ADAM GORDON
United States Attorney
ERIN M. DIMBLEBY
Assistant U.S. Attorney
California Bar No. 323359
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Tel: (619) 546-6987
Fax: (619) 546-7751
Email: Erin.Dimbleby@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JESUS DOMINGO-ROS, et al., Petitioners, v. GREGORY J. ARCHAMBEAULT; et al., Respondents.	Case No.: 25-cv-1208-DMS-DEB **RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONERS' HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER** Date: May 16, 2025 Time: 1:30 p.m. Judge: Hon. Dana M. Sabraw

I. Introduction

Petitioners seek a temporary restraining order (TRO) to enjoin Respondents from removing Petitioners from the Southern District of California and the United States pending this Court's review of their habeas petition brought under 8 U.S.C. § 1252(e) and 28 U.S.C. § 2241. However, as Petitioners' claims are direct and indirect challenges to their expedited removal orders issued pursuant to 8 U.S.C. § 1225(b)(1), jurisdiction over their claims is barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), and § 1252(g). Authority for habeas corpus proceedings under § 1252(e)(2) is expressly limited to three narrow questions, none of which are asserted by Petitioners. As this Court lacks jurisdiction over their habeas petition, Petitioners are unlikely to succeed on the underlying merits of their habeas petition and the equities do not weigh in their favor. The Court should accordingly deny Petitioners' TRO application and dismiss this matter.

II. Factual Background

Petitioner Jesus Domingo-Ros is a native and citizen of Guatemala. ECF No. 2-2 at 4, 6, 20. On October 17, 2024, Petitioner Domingo-Ros entered the United States between ports of entry. ECF No. 2-2 at 6, 20. On April 22, 2025, he was encountered by Border Patrol agents. ECF No. 2-2 at 5-6. That same day, Petitioner Domingo-Ros was charged with removability under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. ECF No. 2-2 at 20. He was issued a Notice and Order of Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). ECF No. 2-2 at 20.

Petitioner Yoni Jacinto Garcia is a native and citizen of Guatemala. ECF No. 2-2 at 9, 11-12, 24. On April 15, 2024, Petitioner Garcia entered the United States between ports of entry. ECF No. 2-2 at 12, 24. On April 22, 2025, he was encountered by Border Patrol agents. ECF No. 2-2 at 10-11. That same day, Petitioner Garcia was charged with removability under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. ECF No. 2-2 at 24. He was issued a Notice and Order of

Expedited Removal under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1). ECF No. 2-2 at 24.

Petitioner Edwin Juarez-Cobon is a native and citizen of Guatemala. ECF No. 2-2 at 14, 17, 28. On or about September 16, 2023, Petitioner Juarez-Cobon entered the United States between ports of entry. ECF No. 2-2 at 17, 28. On April 22, 2025, he was encountered by Border Patrol agents. ECF No. 2-2 at 16-17. That same day, Petitioner Juarez-Cobon was charged with removability under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. ECF No. 2-2 at 28. He was issued a Notice and Order of Expedited Removal under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1). ECF No. 2-2 at 28.

On May 12, 2025, Petitioners commenced this case, seeking to have this Court vacate their expedited removal orders and order their release from ICE custody. ECF No. 1, 2. Subsequently, the Court issued an order requiring Respondents to file responses to Petitioners' habeas petition and TRO application. ECF No. 3.

III. Argument

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

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party's favor.") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

A. Petitioners' Claims and Requested Relief are Barred by 8 U.S.C. § 1252

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioners are not likely to succeed on the underlying merits because they have not satisfied their burden of establishing that the Court has jurisdiction to hear their claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioners bring their habeas action under 8 U.S.C. § 1252(e) and 28 U.S.C. § 2241, but jurisdiction over their claims is barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), and § 1252(g).

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings,

adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

Moreover, "[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling provision, which bars review of almost 'every aspect of the expedited removal process.'" *Azimov v. U.S. Dep't of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-stripping provisions cover "the 'procedures and policies' that have been adopted to 'implement' the expedited removal process; the decision to 'invoke' that process in a particular case; the 'application' of that process to a particular alien; and the 'implementation' and 'operation' of any expedited removal order." *Mendoza-Lineras*, 51 F.4th at 1155. "Congress chose to strictly cabin this court's jurisdiction to review expedited removal orders." *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) (finding that the Supreme Court abrogated any "colorable constitutional claims" exception to the limits placed by § 1252(a)(2)(A)); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause). "Congress has chosen to explicitly bar nearly all judicial review of expedited removal orders concerning such aliens, including 'review of constitutional claims or questions of law.'" *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see Dept' of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020) (explicitly rejecting Ninth Circuit's holding that an arriving alien has a "constitutional right to expedited removal proceedings that conform to the dictates of due process").

"Congress could scarcely have been more comprehensive in its articulation of the general prohibition on judicial review of expedited removal orders." *Mendoza-Lineras*, 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

> (2) Matters not subject to judicial review
> (A) Review relating to section 1225(b)(1)
> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review-
> (i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,
> (ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,
> (iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or
> (iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

8 U.S.C. § 1252(a)(2)(A). Thus, "Section 1252(a)(2)(A)(i) deprives courts of jurisdiction to hear a 'cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1),' which plainly includes [Petitioners'] collateral attacks on the validity of the expedited removal orders." *Azimov*, 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the "arising from" language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards and process by which each expedited removal order was entered against Petitioners, they necessarily ask the Court "to do what the statute forbids [it] to do, which is to review 'the application of such section to [them]." *Mendoza-Linares*, 51 F.4th at 1155. "And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction to review 'procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title,' which plainly includes [Petitioners'] claims

regarding how [Respondents] have implemented" § 1225(b)(1). *Azimov*, 2024 WL 687442, at *1 (citing *Mendoza-Linares*, 51 F.4th at 1154–55).

In setting forth provisions for judicial review of § 1225(b)(1) expedited removal orders, Congress expressly limited available relief: "Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may" "enter declaratory, injunctive, other equitable relief in any action pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection." 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review concerning expedited removal orders: (1) narrow habeas corpus proceedings under § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any permissible challenge to the validity of the system "is available [only] in an action in the United States District Court for the District of Columbia . . . ." 8 U.S.C. § 1252(e)(3).

Narrow habeas corpus proceedings are expressly "limited to determinations" of three questions: (1) "whether the petitioner is an alien"; (2) "whether the petitioner was ordered removed under [section 1225(b)(1)]"; and (3) "whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien" who has been granted status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C). "In determining whether an alien has been ordered removed under section 235(b)(1) [8 U.S.C. § 1225(b)(1)], the court's inquiry shall be limited *to whether such an order in fact was issued* and *whether it relates to the petitioner*. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal." 8 U.S.C. § 1252(e)(5) (emphasis added). Here, Petitioners do not assert that they are not aliens, nor "whether the petitioner[s] [are] alien[s]." Instead, they challenge how alienage was determined in issuance of the expedited removal orders. *See* ECF No. 2-1 at 4-6. Such questions lay outside the scope of § 1252(e)(2) and are barred by § 1252(a)(2)(A). Petitioners also do not assert that they have been granted any form of status. Moreover, "[t]here is no doubt that an order 'under section 235(b)(1)' was in fact

issued here, because (1) the order[s] that [are] in the record and that [Petitioners] challenge[] expressly state[] that [they] w[ere] entered 'under section 235(b)(1)' of the INA." *Mendoza-Linares*, 51 F.4th at 1158; *see* ECF No. 2-2 at 20, 24, 28. Each of Petitioners' claims fall outside the limited habeas corpus authority provided within § 1252(e)(2).

Thus, as Petitioners' claims are direct and indirect challenges to their § 1225(b)(1) expedited removal orders and the application of the expedited removal process to Petitioners, this Court lacks jurisdiction under 8 U.S.C. § 1252. The TRO application should therefore be denied, and this action should be dismissed.

B. Petitioners Have Not Shown Irreparable Injury

Petitioners are each subject to an expedited removal order entered under § 1225(b)(1). In asserting that they will be harmed, Petitioners rely on the argument that they will be removed from the United States before their habeas claims are heard by this Court. *See* ECF No. 2-1 at 8-9. Notably, while Petitioners seek to challenge their removal orders, they do not assert that they are entitled to any form of relief from removal (e.g., asylum, holding from withholding, protections under the Convention Against Torture) or that they are seeking relief from removal (outside of attacks to the removal orders).

C. Balance of Equities Does Not Tip in Petitioners' Favor

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted).

Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, Petitioners do not allege that they can overcome the statutory bars to the relief they seek. *See* 8 U.S.C. § 1252. Without jurisdiction, Petitioners will not succeed on the merits of their claims.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the application for a temporary restraining order and dismiss this action for lack of jurisdiction.

DATED: May 14, 2025

ADAM GORDON
United States Attorney

s/Erin M. Dimbleby
ERIN M. DIMBLEBY
Assistant U.S. Attorney