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

11 DAVID VIKTOROVICH NIKOLAYEV

12 Petitioner,

13 v.

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

16 Respondents.
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Case No. 25-cv-03208-LL-BJW

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

I. INTRODUCTION

Petitioner David Viktorovich Nikolayev 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.

II. FACTUAL BACKGROUND

Petitioner came to the United States from the U.S.S.R., now Russia, in late 1991 or early 1992. Declaration of David Nikolaev ("Nikolayev Decl.") at ¶ 1.¹ On December 13, 2017, Petitioner was ordered removed to Russia following numerous criminal convictions. *Id.* at ¶ 2; Declaration of Jason Cole ("Cole Decl.") at ¶ 4. On August 20, 2018, Petitioner was released from Immigration and Customs Enforcement (ICE) custody under an order of supervision pending removal to Russia because the government was unable to obtain a travel document to Russia. Cole Decl. at ¶ 5.

On October 28, 2025, ICE issued a Form I-200, Warrant for Arrest of Alien, for Petitioner's arrest, finding probable cause to believe that Petitioner is removable from the United States. *Id.* at ¶ 6, Ex. A (Warrant for Arrest of Alien). That same day, ICE re-detained Petitioner to execute his removal order to Russia. Cole Decl. at ¶ 7. At the time of his re-detention, ICE served Petitioner with the Form I-200, Warrant for Arrest of Alien, dated October 28, 2025. *Id.*

On October 28, 2025, ICE provided Petitioner with a Notice of Revocation of Release, which Petitioner signed, informing him that his order of supervision had been revoked, and ICE conducted an informal interview with Petitioner regarding his detention status. *Id.* at ¶¶ 8–9, Ex. B (Notice of Revocation of Release), Ex. C (Alien Informal Interview Upon Revocation of Order of Supervision).

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¹ Petitioner's declaration is found at pages 25–27 of ECF No. 1.

On October 28, 2025, ICE also issued a Form I-205, Warrant of Removal/Deportation, which Petitioner refused to sign, and a Form I-213, Record of Deportable/Inadmissible Alien, pertaining to Petitioner. Cole Decl. at ¶¶ 10–11, Ex. D (Warrant of Removal/Deportation), Ex. E (Form I-213, Record of Deportable/ Inadmissible Alien).

ICE is not seeking to remove Petitioner to a third country. Cole Decl. at ¶ 12. To effectuate Petitioner’s removal to Russia, ICE’s Enforcement and Removal Operations (ERO) must acquire a travel document and schedule a flight for Petitioner. *Id.* at ¶ 13. ERO has worked expeditiously to effectuate Petitioner’s removal to Russia. *Id.* These removal efforts remain ongoing. *Id.* On November 5, 2025, ERO submitted a travel document request for Petitioner to ERO’s Removal and International Operations (RIO). *Id.* On November 25, 2025, ERO resubmitted the travel document request to RIO in response to RIO’s request for additional information. *Id.* The request to RIO is currently pending. *Id.*

III. ARGUMENT

A. Because Petitioner’s Claims Regarding Third Countries are Unfounded, This Court Lacks Jurisdiction Over Petitioner’s Third Claim for Relief.

The Constitution limits federal judicial power to designated “cases” and “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. 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 immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending.”) (simplified)). At the “irreducible constitutional minimum,” standing

requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Here, Petitioner’s third claim for relief alleges that “ICE’s policies threaten [his] unexpected, but poetically immediate and abrupt, removal to another unidentified third country without adequate notice and an opportunity to be heard.” ECF No. 1 at 18:7–19.² But Respondents are not seeking to remove Petitioner to a third country and are instead working to promptly remove Petitioner to Russia. *See* Cole Decl. at ¶¶ 12–14, 20. As such, there is no controversy concerning third-country resettlement for this Court to resolve. Federal courts do not have jurisdiction “to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). “A claim is moot if it has lost its character as a present, live controversy.” *Am. Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted). The Court therefore lacks jurisdiction over Petitioner’s claims concerning third-country resettlement because there is no live case or controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

B. 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

² Unless otherwise indicated, page citations herein refer to the ECF-generated page numbers stamped at the top of each ECF-filed document.

1 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on
2 behalf of any alien arising from the decision or action by the Attorney General to
3 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
4 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
5 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
6 attention upon, and make special provision for, judicial review of the Attorney
7 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
8 execut[ing] removal orders”—which represent the initiation or prosecution of various
9 stages in the deportation process.”) (quoting 8 U.S.C. § 1252(g)). In other words, section
10 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney
11 General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases,
12 or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Here,
13 Petitioner’s claims necessarily arise “from the decision or action by the Attorney
14 General to . . . execute removal orders,” over which Congress has explicitly foreclosed
15 district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
16 (“Notwithstanding any other provision of law, no court shall enjoin the removal of any
17 alien pursuant to a final order under this section unless the alien shows by clear and
18 convincing evidence that the entry or execution of such order is prohibited as a matter
19 of law.”). Accordingly, to the extent Petitioner’s claims arise from—or seek to enjoin—
20 the decision to execute his removal order, the Court should deny and dismiss those
21 claims for lack of jurisdiction under 8 U.S.C. § 1252.

22 **D. Petitioner Fails to Establish Entitlement to a Restraining Order.**

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

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1 In general, the showing required for a temporary restraining order is the same as
 2 that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D.*
 3 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
 4 temporary restraining order, a plaintiff must “establish that he is likely to succeed on
 5 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
 6 relief, that the balance of equities tips in his favor, and that an injunction is in the public
 7 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
 8 *Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a “substantial case for
 9 relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
 10 When “a plaintiff has failed to show the likelihood of success on the merits, we need
 11 not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d
 12 733, 740 (9th Cir. 2015). The final two factors required for preliminary injunctive
 13 relief—balancing of the harm to the opposing party and the public interest—merge
 14 when the Government is the opposing party. *See Nken*, 556 U.S. at 435. “Few interests
 15 can be more compelling than a nation’s need to ensure its own security.” *Wayte v.*
 16 *United States*, 470 U.S. 598, 611 (1985).

17 **1. Petitioner is Unlikely to Succeed on the Merits.**

18 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at
 19 740. Here, apart from his non-justiciable claim of potential third-country removal,
 20 Petitioner argues that his re-arrest and detention warrant habeas relief because: (1) ICE
 21 violated its own regulations, ECF No. 1 at 9:24–13:19 (Petitioner’s first claim for
 22 relief); and (2) they ran afoul of the Supreme Court’s holding in *Zadvydas v. Davis*, 533
 23 U.S. 678, 689 (2001), ECF No. 1 at 13:20–18:4 (Petitioner’s second claim for relief).
 24 But Petitioner cannot establish that he is likely to succeed on the underlying merits of
 25 those claims because he is properly detained under 8 U.S.C. § 1231(a) and the
 26 applicable agency regulations.

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1 a. **Petitioner’s detention is lawful, and he has not established that**
2 **there is no significant likelihood of removal in the reasonably**
3 **foreseeable future.**

4 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
5 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found
6 to be unlawfully present in the United States and a final order of removal has been
7 entered, the government ordinarily secures the alien’s removal during a subsequent 90-
8 day statutory “removal period.” 8 U.S.C. § 1231(a)(1). The statute provides that the
9 Attorney General “shall detain” the alien during this removal period. 8 U.S.C.
10 § 1231(a)(2).

11 The Supreme Court held in *Zadvydas* that when removal is not accomplished
12 during the 90-day removal period, the statute “limits an alien’s post-removal-period
13 detention to a period reasonably necessary to bring about the alien’s removal from the
14 United States” and does not permit “indefinite detention.” *Zadvydas*, 533 U.S. at 689.
15 The Supreme Court has held that six months constitutes a “presumptively reasonable
16 period of detention.” *Id.* at 701. Courts have repeatedly declined to grant habeas relief
17 where the presumptively reasonable six-month period has not yet elapsed. *See*
18 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
19 2025) (“The government is entitled to its six-month presumptive period before
20 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*
21 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
22 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
23 been detained for more than six months. Petitioner has been in detention since May 29,
24 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations
25 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
26 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
27 the release based on changed circumstances, “the revocation would merely restart the
28 90-day removal period, not necessarily the presumptively reasonable six-month

1 detention period under *Zadvydas*”).

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

14 The Supreme Court also instructed that detention could exceed six months: “This
15 6-month presumption, of course, does not mean that every alien not removed must be
16 released after six months. To the contrary, an alien may be held in confinement until it
17 has been determined that there is no significant likelihood of removal in the reasonably
18 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
19 reason to believe that there is no significant likelihood of removal in the reasonably
20 foreseeable future, the Government must respond with evidence sufficient to rebut that
21 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
22 alien to show, after a detention period of six months, that there is ‘good reason to believe
23 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
24 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
25 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

26 Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But
27 even if Petitioner’s total time in detention since August 2018 does exceed the six months
28 of presumptive reasonableness, his claim still fails at the next step because he cannot

1 meet his burden to establish “that there is no significant likelihood of removal in the
2 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Petitioner was re-detained
3 for removal on October 28, 2025, after ICE had been successfully obtaining travel
4 documents for Russian citizens and removing them. *See* ICE Annual Report Fiscal Year
5 2024, at p. 101, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last
6 visited Nov. 26, 2025) (reporting that removals to Russia ranged from 68 to 464 per
7 fiscal year during fiscals years 2019–2024); Cole Decl. at ¶ 14 (confirming removals to
8 Russia in fiscal years 2025–2026). To effectuate Petitioner’s removal to Russia, ERO
9 must acquire a travel document and schedule a flight for Petitioner. *Id.* at ¶ 13. ERO has
10 worked expeditiously to effectuate Petitioner’s removal to Russia. *Id.* These removal
11 efforts remain ongoing. *Id.* On November 5, 2025, ERO submitted a travel document
12 request for Petitioner to ERO’s Removal and International Operations (RIO). *Id.* On
13 November 25, 2025, ERO resubmitted the travel document request to RIO in response
14 to RIO’s request for additional information. *Id.* The request to RIO is currently pending.
15 *Id.* There is no bar against Petitioner’s removal to Russia, and the government is
16 currently arranging for that removal.

17 Petitioner may complain that the government did not already obtain his travel
18 documents before taking him back into detention. *Zadvydas* does not require the
19 government to pre-arrange a noncitizen’s removal travel before arresting them, which
20 would often be extremely difficult if not impossible. The constitutional standard is
21 whether there is “a significant likelihood of removal” in the “reasonably foreseeable
22 future.” The law does not require that “every [noncitizen] not removed must be released
23 after six months.” *Zadvydas*, 533 U.S. at 701. Instead, the Supreme Court was clear that
24 the Constitution prevents only “indefinite” or “potentially permanent” detention. *Id.* at
25 689–91. Courts properly deny *Zadvydas* claims under such circumstances. *See*
26 *Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April
27 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14
28 months post-final order); *Nicia v. ICE Field Office Dir.*, No. C13–0092–RSM, 2013

1 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner “failed to satisfy
2 his burden of showing that there is no significant likelihood of his removal in the
3 reasonably foreseeable future” where he had been detained more than seven months
4 post-final order).

5 That Petitioner does not yet have a specific date of anticipated removal does not
6 make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222,
7 1233 (9th Cir. 2008) (explaining that a demonstration of “no significant likelihood of
8 removal in the reasonably foreseeable future” would include a country’s refusal to
9 accept a noncitizen or that removal is barred by our own laws). On the contrary, as
10 courts in this district have found, “evidence of progress, albeit slow progress, in
11 negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
12 detention grows unreasonably lengthy.” Exhibit A, *Kim v. Ashcroft*, Case No. 02-cv-
13 1524-J-LAB, ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner’s
14 one year and four-month detention does not violate *Zadvydas* given respondent’s
15 production of evidence showing governments’ negotiations are in progress and there is
16 reason to believe that removal is likely in the foreseeable future); *see also Marquez v.*
17 *Wolf*, No. 20-cv-1769-WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020)
18 (denying petition because “Respondents have set forth evidence that demonstrates
19 progress and the reasons for the delay in Petitioner’s removal”); Exhibit B, *Sereke v.*
20 *DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019)
21 (“[T]he record at this stage in the litigation does not support a finding that there is no
22 significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”).

23 Petitioner’s continued detention is thus not unconstitutionally prolonged under
24 *Zadvydas*.

25 **b. Petitioner’s complaints about procedural defects in his**
26 **detention do not establish a basis for habeas relief.**

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

1 A noncitizen who is not removed within the removal period may be released from
2 ICE custody “pending removal . . . 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 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a
6 removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
7 ICE may also revoke the order of supervision where, “on account of changed
8 circumstances, [ICE] determines that there is a significant likelihood that the alien may
9 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
10 regulations further provide:

11 Upon revocation, the alien will be notified of the reasons for revocation of
12 his or her release or parole. The alien will be afforded an initial informal
13 interview promptly after his or her return to Service custody to afford the
14 alien an opportunity to respond to the reasons for revocation stated in the
notification.

15 8 C.F.R. § 214.4(l).

16 Here, Petitioner claims that his detention is unlawful because the agency failed
17 to comply with its regulations when re-detaining him. Specifically, Petitioner argues
18 that ICE did not have any reason to believe that removal to Russia was significantly
19 likely to occur in the reasonably foreseeable future, ICE did not identify any “changed
20 circumstances” to justify re-detaining him, ICE did not inform him of the reasons for
21 re-detaining him, he was not given an informal interview, and he has not been afforded
22 a meaningful opportunity to respond to the reasons for revocation or submit evidence
23 rebutting his re-detention. ECF No. 1 at 11:22–12:21.³ Notably, the regulations do not
24 require written notice, advance notice, an advanced interview, nor for DHS to prove to
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26 ³ ICE provided Petitioner with a formal Notice of Revocation of Release and an informal
27 interview on October 28, 2025—the same day that ICE re-detained him. *See* Cole Decl.
28 at ¶ 8–9, Ex. B (Notice of Revocation of Release and Proof of Service), Ex. C (Alien
Informal Interview Upon Revocation of Order of Supervision).

1 the satisfaction of a petitioner that changed circumstances are present.⁴

2 Yet it is clear that there *are* changed circumstances here—namely, ICE’s recent
3 ability to obtain travel documents from the Russian government and to schedule routine
4 removal flights to Russia. The Russian government has issued travel documents in other
5 cases, and removals to Russia have been successfully executed throughout the past six
6 years. See ICE Annual Report Fiscal Year 2024, at p. 101,
7 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last visited Nov. 26,
8 2025); Cole Decl. at ¶ 14. These facts are fatal to Petitioner’s claim, because even if the
9 agency had failed to provide Petitioner with “advance notice” of the revocation, or
10 neglected to conduct the informal interview, Petitioner could not establish that he was
11 prejudiced by those omissions nor that a constitutional level violation has occurred. See
12 *Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“[T]he mere failure of an
13 agency to follow its regulations is not a violation of due process.”); *United States v.*
14 *Tatoyan*, 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that “[c]ompliance with . . .
15 internal [customs] agency regulations is not mandated by the Constitution”)
16 (simplified); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978)
17 (holding that *Accardi* “enunciate[s] principles of federal administrative law rather than
18 of constitutional law”).

19 For example, in *Ahmad v. Whitaker*, the government revoked the petitioner’s
20 release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-
21 JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and*
22 *recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner
23 argued the revocation of his release was unlawful because, he contended, the federal
24

25 ⁴ There are obvious law enforcement reasons for not providing “advance” notice of a
26 re-detention before executing a warrant of removal, just as there is no requirement to
27 provide prior notice of execution of an arrest warrant. Providing such notice “creates a
28 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).

1 regulations prohibited re-detention without, among other things, an opportunity to be
2 heard. *Id.* at *5. In rejecting his claim, the court held that although the regulations called
3 for an informal interview, petitioner could not establish “any actionable injury from this
4 violation of the regulations given that ICE had procured a travel document and
5 scheduled [petitioner’s] removal.” *Id.* Similarly, in *Doe v. Smith*, the court held that
6 even if an ICE detained petitioner had not received a timely interview following her
7 return to custody, there was “no apparent reason why a violation of the regulation, even
8 assuming it occurred, should result in release.” *Doe v. Smith*, No. 18-11363-FDS, 2018
9 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, “it is difficult to see
10 an actionable injury stemming from such a violation. Doe is not challenging the
11 underlying justification for the removal order. . . . Nor is this a situation where a prompt
12 interview might have led to her immediate release—for example, a case of mistaken
13 identity.” *Id.*

14 So too here. At the time of his re-detention, Petitioner knew he was subject to a
15 final order of removal to Russia. *See* Nikolayev Decl. at ¶ 2. He does not challenge that
16 order in this lawsuit or offer any indication that he intends to do so. Petitioner was
17 informed of the reason for his re-detention when he was served on October 28, 2025,
18 with the Notice of Revocation of Release and the Form I-205, Warrant of
19 Removal/Deportation. *See* Cole Decl. at ¶¶ 8, 10, Ex. B (Notice of Revocation of
20 Release), Ex. D (Form I-205, Warrant of Removal/Deportation). And because
21 Respondents had, and continue to have, an evidentiary basis to conclude there is a
22 significant likelihood that Petitioner will be removed to Russia in the reasonably
23 foreseeable future, any challenge that Petitioner would have raised to the revocation
24 prior to or after his re-detention would have failed. Because Petitioner cannot show
25 prejudice under these circumstances, the alleged violation of agency regulations does
26 not warrant release here. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.
27 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir.
28 2010) (“While the regulation provides the detainee some opportunity to respond to the

1 reasons for revocation, it provides no other procedural and no meaningful substantive
2 limit on this exercise of discretion as it allows revocation ‘when, in the opinion of the
3 revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct
4 of the alien, or *any other circumstance*, indicates that release would no longer be
5 appropriate.’”) (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation*
6 *Co. v. Sec’y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“[V]iolations of procedural
7 regulations should be upheld if there is no significant possibility that the violation
8 affected the ultimate outcome of the agency’s action.” (citation omitted)); *United States*
9 *v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow
10 regulations requiring that an arrested alien be advised of his right to speak to his consul
11 was not prejudicial and thus not a ground for challenging the conviction); *United States*
12 *v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming
13 that the judge had violated the rule by failing to inquire into the alien’s background, any
14 error was harmless because there was no showing that the petitioner was qualified for
15 relief from deportation).

16 Thus, whatever procedural deficiencies or delays may have occurred, they do
17 not warrant Petitioner’s release and indeed could be cured by means well short of
18 release. Petitioner does not challenge his removal order, nor could he. *See supra* Section
19 III.B. ICE’s ERO will soon be submitting a travel document request to the Russian
20 government. *See Cole Decl.* at ¶ 13. With Petitioner’s removal likely to occur in the
21 reasonably foreseeable future, no purpose would be served by this Court’s ordering his
22 release—other than frustrating “the statute’s basic purpose, namely, assuring the alien’s
23 presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. Petitioner is thus
24 unlikely to succeed on the merits of his claim that ICE’s alleged failure to follow agency
25 regulations merits his release.

26 2. Petitioner Has Not Shown Irreparable Harm

27 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
28 “immediate threatened injury.” *Caribbean Marine Servs. 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. And detention alone is not an irreparable injury. See *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021). Further, “[i]ssuing 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.” *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to allegedly unjustified detention itself constitutes irreparable injury.⁵ 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 timely 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).

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

It is well settled that “the public interest in enforcement of the immigration laws is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.

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

1 1981) (collecting cases); *see Nken*, 556 U.S. at 436 (“There is always a public interest
2 in prompt execution of removal orders: The continued presence of an alien lawfully
3 deemed removable undermines the streamlined removal proceedings IIRIRA
4 established, and permits and prolongs a continuing violation of United States law.”)
5 (simplified). And ultimately, “the balance of the relative equities ‘may depend to a large
6 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna*
7 *v. Kane*, Case No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz.
8 Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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

13 IV. CONCLUSION

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

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17 Dated: November 26, 2025

Respectfully submitted,

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21 s/ Matthew Riley
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