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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

10 Hector Reyes Carmona,
11 Petitioner,
12 v.
13 Pam Bondi, et al.,
14 Respondents.

CV-25-00110-TUC-JGZ

**RESPONSE IN OPPOSITION TO
PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION**

-AND-

MOTION TO DISMISS PETITION

16 Pursuant to the Court's March 12, 2025, Order (Doc. 6), Respondents hereby
17 submit this Response to Plaintiff's Motion for Preliminary Injunction (Doc. 5) (the
18 "Motion"). For the reasons set forth below, the Court should deny the Motion, dissolve
19 the existing temporary restraining order ("TRO"), and dismiss the Petition for Writ of
20 Habeas Corpus ("Petition") (Doc. 1). Respondents' Response is supported by the
21 accompanying Memorandum of Points and Authorities, and the entire record in this case.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION**

24 The Court should deny the Motion and dissolve the existing TRO (Doc. 6) because
25 the Court lacks subject matter jurisdiction to stay Petitioner's removal from the United
26 States pending resolution of his attempt to reopen his immigration proceeding. The law is
27 clear: the Court does not have subject matter jurisdiction to hear any claim brought by an
28 alien arising from the Attorney General's discretionary decision to execute a removal

1 order. 8 U.S.C. § 1252(g). The Ninth Circuit, in controlling precedent, has reaffirmed
2 courts have no jurisdiction to enjoin the government from executing removal orders
3 pending a decision on a petitioner's motion to reopen his immigration proceedings. *Rauda*
4 *v. Jennings*, 55 F.4th 773 (9th Cir. 2022). Yet that is exactly what Petitioner asks this
5 Court to do. No matter how Petitioner may attempt to frame the claims asserted in the
6 Petition and the Motion, at the end of the day, he asks this Court to stop the government
7 from executing his removal. This Court lacks jurisdiction to grant this relief, temporarily
8 or otherwise. Petitioner's proper remedy here is to wait for the Board of Immigration
9 Appeals ("BIA") to decide his motion to reopen, and, if the BIA declines to reopen his
10 case, appeal that decision to the Ninth Circuit. *See* 8 U.S.C. § 1252(a)(5). Petitioner's due
11 process rights will not be violated if he is removed before there is a final decision on his
12 motion to reopen. He will continue to have access to all the process guaranteed to him by
13 8 U.S.C. § 1252, and there are no facts asserted in the Petition or Motion to suggest
14 otherwise. As such, the Court should deny the Motion and terminate the TRO.
15 Additionally, the Court lacks subject matter jurisdiction over the claims in the Petition for
16 which the relief sought is a stay of removal. Therefore, the Court should also dismiss the
17 Petition.

18 **II. BACKGROUND**

19 Petitioner is a native citizen of Mexico who claims he has been residing unlawfully
20 in the United States since 1993 and who is currently subject to a final order of deportation.
21 (Petition at ¶¶ 6, 18.)

22 On September 16, 2016, Petitioner entered a guilty plea on one count of solicitation
23 to unlawfully possess a narcotic drug, a Class Six Undesignated Offense, and was
24 sentenced to two years probation. (Petition at Ex. A, Tab R.) Petitioner has admitted that
25 narcotic was cocaine. (*Id.* at Tab H, p. 96.) On October 4, 2018, the Superior Court of the
26 State of Arizona in and for the County of Pima entered an Order of Discharge of Probation
27 with the undesignated offense remaining undesignated and not converted to a
28 misdemeanor. (*Id.* at Tab S.)

1 On January 29, 2019, Immigration and Customs Enforcement (“ICE”) agents
2 arrested Petitioner as he was subject to removal from the United States pursuant to Section
3 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182 (“INA”), and
4 Petitioner was served with a Notice to Appear. (*Id.* at Tabs L, M.) Petitioner filed a 42B,
5 Application for Cancellation of Removal based on hardship to his wife and three children,
6 all of whom are U.S. citizens. (Ex. A at pp. 4-5.) The Immigration Judge denied the
7 Application finding Petitioner failed to establish his qualifying relatives would experience
8 exceptional and extremely unusual hardship under INA § 240A(b)(1)(D) and that
9 Petitioner did not merit a positive exercise of discretion because the negative factors in his
10 case outweighed the positive factors. (Ex. A at Tab H, p. 96.)

11 Petitioner appealed the denial to the BIA on May 3, 2022, arguing the Immigration
12 Judge erred in finding Petitioner did not establish exceptional and extremely unusual
13 hardship. (*Id.*) The BIA affirmed the denial of cancellation of removal. (*Id.* at p. 97.) The
14 BIA noted that, assuming Petitioner was statutorily eligible for cancellation of removal,
15 he had the burden of proof to also show cancellation of removal was warranted in the
16 exercise of discretion. (*Id.*) It went on to note Petitioner had pleaded guilty to solicitation
17 to unlawfully possess cocaine. (*Id.*) The BIA found that Petitioner waived review of the
18 Immigration Judge’s discretion finding by failing to include the issue in his Notice of
19 Appeal, and, as the discretion issue was dispositive to Petitioner’s eligibility for
20 cancellation of removal, it affirmed denial of that relief. (*Id.* at pp. 96-97.)

21 Petitioner filed a petition for review in the Ninth Circuit Court of Appeals. (*Id.* at
22 Tab I.) The court granted a temporary stay of removal pending the outcome of the appeal.
23 (*Id.* at p. 100.) The government filed a motion for summary disposition, which the court
24 granted on September 23, 2022. (*Id.*) The court found that it lacked jurisdiction to review
25 any challenge to the denial of cancellation of removal based on the Immigration Judge’s
26 discretion finding because Petitioner failed to exhaust that issue by failing to present it in
27 the BIA. (*Id.* at p. 99.) The court ordered that the temporary stay of removal would remain
28 in place until the court’s mandate issued but otherwise denied Petitioner’s motion for stay

1 of removal. (*Id.* at p. 100.) The mandate issued on November 15, 2022. (*Id.* at Tab Q.)

2 On June 28, 2024, Petitioner filed in the BIA a Motion to Reopen and Request for
3 Stay of Removal (the “motion to reopen”). (Petition at Ex. A.) In the motion to reopen,
4 Petitioner contends he was represented by counsel Mary Cowan throughout his
5 immigration proceedings and appeals. (*Id.* at p. 2.) He asserts he received ineffective
6 assistance of counsel from Ms. Cowan in violation of his due process rights resulting in
7 denial of his application for cancellation of removal, dismissal of his BIA appeal,
8 dismissal of his Ninth Circuit petition for review, and waiver of substantive review of his
9 claims. (*Id.* at 11.) He further contends his removal proceedings should be reopened based
10 on new material evidence; namely, he has had another child in the interim and now has
11 four U.S. citizen children. (*Id.*)

12 Petitioner filed the instant Petition on March 7, 2025. (Doc. 1.) The Petition asserts
13 two claims for relief. Count One asserts a violation of the INA alleging his removal during
14 the pendency of his motion to reopen violates his statutory right to litigate his motion to
15 reopen. (*Id.* at ¶¶ 64-70.) Count Two alleges a violation of the Due Process Clause
16 asserting he has not had the opportunity to litigate his claim for ineffective assistance of
17 counsel as set out in the motion to reopen; therefore, his removal violates the due process
18 guarantee of the Fifth Amendment. (*Id.* at ¶¶ 71-74.) As relief, Petitioner asks this Court
19 to enjoin Respondents from removing him during the pendency of his motion to reopen
20 including any appeal of the BIA’s ultimate decision, and to enjoin Respondents from
21 transferring him outside the jurisdiction of Arizona. (*Id.* at ECF p. 18.)

22 **III. LEGAL STANDARD**

23 **A. Jurisdiction**

24 **1. Federal jurisdiction generally**

25 “Federal courts are courts of limited jurisdiction. They possess only that power
26 authorized by Constitution and statute, which is not to be expanded by judicial decree.”
27 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted).
28 The party seeking to invoke the court’s subject matter jurisdiction has the burden to

1 demonstrate jurisdiction exists. *Id.* Additionally, courts “have an independent obligation
 2 to determine whether subject-matter jurisdiction exists[.]” *Arbaugh v. Y&H Corp.*, 546
 3 U.S. 500, 514 (2006); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any
 4 time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

5 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides a defendant may
 6 move to dismiss an action for a “lack of subject-matter jurisdiction.” *Id.* “Under Rule
 7 12(b)(1), a defendant may challenge the plaintiff’s jurisdictional allegations in one of two
 8 ways. A ‘facial’ attack accepts the truth of the plaintiff’s allegations but asserts that they
 9 are insufficient on their face to invoke federal jurisdiction. ... A ‘factual’ attack, by
 10 contrast, contests the truth of the plaintiff’s factual allegations, usually by introducing
 11 evidence outside the pleadings.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014)
 12 (citations omitted).

13 **2. Scope of Habeas jurisdiction**

14 **a. Courts’ power to grant habeas relief generally**

15 Federal district courts may grant writs of habeas corpus if the petitioner is “in
 16 custody in violation of the Constitution or laws or treaties of the United States[.]” 28
 17 U.S.C. § 2241(c)(3).

18 **b. The Real ID Act’s impact on jurisdiction related to final** 19 **orders of removal**

20 In 2005, Congress enacted the REAL ID Act, which stripped district courts of
 21 habeas jurisdiction over removal orders, and vested jurisdiction to review such orders
 22 exclusively in the courts of appeal. *See* 8 U.S.C. § 1252(a)(5).

23 In pertinent part, 8 U.S.C. § 1252(a)(5) provides:

24
 25 Notwithstanding any other provision of law (statutory or nonstatutory),
 26 including section 2241 of Title 28, or any other habeas corpus provision, and
 27 sections 1361 and 1651 of such title, a petition for review filed with an
 28 appropriate court of appeals in accordance with this section shall be the sole
 and exclusive means for judicial review of an order of removal entered or
 issued under any provision of this chapter, except as provided in subsection
 (e) of this section.

1 Further, 8 U.S.C. § 1252(b)(9) provides:

2 Judicial review of all questions of law and fact, including interpretation and
 3 application of constitutional and statutory provisions, arising from any action
 4 taken or proceeding brought to remove an alien from the United States under
 5 this subchapter shall be available only in judicial review of a final order under
 6 this section. Except as otherwise provided in this section, no court shall have
 7 jurisdiction, by habeas corpus under section 2241 of Title 28, or any other
 8 habeas corpus provision, by section 1361 or 1651 of such title, or by any
 9 other provision of law (statutory or nonstatutory), to review such an order or
 10 such questions of law or fact.

11 Finally, the statute directs that “[e]xcept as provided in this section and
 12 notwithstanding any other provision of law (statutory or nonstatutory) ... *no court shall*
 13 *have jurisdiction to hear any cause or claim* by or on behalf of any alien *arising from*
 14 *the decision or action by the Attorney General to* commence proceedings, adjudicate
 15 cases, or *execute removal orders* against any alien under this chapter.” 8 U.S.C. § 1252(g)
 16 (emphasis added).

13 **B. Preliminary Injunction Standard**

14 Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def.*
 15 *Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “[P]laintiffs seeking a preliminary
 16 injunction face a difficult task in proving that they are entitled to this extraordinary
 17 remedy.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal
 18 quotations omitted). Plaintiffs’ burden is aptly described as a “heavy” one. *Id.* A
 19 preliminary injunction requires “substantial proof” and a “*clear showing*” that it is
 20 warranted. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original;
 21 internal quotations omitted). “A plaintiff seeking a preliminary injunction must show that:
 22 (1) [he] is likely to succeed on the merits, (2) [he] is likely to suffer irreparable harm in
 23 the absence of preliminary relief, (3) the balance of equities tips in [his] favor, and (4) an
 24 injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.
 25 2015) (internal quotations omitted). Alternatively, a plaintiff can show there are “serious
 26 questions going to the merits and the balance of hardships tips sharply towards [plaintiff],
 27 as long as the second and third *Winter* factors are satisfied.” *Disney Enters., Inc. v.*
 28 *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotations omitted).

1 “A district court may not grant a preliminary injunction if it lacks subject matter
2 jurisdiction over the claim before it.” *Shell Offshore Inc. v. Greenpeace, Inc.*, 864
3 F.Supp.2d 839, 842 (D. Alaska 2012) (collecting cases), *aff’d*, 709 F.3d 1281 (9th Cir.
4 2013).

5 **IV. ARGUMENT**

6 **A. The Court Lacks Jurisdiction to Grant the Preliminary Injunction**

7 The Court should deny the Motion and dissolve the TRO because controlling Ninth
8 Circuit Court of Appeals precedent precludes the Court from staying the government’s
9 execution of Petitioner’s final order of removal here. *Rauda v. Jennings*, 54 F.4th 773 (9th
10 Cir. 2022). In *Rauda*, Matias, an El Salvador national, was detained by ICE, which
11 instituted removal proceedings. *Rauda v. Jennings*, No. 21-CV-03897-CRB, 2021 WL
12 2413006, at *1 (N.D. Cal. June 6, 2021). The Immigration Judge denied relief from
13 removal, Matias unsuccessfully appealed to the BIA, and the Ninth Circuit denied his
14 petition for review. *Id.* at *1-2. Matias subsequently filed a motion to reopen his
15 immigration case so the BIA could consider whether new developments made it more
16 likely he would suffer torture or be killed if removed to El Salvador. *Id.* at *2.

17 Matias then filed a habeas petition in a Northern District of California district court
18 and a TRO motion to prevent the government from removing him before the BIA ruled
19 on his motion to reopen and the district court ruled on his habeas petition. *Id.* Matias
20 argued the government’s execution of his removal order while his motion to reopen was
21 pending would violate his due process rights, as well as the Convention Against Torture
22 (“CAT”) and the INA. *Id.* at *3. He asserted if he was ““detained, dead, or disappeared,””
23 he would have no opportunity to be heard on the motion to reopen. *Id.* at *4.

24 The district court held it lacked jurisdiction over Matias’s claims and denied the
25 TRO motion. *Id.* at *3. The district court found:

26 8 U.S.C. § 1252(g) deprives courts of jurisdiction “to hear any cause or claim
27 by or on behalf of any alien arising from the decision or action by the
28 Attorney General to commence proceedings, adjudicate cases, or execute
removal orders against any alien.” That means courts lack jurisdiction over
claims challenging the government’s decisions or actions to execute removal

orders. Mr. Matias' habeas petition and his motion for a TRO both ask the Court to enjoin the government from executing his removal order. Because his claims arise from the government's "decision or action" to "execute" his removal order, § 1252(g) bars the Court from hearing them.

Id. (internal citation omitted) (quoting 8 U.S.C. § 1252(g)). The district court went on to find that applying § 1252(g) in that case would not violate the Suspension Clause. *Id.* at *5. The Court reasoned:

The "historic role of habeas is to secure release from custody." Here, in arguing that he should not be removed while his motion to reopen is pending, Mr. Matias does not attempt to secure his release from custody. Although his habeas petition contains a cursory request for release, his motion for a TRO does not. ... In short, Mr. Matias seeks a temporary stay of removal, not release from custody.

In sum, because Mr. Matias's claims do not "call for traditional habeas relief" even under an evolving understanding of the writ, applying § 1252(g) to bar his claims does not implicate the Suspension Clause.

Id. at *5-6 (internal citation omitted) (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118 (2020)). The district court denied the TRO. *Id.* at *6.

The Ninth Circuit Court of Appeals affirmed the district court's denial of the TRO and directed the district court to dismiss the habeas petition. *Rauda*, 55 F.4th at 781. The court held the plain language of § 1252(g) barred review of Matias's claims. *Id.* at 777. The court reasoned:

Per § 1252(g), "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."

The execution of his removal order is precisely what Matias challenges here. Matias seeks to enjoin the government from removing him—or in other words, enjoin "action by the Attorney General ... to execute removal orders against [Matias]." Congress has explicitly precluded our review of this claim.

Id. (internal citation omitted) (emphasis in original) (quoting 8 U.S.C. § 1252(g)).

The court noted that while Matias was not asking it to review the grounds for his removal but just to temporarily stay his removal pending a final decision on the motion to reopen, that did not circumvent the jurisdiction divesting provision of § 1252(g). *Id.* The

1 court observed the statutory bar on review of “‘claim[s] ... arising from the decision or
2 action by the Attorney General to execute removal orders’ does not include any temporal
3 caveats.” *Id.* (quoting 8 U.S.C. § 1252(g)). And “‘the discretion to decide *whether* to
4 execute a removal order includes the discretion to decide *when* to do it. Both are covered
5 by the statute.’” *Id.* at 778 (emphasis in original) (quoting *Tazu v. Att’y Gen. United States*,
6 975 F.3d 292, 297 (3rd Cir. 2020)). The court concluded: “No matter how Matias frames
7 it, his challenge is to the Attorney General’s exercise of his discretion to execute Matias’s
8 removal order, which we have no jurisdiction to review.” *Id.* at 778.

9 The court rejected the contention that refusing to enter a stay of removal pending
10 resolution of the motion to reopen would effectively deprive the petitioner of his statutory
11 right to file a motion to reopen. *Id.* at 779. The court noted the petitioner’s motion to
12 reopen had already been filed and was pending before the BIA, and that once the BIA
13 decided the motion to reopen, the petitioner would be able to file a Petition for Review in
14 the Ninth Circuit for review of that final agency action. *Id.* The court noted: “Mathias has
15 taken full advantage of his statutory rights [to file a motion to reopen] and will continue
16 to have access to the process guaranteed to him under the statute even if he is removed.”
17 *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 424 (2009)).

18 The court also rejected Matias’s argument that applying the statutory bar would
19 violate the Suspension Clause. *Id.* at 779. The court found “only an extreme and
20 unwarranted expansion of the habeas writ would encompass Matias’s requested relief.”
21 *Id.* The court noted that in the *Department of Homeland Security v. Thuraissigiam*, 591
22 U.S. 103 (2020), the United States Supreme Court interpreted the scope of the Suspension
23 Clause in an analogous situation and “determined that habeas relief applies to petitioners
24 seeking release from executive detention but not to petitioners seeking to remain in United
25 States” because “the ‘core’ of habeas relief is *release from* unlawful executive detention,
26 not the right to remain in a country.” *Id.* (emphasis in original).

27 Finally, the court rejected Matias’s argument that due process required staying his
28 removal pending a final decision on the motion to reopen, as well as his alternative

1 arguments under Article III of the Constitution and 18 U.S.C. § 1331 finding them
2 “without merit.” *Id.* at 780-81. The Court reasoned:

3 [Section] 1252’s limit on judicial review does not immunize his claims from
4 review—it merely prevents him from filing a habeas petition challenging the
5 Attorney General’s discretion to execute a valid order of removal while his
6 motion to reopen is pending. Instead, he must wait to raise the claims in a
7 petition for review of a final order.

8 This should come as no surprise. Our immigration laws allow an alien to
9 challenge an order of removal before it’s executed and—as Matias did here—
10 request a stay of removal during judicial proceedings reviewing the agency’s
11 removal decision. But once the removal order has withstood challenges before
12 the IJ, the BIA, *and* our court, the government has discretion to decide *when*
13 to remove an alien from a place he has no legal right to remain. And although
14 the alien is entitled to file a motion to reopen and seek a stay of removal from
15 the agency until that motion is decided, our court lacks jurisdiction to
16 intervene if the stay is denied, precisely because an alien’s presence in the
17 United States is not required for adjudication of the motion to reopen to take
18 place. This statutorily provided process satisfies any demands of the Due
19 Process Clause when an alien subject to a valid, final order of removal seeks
20 to reopen his removal proceedings.

21 *Id.* at 780 (citing *Tazu*, 975 F.3d at 299-300) (emphasis in original). The court concluded:
22 “Even if removed, Matias’s motion would remain pending until its adjudication, and he
23 may challenge the BIA’s decision in our court once a final order has been issued. He is
24 not stripped of any process due him by being removed.” *Id.* at 781.

25 The Ninth Circuit’s decision in *Rauda* is directly on point here and controlling.
26 Petitioner is subject to a final order of removal, and consistent with *Rauda* and with §
27 1252(g), the Court may not issue injunctive relief to prevent the Attorney General from
28 exercising her discretion to decide whether and, if so, when to execute that removal order,
even if the BIA has not yet decided Petitioner’s motion to reopen. Like the petitioner in
Rauda, Petitioner’s due process rights are satisfied because he may file a petition for
review in the Ninth Circuit Court of Appeals if the BIA denies his motion to reopen, and
his physical presence in the United States is not required to do so. *See* 8 U.S.C. §
1252(a)(1); *Reyes-Torres v. Holder*, 645 F.3d 1073, 1074-75 (9th Cir. 2011).

29 *Poghosyan v. Wolf*, No. 5:20-CV-02295-ODW (AFM), 2020 WL 7347858 (C.D.
30 Cal. Nov. 6, 2020), the case on which Petitioner’s Motion relies, does not support
injunctive relief here. *Poghosyan* is a non-controlling district court decision that was

1 issued two years before the Ninth Circuit’s decision in *Rauda*. *Rauda* is controlling Ninth
 2 Circuit precedent and would compel a different result in *Poghosyan* were that case brought
 3 today. Another Central District of California court recognized just this, relying on *Rauda*
 4 in summarily dismissing a habeas petition seeking a stay of removal until the BIA ruled
 5 on the petitioner’s pending motion to reopen. *Ponce v. Garland*, No. EDCV 22-1751 JGB
 6 (PVC), 2022 WL 14318031, at *2 (C.D. Cal. Oct. 14, 2022) (“The Ninth Circuit’s *Rauda*
 7 decision fully disposes of Petitioner’s request for a stay of removal.”).¹ *Rauda* is similarly
 8 fully on point here and is controlling.

9 The present case is virtually identical to a case decided by a Western District of
 10 Washington district court just a few months ago—*Flores v. Garland*, No. C24-16-92-
 11 RSM, 2024 WL 4520052 (W.D. Wash. Nov. 11, 2024). As Petitioner does here, Flores
 12 filed a habeas petition and a TRO motion seeking a stay of removal pending a decision on
 13 his motion to reopen, which was based on ineffective assistance of counsel. *Id.* at *1. The
 14 court summarily denied the TRO motion concluding § 1252(g) prohibited it from staying
 15 Flores’s removal. *Id.* at *2 (citing *Rauda*, 55 F.4th 773; *Gahano v. Renaud*, No. C20-1094-
 16 MJP, 2021 WL 2530714 (W.D. Wash. June 21, 2021); *Diaz-Amezcuca v. Barr*, 402
 17 F.Supp.3d 963 (W.D. Wash. 2019)); *see also Hernandez Aguilar v. Kirksey*, No. CV 24-

18 ¹ The court noted that even prior to the Ninth Circuit’s controlling decision in *Rauda*,
 19 several district courts in the Ninth Circuit had concluded they lacked subject matter
 20 jurisdiction to stay removal pending a decision on a motion to reopen. *Id.* at n.2 (citing
 21 *Corrales v. Sessions*, 2018 WL 4491177, at *3 (N.D. Cal. Sept. 19, 2018); *Flores v.*
 22 *Johnson*, 2015 WL 12656240, at *2-3 (C.D. Cal. Sept. 30, 2015); *Ma v. Holder*, 860
 23 F.Supp.2d 1048, 1056060 (N.D. Cal. 2012); *Meja-Espinoza v. Mukasey*, 2009 WL
 24 235625, at *1 (C.D. Cal. Jan. 27, 2009)); *see also Diaz-Amezcuca v. Johnson*, No. C14-
 25 1313, 2015 WL 419029, at *3 (W.D. Wash. Jan. 30, 2015) (“Petitioner’s request to stay
 26 his removal arises from the decision or action by the Attorney General to execute his
 27 removal order, and this Court therefore is without jurisdiction to hear such a claim, even if
 28 the claim is for a short stay while he seeks additional administrative remedies.”);
Caravantes v. Immigration & Naturalization Serv., 967 F. Supp. 1179, 1181-83 (D. Ariz.
 1997) (finding old version of § 1252(g)’s language providing “no court shall have
 jurisdiction to hear any cause or claim ... arising from the decision or action of the Attorney
 General to commence proceedings, adjudicate cases, or execute removal orders” deprived
 the court of jurisdiction to enjoin removal of the petitioners).

1 10826-ODW (AGR), 2024 WL 5170279, at *2 (C.D. Cal. Dec. 19, 2024) (finding §
 2 1252(g) precluded the court from staying removal pending a decision on the petitioner's
 3 motion to reopen).

4 *Rauda* is controlling law and forecloses the relief Petitioner seeks. Therefore, the
 5 Court should deny the Motion.

6 **B. The Winter Factors Compel Denial of a Preliminary Injunction Here**

7 As controlling Ninth Circuit precedent provides that this Court does not have
 8 subject matter jurisdiction to grant injunctive relief staying removal of Petitioner pending
 9 the BIA's decision on his motion to reopen (and any appeals therefrom), the Court need
 10 not analyze the factors for granting preliminary injunctive relief set out in *Winter*, 555
 11 U.S. 7. But if it chooses to do so, it should deny the Motion because Petitioner fails to
 12 satisfy his burden of showing the *Winter* factors weigh in favor of injunctive relief here.

13 **1. Petitioner is not likely to succeed on the merits of his Petition**

14 Likelihood of success on the merits is a threshold issue: “[W]hen a plaintiff has
 15 failed to show the likelihood of success on the merits, [the court] need not consider the
 16 remaining three *Winters* elements.” *Garcia*, 786 F.3d at 740 (internal quotation omitted).
 17 Petitioner cannot succeed on the merits of his habeas claims.

18 The Petition fails because Petitioner has not raised an actual challenge to his
 19 detention. The habeas statute, 28 U.S.C. § 2241, permits the granting of the writ if an
 20 individual “is in custody in violation of the Constitution or laws or treaties of the United
 21 States[.]” 28 U.S.C. § 2241(c)(3). Here, Petitioner has not alleged his detention is
 22 unlawful, only that his removal would be. “Habeas is at its core a remedy for unlawful
 23 executive detention,” and “[t]he typical remedy for such detention is, of course, release.”
 24 *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (internal citations omitted); *see, e.g., Preiser*
 25 *v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[T]he traditional function of the writ is to secure
 26 release from illegal custody.”). Yet, Petitioner seeks a stay of removal, not release from
 27 custody. The Supreme Court has reiterated a habeas petition is not cognizable where the
 28 petitioner “does not want ‘simple release’ but, ultimately, the opportunity to remain

1 lawfully in the United States.” *Thuraissigiam*, 591 U.S. at 117-119 (holding statute
2 limiting habeas review in expedited-removal proceedings did not violate the Suspension
3 Clause or due process where habeas petition sought vacatur of his removal order to allow
4 petitioner a new opportunity to apply for asylum, noting the writ of habeas has historically
5 “provided a means of contesting restraint and securing release”, and not “to claim the right
6 to enter or remain in a country or to obtain administrative review potentially leading to
7 that result.”).

8 Controlling Ninth Circuit precedent—*Rauda*—holds that removal of an alien
9 subject to a final order of removal while a motion to reopen remains pending does not
10 violate an alien’s due process rights. *Rauda*, 55 F.4th at 780-81. However Petitioner
11 attempts to describe his habeas claims, they seek to enjoin the Attorney General from
12 acting on her discretion to decide whether and, if so, when to remove an alien subject to a
13 final order of removal. As explained above, the Court lacks jurisdiction to do so. *See id.*;
14 *see also* 8 U.S.C. § 1252(g).

15 Thus, Petitioner’s habeas claims fail and must be dismissed. As such, he cannot
16 demonstrate a likelihood of success on the merits of those claims. Nor can he demonstrate
17 serious questions going to the merits because Ninth Circuit precedent precludes the habeas
18 relief he seeks here.

19 **2. Petitioner does not establish irreparable harm**

20 The Motion should also be denied because Petitioner does not establish irreparable
21 harm. Petitioner must demonstrate “immediate threatened injury.” *Caribbean Marine*
22 *Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles*
23 *Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th
24 Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*,
25 555 U.S. at 22. “Issuing a preliminary injunction based only on a possibility of irreparable
26 harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an
27 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
28 entitled to such relief.” *Winter*, 555 U.S. at 22.

1 Here, Petitioner alleges he has been the subject of a final order of removal since
2 April of 2022. (Petition at ECF p. 3.) He bases his injunction request on his assertion that
3 he “has an unknown and finite number of days before ICE executes his removal order and
4 sends him to Mexico.” (Motion at ECF p. 10.) He does not allege he is currently in ICE’s
5 physical custody, that ICE has recently attempted to take him into custody, that ICE has
6 informed him of a date he will be removed, or any other facts establishing “immediate
7 threatened injury.” *Baldridge*, 844 F.2d at 674. His assertion that at some point in time
8 ICE may attempt to do so only shows the “possibility” he may suffer irreparable harm.
9 That is insufficient. *Winter*, 555 U.S. at 22. Nor does Petitioner’s pending motion to
10 reopen provide a basis for this Court to find irreparable injury. As discussed above,
11 Petitioner is incorrect as a matter of law when he contends that his removal will force him
12 to abandon his motion to reopen. *See Rauda*, 55 F.4th at 777; *Reyes-Torres*, 645 F.3d at
13 1074-75.

14 **3. The balance of the equities and the public interest do not favor**
15 **Petitioner**

16 Nor do the balance of the equities and the public interest favor Petitioner. It is well
17 settled that the public interest in enforcement of the United States’ immigration laws is
18 significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976);
19 *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The
20 Supreme Court has recognized that the public interest in enforcement of the immigration
21 laws is significant.”) (citing cases); *see also Nken*, 556 U.S. at 435 (“There is always a
22 public interest in prompt execution of removal orders: The continued presence of an alien
23 lawfully deemed removable undermines the streamlined removal proceedings IIRIRA
24 established, and permits and prolongs a continuing violation of United States law.”)
25 (internal quotation omitted).

26 Petitioner simply does not establish that he is entitled to injunctive relief here under
27 the *Winter* factors. As such, his Motion should be denied.
28

1 **C. The Court Should Dismiss the Petition**

2 The Court should also dismiss the Petition itself because the Court lacks subject
 3 matter jurisdiction over Plaintiff's claims. As explained above, the Supreme Court in
 4 *Thuraissigiam v. Department of Homeland Security* reiterated that a habeas petition is not
 5 cognizable where the petitioner "does not want 'simple release' but, ultimately, the
 6 opportunity to remain lawfully in the United States." 591 U.S. at 117-119. Also as
 7 explained above, 8 U.S.C. § 1252(g) divests courts of jurisdiction to review the
 8 government's decisions as to whether, and, if so, when to execute a final removal order.
 9 *Rauda*, 55 F. 4th at 777. Petitioner contends the statutory prohibitions on district court
 10 jurisdiction do not apply because he purportedly does not directly challenge his removal
 11 order. However, Petitioner's request to halt the execution of his final removal order
 12 indisputably "arise[s] from" an "action" or a "proceeding" brought in connection with his
 13 removal, *see* 8 U.S.C. § 1252(b)(9), as well as from "the decision or action" to "execute
 14 removal orders against" him, *see* 8 U.S.C. § 1252(g). *Rauda*, 55 F. 4th at 777 ("Matias
 15 seeks to enjoin the government from removing him. ... Congress has explicitly precluded
 16 our review of this claim."); *see also Rauda*, 2021 WL 2413006, at *3 ("[C]ourts lack
 17 jurisdiction over claims challenging the government's decisions or actions to execute
 18 removal orders. Mr. Matias's habeas petition ... ask[s] the Court to enjoin the government
 19 from executing his removal order. Because his claims arise from the government's
 20 'decision or action' to 'execute' his removal order, § 1252(g) bars the court from hearing
 21 [the claims].") (citation omitted); *Tazu*, 975 F.3d at 294, 300 (district court lacked
 22 jurisdiction under § 1252(g) to entertain petitioner's habeas petition seeking stay of
 23 removal pending a final decision on motion to reopen based on ineffective assistance of
 24 counsel); *Ponce*, 2022 WL 14318031, at *4 (finding summary dismissal of habeas petition
 25 warranted because § 1252(g) divests the court from exercising jurisdiction over claims
 26 seeking to enjoin removal while motion to reopen is still pending).

27 Habeas jurisdiction under 28 U.S.C. § 2241 is foreclosed here by § 1252(g). *Rauda*,
 28 55 F. 4th at 777. It is unclear whether the Suspension Clause of the United States

1 Constitution, Art. 1, § 9, Cl.2, confers an independent grant of habeas jurisdiction or is
2 simply an acknowledgement of continued jurisdiction under the general habeas statute, 28
3 U.S.C. § 2241. However, removal of Petitioner from the United States before a final
4 decision on his motion to reopen does not implicate the Suspension Clause. *Rauda*, 55 F.
5 4th at 779. The Supreme Court’s decision in *Thuraissigiam* bars petitioners from invoking
6 the Suspension Clause when they seek something other than “simple release” from
7 unlawful detention. Petitioner here does not seek simple release but instead seeks the
8 ability to remain in the United States pending a decision on his motion to reopen. This
9 request is “so far outside the ‘core of habeas’” that it “may not be pursued” through a
10 habeas petition. *Id.* at 119; *see also Huerta-Jimenez v. Wolf*, No. 19-55420, 2020 WL
11 7230778, at *1 (9th Cir. Dec. 8, 2020) (holding Suspension Clause argument failed under
12 *Thuraissigiam* where “petitioner [did] not want simple release but, ultimately, the
13 opportunity to remain lawfully in the United States” because such relief falls “outside the
14 scope of the writ”) (internal citation and quotation marks omitted).

15 The All Writs Act, 28 U.S.C. § 1651, does not confer an independent basis for
16 jurisdiction. *Syngenta Crop Protection v. Henson*, 537 U.S. 28, 33 (2002) (“the All Writs
17 Act does not confer jurisdiction on the federal courts”). The Administrative Procedure
18 Act, 5 U.S.C. § 701, *et seq.*, does not apply where another statute— here, § 1252(g)—
19 precludes judicial review. *See* 5 U.S.C. § 701(a)(1). The Declaratory Judgment Act is not
20 an independent basis for jurisdiction. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S.
21 667, 671–74 (1950). The Mandamus Clause, 28 U.S.C. § 1651, does not apply here
22 because, for the reasons set out above, Petitioner has not shown he has a “clear right” to a
23 stay of removal, *Johnson v. Reilly*, 349 F.3d 1149, 1153 (9th Cir. 2003), and mandamus
24 cannot be used to compel or review discretionary acts of government officials, *Nova*
25 *Stylings, Inc. v. Ladd*, 695 F.2d 1179, 1180 (9th Cir. 1983) —here, the Attorney General’s
26 discretion to decide if and when to execute a final removal order. 8 U.S.C. § 1252(g).

27 Nor does the general federal question jurisdiction statute, 28 U.S.C. § 1331, confer
28 jurisdiction to enjoin removal here. “The basic premise behind nonstatutory review is that,

1 even after the passage of the APA, some residuum of power remains with the district court
2 to review agency action that is ultra vires.” *R.I. Dep’t of Env’t Mgmt. v. United States*, 304
3 F.3d 31, 42 (1st Cir. 2002). That court distilled “certain critical factors [that] must be
4 present to invoke nonstatutory review”: (1) “that the agency’s nonfinal action must
5 ‘wholly deprive the [party] of a meaningful and adequate means of vindicating its ...
6 rights’”; and (2) “that Congress must not have clearly intended to preclude review of the
7 agency’s particular determination.” *Id.* at 42–43 (quoting *Bd. of Governors of Fed. Rsrv.
8 Sys. v. MCorp Fin. Inc.*, 502 U.S. 32, 43 (1991)). The Ninth Circuit has explained that on
9 top of the party being deprived of a way to vindicate its rights, “the challenged ... action
10 must be ultra vires, i.e., it must contravene ‘clear and mandatory’ statutory language.”
11 *Pac. Mar. Ass’n v. NLRB*, 827 F.3d 1203, 1208 (9th Cir. 2016). The Ninth Circuit has also
12 explained that nonstatutory review has been “narrowly construed.” *Baker v. Int’l All. of
13 Theatrical Stage Emps. & Moving Picture Operators of U.S. & Can.*, 691 F.2d 1291, 1294
14 (9th Cir. 1982); *see also Nat’l Air Traffic Controllers Ass’n AFL-CIO v. Fed. Serv.
15 Impasses Panel*, 437 F.3d 1256, 1263 (D.C. Cir. 2006) (explaining the invocation of this
16 jurisdiction “is extraordinary” and “extremely narrow in scope” (internal quotation marks
17 and citation omitted)).

18 Here, the language of 28 U.S.C. § 1256(g) shows Congress plainly intended to
19 preclude district courts from interfering with the Attorney General’s discretion to decide
20 whether and, if so, when to execute a final removal order. *See Rauda*, 55 F.4th at 777. And
21 Petitioner will not be deprived of any way to vindicate his rights here. He has a pending
22 motion to reopen before the BIA and, if he disagrees with the BIA’s decision, he may file
23 a petition for review in the Ninth Circuit, even if he has been removed from the United
24 States in the interim. *Id.* at 779.

25 **V. CONCLUSION**

26 The Court lacks jurisdiction over this Petition and lacks jurisdiction to enjoin
27 removal, temporarily or otherwise. As such, the Motion must be denied, and the Petition
28 must be dismissed.

1 RESPECTFULLY SUBMITTED on this 19th day of March 2025.

2 TIMOTHY COURCHaine
3 United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and transmitted a Notice of Electronic Filing to the following CM/ECF registrants:

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Response to Motion for Prelim. Injunction, MTD