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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EDWIN YOBANI ENAMORADO,

Petitioner-Plaintiff,

v.

POLLY KAISER, in her official capacity as
Acting San Francisco Field Office Director,
U.S. Immigration and Customs Enforcement,
et al.,

Respondents-Defendants.

) Case No. 25-cv-04072-NW

) **FEDERAL RESPONDENTS' OPPOSITION TO**
) **MOTION FOR TEMPORARY RESTRAINING**
) **ORDER (DKT. NO. 3)**

) Date: July 16, 2025

) Time: 9:00 a.m.

) Location: Courtroom 3 – 5th Floor

) Judge: Hon. Noël Wise

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1 **I. INTRODUCTION**

2 In this habeas case, Petitioner Edwin Yobani Enamorado (“Petitioner” or “Mr. Enamorado”),
 3 who is subject to a removal order but is not in custody and has not been re-detained by U.S. Immigration
 4 and Customs Enforcement (“ICE”), has sought an order “enjoining Respondents from re-detaining him
 5 pending further order of this Court,” because he is “terrified that ICE will detain him and try to remove
 6 him to a third country.” See Motion for TRO (“Motion”) (Dkt. No. 3) at 1 and 3; Court’s TRO Order
 7 (“Court’s Order”) (Dkt. No. 8) at 2. Due to his fear of removal to a third country, Petitioner seeks a pre-
 8 deprivation hearing before “possible re-detention.” See Habeas Petition (“Petition”) (Dkt. No. 2) ¶¶ 5,
 9 24, 38; Motion at 1.

10 In October 2003, the Board of Immigration of Appeals (“BIA”) ordered Petitioner removed to
 11 Honduras. See Motion at 5; Declaration of Heliodoro Moreno, Jr. (“Moreno Decl.”), Ex. F (Dkt. No. 3-
 12 1 at 38). In December 2018, after Petitioner fled Honduras and illegally re-entered the United States,
 13 Petitioner’s prior October 2003 removal order was reinstated. See Motion at 5; Moreno Decl., Ex. G
 14 (Dkt. No. 3-1 at 40).

15 In April 2022, an Immigration Judge granted Petitioner’s application of withholding of removal
 16 to Honduras. See Motion at 6; Moreno Decl., Ex. K (Dkt. No. 3-1 at 51). Accordingly, Petitioner may
 17 be removed to a third country. 8 U.S.C. § 1231(b)(2)(E).

18 The Court should deny Petitioner’s Motion for multiple reasons. First, it is undisputed that
 19 Petitioner is a class member in the certified class action *D.V.D. v. DHS*, 25-cv-10676-BEM (D. Mass.)
 20 (“*D.V.D.*”), in which the Court issued a preliminary injunction requiring that ICE provide supplemental
 21 procedures before removing class members to a third country. Thus, the *D.V.D.* court has provided
 22 protections to address Petitioner’s claims regarding any *potential* third country removal. This Court
 23 should not invade on the purview of the district court in Massachusetts, which is already adjudicating
 24 the issues raised in this Petition: the procedures attendant on removing an alien to a third country.

25 Notwithstanding the Petition’s overlap with the issues being adjudicated in *D.V.D.*,
 26 Mr. Enamorado’s claim is not a cognizable habeas petition, as it seeks to enjoin his arrest and/or a “pre-
 27 deprivation hearing,” not a release from custody. Additionally, at least three provisions of the
 28 Immigration and Nationality Act (“INA”) deprive this Court of jurisdiction over Petitioner’s claims

1 seeking to delay his removal while ICE complies with additional procedures. For instance, 8 U.S.C.
2 § 1252(g) strips federal courts of jurisdiction over “any cause or claim” arising from the execution of
3 removal orders, which Petitioner’s claims plainly do. Likewise, this Court lacks jurisdiction under 8
4 U.S.C. §§ 1252(a)(5), (b)(9), and (a)(4) because, to the extent Petitioner seeks to make a fear claim
5 related to his third country removal, he can and must bring that claim through the administrative process
6 and if necessary, the appropriate Court of Appeals. The Foreign Affairs Reform and Restructuring Act
7 of 1998 (“FARRA”) also independently forecloses Petitioner’s claims seeking additional procedures not
8 provided by Congress’ implementation of the Convention Against Torture (“CAT”).

9 Finally, Petitioner has not shown a likelihood of success on the merits of his claims. Petitioner
10 has no due process right to any further procedures, including a pre-detention hearing, regarding his
11 removal from the United States. His detention would be authorized by 8 U.S.C. § 1231(a)(6) to execute
12 his removal from the United States. He will receive sufficient process during any such detention via the
13 Post Order Custody Regulations in 8 U.S.C. § 241.4. There is simply no basis to conclude that
14 Petitioner is entitled to any additional process during or before any hypothetical detention to execute his
15 valid, final order of removal. Therefore, this Court should deny his Petition.

16 **II. LEGAL BACKGROUND AND STANDARDS**

17 **A. Removal Proceedings**

18 Under the INA, several classes of aliens are “inadmissible” and therefore “removable.”
19 *See* 8 U.S.C. §§ 1182, 1229a(e)(2)(A). These include aliens that lack a valid entry document “at the
20 time of application for admission,” 8 U.S.C. § 1182(a)(7)(A)(i)(I), when they arrive at a “port of entry,”
21 or when they are found present in the United States, 8 U.S.C. §§ 1225(a)(1), (3). If an alien is
22 inadmissible, the alien is subject to removal from the United States. In removal proceedings pursuant to
23 8 U.S.C. § 1229a, an alien may attempt to show that he or she should not be removed. Among other
24 things, an eligible alien may apply for asylum on the ground that he or she would be persecuted on a
25 statutorily protected ground if removed to a particular country. 8 U.S.C. §§ 1158, 1229a(b)(4); 8 C.F.R.
26 § 1240.11(c).

27 Under 8 U.S.C. § 1231(a)(5), DHS may reinstate a prior order of removal for an alien it finds
28 “has reentered the United States illegally after having been removed or having departed voluntarily,

1 under an order of removal.” 8 U.S.C. § 1231(a)(5). When DHS reinstates a removal order, the “prior
2 order of removal is reinstated from its original date and is not subject to being reopened or reviewed.”

3 *Id.*

4 If an alien expresses fear of persecution or torture, the alien may seek withholding or deferral of
5 removal under 8 U.S.C. § 1231(b)(3) or regulations implementing the Convention Against Torture and
6 Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted Dec. 10, 1984, S. Treaty
7 Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85—a treaty that addresses the removal of
8 aliens to countries where they would face torture. *See* Foreign Affairs Reform and Restructuring Act of
9 1998 (FARRA), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822; 8 C.F.R. 208.31, 241.8(e).
10 “Torture” is defined as an “extreme form of cruel and inhuman treatment,” which intentionally inflicts
11 “severe pain or suffering” on another for an improper purpose, and is performed “at the instigation of or
12 with the consent or acquiescence of a public official acting in an official capacity or other person acting
13 in an official capacity.” 8 C.F.R. 208.18(a)(1) and (a)(2); *see, e.g., Del Carmen Amaya De Sicaran v.*
14 *Barr*, 979 F.3d 210, 218-219 (4th Cir. 2020) (torture is a “high bar”). If an asylum officer determines
15 that the alien has established a reasonable fear of persecution or torture, the alien is referred to the IJ for
16 consideration of withholding of removal only (aliens with reinstated orders of removal are not eligible
17 for asylum). 8 C.F.R. § 208.31(e). In withholding-only proceedings, the IJ is limited to consideration of
18 eligibility for withholding and deferral of removal. 8 U.S.C. § 1231(a)(5) (providing that an alien
19 subject to reinstatement “is not eligible and may not apply for any relief under [the INA]”); 8 C.F.R. §
20 1208.2(c)(3)(i) (“The scope of review in [withholding-only] proceedings . . . shall be limited to a
21 determination of whether the alien is eligible for withholding or deferral of removal.”). Indeed, during
22 withholding-only proceedings, “all parties are prohibited from raising or considering any other issues,
23 including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility
24 for any other form of relief.” *Id.*

25 CAT protection or withholding under Section 1231(b)(3) does not alter *whether* an alien may be
26 removed; it affects only *where* an alien may be removed to. That is, a grant of CAT protection “means
27 only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated
28 country of removal, at least until conditions change in that country.” *Nasrallah v. Barr*, 590 U.S. 573,

1 582 (2020). The United States remains free to remove that alien “at any time to another country where
2 he or she is not likely to be tortured.” *Id.* (citation omitted); *see INS v. Cardoza-Fonseca*, 480 U.S. 421,
3 428 n.6 (1987). Thus, the alien remains removable as an alien with a final order of removal.

4 **B. Third Country Removals**

5 Aliens subject to removal orders need not be removed to their native country. Generally, aliens
6 ordered removed “may designate one country to which the alien wants to be removed,” and DHS “shall
7 remove the alien to [that] country[.]” 8 U.S.C. § 1231(b)(2)(A). In certain circumstances, however,
8 DHS need not remove the alien to his or her designated country, including where “the government of the
9 country is not willing to accept the alien into the country.” 8 U.S.C. § 1231(b)(2)(C)(iii). In such a
10 case, the alien “shall” be removed to the alien’s country of nationality or citizenship, unless that country
11 “is not willing to accept the alien into the country.” 8 U.S.C. § 1231(b)(2)(D). If an alien cannot be
12 removed to the country of designation, or to the country of nationality or citizenship, then the
13 Government may consider other options, including “[t]he country from which the alien was admitted to
14 the United States,” “[t]he country in which the alien was born,” or “[t]he country in which the alien last
15 resided.” 8 U.S.C. §§ 1231(b)(2)(E)(i), (iii)-(iv).

16 Where removal to any of the countries listed in subparagraph (E) is “impracticable, inadvisable,
17 or impossible,” then the alien may be removed to any “country whose government will accept the alien
18 into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335,
19 341 (2005). In addition, DHS “may not remove an alien to a country if the Attorney General decides
20 that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion,
21 nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A).

22 “The Judiciary is not suited to second-guess” determinations about “whether there is a serious
23 prospect of torture at the hands of” a foreign sovereign. *Munaf v. Geren*, 553 U.S. 674, 702 (2008); *see*
24 *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (“Under *Munaf*, . . . the district court may not
25 question the Government’s determination that a potential recipient country is not likely to torture a
26 detainee.”).

1 **C. Habeas Corpus**

2 Federal district courts may grant writs of habeas corpus if the petitioner is “in custody in
3 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). The
4 custody requirement may be satisfied if a Petitioner is not actually confined, but is nonetheless subject to
5 significant restraint on liberty “not shared by the public generally.” *Jones v. Cunningham*, 371 U.S. 236,
6 239–40 (1963).

7 **D. Temporary Restraining Orders and Preliminary Injunctions**

8 The substantive standard for issuing a temporary restraining order is identical to the standard for
9 issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
10 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable discretion and is “an extraordinary
11 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”
12 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are “never
13 awarded as of right.” *Id.* at 24.

14 “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the
15 merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
16 equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786
17 F.3d 733, 740 (9th Cir. 2015) (citing *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) and *Winter*,
18 555 U.S. at 20). Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’
19 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and third *Winter*
20 factors are [also] satisfied.” *Disney Enters. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing
21 *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011)). “[P]laintiffs seeking a
22 preliminary injunction face a difficult task in proving that they are entitled to this ‘extraordinary
23 remedy.’ *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s burden is aptly
24 described as a “heavy” one. *Id.*

25 The purpose of a preliminary injunction “is to preserve the status quo and the rights of the parties
26 until a final judgment issues in the cause.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094
27 (9th Cir. 2010). A preliminary injunction may not be used to obtain “a preliminary adjudication on the
28 merits,” but only to preserve the status quo before judgment. *Sierra On-Line, Inc. v. Phx. Software, Inc.*,

1 739 F.2d 1415, 1422 (9th Cir. 1984).

2 Accordingly, where a petitioner seeks mandatory injunctive relief—seeking to alter the status
3 quo—“courts should be extremely cautious.” *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319–20 (9th
4 Cir. 1994). A mandatory injunction “goes well beyond simply maintaining the status quo *pendente lite*
5 and is particularly disfavored.” *Id.* at 1320 (internal quotations and alteration omitted). A mandatory
6 injunction “should not be issued unless the facts and law clearly favor the moving party.” *Anderson v.*
7 *United States*, 612 F.2d 1112, 1114 (9th Cir. 1979). Mandatory injunctions “are not granted unless
8 extreme or very serious damage will result and are not issued in doubtful cases.” *Id.* at 1115.
9 Accordingly, the party seeking a mandatory injunction “must establish that the law and facts *clearly*
10 *favor* her position, not simply that she is likely to succeed.” *Garcia*, 786 F.3d at 740 (emphasis in
11 original).

12 **III. FACTUAL BACKGROUND**

13 In 1999, Mr. Enamorado, who is a citizen of Honduras, first illegally entered the United States
14 and was initially granted asylum by an Immigration Judge. *See* Petition ¶¶ 18, 25; Declaration of ICE
15 Deportation Officer Thomas Auer (“Auer Decl.”) ¶ 5; Moreno Decl., Ex. I (Dkt. No. 3-1 at 45). In
16 October 2003, the Board of Immigration Appeals reversed the grant of asylum and ordered Petitioner
17 removed to Honduras. *See* Petition ¶ 25; Moreno Decl., Ex. F (Dkt. No. 3-1 at 35–38).

18 Petitioner has multiple criminal convictions. For example, in July 2003, Petitioner was
19 convicted of possession of marijuana. Auer Decl. ¶ 10, Exs. 2 and 6; *see* Motion at 2. In December
20 2003, Petitioner was again convicted of possession of a controlled substance. Auer Decl. ¶ 11, Ex. 3;
21 *see* Motion at 2. In July 2005, he was convicted of possession of a false identification. Auer Decl. ¶ 12,
22 Ex. 4; *see* Motion at 2. In August 2005, Petitioner was again convicted of possession of a controlled
23 substance. Auer Decl. ¶ 13, Ex. 5.

24 In late 2005, Petitioner was deported to Honduras. Petition ¶ 25; Motion at 2; Moreno Decl., Ex.
25 I (Dkt. No. 3-1 at 46). In 2018, Mr. Enamorado and his family fled Honduras; and in December 2018,
26 they entered the United States. Petition ¶ 27; Motion at 5; Moreno Decl., Ex. I (Dkt. No. 3-1 at 46).

27 In December 2018, Petitioner’s 2003 removal order was reinstated. Moreno Decl., Ex. G (Dkt.
28 No. 3-1 at 40). In January 2019, an asylum officer determined that Petitioner had a reasonable fear of

1 persecution or torture if he returned to Honduras and referred Petitioner to an Immigration Judge to
 2 apply for withholding of removal under 8 C.F.R. § 208.31(e). Petition ¶ 28; Moreno Decl., Ex. H (Dkt.
 3 No. 3-1 at 42); Moreno Decl., Ex. I (Dkt. No. 3-1 at 46).

4 In July 2019, an Immigration Judge granted Petitioner's release from custody on an \$8,000 bond.
 5 Petition ¶ 29; Moreno Decl., Ex. J (Dkt. No. 3-1 at 49); Auer Decl. ¶ 6. In April 2022, an Immigration
 6 Judge granted Petitioner's application for withholding of removal. Petition ¶ 31; Moreno Decl., Ex. K
 7 (Dkt. No. 3-1 at 51). In April 2025, ICE sent a notice to Petitioner's bond obligor, setting a May 14,
 8 2025 appointment at the San Francisco ICE Field Office. Motion at 3; Moreno Decl., Ex. N (Dkt. No.
 9 3-1 at 58).

10 In April 2025, ICE requested the appearance so that it could place Petitioner on an Order of
 11 Supervision and return the delivery bond to Petitioner's obligor. Auer Decl. ¶ 7. There was no intent to
 12 take Petitioner into custody at that time, whether or not a temporary restraining order prohibited arrest.
 13 *Id.* ICE rescheduled the appointment for May 28, 2025, and at that time, Petitioner was placed on an
 14 Order of Supervision. *Id.* ¶ 9, Ex. 1. That Order of Supervision notes that Petitioner is subject to a final
 15 order of removal, notes that he was issued a "W/H only grant," and places Petitioner on a yearly report
 16 cycle. *Id.*, Ex. 1.

17 On May 11, 2025, Petitioner filed the instant habeas petition seeking, *inter alia*, to enjoin his
 18 arrest and stay his removal (1) "during the pendency of any and all determinations of whether the
 19 government can produce an executable order to a third country, including, *but not limited to* the
 20 protections provided pursuant to the nationwide preliminary injunction in *DVD v. DHS*;" or,
 21 alternatively, (2) an injunction against the re-arrest of Petitioner, "unless and until he is afforded a
 22 hearing" before a specific immigration judge on the question of whether Petitioner's bond "warrants a
 23 revocation or alteration." Petition at 36–37.

24 **IV. PETITIONER IS A *D.V.D.* CLASS MEMBER, SO HIS DUPLICATIVE CLAIMS ARE**
 25 **FORECLOSED BY THE PARALLEL CASE**

26 As a threshold matter, this Court should dismiss, or, in the alternative stay, Petitioner's claims
 27 seeking additional, extra-statutory procedures prior to removal from the United States to a third country,
 28 because those claims are already being adjudicated in the nationwide *D.V.D.* class action. *See D.V.D. v.*

1 DHS, No. 12-cv-10767 (BEM) (D. Mass.); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting
2 that a district court “has broad discretion to stay proceedings as an incident to its power to control its
3 own docket).

4 As part of district courts’ discretion to administer their docket, courts have dismissed, without
5 prejudice, or stayed suits brought by individuals whose claims are duplicative of class claims in other
6 litigation. *See e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay
7 of Fifth Amendment challenge pending completion of pending class action).

8 For example, in *Taylor v. Ndoh*, the district court stayed a state prisoner’s habeas *ex post facto*
9 claim, where a duplicative claim was being litigated in a class action case. *Taylor v. Ndoh*, No. 15-cv-
10 00996-YGR, 2016 WL 1056138, at *4–5 (N.D. Cal. Mar. 17, 2016). The district court reasoned, “[a]
11 court may choose not to exercise its jurisdiction over an individual suit for injunctive and equitable relief
12 from alleged unconstitutional prison conditions where there is a pending class action suit involving the
13 same subject matter.” *Id.* (citing *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979), *McNeil v.*
14 *Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991); and *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir.
15 1988) (en banc)). The district court further reasoned that “[i]ndividual suits would interfere with the
16 orderly administration of the class action and risk inconsistent adjudications.” *Id.* The district court also
17 explained, “[i]n light of the fact that the Ninth Circuit has decided the same issue relating to the *ex post*
18 *facto* claim as presented in Petitioner’s petition, . . . it would be an unnecessary consumption of judicial
19 resources for this Court to decide the issue at this time.” *Id.* Thus, the district court stayed the habeas
20 proceedings pending the mandate in the related Ninth Circuit class action. *Id.*

21 Likewise, a district court in the Central District of California recently dismissed without
22 prejudice a habeas case brought by a federal prisoner. *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-
23 JDE, 2022 WL 18396018, at *7 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*, 2023
24 WL 319917 (C.D. Cal. Jan. 18, 2023). The court reasoned that petitioner’s claims were based, in part,
25 on a duplicative class action and were “not property before the court.” *Herrera*, 2022 WL 18396018, at
26 *4–6. In the related class action case, Lompoc prisoners alleged that the BOP had failed to take
27 adequate safety measures against COVID-19. *Id.* at *5. Likewise, in the habeas case, the petitioner-
28 plaintiff alleged that the Lompoc prison conditions created unreasonable COVID-19 risks, such as the

1 alleged “contaminated surfaces” and the lack of “social distancing.” *Id.* at *3. In the related class
 2 action, the district court granted the plaintiffs-petitioners’ motion for preliminary injunction and the
 3 parties reached settlement. *Id.* at *5.

4 The district court in *Herrera* further explained that “Petitioner’s allegations regarding the
 5 Prison’s handling of COVID-19 are duplicative of the allegations in the *Torres* Class Action, of which
 6 Petitioner is a member seeking the same relief, and thus, Petitioner is barred from raising these claims
 7 by the terms of the settlement agreement.” *Id.* at *6. In addition, “[t]o the extent Petitioner seeks to
 8 enforce the provisions of the settlement agreement, he must do so through the class representative or
 9 class counsel, and not in his own, separate case.” *Id.* (citing *Sykes v. Friederichs*, 2007 WL 841789, at
 10 *6 n.12 (N.D. Cal. Mar. 20, 2007)). Accordingly, the district court dismissed the habeas claims that
 11 were based on the related class action. *See id.*

12 Multiple courts of appeals have upheld dismissals of cases where parallel class actions raise the
 13 same or substantially similar issues. *See, e.g., Crawford*, 599 F.2d at 892–93 (holding that a district
 14 court may dismiss “those portions of [the] complaint which duplicate the [class action’s] allegations and
 15 prayer for relief”); *McNeil*, 945 F.2d at 1165–66 (10th Cir. 1991) (finding that individual suits for
 16 injunctive and declaratory relief cannot be brought where a class action with the same claims exists);
 17 *Gillespie*, 858 F.2d at 1103 (once a class action has been certified, “[s]eparate individual suits may not
 18 be maintained for equitable relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member
 19 cannot relitigate issues raised in a class action after it has been resolved, a class member should not be
 20 able to prosecute a separate equitable action once his or her class has been certified”).

21 Petitioner’s claims seeking to delay or otherwise prohibit his removal to a third country until ICE
 22 complies with extra-statutory procedures substantially overlap with the nationwide class action, *D.V.D.*
 23 Indeed, on April 18, 2025, the court in *D.V.D.* certified, pursuant to Fed. R. Civ. P. 23(b)(2), a class of
 24 individuals—to which Petitioner admits he belongs—defined as follows:

25 All individuals who have a final removal order issued in proceedings under Section 240,
 26 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has
 27 deported or will deport on or after February 18, 2025, to a country (a) not previously
 designated as the country or alternative country of removal, and (b) not identified in writing
 in the prior proceedings as a country to which the individual would be removed.

28 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676 (BEM), 2025 WL 1142968, at *11 (D. Mass.

1 Apr. 18, 2025). The *D.V.D.* court entered a nationwide preliminary injunction requiring the Department
 2 of Homeland Security (“DHS”) to comply with various procedures prior to removing a class member to
 3 a third country including:

4 (1) Defendants must provide “written notice to the alien—and the alien’s immigration
 5 counsel, if any—of the third country to which the alien may be removed, in a language the
 alien can understand;”

6 (2) Defendants must provide a “meaningful opportunity for the alien to raise a fear of return
 7 for eligibility for CAT protections;”

8 (3) Defendants must “move to reopen the proceedings if the alien demonstrates ‘reasonable
 fear’”; and

9 (4) If the alien has not demonstrated ‘reasonable fear,’” Defendants must “provide
 10 meaningful opportunity, and a minimum of 15 days, for that alien to seek to move to reopen
 immigration proceedings to challenge the potential third-country removal.”

11 *Id.* at *25 (cleaned up).

12 Because the *D.V.D.* class was certified pursuant Rule 23(b)(2), *see id.* at *14, 18, and 25,
 13 membership in the class is mandatory with no opportunity to opt out. *See Wal-Mart Stores, Inc. v.*
 14 *Dukes*, 564 U.S. 338, 361–62 (stating that Rule 23 “provides no opportunity for (b)(1) or (b)(2) class
 15 members to opt out, and does not even oblige the [d]istrict [c]ourt to afford them notice of the action”);
 16 *Sanderson v. Whoop, Inc.*, No. 23-cv-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025)
 17 (noting that “23(b)(2) class members have no opportunity to opt out”). As a member of this class,
 18 Petitioner is entitled to and bound by all the procedures provided by the *D.V.D.* preliminary injunction
 19 and will ultimately be bound by any final injunction. *See id.*

20 Accordingly, this Court should dismiss his claims seeking additional procedures prior to his
 21 removal to a third country because they are subsumed within the issues being actively litigated in *D.V.D.*
 22 Indeed, Mr. Enamorado admits that he is a “*DVD* class member because he has a final removal order to
 23 Honduras but was granted withholding of removal to that country.” Petition ¶ 68. *See* Motion at 11–12.

24 To do otherwise would undermine what Rule 23 was intended to ensure: consistency of
 25 treatment for similarly situated individuals. *See Howard v. Aetna Life Ins. Co.*, No. 22-cv-01505, 2024
 26 WL 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel litigation in
 27 district courts all over the country which could ultimately threaten the certification of the underlying
 28 class by creating differences among the class members. Petitioner’s alleged constitutional right to extra-

1 statutory procedures before removal to a third country are already protected by a nationwide injunction.
 2 This Court should therefore dismiss or stay this case.

3 **V. PETITIONER'S CLAIM IS NOT A COGNIZABLE HABEAS PETITION BECAUSE IT**
 4 **DOES NOT SEEK A RELEASE FROM CUSTODY**

5 Habeas relief is an appropriate request when an individual is detained, U.S. CONST. Art. 1, § 9,
 6 Cl. 2, and requesting release from that detention. 28 U.S.C. § 2241(c) (“The writ of habeas corpus shall
 7 not extend to a prisoner unless [h]e is in custody ”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S.
 8 103, 117–18 (2020) (“[T]he essence of habeas corpus is an attack by a person in custody upon the
 9 legality of that custody, and [] the traditional function of the writ is to secure release from illegal
 10 custody.”). An individual does not need to be in actual physical custody to seek habeas relief; the “in
 11 custody” requirement may be satisfied where an individual’s release from detention is subject to specific
 12 conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993).
 13 While Petitioner here may meet the “in custody” requirement because he is subject to certain conditions
 14 of release, this habeas petition does not purport to challenge that custodial arrangement or secure his
 15 release from his present custody. *Cf. Doe v. Garland*, 109 F.4th 1188, 1191–93 (9th Cir. 2024) (petition
 16 seeking individualized bond hearing sought conditional release from custody). Thus, Petitioner does not
 17 seek a remedy that sounds in habeas. Rather, Petitioner seeks an injunction to prevent his future arrest
 18 and the possibility of future detention.¹

19 **VI. THE COURT LACKS JURISDICTION TO STAY PETITIONER'S REMOVAL**

20 **A. 8 U.S.C. § 1252(g) Bars Review of Petitioner's Challenges to the Execution of His**
 21 **Removal Order**

22 Petitioner’s claim seeking a stay of removal pending the completion of extra-statutory
 23 procedures to remove him is barred by 8 U.S.C. § 1252(g). Congress spoke clearly that “no court” has
 24 jurisdiction over “any cause or claim” arising from the execution of removal orders, “notwithstanding
 25

26 ¹ To the extent Petitioner’s claim is considered a cognizable habeas claim based on the fiction of
 27 seeking release from his hypothetical future detention, this Court would not have jurisdiction to consider
 28 that claim because any such detention would not be in the Northern District of California. *See*
<https://www.ice.gov/detention-facilities> (filtered by California, San Francisco Field Office) (last visited
 June 16, 2025); *Doe*, 109 F.4th at 1198–1199.

1 any other provision of law,” whether “statutory or nonstatutory,” including habeas, mandamus, or the
2 All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision
3 precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and
4 Administrative Procedure Act) of claims arising from a decision or action to “execute” a final order of
5 removal. *See Reno v. American-Arab Anti-Discrimination Committee (“AADC”)*, 525 U.S. 471, 482
6 (1999).

7 Petitioner’s claims arise from his concerns about the execution of his removal order; his petition
8 seeks to require ICE to provide him with additional procedures prior to his removal and even to any
9 arrest to effectuate his removal. *See* Petition ¶ 5 and Prayer for Relief; Motion at 4.

10 But numerous courts of appeals, including the Ninth Circuit, have consistently held that claims
11 seeking a stay of removal—even temporarily to assert other claims to relief—are barred by
12 Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g)
13 barred plaintiff’s claim seeking a temporary stay of removal while he pursued a motion to reopen his
14 immigration proceedings); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“[W]e do not
15 have jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s
16 decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as
17 an attack on the government’s *authority* to execute a removal order rather than its *execution* of a
18 removal order.”); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting plaintiff’s argument
19 that jurisdiction remained because petitioner was challenging DHS’s “legal authority” as opposed to its
20 “discretionary decisions”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that
21 “the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do
22 it” and that “[b]oth are covered by the statute”) (emphasis in original); *Hamama*, 912 F.3d 869, 874–77
23 (6th Cir. 2018) (vacating district court’s injunction staying removal, concluding that §1252(g) stripped
24 district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those
25 claims); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to
26 constitutional claims arising from the execution of a final order of removal, and language barring “any
27 cause or claim” made it “unnecessary for Congress to enumerate every possible cause or claim”).
28

Petitioner's claims are similar to the alien plaintiff's claims in *Rauda* wherein the alien plaintiff also sought to delay his removal while he sought relief in immigration Court. *Rauda*, 55 F.4th at 776–78. Here, Petitioner also seeks to stay his removal. The Court should follow the Ninth Circuit's *Rauda* decision.

B. 8 U.S.C. §§ 1252(a)(5) and (b)(9) Channel All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals

Even if Section 1252(g) of the INA did not bar review—which it does—Sections 1252(a)(5) and 1252(b)(9) of the INA bar review in *this* Court. By law, “the sole and exclusive means for judicial review of an order of removal” is a “petition for review filed with an appropriate court of appeals,” that is, “the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.” 8 U.S.C. §§ 1252(a)(5), (b)(2). This explicitly excludes “section 2241 of title 28, or any other *habeas corpus* provision.” 8 U.S.C. § 1252(a)(5) (emphasis added). Section 1252(b)(9) then eliminates this Court's jurisdiction over Mr. Enamorado's claims by channeling “all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien” to the courts of appeals. 8 U.S.C. § 1252(b)(9). Again, the law is clear that “no court shall have jurisdiction, by *habeas corpus*” or other means. *Id.* (emphasis added).

Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of *all* [claims arising from deportation proceedings]” to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. Under Ninth Circuit law, “[t]aken together, §§ 1252(a)(5) and [(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. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 (“§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and-practices challenges through the PFR process whenever they ‘arise from’ removal proceedings”).

Here, the gravamen of Petitioner's habeas petition is that he seeks to prevent ICE from “detain[ing] him and try[ing] to remove him to a third country.” Petition ¶¶ 5, 24; Motion at 3. In this case, Mr. Enamorado's claims are barred under Sections 1252(a)(5) and (b)(9) because they “aris[e] from . . . proceeding[s] brought to remove an alien from the United States” and further

challenge “any *action taken* . . . to remove an alien from the United States.” 8 U.S.C. § 1252(b)(9) (emphasis added). Rather than petition the relevant court of appeals, Mr. Enamorado chose to file a habeas petition in this Court to challenge his removal. That is precisely what the INA forbids. *See J.E.F.M.*, 837 F.3d at 1031. Petitioner is not detained and under no imminent threat of being removed to a third country. He could, at any time, move to reopen his immigration court proceedings claiming fear to any third country. 8 C.F.R. § 1003.23; *Rubalcaba v. Garland*, 998 F.3d 1031, 1034–35 (9th Cir. 2021) (holding that the post-departure bar does not apply to the immigration court’s *sua sponte* authority to reopen proceedings); *Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016) (allowing review of the denial of a *sua sponte* motion to reopen for “legal or constitutional error”). His refusal to do so does not vest this Court with jurisdiction.²

C. The Foreign Affairs Reform and Restructuring Act of 1998 Also Precludes Petitioner’s Claims

In addition, Petitioner’s claims run afoul of Section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), which implements Article 3 of CAT and provides that

Notwithstanding any other provision of law, and except as provided [by regulation], *no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section*[.]

FARRA § 2242(d), codified at 8 U.S.C. § 1231 (note) (emphasis added). *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 959 (9th Cir. 2012) (concurrence, discussing same).

Any judicial review of any claim arising under CAT is available exclusively on an individualized basis “as part of the review of a final order of removal” in the courts of appeals. *See* 8 U.S.C. § 1252(a)(4). *Cf. Nasrallah*, 590 U.S. at 580 (discussing FARRA). Under FARRA, “no court”—and certainly not a district court—has jurisdiction to review DHS’s implementation of CAT. Yet that is

² In fact, the National Immigration Litigation Alliance issued a practice advisory regarding the motion to reopen process for aliens like Petitioner including template motions to reopen and letters to DHS to assert fear of return to third countries. *See* National Immigration Litigation Alliance, New Advisory: Protecting Noncitizens Granted Withholding of Removal or CAT Protection Against Deportation to Third Countries Where They Fear Persecution/Torture, *available at* <https://immigrationlitigation.org/new-advisoryprotecting-noncitizens-granted-withholding-of-removal-or-cat-protection-against-deportation-to-third-countries-where-they-fear-persecution-torture/>, (last visited June 15, 2025).

precisely what Petitioner seeks here by asking the Court to order ICE to comply with additional procedures so that Petitioner may seek withholding of removal under CAT to a third country.

Notably, CAT is not self-executing. *See Borjas-Borjas v. Barr*, No. 20-cv-0417, 2020 WL 13544984, at *5 (D. Ariz. Oct. 6, 2020) (discussing same). Its effect, if any, depends on implementation via domestic law. Congress thus worked well within its authority to limit judicial review of CAT regulations and CAT claims. Because Petitioner seeks *additional* procedures beyond what CAT provides, he is challenging the implementation of CAT as applied to him which is barred by FARRA and this Court should dismiss his petition.

VII. PETITIONER IS NOT LIKELY TO SUCCEED ON THE MERITS NOR HAS HE RAISED SERIOUS QUESTIONS GOING TO THE MERITS OF HIS CLAIMS

The Court should deny Petitioner's Motion For a Temporary Restraining Order, because Petitioner has not demonstrated likelihood of success on the merits. Nor has Petitioner raised "serious questions" about the merits. Petitioner has not been detained, and he does not have the due process right to a pre-detention hearing. Petitioner is asking the Court to create a procedure that does not exist in any statute or regulation by requiring a pre-deprivation hearing while he is not in custody.

A. Petitioner's Detention is Authorized by 8 U.S.C. § 1231(a)(6)

Mr. Enamorado's claim is premature, as he has not been re-arrested,³ and, even if he were, it would be constitutional to re-detain him. The Supreme Court has unambiguously upheld detention pending an alien's removal. *See Zadvydas v. Davis*, 533 U.S. 678 (2001) (an alien is not entitled to habeas relief after the expiration of the presumptively reasonable six-month period of detention under § 1231(a)(6) unless he can show the detention is "indefinite" – *i.e.*, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.")). Here, Petitioner, who has not been detained, cannot show that he is subject to prolonged detention or that his

³ To be reviewable under the APA, the decision under review must be a "final agency action," 5 U.S.C. § 704. This finality requirement is a "prerequisite to review" of any APA claim. *Dalton v. Specter*, 511 U.S. 462, 469 (1994). A district court lacks jurisdiction to review a APA claim absent final agency action. *Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1104 (9th Cir. 2004). Petitioner has filed this action in anticipation of a possible future action; he has failed to identify any agency action or failure to act that has actually occurred.

1 removal is unlikely to occur in the reasonably foreseeable future.

2 The purpose of Section 1231(a)(6) detention is to effectuate removal. *See Demore v. Kim*, 538
3 U.S. 510, 527 (2003) (analyzing *Zadvydas* and discussing explaining the removal period was based on
4 the “reasonably necessary” time in order “to secure the alien’s removal”). To the extent Petitioner ever
5 had a procedural due process interest in his release while he was in ongoing withholding-only
6 proceedings—which the government does not concede—that interest terminated when his withholding-
7 only proceedings ended. Indeed, his withholding-only proceedings was the reason he received a bond
8 hearing in the first instance. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580–81 (2022). Should
9 ICE detain Petitioner in the future, which at this juncture remains speculative, his detention would be
10 authorized under Section 1231(a)(6) to effectuate his removal to a third country unless and until there
11 was “no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
12 690–92, 699.

13 The cases Petitioner cites in support of his argument for a pre-detention hearing concern aliens
14 subject to *pre-removal order* detention in which the primary consideration is ensuring an alien’s
15 presence at their future removal proceedings and in which bond hearings are largely available by
16 regulation. *See, e.g. Ortiz-Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *1, 3 (N.D.
17 Cal. Aug. 23, 2020). Here, Petitioner is subject to post final order detention under Section 1231(a)(6).
18 The purpose of that detention is to effectuate removal—not to ensure presence at removal proceedings.
19 Accordingly, the reasoning underlying the cases Petitioner cites is distinguishable.

20 Therefore, Petitioner has no basis to assert a procedural due process right to his prior bond or for
21 a pre-detention hearing because he has a final order of removal and any detention would be to effectuate
22 his removal to a third country.

23 **B. Petitioner is Not Entitled to a Pre-Detention Hearing or Bond Hearing**

24 **1. The Due Process Clause does not require a pre-detention hearing**

25 The Due Process Clause does not prohibit ICE from re-detaining Petitioner. Moreover, there is
26 no statutory or regulatory requirement that entitles Petitioner to a “pre-deprivation” hearing. *See*
27 *generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4.

28 For this Court to read one into the immigration custody statute would be to create a process that

1 the current statutory and regulatory scheme do not provide for. *See Arteaga-Martinez*, 596 U.S. at 580–
2 82. Thus, Petitioner can cite no liberty or property interest to which due process protections attach.

3 Petitioner’s reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced.
4 *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472–73.
5 It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed
6 that “due process is flexible and calls for such procedural protections as the particular situation
7 demands.” *Id.* at 481. In addition, the “[c]onsideration of what procedures due process may require
8 under any given set of circumstances must begin with a determination of the precise nature of the
9 government function.” *Id.* With respect to the precise nature of the government function, the Supreme
10 Court has long held that “Congress regularly makes rules” regarding immigration that “would be
11 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under these
12 circumstances, Petitioner does not have a cognizable liberty interest, or even assuming he had one, it
13 would be reduced based on the immigration context.

14 The procedural process provided to Petitioner, if re-arrested, is constitutionally adequate in the
15 circumstances and no additional process is required. “Procedural due process imposes constraints on
16 governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning
17 of the [Fifth Amendment] Due Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).⁴
18 “The fundamental requirement of [procedural] due process is the opportunity to be heard ‘at a
19 meaningful time and in a meaningful manner.’” *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545,
20 552 (1965)).

21 To determine whether procedural protections satisfy the Due Process Clause, courts consider
22 three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an
23 erroneous deprivation of such interest through the procedures used, and the probable value, if any, of
24 additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the
25 function involved and the fiscal and administrative burdens that the additional or substitute procedural
26 requirement would entail.” *Id.* at 335.

27
28 ⁴ While Respondents do not concede that *Mathews v. Eldridge* provides the correct framework,
they acknowledge that courts in this district generally apply it.

1 The first factor favors Respondents. The Supreme Court has long recognized that due process as
2 applied to aliens in matters related to immigration does not require the same strictures as it might in
3 other circumstances. In *Mathews v. Diaz*, the Court held that, when exercising its “broad power over
4 naturalization and immigration, Congress regularly makes rules regarding aliens that would be
5 unacceptable if applied to citizens.” *Diaz*, 426 U.S. at 79–80. In *Demore*, the Court likewise recognized
6 that the liberty interests of aliens are subject to limitations not applicable to citizens. 538 U.S. at 522
7 (citing *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has
8 recognized the individuals subject to immigration detention possess at least a limited liberty interest, it
9 has also recognized that aliens’ liberty interests are less than full. See *Diouf v. Napolitano*, 634 F.3d
10 1081, 1086–87 (9th Cir. 2011). Because Petitioner’s liberty interest is less than that at issue in
11 *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-re-arrest hearing.

12 The second *Mathews* factor also favors Respondents. Under the existing procedures, aliens
13 including Petitioner face little risk of erroneous deprivation. As explained in Section VII.A above, there
14 is no risk of erroneous deprivation because Section 1231(a)(6) unquestionably authorizes Petitioner’s
15 detention to execute his final removal order to a third country. Moreover, as discussed in Section IV,
16 the *D.V.D.* court has already created extra-statutory protections that apply to Petitioner. See *D.V.D.*,
17 2025 WL 1495517 at *24.

18 And, in the event that Petitioner were to be re-arrested and taken into custody, ICE would be
19 required to give Petitioner additional procedures under the Post Order Custody Review Regulations in 8
20 C.F.R. § 241.4. These regulations require, *inter alia*, periodic custody reviews in which Petitioner will
21 have the opportunity to submit documents in support of his release to include documentation about flight
22 risk and dangerousness. See generally 8 C.F.R. § 241.4(e)–(f) (listing factors to be considered in custody
23 determinations). These procedures are more than adequate and unquestionably provide Petitioner notice
24 and opportunity to be heard at the start of and throughout any future detention. Moreover, if the federal
25 government attempts to remove Petitioner to a third country, it would be required to provide him the
26 protective measures set forth by the *D.V.D.* court, including written notice of any third country, and the
27 “meaningful opportunity” to “raise a fear of return for eligibility for CAT protections.” See *D.V.D.*,
28 2025 WL 1495517 at *24.

1 Petitioner asserts that these available processes are insufficient because they do not occur prior to
2 re-arrest. But the bulk of cases cited by Petitioner do not arise in the distinct arena of immigration law,
3 and they are therefore inapposite. *See, e.g., Zinerman v. Burch*, 494 U.S. 113 (1990) (mental treatment
4 facility); *Hurd v. District of Columbia, Government*, 864 F.3d 671 (D.C. Cir. 2017) (re-incarceration of
5 inmate); *Gagnon v. Scarpelli*, 41 U.S. 778 (1973) (probation revocation).

6 As explained above, Petitioner's cited cases concern pre-final order detention in which the goals
7 and considerations for detention are different and in which bond hearings are, in many cases, provided
8 by regulation. *See, e.g., Ortiz-Vargas*, 2020 WL 5074312, at *1, 3 (N.D. Cal. Aug. 23, 2020).

9 The third *Mathews* factor—the value of additional safeguards relative to the fiscal and
10 administrative burdens that they would impose—weighs heavily in favor of Respondents. As previously
11 explained, Petitioner's proposed safeguard—a pre-deprivation hearing—adds little value to the system
12 already in place in which he will receive periodic reviews to ensure his removal remains reasonably
13 foreseeable and in which the entire purpose of his detention is to effectuate his removal.

14 Moreover, as set forth in Section IV, the *D.V.D.* class action has created additional protections
15 regarding removal to third countries. Indeed, Petitioner admits that the *D.V.D.* preliminary injunction
16 provides substantive protections against third-country removal, including (1) written notice and (2) the
17 “meaningful opportunity” to raise a “fear of return.” Petition ¶ 68.

18 Here, Petitioner is subject to a final order of removal that has been reinstated under Section 1231.
19 The purpose of the requested pre-deprivation hearing would be to impede execution of his final order of
20 removal. Thus, Petitioner essentially posits that DHS must provide him a hearing before it may detain
21 him in order to remove him. Accordingly, Petitioner essentially seeks a judicially created stay of the
22 execution of a final removal order.

23 Accordingly, Petitioner's proposed safeguard would disrupt the removal process. Because the
24 hearing Petitioner proposes would by definition involve a non-detained individual, there would be
25 hurdles to efficiently scheduling a hearing. There is no administrative process in place for giving an
26 alien with a final order of removal a hearing resembling a bond hearing before an immigration judge.
27 Petitioner's proposed safeguard presents an unworkable solution to a situation already addressed by the
28 current procedures. *See* 8 C.F.R. § 241.4.

Even in non-immigration contexts, courts have recognized that pre-deprivation process may be unwarranted, particularly where there is a need for prompt government action. “The necessity of quick action can arise where the government has an interest in protecting public health and safety.” *Lamoreaux v. Kalispell Police Dep’t*, No. 16-cv-0089, 2016 WL 6078274, at *4 (D. Mont. Oct. 17, 2016) (citing *Mackey v. Montrym*, 443 U.S. 1, 17 (1979)), *report and recommendation adopted*, 2016 WL 6634861 (D. Mont. Nov. 8, 2016). *Cf. Edmondson v. City of Boston*, 1990 WL 235426, at *2 (D. Mass. Dec. 20, 1990) (noting that “[i]n the context of an arrest . . . quick action is necessary and predeprivation process is, at best, impractical and unduly burdensome”).

The INA does not provide for a pre-deprivation hearing. *See, e.g.*, 8 U.S.C. § 1231. Requiring a pre-deprivation hearing would impair law enforcement, including because it would increase the risk of flight. This is particularly true where the Petitioner already has a final order of removal.

Respondents recognize that Petitioner is making an individualized challenge here. However, the additional procedure he requests would have a significant impact on the removal system. It would require ICE and the Executive Office of Immigration Review to set up a novel administrative process for Petitioner who – for all intents and purposes – represents a large portion of the final order alien population. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-deprivation hearing.

C. Petitioner Cannot Meet His Burden to Show Irreparable Harm

The Court should deny Petitioner’s Motion, because Petitioner “must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). The “possibility” of injury is “too remote and speculative to constitute an irreparable injury meriting preliminary injunctive relief.” *Id.* “Subjective apprehensions and unsupported predictions . . . are not sufficient to satisfy a plaintiff’s burden of demonstrating an immediate threat of irreparable harm.” *Id.* at 675–76.

Petitioner’s contentions regarding the possibility of detention and deportation to a third country does not “rise to the level of “‘immediate threatened injury’ that is required to obtain a preliminary injunction.” *Slaughter v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D. Wash. Aug. 10, 2006), *report and recommendation adopted*, 2008 WL 2434208 (W.D. Wash. June 16,

2008) (“Plaintiff’s argument of possible harm does not rise to the level of ‘immediate threatened injury’”). Moreover, while Petitioner argues that being detained would cause irreparable harm, “there is no constitutional infringement if restrictions imposed” are “but an incident of some other legitimate government purpose.” *Id.* (citing, e.g., *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). “In such a circumstance, governmental restrictions are permissible.” *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 747, (1987)).

Petitioner argues that there are “only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community.” Motion at 14. Petitioner disregards additional legitimate purposes of detention: to enforce a removal order.

In this case, Petitioner cannot show that denying the temporary restraining order would make “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must] demonstrate that irreparable injury is *likely* in the absence of an injunction.”) (emphasis in original). “[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury.” *Id.* “Speculative injury does not constitute irreparable injury.” *Goldie’s Bookstore, Inc. v. Superior Court of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish irreparable harm if he does is not provided a pre-detention hearing.

D. The Equities and Public Interest Do Not Favor Petitioner

The third and fourth factors, “harm to the opposing party” and the “public interest,” “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). “In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

An adverse decision here would negatively impact the public interest by jeopardizing “the orderly and efficient administration of this country’s immigration laws.” *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined.”).

The public has a legitimate interest in the government's enforcement of its laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the rules that are the subject of this appeal.").

While it is in the public interest to protect constitutional rights, if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

Respondents acknowledge the Petitioner's submissions regarding his efforts to support his family. Given Petitioner's undisputed criminal history, it is evident that the public and governmental interest in permitting his potential detention is significant. Thus, Petitioner has not established that he merits a temporary restraining order.

VIII. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Motion for a Temporary Restraining Order.

Respectfully submitted,

DATED: June 16, 2025

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