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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

RICARDO AGUILAR GARCIA, Petitioner, v. POLLY KAISER, et al., Respondents.	Case No. 3:25-cv-05070-JSC **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTIVE RELIEF (DKT. NO. 3)**

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I. INTRODUCTION

Respondents respectfully submit this Response to the Order to Show Cause Re: Preliminary Injunction, which issued on June 14, 2025, per the briefing schedule set by the Court's June 20, 2025 order (Dkt. 13). This Response also serves as the Respondents' Return to the Petition for Writ of Habeas Corpus.

Petitioner Ricardo Aguilar Garcia ("Petitioner") is not in custody and has not been re-detained by Immigration and Customs Enforcement ("ICE"). Because Petitioner was previously detained pursuant to 8 U.S.C. § 1226(a) pending a decision on whether he is to be removed from the United States, a bond hearing was completed on September 17, 2018. The immigration judge ("IJ") conducted a custody redetermination hearing for Petitioner, and declined to order release on bond. ICE, however, made the decision to release Petitioner on July 3, 2019 on an administrative bond as part of the Intensive Supervision Appearance Program ("ISAP") as an alternative to detention ("ATD"). Two Petitions for Review ("PFRs") before the Ninth Circuit followed, which were consolidated and denied on May 8, 2025, clearing the way for Petitioner's removal.

On May 23, 2025, the Ninth Circuit granted Petitioner's motion to stay issuance of the mandate for ninety days to allow Petitioner to file a motion to reopen before the Board of Immigration Appeals ("BIA"). Although Petitioner has yet to file a second motion with the Board, if he does it faces significant legal obstacles. Once ninety days have passed, the Ninth Circuit's mandate will issue and the order of removal will be final and enforceable. If ICE were to re-arrest and detain Petitioner prior to the issuance of a mandate, his custody status would be governed by 8 U.S.C. §1226(a) ("Section 1226(a)"). Accordingly, he would be entitled to an initial bond hearing before an IJ following any detention. Once the stay of the issuance of a mandate is lifted, 8 U.S.C. § 1231 would govern and Petitioner would be subject to mandatory detention for execution of his removal order.

The Court should deny Petitioner's request for a preliminary injunction because he is unlikely to succeed on the merits of his claim. Petitioner would be able to seek another bond hearing if he were detained. There is no statutory or regulatory authority or entitlement to an administrative "pre-detention" hearing before an IJ for an alien who has not been arrested by ICE. Rather, aliens are only

entitled to a review of custody determinations, if at all, after their arrest. For individuals detained under Section 1226(a), the Ninth Circuit has held that the process afforded the individuals are constitutionally adequate to prevent the risk of erroneous deprivation of their liberty interests. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1203 (9th Cir. 2022). Accordingly, the Motion for Preliminary Injunction should be denied. For the same reasons, the Petition should be denied and the matter dismissed.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Mexico, who entered the United States without inspection, admission, or parole, has no lawful immigration status in the United States, and acquired a criminal record in the United States, including a conviction for driving under the influence and arrests for, among other things, weapons and controlled substance offenses. Declaration of Jarvin Li ("Li Decl."), ¶ 4, Exh. 1; Exh. 2.

On or about July 26, 2018, ICE initiated removal proceedings against Petitioner by filing a Notice to Appear with the immigration court, charging Petitioner with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"), as an alien present in the United States without admission or parole or who otherwise arrived in the United States at any time or place other than as designated by the Attorney General. Li Decl ¶ 5 Exh. 1. ICE detained Petitioner pursuant to Section 236(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a). *Id.*

Pursuant to Section 1226(a), Petitioner was entitled to a bond redetermination hearing. On September 17, 2018, Petitioner had a bond hearing before an Immigration Judge ("IJ"), who denied bond to Petitioner two days later, finding that Petitioner "failed to meet his burden of demonstrating that he does not pose a danger to the community." Li Decl ¶ 6, Exh. 3. On September 25, 2018, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA") challenging the IJ's decision denying bond. Li Decl ¶ 7. The BIA dismissed Petitioner's bond appeal, on January 3, 2019, agreeing with the IJ that Petitioner failed to establish "that he is not a danger to persons or property." Li Decl ¶ 10, Exh. 4.

Claiming changed circumstances, Petitioner filed a motion for a second bond hearing, which was denied by the IJ due to a lack of materially changed circumstances. Li Decl ¶ 11, Exh. 5; Exh. 6; Exh. 7. Petitioner appealed that decision on May 1, 2019. Li Decl ¶ 12. On July 3, 2019, however, Petitioner

was released by ICE—on an administrative bond in the amount of $8,000.00—under the Intensive Supervision Appearance Program ("ISAP") as an alternative to detention ("ATD"). As part of ISAP, Petitioner has ongoing reporting requirements. Li Decl ¶ 13. In light of his release, on November 25, 2019, the BIA dismissed as moot Petitioner's appeal challenging the Immigration Judge's decision denying him a second bond hearing. Li Decl ¶ 17, Exh. 9.

Petitioner's removal proceedings continued while his bond proceedings were pending. On December 20, 2018, an IJ ordered Petitioner removed to Mexico. Li Decl ¶ 8, Exh. 1. On December 26, 2018, Petitioner filed an appeal with the BIA challenging the removal order against him. Li Decl ¶ 8. The BIA dismissed Petitioner's appeal from his removal order on July 9, 2019. Li Decl ¶ 14, Exh. 8. On July 30, 2019, Petitioner filed a Petition for Review ("PFR") in the U.S. Court of Appeals for the Ninth Circuit, in *Aguilar Garcia v. Bondi*, No. 19-71917, challenging the removal order against him. Li Decl ¶ 15. He filed a motion to stay removal ("Stay Motion") with his PFR, which automatically temporarily stayed his removal until further order of the Ninth Circuit. Li Decl ¶ 16.

On May 22, 2020, Petitioner belatedly filed a motion to reopen his removal proceedings with the BIA. Li Decl ¶ 18, Exh. 10. The BIA denied the motion on June 29, 2023, finding, among other things, that Petitioner's motion to reopen was untimely. Li Decl ¶ 19, Exh. 10.

Following the denial of his motion to reopen, Petitioner filed a second PFR in the Ninth Circuit on July 21, 2023, *Aguilar Garcia v. Bondi*, No. 23-1536, challenging the Board's June 2023 decision. Li Decl ¶ 20. On July 31, 2023, the Ninth Circuit consolidated Petitioner's two PFRs. Li Decl ¶ 21.

On February 28, 2025, the Ninth Circuit denied Petitioner's consolidated PFRs and his motion for a stay of removal. The Court kept the temporary stay of removal in place until issuance of the mandate. Li Decl ¶ 22, Exh. 11. Petitioner filed a Petition for Panel Rehearing on April 11, 2025. Li Decl ¶ 23. On May 8, 2025, the Ninth Circuit issued an amended memorandum disposition—again denying Petitioner's PFRs and motion for a stay of removal—and otherwise denying panel rehearing. Li Decl ¶ 25, Exh. 12. On May 23, 2025, the Ninth Circuit granted Petitioner's motion to stay issuance of the mandate for ninety days to allow Petitioner to file a motion to reopen before the BIA. Petitioner has yet to file any motion with the BIA. Li Decl ¶ 26, Exh. 13

Throughout his removal and PFR proceedings, Petitioner has been subject to periodic in-person reporting requirements with ICE. Petitioner last physically reported to ICE on May 1, 2025. At that time, ICE reviewed his case and was aware of his pending petition for rehearing that Petitioner filed with the Ninth Circuit in April 2025. ICE scheduled Petitioner to next report in-person to ICE on August 1, 2025. Li Decl ¶ 24.

III. LEGAL STANDARD

A. Immigration Detention Authority.

Congress enacted a multi-layered statute that provides for the continued civil detention of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057. Petitioner was previously detained under 8 U.S.C. § 1226(a), which "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018) (quoting Section 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Generally, 8 U.S.C. § 1231 is the applicable authority governing detention of aliens subject to a final removal order. Under Section 1231, the government "shall" remove the alien during a 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A), (B). The removal period begins at the latest of the following three dates: (i) the date the order of removal becomes administratively final; (ii) if the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; or (iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B)(i)-(iii). Detention during the 90-day removal period is mandatory. 8 U.S.C. § 1231(a)(2).

Where an alien files a Petition for Review and requests stay of removal, the detention authority

does not shift to 8 U.S.C. § 1231 until either the Ninth Circuit denies the request for stay of removal or grants the stay of removal and denies the Petition for Review. *See Prieto-Romero,* 534 F.3d at 1060, n.5. Thus, where an alien has filed a Petition for Review and obtained an automatic temporary stay of removal, the alien remains subject to detention set forth in 8 U.S.C. § 1226. Accordingly, if Petitioner were re-detained it would be pursuant to Section 1226(a) until the Ninth Circuit issues its mandate, at which point the detention authority would shift to Section 1231(a)(2) for mandatory detention for removal.

Every alien apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 138 S. Ct. at 847 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). An ICE officer initially assesses whether the alien has "demonstrate[d]" that "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the ICE officer denies bond, the alien may ask an IJ for a redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing for an alien detained under Section 1226(a) is also called a "redetermination hearing." Bond hearings are separate and apart from, and form no part of, an alien's removal hearings. 8 C.F.R. § 1003.19(d).

The alien may appeal the IJ's custody redetermination to the BIA. 8 C.F.R. § 236.1(d)(3)(i), 1236.1(d)(3)(i). Further, an alien who remains detained under Section 1226(a) after the initial bond hearing may request that the IJ conduct another custody redetermination whenever "circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). If dissatisfied with the outcome of any subsequent hearing, an alien may appeal that decision to the Board as well. *See Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

B. Habeas Corpus.

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

239-40 (1963).

C. Preliminary Injunction.

In order to be entitled to a preliminary injunction, the moving party must show "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). "[I]f a plaintiff can only show that there are serious questions going to the merits – a lesser standard than likelihood of success on the merits – then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff's favor, and the other two *Winter* factors are satisfied." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (citations and quotations omitted).

IV. ARGUMENT

A. Petitioner Cannot Show That He is Likely to Succeed on the Merits

The Court should deny Petitioner's Request for injunctive relief, because Petitioner has not demonstrated likelihood of success on the merits. Nor has Petitioner raised "serious questions" about the merits.

The Due Process Clause does not prohibit ICE from re-arresting Petitioner given that he has already received a bond hearing (where an IJ determined that he should *not* be released on bond). Moreover, there is no statutory or regulatory requirement that entitles Petitioner to a "pre-arrest" hearing. *See generally* 8 U.S.C. § 1226; 8 C.F.R. § 236(c)(9). For this Court to read one into the immigration custody statute would be to create a process that the current statutory and regulatory scheme do not provide for. *See, e.g.*, *Jennings*, 138 S. Ct. at 850-51.

Petitioner's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972), and its progeny is misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472-73. It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed that "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 481. In addition, the "[c]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the

government function." *Id.* Moreover, the Supreme Court has long held that "Congress regularly makes rules" regarding immigration that "would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Ultimately, the most significant flaw in the decisions relying on *Morrisey* is that none of them meaningfully analyzed *Morrissey*'s requirement that a protected liberty interest can only arise when an individual reasonably expected to remain free under the terms of the program at issue. Here, there can be no reasonable expectation to remain free as (1) Petitioner was not released by an IJ, but rather through the ISAP program as an alternative to detention; and (2) Petitioner's PFRs have been denied and any expectation of liberty could only be, at most, until the mandate issues on August 21, 2025. Under the circumstances, Petitioner does not have a cognizable liberty interest.

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

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

The first factor favors Respondents. The Supreme Court has long recognized that due process as applied to aliens in matters related to immigration does not require the same strictures as it might in other circumstances. In *Mathews*, the Court held that, when exercising its "broad power over naturalization and immigration, Congress regularly makes rules regarding aliens that would be unacceptable if applied to citizens." *Mathews*, 426 U.S. at 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are subject to limitations not applicable to citizens. 538

U.S. at 522 (quoting *Zadvyda v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the individuals subject to immigration detention possess at least a limited liberty interest, it has also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th Cir. 2011) (citing *Zadvydas*, 533 U.S. at 694). Because Petitioner's liberty interest is less than that at issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-re-arrest hearing. The more analogous case is *Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434 (N.D. Cal. Oct. 14, 2022). There, the petitioner was conditionally released pending the resolution of ICE's bond appeal to the BIA that was ultimately successful. Judge Breyer observed that "[petitioner] always knew that his release was subject to appellate review. He cannot reasonably claim that the government promised him ongoing freedom or that he reasonably believed he would remain at liberty even after the BIA's decision so long as he complied with the terms of his conditional release." *Id.* at *3. So too here: Petitioner's liberty interest is completely different (and weaker) now that the Ninth Circuit's mandate is about to issue, at which point Petitioner will have little or no expectation of continued freedom. Petitioner is certainly on notice that his order of removal will become final—and subject to ICE executing it—once the Ninth Circuit's mandate issues. Thus, any liberty interest that may be implicated here "is not as weighty as some." *Id.* at *4. [1] Compare the present case to *Jorge M. F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL 783561, at *1 (N.D. Cal. Mar. 1, 2021), which predates the Ninth Circuit's decision in *Rodriguez Diaz*, where a court in this district determined following a *Mathews* analysis that due process required a pre-detention hearing where ICE sought to re-detain petitioner. In *Jorge M.F.*, the removal proceeding had been initiated but was in the early stages of litigation. *Id.* at *1. That stands in stark contrast to the present case, where Petitioner has been ordered removed and his PFR has been denied by the Ninth Circuit.

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[1] Moreover, the specific additional procedures Petitioner requests for his novel hearing—that the government would have the burden of proof, by clear and convincing evidence—are especially problematic, considering that the Ninth Circuit has already rejected those exact same requirements in Petitioner's own case. *See Rodriguez Diaz*, 53 F.4th at 1203-13. As the Ninth Circuit said previously, "We are aware of no Supreme Court case placing the burden on the government to justify the continued detention of an alien, much less through an elevated 'clear and convincing' showing." *Id.* at 1212. There is no good reason to impose such a requirement for Petitioner now, when the Ninth Circuit previously held that Petitioner was not entitled to that process.

Once the Ninth Circuit's mandate issues in a few weeks, the order will become final and Petitioner will be subject to mandatory detention for removal pursuant to 8 U.S.C. § 1231(a)(2).

The second *Mathews* factor also favors Respondents. Under the existing procedures, aliens including Petitioner face little risk of erroneous deprivation. In the event Petitioner were to be re-arrested and taken into custody, ICE would be required to give the Petitioner the option of requesting a review of his custody determination, which would then be documented on ICE Form I-286. *See* Lopez Decl, ¶ 18 & Exh. 7. Thereafter, if the Petitioner sought review of his custody, he would then be scheduled for a custody redetermination hearing before an immigration judge. *Id.* The procedural processes that would be available to Petitioner are sufficient to protect his interests for the brief time even remaining for any 8 U.S.C. § 1226(a) discretionary detention. *Rodriguez Diaz*, 53 F.4th at 1209.

Petitioner asserts that these available processes are insufficient because they do not occur prior to re-arrest. But the bulk of cases cited by Petitioner do not arise in the distinct arena of immigration law, and they are therefore inapposite. *See, e.g.*, *Zinermon v. Burch*, 494 U.S. 113 (1990) (mental treatment facility); *Hurd v. District of Columbia, Government*, 864 F.3d 671 (D.C. Cir. 2017) (re-incarceration of inmate); *Gagnon v. Scarpelli*, 41 U.S. 782 (1973) (probation revocation). And other cases ordering additional bond hearings, such as *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019), and *Ortiz-Vargas v. Jennings*, Case No. 20-cv-5785 PJH, 2020 WL 5517277 (N.D. Cal. Sept. 14, 2020), do not address detention under 1226(a) and all predate the Ninth Circuit's decision in *Rodriguez Diaz* finding that such subsequent hearings under 8 U.S.C. § 1226(a) are not required by the Due Process Clause and run afoul of the statutory scheme that Congress has created.

Moreover, as previously set forth, where the Supreme Court has considered whether detention during immigration proceedings is constitutional, it has found such detention to be facially constitutional. *See Demore*, 538 U.S. at 523. Such detention does not require a hearing prior to arrest and permits arrest upon a warrant completed by DHS, which then leads to a custody determination by DHS that can be challenged as set forth above. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(b), (c)(8) (outlining the procedure for apprehension of aliens). The procedures in place by which Petitioner may challenge any potential exercise of DHS's authority are therefore sufficient to guard against the risk of

an erroneous exercise of that authority.

The third *Mathews* factor—the value of additional safeguards relative to the fiscal and administrative burdens that they would impose—favors Respondents. As previously explained, Petitioner's proposed safeguard—a pre-arrest hearing—adds little value to the system already in place. As the Ninth Circuit has observed, Section 1226(a) already offers significant procedural safeguards through "extensive procedural protections that are unavailable under other detention provisions, including several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change." *Rodriguez Diaz*, 53 F.4th at 1202.

Petitioner's proposed safeguard would also disrupt the removal proceeding system. Because the hearing Petitioner proposes would by definition involve a non-detained individual, there would be hurdles to efficiently scheduling a hearing. Any delay in the ability to calendar a hearing may result in further exacerbation of the flight risk or danger. Additionally, an alien would have limited incentives to appear in court at a hearing at which he could be rearrested. Petitioner's proposed safeguard presents an unworkable solution to a situation already addressed by the current procedures.

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"). In the INA, Congress decided not to provide for a pre-deprivation hearing. *See, e.g.*, 8 U.S.C. § 1226(a), (c). Requiring a pre-deprivation hearing would impair law enforcement, in particular because it would increase the risk of flight when Petitioner's removal order is almost final and amenable to execution.

The additional procedure proposed by Petitioner would have significant impacts on the immigration system. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-arrest hearing. Such a decision would be consistent with the Ninth Circuit's decision in *Rodriguez Diaz*. 53 F.4th at 1203 (holding that the Due Process Clause did not require "a second bond hearing at which the government bears the burden of proof by clear and convincing evidence.").

B. Petitioner Cannot Meet His Burden to Show Irreparable Harm.

The Court should decline to grant preliminary injunctive relief, because Petitioner "must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean Marine Servs. Co. v. Baldridge*, 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 arrest 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) ("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).)

Petitioner cannot show that denying the injunction would make irreparable harm the likely outcome because any harm would be short-lived given that (1) Petitioner would be entitled to a post-deprivation hearing and (2) the imminence of his final removal order. *Winter*, 555 U.S. at 22 ("Plaintiffs . . . [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 not get a pre-detention hearing where, as here, he would get a post-detention bond

hearing (if still merely subject to 8 U.S.C. § 1226(a) discretionary detention) where he could argue for release on bond.

C. 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, 420 (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).

Here, the government's interest should be given significant weight in light of the imminence of Petitioner's removal. *See Rodriguez Diaz*, 53 F.4th at 1208 (stating that the Government's interests "only increase with the passage of time" due to the greater resources it "devotes to securing [a noncitizen]'s ultimate removal" and the risk of a detainee's absconder "inevitably escalat[ing] as the time for removal becomes more imminent"). Under *Rodriguez Diaz*, the government has a strong interest at stake in cases like this one where the removal proceedings have almost reached their conclusion. The imminence of this final removal order thus places great weight in the government's interest and any injunction requiring a pre-detention hearing, under these circumstances, would likely run afoul of *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (holding that the district court lacked jurisdiction to issue a temporary restraining order to enjoin the noncitizen's removal from United States), and 8 U.S.C. § 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*") (emphasis added).[2]

An adverse decision here would also negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws." *See Sasso v. Milhollan*, 735 F.

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[2] A further attempt to seek relief from the BIA is unlikely to prevent a final order of removal. Petitioner has already filed the single motion to reopen he is entitled to, subject to limited exceptions that do not apply here (*see* 8 C.F.R. § 1003.2(c)(2)), and thus would have to rely on the BIA's decision to *sua sponte* reopen his proceedings. But, as the BIA has observed, their "power to reopen on [their] own motion is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship." *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997).

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."). While it is "always 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). 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 preliminary injunction.

V. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Petition for Writ of Habeas Corpus, decline to issue a Preliminary Injunction, and dismiss the case.

Respectfully submitted,

DATED: June 30, 2025

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