see also J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting section 1252(b)(9) is "'breathtaking' in scope and 'vise-like' in grip and therefore swallows up virtually all claims that are tied to removal proceedings") (quoting *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007)). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process." *J.E.F.M.*, 837 F.3d at 1031 (emphasis in original); *see also id.* ("[W]hile these sections limit how immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose all judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *id.* at 1035 (sections "1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and-practices challenges, through the [petition-for-review] process whenever they 'arise from' removal proceedings").

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Thus, as Petitioner's claim is an indirect challenge to his removal order and removal proceedings, under 8 U.S.C. § 1252, this Court lacks jurisdiction to provide Petitioner the relief he seeks. Accordingly, his TRO motion should be denied, and this habeas action should be dismissed.

C. Petitioner is Lawfully Detained.

Alternatively, Petitioner's petition should be denied because he is properly detained under 8 U.S.C. § 1231(a). Since re-detaining Petitioner less than two months ago, ICE has worked expeditiously and has acquired the necessary travel document to effectuate Petitioner's removal to Laos. Cole Decl. at ¶¶ 11–12.

An alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period under subsection (a)(1)). 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 v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 701. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

In *Zadvydas*, the Supreme Court held: "[T]he 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 court recognized that detention is presumptively reasonable pending efforts to obtain travel documents because the noncitizen's assistance is needed to obtain the travel documents, and 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 removal is imminent.

The *Zadvydas* court also held that the 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.*

In recent cases involving re-detention to effect removal, courts have recognized that ICE has a presumptively reasonable period of six months to obtain travel documents. *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); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July 8, 2025) ("Because Grigorian has been in custody for fifteen days, his detention does not violate the implicit six-month period read into the post-removal-period detention statute under *Zadvydas*."). *Cf. Nhean v. Brott*, Civil No. 17–28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, Civ. No. 17–28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) ("Nhean's 90-day removal period began to run on October 12, 2010, when his removal order became final, and he was released after 91 days of custody to supervised release on January 11, 2011. [Citation.] Nhean was transferred back into ICE custody on August 26, 2016. Nhean's detention was presumptively reasonable for an additional 90 days (six months in total)"), *cited in Sied v. Nielsen*, No. 17-cv-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *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*").

Here, Petitioner has been in custody for less than two months. Apart from the fact that the period of presumptive reasonableness has not yet elapsed, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future. Since re-detaining Petitioner on August 13, 2025, ICE has been preparing Petitioner's travel document request, which has been submitted and is pending adjudication. Cole Decl. at ¶ 12. The travel document request will then be forwarded to the Laos embassy, at which point Laos has thirty days to issue the travel document. *Id.* at ¶ 12. Once a travel document is issued for Petitioner, his removal can be effectuated promptly. *Id.* at ¶ 16. ICE has flights to Laos scheduled every month, including one on October 22, 2025. *Id.* at ¶ 17.

Based on the progress of Petitioner's travel document request, ICE attests "there is a high likelihood of removal to Laos in the next two months." *Id.* at ¶ 18. ICE's confidence in effecting Petitioner's removal to Laos is further based on ICE's current ability to do so. Compared to fiscal year 2024, where ICE removed no Laotian citizens, ICE removed 177 Laotian citizens to Laos in fiscal year 2025 (as of September 8, 2025). *Id.* at ¶ 15. In addition, ICE has received travel documents to remove 177 Laotian citizens to Laos in fiscal year 2026 (as of October 3, 2025). *Id.* ICE has flights to Loas scheduled every month. *Id.* at ¶ 17.

Considering the above evidence, the Court should reject Petitioner's contention that his detention pending removal is unlawful.

Further distinguishing Petitioner's case from *Zadvydas*, this case does not implicate the impossibility of repatriation. One of the petitioners in *Zadvydas* was stateless. Both countries to which he potentially could have been deported (the country where he was born and the country of which his parents were citizens) refused to accept him because he was not a citizen. *See Zadvydas*, 533 U.S. at 684. The other petitioner could not be deported because there was no repatriation agreement at that time between the United States and Cambodia. *Id.* at 685. Those circumstances are not present here. Petitioner is not stateless—he is a Laotian citizen. ICE is actively working to obtain a travel document to remove Petitioner to Laos, ICE is able to remove Laotian citizens to Laos, and Petitioner's continued detention is not unconstitutionally indefinite.

Based on the foregoing, Petitioner cannot sustain his burden, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its present, diligent efforts to effectuate his removal. 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." Exhibit A, *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-WQH-BLM, 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 B, *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.").

Additionally, Petitioner claims that his detention is unlawful because the agency failed to comply with its regulations for re-detaining him. ECF No. 1 at 14:15–16:17. However, "[w]hile the regulations cited by Petitioner . . . establish procedural safeguards—including the requirements that revocation be based on a condition of release violation or on a significant likelihood of removal, and that the noncitizen receive notice and an informal interview—they do not create independent substantive rights that override the statutory grant of detention authority. *See* Exhibit C, *Morales Sanchez v. Bondi*, Case No. 25-cv-02530-AB-DTB, at p. 4 (C.D. Cal. Oct. 3, 2025) (citing 8 C.F.R. §§ 241.13(i)(1)–(2), 241.4; *Zadvydas*, 533 U.S. at 701; *Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) (concluding that agency rules must prescribe substantive law, not merely procedural or policy guidance, to be enforceable)).

Moreover, there is no basis for claiming that, "before" revoking an individual's release from immigration custody, ICE must provide notice of the reasons for the revocation, pursuant to 8 C.F.R. § 214.4(*l*). The regulation clearly provides:

> *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.

Id. (emphasis added). There is therefore no legal basis for Petitioner's claim that he was entitled under the regulation to prior notice of revocation and re-detention.[2] Further, Petitioner has introduced no evidence that ICE failed to comply with its regulations *after* re-detaining Petitioner. *Cf.* Khambounheuang Decl. at ¶ 6 (stating that ICE did not give him "any *advance notice* that [he] *would be* detained" or an "informal interview or a chance to contest [his] detention *before* they arrested [him]") (emphasis added).

Finally, even assuming the agency's compliance with the regulations fell short, Petitioner has not established substantial prejudice. *See Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (adopting prejudice standard to determine whether

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[2] There are also obvious law enforcement reasons for not providing prior notice of a re-detention to execute a warrant of removal, just as there is no requirement to provide prior notice of execution of an arrest warrant. Providing such notice "creates a 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).

regulatory violation violated due process); *Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 921 (N.D. Cal. 2025) (the *Accardi* doctrine, which generally requires federal agencies to comply with their own regulations, requires plaintiffs to "show both that (1) the Government violated its own regulations, and (2) Plaintiffs suffer substantial prejudice as a result of that violation.") (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268) (1954); *Al Otro Lado, Inc. v. Mayorkas*, No. 23-cv-1367-AGS-BLM, 2024 WL 4370577, at *8–9 (S.D. Cal. Sept. 30, 2024)).

At the time of his re-detention, Petitioner knew he was subject to a final order of removal to Laos. *See* Khambounheuang Decl. at ¶ 3; Cole Decl., Ex. A. He also knew, based on his order of supervision, that although he was released in 2002, ICE would be continuing to make efforts to obtain a travel document to execute his removal to Laos. Cole Decl., Ex. B. And as discussed above, because Respondents had, and continue to have, an evidentiary basis to determine there is a significant likelihood that Petitioner will be removed to Laos in the reasonably foreseeable future, any challenge that Petitioner would have raised under the regulations would have failed. Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant release here. *See, e.g.*, *Carnation Co.*, 641 F.2d at 804 n.4 ("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 into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

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D. Petitioner Does Not Meet the Standard for a Temporary Restraining Order.

Petitioner's motion for temporary restraining order should be denied. Petitioner has not established that he is entitled to a temporary restraining order because he cannot establish that he is likely to succeed on the underlying merits of his habeas petition, he has not demonstrated 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 Cir. 2001). To prevail on a motion for a temporary restraining order, a petitioner must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878–79 (1975); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "'must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the [moving party's] favor.'") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir.

2001)); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220–21 (D.C. Cir. 1981).

1. Petitioner Is Not Likely to Succeed on the Merits.

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot establish that he is likely to succeed on the underlying merits of his habeas petition claims. As discussed in detail above: (1) Petitioner fails to allege a justiciable claim regarding his concern of being removed to a third country because ICE is seeking to remove him to Laos, not to a third country; (2) under 8 U.S.C. §§ 1252(g) and 1252(b)(9), the Court lacks jurisdiction over Petitioner's request for an order requiring his release; and (3) Petitioner is lawfully detained while ICE finalizes his removal to Laos, and any alleged regulatory noncompliance did not prejudice Petitioner. As such, Petitioner cannot show entitlement to habeas relief and has thus failed to demonstrate a likelihood of success on the underlying merits.

2. Petitioner Has Not Shown Irreparable Harm.

Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* 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); *see also Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021) (finding that detention alone is not an irreparable injury). Moreover, Petitioner has an alternative adequate remedy available to him by seeking a stay of removal through the immigration court. *See* EOIR Policy Manual, Part III: BIA Practice

Manual, § 6.3(c)(2), https://www.justice.gov/eoir/reference-materials/bia/chapter-6/3 (last visited on Oct. 3, 2025). Because Petitioner still has an adequate administrative remedy available, he cannot establish irreparable harm.

3. The Balance of Equities Does Not Tip in Petitioner's Favor.

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551–58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted). Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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.

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.

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DATED: October 6, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Matthew Riley
MATTHEW RILEY
Assistant United States Attorney
Attorney for Respondents