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

10 JUAN CARLOS CORTES HERNANDEZ,

11 Petitioner,

12 v.

13 KRISTI NOEM, *et al.*,

14 Respondents.
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Case No.: 3:25-cv-03167-JO-MMP

**RESPONSE IN OPPOSITION TO
PETITIONER'S HABEAS PETITION
AND APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

1 **I. INTRODUCTION**

2 Petitioner Juan Carlos Cortes Hernandez has filed a habeas petition and motion
3 for a temporary restraining order. For purposes of judicial efficiency, given the petition
4 and motion assert the same claims and seek the same relief, Respondents respectfully
5 respond to both the petition and motion herein. For the reasons set forth below, the
6 Court should deny Petitioner's requests for relief and dismiss the petition.

7 **II. FACTUAL BACKGROUND**

8 Petitioner is a native and citizen of Mexico. On or about January 1, 1987,
9 Petitioner unlawfully entered the United States without inspection. Ex.1. After serving
10 a sentence for a state criminal conviction, Petitioner was placed into removal
11 proceedings and served a Notice to Appear ("NTA"). *Id.* On October 18, 2004, an
12 immigration judge ordered Petitioner removed from the United States to Mexico. Ex.
13 2. Petitioner was removed on November 5, 2004. Ex. 3. In 2016, ICE reencountered
14 and apprehended Petitioner. *Id.* On August 19, 2016, the Department of Homeland
15 Security ("DHS") reinstated Petitioner's removal order. *Id.* Petitioner, on May 3, 2017,
16 was released from ICE custody on an Order of Recognizance. Decl. of La'Shaniece
17 Wilson ("Wilson Decl.") ¶ 3; Ex. 4.

18 On October 25, 2018, Petitioner was granted Withholding of Removal under the
19 Convention Against Torture ("CAT") by an immigration judge. *Id.* ¶ 4; Ex. 5. On
20 September 23, 2025, ICE re-detained Petitioner to execute his removal order to a third
21 country. *Id.* ¶ 5; Ex. 6. Since Petitioner's re-detention, ICE Enforcement and Removal
22 Operations ("ERO") has been actively working as expeditiously as possible to locate a
23 third country for resettlement and to effect Petitioner's removal to a third country. *Id.* ¶
24 6. ERO has sent multiple requests to HQ Removal and International Operations for a
25 third country resettlement, with the last request sent on November 17, 2025. *Id.* ¶ 7. The
26 requests remain pending. *Id.*

27 **III. ARGUMENT**

28 Petitioner's motion should be denied because he has not established that he is

1 entitled to interim injunctive relief. Petitioner cannot establish that he is likely to
2 succeed on the underlying merits, there is no showing of irreparable harm, and the
3 equities do not weigh in his favor.

4 In general, the showing required for a temporary restraining order is the same as
5 that required for a preliminary injunction. *See Stuhlberg Int'l Sales Co., Inc. v. John D.*
6 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
7 temporary restraining order, a plaintiff must “establish that he is likely to succeed on
8 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
9 relief, that the balance of equities tips in his favor, and that an injunction is in the public
10 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
11 *Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a “substantial case for
12 relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
13 When “a plaintiff has failed to show the likelihood of success on the merits, we need
14 not consider the remaining three [*Winter* elements].” *Garcia v. Google, Inc.*, 786 F.3d
15 733, 740 (9th Cir. 2015) (citations omitted).

16 The final two factors required for preliminary injunctive relief—balancing of the
17 harm to the opposing party and the public interest—merge when the Government is the
18 opposing party. *See Nken*, 556 U.S. at 435. “Few interests can be more compelling than
19 a nation’s need to ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611
20 (1985).

21 **A. Petitioner Has Not Shown Likelihood of Success on the Merits**

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

25 An alien ordered removed must be detained for ninety (90) days pending the
26 government’s efforts to secure the alien’s removal through negotiations with foreign
27 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien
28 during the 90-day removal period). The statute “limits an alien’s post-removal detention

1 to a period reasonably necessary to bring about the alien's removal from the United
2 States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678,
3 689 (2001). The Supreme Court has held that a six-month period of post-removal
4 detention constitutes a "presumptively reasonable period of detention." *Id.* at 683.
5 Release is not mandated after the expiration of the six-month period unless "there is no
6 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

7 In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the
8 detention in question exceeds a period reasonably necessary to secure removal. It should
9 measure reasonableness primarily in terms of the statute's basic purpose, namely,
10 *assuring the alien's presence at the moment of removal.*" *Id.* at 699 (emphasis added).
11 In so holding, the court recognized that detention is presumptively reasonable pending
12 efforts to obtain travel documents, because the noncitizen's assistance is needed to
13 obtain the travel documents, and a noncitizen who is subject to an imminent, executable
14 warrant of removal becomes a significant flight risk, especially if he or she is aware that
15 it is imminent.

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

1 Petitioner is subject to a final, executable order of removal, which means that he
2 has no right to remain in the United States. He has a temporary right not to be repatriated
3 to Mexico, but he has no right to not be resettled in a third country. ICE has long-
4 standing authority to remove noncitizens and resettle them in third countries where
5 removal to the country designated in the final order is “impracticable, inadvisable, or
6 impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining
7 framework for designation). Accordingly, noncitizens like Petitioner, who have
8 received protection against removal to the designated country (either withholding of
9 removal under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and resettled
10 in third countries.

11 Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall
12 remove the noncitizen to any of the following countries:

- 13 (i) The country from which the alien was admitted to the United
14 States.
- 15 (ii) The country in which is located the foreign port from which
16 the alien left for the United States or for a foreign territory
17 contiguous to the United States.
- 18 (iii) A country in which the alien resided before the alien entered
19 the country from which the alien entered the United States.
- 20 (iv) The country in which the alien was born.
- 21 (v) The country that had sovereignty over the alien’s birthplace
22 when the alien was born.
- 23 (vi) The country in which the alien’s birthplace is located when
24 the alien is ordered removed.
- 25 (vii) If impracticable, inadvisable, or impossible to remove the
26 alien to each country described in a previous clause of this
27 subparagraph, another country whose government will accept
28 the alien into that country.

24 *Id.* Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen
25 to a country of designation or an alternative country per Section 1231(b)(2)(D), the
26 Secretary may, in her discretion, remove the noncitizen to any country listed in
27 subparagraphs (E)(i) through (E)(vi). To effectuate Petitioner’s removal to a third
28 country, ERO has sent multiple requests to HQ Removal and International Operations

1 for a third country resettlement, with the last request sent on November 17, 2025.
2 Wilson Decl. ¶ 7.

3 To the extent Petitioner challenges the execution of his removal order, such
4 challenges are barred by 8 U.S.C. § 1252(g). Petitioner bears the burden of establishing
5 that this Court has subject matter jurisdiction over his claims. *See Ass’n of Am. Med.*
6 *Coll. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000); *Finley v. United States*,
7 490 U.S. 545, 547–48 (1989). Courts lack jurisdiction over any claim or cause of action
8 arising from any decision to commence or adjudicate removal proceedings or execute
9 removal orders. *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and
10 *notwithstanding any other provision of law* (statutory or nonstatutory), *including*
11 *section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and
12 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on
13 behalf of any alien arising from the decision or action by the Attorney General to
14 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
15 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
16 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
17 attention upon, and make special provision for, judicial review of the Attorney
18 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
19 execut[ing] removal orders”—which represent the initiation or prosecution of various
20 stages in the deportation process.”). A challenge to the execution of his removal order
21 necessarily arises “from the decision or action by the Attorney General to . . . execute
22 removal orders,” over which Congress has explicitly foreclosed district court
23 jurisdiction. 8 U.S.C. § 1252(g).

24 Lastly, Petitioner’s claim that he may not be removed to a third country without
25 adequate notice and an opportunity to be heard is subject to ongoing litigation, with the
26 Supreme Court staying an injunction imposed by a district court ordering the
27 government to provide notice and an opportunity to be heard like that requested here.
28 *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given the Supreme

1 Court's reversal of that injunction, Respondents' position is that imposition of a similar
2 injunction would be reversed here.

3 **B. Petitioner Has Not Shown Irreparable Harm**

4 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
5 "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844
6 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v.*
7 *National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a
8 "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And
9 detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021
10 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*,
11 No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, "[i]ssuing a
12 preliminary injunction based only on a possibility of irreparable harm is inconsistent
13 with [the Supreme Court's] characterization of injunctive relief as an extraordinary
14 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to
15 such relief." *Winter*, 555 U.S. at 22.

16 Petitioner suggests that being subjected to allegedly unjustified detention itself
17 constitutes irreparable injury.¹ But this argument "begs the constitutional questions
18 presented in [his] petition by assuming that [P]etitioner has suffered a constitutional
19 injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover,
20 Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their
21 custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5
22 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas
23 corpus petitioner in immigration custody, and he has not shown extraordinary
24 circumstances warranting a mandatory preliminary injunction.

25 Importantly, the purpose of civil detention is facilitating removal, and the
26 government is working to timely remove Petitioner. Here, because Petitioner's alleged
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28 ¹ Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

1 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor
2 of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at
3 *10 (N.D. Cal. Dec. 24, 2018).

4 **C. The Balance of Equities Does Not Tip in Petitioner’s Favor**

5 It is well settled that “the public interest in enforcement of the immigration laws
6 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
7 1981) (collecting cases); see *Nken*, 556 U.S. at 436 (“There is always a public interest
8 in prompt execution of removal orders: The continued presence of an alien lawfully
9 deemed removable undermines the streamlined removal proceedings IIRIRA
10 established, and permits and prolongs a continuing violation of United States law.”)
11 (simplified). And ultimately, “the balance of the relative equities ‘may depend to a large
12 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna*
13 *v. Kane*, Case No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz.
14 Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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

19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court should deny Petitioner’s request for
21 injunctive relief and dismiss the petition.

22 DATED: November 20, 2025

23 Respectfully submitted,

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