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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 GIOVANNY HERNAN ORTEGA,

12 Petitioner-Plaintiff,

13 v.

14 POLLY KAISER, in her official capacity,
15 Acting San Francisco Field Office Director,
U.S. Immigration and Customs Enforcement, et
16 al.,
17 Respondents-Defendants.

) CASE NO. 4:25-cv-05259-JST

) **RESPONDENTS' OPPOSITION TO MOTION**
) **FOR TEMPORARY RESTRAINING ORDER**

) Date: July 30, 2025
) Time: 2:00 pm
) Location: Zoom Webinar
) Judge: Hon. Jon S. Tigar

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1 **I. INTRODUCTION**

2 In this habeas case, Petitioner Giovanny Hernan Ortega, a Salvadoran citizen, seeks an order
 3 enjoining Respondents from re-arresting him pending further order of this Court. Dkt. No. 11 (“Mot.”)
 4 at 25. Following Petitioner’s incarceration for multiple counts of attempted murder, an Immigration
 5 Judge conducted an evidentiary hearing and ordered Petitioner removed to El Salvador. *See id.* at 4-6.
 6 The Immigration Judge simultaneously ordered that Petitioner’s removal to El Salvador be deferred
 7 pursuant to the Convention Against Torture. *Id.* at 5-6.

8 Petitioner is not in custody and has not been re-detained by U.S. Immigration and Customs
 9 Enforcement (“ICE”). Nevertheless, he asserts that “[h]e is terrified of being deported directly from the
 10 United States to a Salvadoran prison [and] likewise terrified that the United States will send him to a
 11 third country where he would be at direct risk of torture.” *Id.* at 10. Petitioner concedes that his
 12 criminal convictions render him ineligible for asylum or withholding of removal. *Id.* at 3. But before he
 13 is detained again, Petitioner seeks to have his removal proceedings reopened and to have a hearing in
 14 which “the government must prove by clear and convincing evidence that Mr. Ortega’s current release
 15 conditions should be modified.” Dkt. No. 10 at 47.

16 The Court should deny Petitioner’s Motion for multiple reasons. First, this Court lacks
 17 jurisdiction. Petitioner’s claim is not a cognizable habeas claim, as it seeks to enjoin his arrest and/or
 18 require a pre-detention hearing,¹ not a release from custody. Additionally, at least three provisions of
 19 the Immigration and Nationality Act (“INA”) deprive this Court of jurisdiction over Petitioner’s claims
 20 seeking to delay his removal while ICE complies with additional procedures. For instance, 8 U.S.C.
 21 § 1252(g) strips federal courts of jurisdiction over “any cause or claim” arising from the execution of
 22 removal orders, which Petitioner’s claims plainly do. Likewise, this Court lacks jurisdiction under
 23 8 U.S.C. §§ 1252(a)(5), (b)(9), and (a)(4) because, if Petitioner seeks to make a fear claim related to his
 24 third country removal, he can and must bring that claim in immigration court and, if necessary, the
 25 appropriate Court of Appeals—not a District Court. The Foreign Affairs Reform and Restructuring Act
 26 of 1998 (“FARRA”) also independently forecloses Petitioner’s claims seeking additional procedures not
 27

28 ¹ Courts sometimes refer to such hearings as “pre-deprivation hearings.” This Opposition uses the terms interchangeably.

provided by Congress' implementation of the Convention Against Torture ("CAT").

Second, Petitioner is a class member in the certified class action *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM (D. Mass.) ("*D.V.D.*"), in which the district court devised supplemental procedures for removing class members to a third country. Those procedures are currently stayed pending review at the First Circuit. To support judicial economy and avoid inconsistent results, this Court should exercise its discretion to dismiss this action because it is duplicative of the class claims in *D.V.D.*

Finally, Petitioner has not shown a likelihood of success on the merits of his claims. Petitioner has no due process right to any further procedures, including a pre-detention hearing, regarding his removal from the United States. His detention is statutorily authorized by 8 U.S.C. § 1231(a)(6) to execute his removal from the United States. He will receive sufficient process during any such detention via the Post Order Custody Regulations in 8 C.F.R. § 241.4, which set forth specific criteria that should be weighed in considering whether to recommend further detention beyond the removal period set in 8 U.S.C. § 1231. There is simply no basis to conclude that Petitioner is entitled to any additional process during or before any hypothetical detention to execute his valid, final order of removal. Therefore, this Court should deny his Petition.

II. LEGAL FRAMEWORK

A. Removal Proceedings

In general, "[a]ny alien who is convicted of an aggravated felony at any time after admission [into the United States] is deportable." 8 U.S.C. § 1227(a)(2)(iii). If an alien expresses fear of persecution or torture, the alien may seek withholding or deferral of removal under 8 U.S.C. § 1231(b)(3)² or regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), adopted Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85—a treaty that addresses the removal of aliens to countries where they would face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822; 8 C.F.R. § 208.31, 241.8(e). "Torture" is

² Petitioner concedes that Section 1231(b)(3) does not protect him from removal due to his aggravated felony conviction. Dkt. No. 10 ¶ 50.

1 defined as an “extreme form of cruel and inhuman treatment,” which intentionally inflicts “severe pain
2 or suffering” on another for an improper purpose, and is performed “at the instigation of or with the
3 consent or acquiescence of a public official acting in an official capacity or other person acting in an
4 official capacity.” 8 C.F.R. § 208.18(a)(1) and (a)(2); *see, e.g., Del Carmen Amaya De Sicaran v. Barr*,
5 979 F.3d 210, 218-219 (4th Cir. 2020) (torture is a “high bar”).

6 CAT protection does not alter whether an alien may be removed; it affects only the locations to
7 which an alien may be removed. That is, a grant of CAT protection “means only that, notwithstanding
8 the order of removal, the noncitizen may not be removed to the designated country of removal, at least
9 until conditions change in that country.” *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The United
10 States remains free to remove that alien “at any time to another country where he or she is not likely to
11 be tortured.” *Id.* (citation omitted); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987). Thus,
12 the alien remains removable as an alien with a final order of removal.

13 **B. Third Country Removals**

14 Aliens subject to removal orders need not be removed to their native country. Generally, aliens
15 ordered removed “may designate one country to which the alien wants to be removed,” and DHS “shall
16 remove the alien to [that] country.” 8 U.S.C. § 1231(b)(2)(A). In certain circumstances, however, DHS
17 need not remove the alien to his or her designated country, including where “the government of the
18 country is not willing to accept the alien into the country.” 8 U.S.C. § 1231(b)(2)(C)(iii). In such a
19 case, the alien “shall” be removed to the alien’s country of nationality or citizenship, unless that country
20 “is not willing to accept the alien into the country.” 8 U.S.C. § 1231(b)(2)(D). If an alien cannot be
21 removed to the country of designation, or to the country of nationality or citizenship, then the
22 Government may consider other options, including “[t]he country from which the alien was admitted to
23 the United States,” “[a] country in which the alien resided before the alien entered the country from
24 which the alien entered the United States,” or “[t]he country in which the alien was born.” 8 U.S.C.
25 §§ 1231(b)(2)(E)(i), (iii)-(iv).

26 Where removal to any of the countries listed in subparagraph (E) is “impracticable, inadvisable,
27 or impossible,” then the alien may be removed to any “country whose government will accept the alien
28 into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335,

1 341 (2005).

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

7 **C. Habeas Proceedings**

8 Federal district courts may grant writs of habeas corpus if the petitioner is “in custody in
9 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). The
10 custody requirement may be satisfied if a Petitioner is not actually confined, but is nonetheless subject to
11 significant restraint on liberty “not shared by the public generally.” *Jones v. Cunningham*, 371 U.S. 236,
12 239–40 (1963).

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

14 The substantive standard for issuing a temporary restraining order is identical to the standard for
15 issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
16 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable discretion and is “an extraordinary
17 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”
18 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are “never
19 awarded as of right.” *Id.* at 24.

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

1 remedy.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s burden is aptly
2 described as a “heavy” one. *Id.*

3 The purpose of a preliminary injunction “is to preserve the status quo and the rights of the parties
4 until a final judgment issues in the cause.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094
5 (9th Cir. 2010). A preliminary injunction may not be used to obtain “a preliminary adjudication on the
6 merits,” but only to preserve the status quo before judgment. *Sierra On-Line, Inc. v. Phx. Software, Inc.*,
7 739 F.2d 1415, 1422 (9th Cir. 1984).

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

18 **III. FACTUAL BACKGROUND**

19 Petitioner entered the United States in 1990 from El Salvador as a derivative asylee through his
20 mother’s approved asylum application. Declaration of Deportation Officer Kenny T. Louis (“Louie
21 Decl.”) ¶ 4. He is a citizen of El Salvador and no other country. Dkt. No. 10 ¶ 40. Petitioner admits
22 that in 1993, he was a gang member and that he participated in a drive-by shooting of seven members of
23 a rival gang. *Id.* ¶ 43. He pled nolo contendere to seven counts of violating Cal. Penal Code
24 § 664/187(A) (Attempted Murder) and was sentenced to 31 years in prison. *Id.*; Louie Decl. Ex. 2.

25 Following his incarceration, the Department of Homeland Security initiated removal proceedings
26 against Petitioner, charging him with removability because he was an alien who had been convicted of
27 an aggravated felony. Louie Decl. ¶ 6. Petitioner was transferred to ICE custody in April 2017. *Id.* He
28 spent nine months in immigration custody before being released on bond on January 30, 2018. Dkt. No.

1 10 ¶¶ 51–52; *see* Louie Decl. Ex. 3. He has been living in Arcata, California since that time. *Id.* ¶ 52.
2 On December 21, 2022, an immigration judge issued a final removal order in Petitioner’s removal
3 proceedings and simultaneously ordered that his removal to El Salvador be deferred pursuant to the
4 Convention Against Torture (“CAT”). Louie Decl. Ex. 1 at 4. The final removal order and its deferral
5 were not appealed and remain in effect. *See* Louie Decl. ¶ 8; Dkt. No. 10 ¶ 3.

6 On March 17, 2023, ICE cancelled the bond Petitioner paid in 2018 and ordered him to report
7 annually to ICE’s San Francisco Field Office. Dkt. No. 10 ¶¶ 72–73. Petitioner appeared at the office in
8 March 2024. *Id.* ¶ 73. Before his March 2025 appearance date, Petitioner’s counsel sought and obtained
9 a postponement of his appearance because the original date conflicted with his wife’s medical
10 appointments. *Id.* ICE rescheduled his in-person reporting date to July 9, 2025. *Id.*

11 On June 23, 2025, Petitioner filed a petition for writ of habeas corpus, Dkt. No. 1, and motion for
12 temporary restraining order, Dkt. No. 4. Petitioner filed amended versions of these documents on June
13 25, 2025. Dkt. Nos. 10, 11. Petitioner moved for an order temporarily enjoining Respondents from “re-
14 detaining him while he proceeds with his claims before this Court.” Dkt. No. 11 at 1. On June 26,
15 2025, this Court granted Petitioner’s motion for temporary restraining order pending further briefing and
16 hearing. Dkt. No. 14 at 9. The Court set a briefing and hearing schedule, *id.* at 10, which the parties
17 stipulated to modify on June 27, 2025, Dkt. Nos. 12, 14.

18 **IV. THE COURT LACKS JURISDICTION TO STAY PETITIONER’S REMOVAL**

19 Although Petitioner’s very first request for relief asks this Court to “[e]xercise jurisdiction over
20 this matter,” Dkt. No. 10 at 46, neither his Petition nor his motion presents facts that would give this
21 Court jurisdiction over his requests.

22 **A. Petitioner’s Claim Is Not a Cognizable Habeas Petition Because It Does Not Seek a** 23 **Release from Custody**

24 Habeas relief is an appropriate request when an individual is detained and requesting release
25 from that detention. U.S. CONST. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) (“The writ of habeas corpus
26 shall not extend to a prisoner unless [h]e is in custody”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591
27 U.S. 103, 117–18 (2020) (“[T]he essence of habeas corpus is an attack by a person in custody upon the
28 legality of that custody, and [] the traditional function of the writ is to secure release from illegal

custody.”). An individual does not need to be in actual physical custody to seek habeas relief; the “in custody” requirement may be satisfied where an individual’s release from detention is subject to specific conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993) (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted “custody” for habeas purposes). Even if Petitioner were to meet the “in custody” requirement because he is subject to certain conditions of release—such as reporting annually to an ICE office—this habeas petition does not purport to challenge that custodial arrangement or secure his release from any *present* “custody.” Indeed, Petitioner has sworn that he has “always complied with ICE’s reporting requirements and will continue to do so.” Dkt. No. 10-1 ¶ 48. *Cf. Doe v. Garland*, 109 F.4th 1188, 1191–93 (9th Cir. 2024) (petition seeking individualized bond hearing sought conditional release from custody). Petitioner’s reliance on *Aden v. Nielsen*, 409 F.Supp.3d 998 (W.D. Wash. 2019) is misplaced for at least this reason. In *Aden*, unlike the current case, the petitioner was in physical custody and sought “immediate release.” *Id.* at 1004. Here, Petitioner is not in physical custody and is not challenging restraints on his freedom. Thus, Petitioner does not seek a remedy that sounds in habeas. Rather, Petitioner seeks an injunction to prevent his future arrest and the possibility of future detention.³

B. 8 U.S.C. § 1252(g) Bars Review of Petitioner’s Challenges to the Execution of His Removal Order

Petitioner’s claim seeking a stay of removal pending the completion of extra-statutory procedures to remove him is barred by 8 U.S.C. § 1252(g). Congress spoke clearly that “no court” has jurisdiction over “any cause or claim” arising from the execution of removal orders, “notwithstanding any other provision of law,” whether “statutory or nonstatutory,” including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to “execute” a final order of

³ To the extent Petitioner’s claim is considered a cognizable habeas claim based on the fiction of seeking release from his hypothetical future detention, this Court would not have jurisdiction to consider 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 1199 (“core habeas petitions must be filed in the district of confinement”).

1 removal. *See Reno v. American-Arab Anti-Discrimination Committee* (“AADC”), 525 U.S. 471, 482
2 (1999).

3 Petitioner’s claims arise from his concerns about the execution of his removal order. Indeed, his
4 petition seeks to require ICE to provide him with additional procedures not authorized by statute or
5 regulation prior to his removal or even any arrest to effectuate his removal. Dkt. No. 10 at 46-47,
6 subparagraphs a-g.

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

26 Petitioner’s claims are similar to the alien plaintiff’s claims in *Rauda* wherein the Ninth Circuit
27 held that a district court lacked jurisdiction to stay removal while the plaintiff pursued a motion to
28 reopen his immigration proceedings. *Rauda*, 55 F.4th at 775–78. In *Rauda*, like this case, a Salvadoran

1 immigrant had pled guilty to charges of being involved in a gang shooting. *Id.* at 775-76. After he was
 2 released from prison, an immigration judge ordered him removed to El Salvador and denied him relief
 3 under the CAT. *Id.* at 776. After the political situation in El Salvador changed, he moved to reopen his
 4 immigration case and then filed a habeas petition in district court to obtain a stay of removal while his
 5 motion to reopen was being considered. *Id.* The district court denied his motion for a TRO on the
 6 grounds that 8 U.S.C. § 1252(g)'s jurisdictional limits barred his claims. *Id.* The Ninth Circuit affirmed
 7 and explained: "No matter how [plaintiff] frames it, his challenge is to the Attorney General's exercise
 8 of his discretion to execute Matias's removal order, which we have no jurisdiction to review." *Id.* at
 9 778. Here, Petitioner also seeks to stay his removal pending further immigration court proceedings.
 10 The Court should follow the Ninth Circuit's *Rauda* decision and deny his claims.

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

13 Even if Section 1252(g) of the INA did not bar review—which it does—Sections 1252(a)(5) and
 14 1252(b)(9) of the INA bar review in this Court. By law, "the sole and exclusive means for judicial
 15 review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that
 16 is, "the court of appeals for the judicial circuit in which the immigration judge completed the
 17 proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). The statute explicitly excludes review via "section 2241
 18 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) then
 19 eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact,
 20 including interpretation and application of constitutional and statutory provisions, arising from any
 21 action taken or proceeding brought to remove an alien" to the courts of appeals. 8 U.S.C. § 1252(b)(9).
 22 Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. *Id.*
 23 (emphasis added).

24 Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all"
 25 claims arising from deportation proceedings to a court of appeals in the first instance. *AADC*, 525 U.S.
 26 at 483. Under Ninth Circuit law, "[t]aken together, §§ 1252(a)(5) and [(b)(9)] mean that any issue—
 27 whether legal or factual—arising from any removal-related activity can be reviewed only through the
 28 [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035

1 (“§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and- practices
2 challenges, through the PFR process whenever they ‘arise from’ removal proceedings”).

3 Here, the gravamen of Petitioner’s habeas petition is that he seeks to prevent ICE from detaining
4 him and removing him to El Salvador or a third country. Mot. at 10. Therefore, Petitioner’s claims are
5 barred under Sections 1252(a)(5) and (b)(9) because they “aris[e] from . . . proceeding[s] brought to
6 remove an alien from the United States” and further challenge “any *action taken* . . . to remove an alien
7 from the United States.” 8 U.S.C. § 1252(b)(9) (emphasis added). Rather than petition the relevant
8 court of appeals, Petitioner chose to file a habeas petition in this Court to challenge his removal. That is
9 precisely what the INA forbids. *See J.E.F.M.*, 837 F.3d at 1031. Petitioner is not detained and under no
10 imminent threat of being removed to a third country. He could, at any time, move to reopen his
11 immigration court proceedings claiming fear of removal to any third country. 8 C.F.R. § 1003.23;
12 *Rubalcaba v. Garland*, 998 F.3d 1031, 1034–35 (9th Cir. 2021) (holding that the post-departure bar does
13 not apply to the immigration court’s sua sponte authority to reopen proceedings); *Bonilla v. Lynch*, 840
14 F.3d 575, 588 (9th Cir. 2016) (allowing review of the denial of a *sua sponte* motion to reopen for “legal
15 or constitutional error”). His refusal to do so does not vest this Court with jurisdiction.⁴

16 **D. The Foreign Affairs Reform and Restructuring Act of 1998 Also Precludes**
17 **Petitioner’s Claims**

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

20 Notwithstanding any other provision of law, and except as provided [by
21 regulation], *no court shall have jurisdiction to review the regulations*
22 *adopted to implement this section, and nothing in this section shall be*

23 ⁴ To the extent Petitioner argues that a motion to reopen proceedings would be unduly
24 burdensome, while the Government does not endorse or vouch for the information contained in the
25 following source, the Government notes that the National Immigration Litigation Alliance issued a
26 practice advisory regarding the motion to reopen process for aliens like Petitioner including template
27 motions to reopen and letters to DHS to assert fear of return to third countries. *See* National
28 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).

1 *construed as providing any court jurisdiction to consider or review claims*
 2 *raised under the Convention or this section[.]*

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

5 Any judicial review of any claim arising under CAT is available, if at all, exclusively on an
 6 individualized basis “as part of the review of a final order of removal” in the courts of appeals. *See* 8
 7 U.S.C. § 1252(a)(4). *Cf. Nasrallah*, 590 U.S. at 580 (discussing FARRA). Under FARRA, “no
 8 court”—and certainly not a district court—has jurisdiction to review DHS’s implementation of CAT.
 9 Yet that is precisely what Petitioner seeks here by asking the Court to order ICE to comply with
 10 additional procedures so that Petitioner may seek withholding of removal under CAT to a third country.

11 Notably, CAT is not self-executing. *See Borjas-Borjas v. Barr*, No. 20-cv-0417, 2020 WL
 12 13544984, at *5 (D. Ariz. Oct. 6, 2020) (discussing same). Its effect, if any, depends on implementation
 13 via domestic law. Congress thus worked well within its authority to limit judicial review of CAT
 14 regulations and CAT claims. Because Petitioner seeks additional procedures beyond what CAT
 15 provides, he is challenging the implementation of CAT as applied to him—which FARRA bars—and
 16 this Court should dismiss his petition.

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

19 This Court should dismiss Petitioner’s claims seeking additional, extra-statutory procedures prior
 20 to removal from the United States to a third country, because those claims are already being adjudicated
 21 in the nationwide *D.V.D.* class action. *See D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.); *see also*
 22 *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting that a district court “has broad discretion to stay
 23 proceedings as an incident to its power to control its own docket”).

24 As part of district courts’ discretion to administer their docket, courts have dismissed, without
 25 prejudice, or stayed suits brought by individuals whose claims are duplicative of class claims in other
 26 litigation. *See e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay
 27 of Fifth Amendment challenge pending completion of pending class action). Where, as here, there is an
 28 advanced class action addressing duplicative claims, district courts have found that judicial economy

1 and consistency concerns warrant a dismissal.

2 For example, a district court in the Central District of California recently dismissed without
3 prejudice a habeas case brought by a federal prisoner. *Herrera v. Birkholz*, No.
4 22-cv-07784-RSWL-JDE, 2022 WL 18396018, at *7 (C.D. Cal. Dec. 1, 2022), *report and*
5 *recommendation adopted*, 2023 WL 319917 (C.D. Cal. Jan. 18, 2023). The court reasoned that
6 petitioner's claims were based, in part, on a duplicative class action and were "not properly before the
7 court." *Herrera*, 2022 WL 18396018, at *4–6. In the related class action case, Lompoc prisoners had
8 alleged that the BOP had failed to take adequate safety measures against COVID-19. *Id.* at *5.
9 Likewise, in the habeas case, the petitioner-plaintiff alleged that the Lompoc prison conditions created
10 unreasonable COVID-19 risks, such as the alleged "contaminated surfaces" and the lack of "social
11 distancing." *Id.* at *3. In the class action, the district court granted the plaintiffs-petitioners' motion for
12 preliminary injunction and the parties reached settlement. *Id.* at *5.

13 The district court in *Herrera* explained that "Petitioner's allegations regarding the Prison's
14 handling of COVID-19 are duplicative of the allegations in the *Torres* Class Action, of which Petitioner
15 is a member seeking the same relief, and thus, Petitioner is barred from raising these claims by the terms
16 of the settlement agreement." *Id.* at *6. In addition, "[t]o the extent Petitioner seeks to enforce the
17 provisions of the settlement agreement, he must do so through the class representative or class counsel,
18 and not in his own, separate case." *Id.* (citing *Sykes v. Friederichs*, No. C 04-4229MMCPR, 2007 WL
19 841789, at *6 n.12 (N.D. Cal. Mar. 20, 2007)). Accordingly, the district court dismissed the habeas
20 claims that were based on the related class action. *See id.*; *see also Taylor v. Ndoh*, No.
21 15-cv-00996-YGR, 2016 WL 1056138, at *4–5 (N.D. Cal. Mar. 17, 2016) (staying state prisoner's
22 habeas claim under the Ex Post Facto Clause, where a duplicative claim was being litigated in a class
23 action case).

24 Multiple courts of appeals have upheld dismissals of cases where parallel class actions raise the
25 same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979)
26 (holding that a district court may dismiss "those portions of [the] complaint which duplicate the [class
27 action's] allegations and prayer for relief"). The Ninth Circuit explained that "increasing calendar
28 congestion in the federal courts makes it imperative to avoid concurrent litigation in more than one

forum whenever consistent with the rights of the parties.” *Id.* See also *McNeil v. Guthrie*, 945 F.2d 1163, 1165–66 (10th Cir. 1991) (finding that individual suits for injunctive and declaratory relief cannot be brought where a class action with the same claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc) (once a class action has been certified, “[s]eparate individual suits may not be maintained for equitable relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified”).

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

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has 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.

D.V.D. v. U.S. Dep’t of Homeland Sec., No. 25-cv-10676 (BEM), 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 2025). And Petitioner concedes that he “is a DVD class member because he has a final removal order to El Salvador.” Dkt. No. 10 ¶ 90.

Because the *D.V.D.* class was certified pursuant to Rule 23(b)(2), *see id.* at *14, 18, and 25, membership in the class is mandatory with no opportunity to opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361–62 (stating that Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the [d]istrict [c]ourt to afford them notice of the action”); *Sanderson v. Whoop, Inc.*, No. 23-cv-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025) (noting that “23(b)(2) class members have no opportunity to opt out”).

The *D.V.D.* court entered a nationwide preliminary injunction requiring the Department of Homeland Security (“DHS”) to comply with various procedures prior to removing a class member to a third country. The U.S. Supreme Court stayed that preliminary injunction pending the disposition of an appeal in the First Circuit and a petition for a writ of certiorari. *Dep’t of Homeland Sec. v. D.V.D.*, 145

1 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class, Petitioner is entitled
 2 to and bound by any relief that the *D.V.D.* court ultimately grants, including any applicable injunctive
 3 relief.

4 Accordingly, this Court should dismiss his claims seeking additional procedures prior to his
 5 removal to a third country because they are subsumed within the issues being actively litigated in *D.V.D.*
 6 To do otherwise would undermine what Rule 23 was intended to ensure: consistency of treatment for
 7 similarly situated individuals. *See Howard v. Aetna Life Ins. Co.*, No. 22-cv-01505, 2024 WL 1098789,
 8 at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel litigation in district courts
 9 all over the country which could ultimately threaten the certification of the underlying class by creating
 10 differences among the class members. Another court is already considering Petitioner's alleged
 11 constitutional right to extra-statutory procedures before removal to a third country. This Court should
 12 therefore dismiss this case.

13 **VI. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF**

14 **A. Petitioner Is Not Likely to Succeed on the Merits, nor Has He Raised Serious 15 Questions Going to the Merits of His Claims**

16 The Court should deny Petitioner's motion for a TRO because Petitioner has not demonstrated
 17 likelihood of success on the merits. Nor has Petitioner raised "serious questions" about the merits.
 18 Petitioner has not been detained, and he does not have the due process right to a pre-detention hearing.
 19 Petitioner is asking the Court to create a procedure that does not exist in any statute or regulation by
 20 requiring a pre-detention hearing while he is not in custody.

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

22 Petitioner's claim is premature, as he has not been re-arrested,⁵ and, even if he were, it would be
 23 constitutional to re-detain him. The Supreme Court has unambiguously upheld detention pending an
 24 alien's removal. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (an alien is not entitled to habeas

25 ⁵ To be reviewable under the APA, the decision under review must be a "final agency action."
 26 5 U.S.C. § 704. This finality requirement is a "prerequisite to review" of any APA claim. *Dalton v.*
 27 *Specter*, 511 U.S. 462, 469 (1994). A district court lacks jurisdiction to review an APA claim absent
 28 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 relief after the expiration of the presumptively reasonable six-month period of detention under §
 2 1231(a)(6) unless he can show the detention is “indefinite”—*i.e.*, that there is “good reason to believe
 3 that there is no significant likelihood of removal in the reasonably foreseeable future.”). Here,
 4 Petitioner, who has not been detained, cannot show that he is subject to prolonged detention or that his
 5 removal is unlikely to occur in the reasonably foreseeable future.

6 The purpose of Section 1231(a)(6) detention is to effectuate removal. *See Demore v. Kim*, 538
 7 U.S. 510, 527 (2003) (analyzing *Zadvydas* and explaining the removal period was based on the
 8 “reasonably necessary” time in order “to secure the alien’s removal”). To the extent Petitioner ever had
 9 a procedural due process interest in his release while he was awaiting an IJ determination on whether he
 10 could be deported to El Salvador—a point the government does not concede—that interest terminated
 11 when the IJ ordered his removal on December 21, 2022. Should ICE detain Petitioner in the future,
 12 which at this juncture remains speculative, his detention would be authorized under Section 1231(a)(6)
 13 to effectuate his removal to a third country unless and until there was “no significant likelihood of
 14 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 690–92, 699.

15 The cases that the Court’s June 26 Order cites in support of Petitioner’s request for a pre-
 16 detention hearing concern aliens subject to *pre-removal order* detention in which the primary
 17 consideration is ensuring an alien’s presence at their future removal proceedings and in which bond
 18 hearings are largely available by regulation. Here, Petitioner is subject to *post-final order* detention
 19 under Section 1231(a)(6). The purpose of that detention is to effectuate removal—not to ensure
 20 presence at pending removal proceedings, as might be the case with other statutes. Accordingly, the
 21 reasoning underlying the cited authority is distinguishable. *See, e.g. Vargas v. Jennings*, No. 20-cv-
 22 5785-PJH, 2020 WL 5074312, at *1, 3 (N.D. Cal. Aug. 23, 2020) (discussing mandatory detention
 23 under 8 U.S.C. § 1226(c) pending BIA review of a removal decision, not detention to effectuate a
 24 removal order under § 1231(a)(6)); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1053 (N.D. Cal.
 25 2021) (noting that the petitioner’s detention was “governed by § 1226(a),” without mentioning
 26 § 1231(a)(6)).⁶

27
 28 ⁶ The Court’s June 26 Order cited an earlier decision in the *Jorge M. F.* case that was issued
 before the government had filed a responsive brief and did not discuss the statutory basis for detention.
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Another decision cited in the Court’s June 26 Order, *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025), was issued the same day the motion for a TRO was filed, without an opposition brief or a hearing. It does not address the jurisdictional points discussed in Section IV above, nor does it address the statutory basis for detention (*i.e.*, under 8 U.S.C. § 1231(a)(6) or some other basis). The decision does not indicate that Mr. Diaz was subject to a final order of removal, unlike Mr. Ortega.

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

2. Petitioner is Not Entitled to a Pre-Detention Hearing or Bond Hearing

The Due Process Clause does not prohibit ICE from re-detaining Petitioner, and there is no statutory or regulatory requirement that entitles Petitioner to a “pre-deprivation” hearing. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4. The Supreme Court has warned courts against reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)). Thus, Petitioner can cite no liberty or property interest to which due process protections attach.

Petitioner’s reliance on *Morrissey 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.* With respect to the precise nature of the government function, the Supreme

See Jorge M. F. v. Wilkinson, No. 21-CV-01434-JST, 2021 WL 783561 (N.D. Cal. Mar. 1, 2021).

1 Court has long held that “Congress regularly makes rules” regarding immigration that “would be
2 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under these
3 circumstances, Petitioner does not have a cognizable liberty interest, or even assuming he had one, it
4 would be reduced based on the immigration context.

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

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

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

28 In asserting that Petitioner has a due process right to additional proceedings before he is

1 detained, Petitioner relies primarily on Justice Sotomayor's *dissent* in *D.V.D.* Mot. at 13 (citing *D.V.D.*,
2 2025 WL 1732103, at *8-9). But Petitioner cites no precedent from the Supreme Court or the Ninth
3 Circuit that constitutionally requires reopening Section 240 proceedings for a criminal alien with a valid
4 removal order.

5 The second *Mathews* factor also favors Respondents. Under the existing procedures, aliens
6 including Petitioner face little risk of erroneous deprivation. As explained above in § VI.A.1, there is no
7 risk of erroneous detention because Petitioner is subject to a removal order, and Section 1231(a)(6)
8 unquestionably authorizes Petitioner's detention to execute his final removal order to a third country.

9 And, if Petitioner were to be re-arrested and taken into custody, ICE would be required to apply
10 additional procedural safeguards to prevent erroneous deprivation of rights under 8 C.F.R. § 241.4.
11 These regulations require, among other things, periodic custody reviews in which Petitioner will have
12 the opportunity to submit documents in support of his release to include documentation about flight risk
13 and dangerousness. *See generally* 8 C.F.R. § 241.4(e)–(f) (listing factors to be considered in custody
14 determinations). These procedures are more than adequate and unquestionably provide Petitioner notice
15 and opportunity to be heard at the start of and throughout any future detention.

16 The third *Mathews* factor—the value of additional safeguards relative to the fiscal and
17 administrative burdens that they would impose—weighs heavily in favor of Respondents. Petitioner's
18 proposed safeguard—a pre-detention hearing—adds little value to the system already in place in which
19 he will receive periodic reviews to ensure his removal remains reasonably foreseeable and in which the
20 entire purpose of his detention is to effectuate his removal.

21 Here, Petitioner is subject to a final order of removal. The effect of the requested pre-detention
22 hearing would be to delay execution of his final order of removal. Thus, Petitioner essentially posits
23 that DHS must provide him a hearing before it may detain him to remove him. Petitioner essentially
24 seeks a judicially created stay of the execution of a final removal order.

25 Accordingly, Petitioner's proposed safeguard would disrupt the removal process. Because the
26 hearing Petitioner proposes would, by definition, involve a non-detained individual, there would be
27 hurdles to efficiently scheduling a hearing. There is no administrative process in place for giving an
28 alien with a final order of removal a hearing resembling a bond hearing before an immigration judge.

1 Petitioner's proposed safeguard presents an unworkable solution to a situation already addressed by the
 2 current procedures. *See* 8 C.F.R. § 241.4.

3 Even in non-immigration contexts, courts have recognized that pre-deprivation process may be
 4 unwarranted, particularly where there is a need for prompt government action. "The necessity of quick
 5 action can arise where the government has an interest in protecting public health and safety."

6 *Lamoreaux v. Kalispell Police Dep't*, No. 16-cv-0089, 2016 WL 6078274, at *4 (D. Mont. Oct. 17,
 7 2016) (citing *Mackey v. Montrym*, 443 U.S. 1, 17 (1979)), *report and recommendation adopted*, 2016
 8 WL 6634861 (D. Mont. Nov. 8, 2016). *Cf. Edmondson v. City of Boston*, 1990 WL 235426, at *2 (D.
 9 Mass. Dec. 20, 1990) (noting that "[i]n the context of an arrest . . . quick action is necessary and
 10 predeprivation process is, at best, impractical and unduly burdensome").

11 The INA does not provide for a pre-detention hearing. *See, e.g.*, 8 U.S.C. § 1231. Requiring a
 12 pre-detention hearing for individuals with final removal orders would impair law enforcement, including
 13 because it would increase the risk of flight.

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

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

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

27 Petitioner's contentions regarding the possibility of detention and deportation to a third country
 28 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.” Mot. at 15-16. But Petitioner disregards an additional legitimate purpose of detention: enforcement of a removal order. Section 1231(a) “authorizes the detention of noncitizens who have been ordered removed from the United States.” *Arteaga-Martinez*, 596 U.S. at 575. Indeed, “[t]he statute provides that the Government ‘shall’ detain noncitizens during the statutory removal period.” *Id.* at 578 (citing 8 U.S.C. § 1231(a)(2)).

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 that irreparable harm is likely to occur if he is not provided a pre-detention hearing.

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, 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

1 orderly and efficient administration of this country's immigration laws." *See Sasso v. Milhollan*, 735 F.
 2 Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th
 3 Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or
 4 their representatives is enjoined.").

5 The public has a legitimate interest in the government's enforcement of its laws. *See, e.g.,*
 6 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due
 7 weight to the serious consideration of the public interest in this case that has already been undertaken by
 8 the responsible state officials in Washington, who unanimously passed the rules that are the subject of
 9 this appeal."). Respondents acknowledge Petitioner's submissions regarding his efforts to support his
 10 family. Given Petitioner's undisputed, violent criminal history, however—the shooting of seven
 11 people—the public and governmental interest in permitting his potential detention is significant.

12 While it is in the public interest to protect constitutional rights, Petitioner has not shown that the
 13 violation of any constitutional rights is likely to occur. Regardless, where, as here, Petitioner has not
 14 shown a likelihood of success on the merits, the marginal value of additional process must yield to the
 15 competing interest in law enforcement. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
 16 ("Because Plaintiffs have not shown a likelihood of success on the merits of their First Amendment
 17 claim, because the VA has a competing public interest in providing the best possible care . . . the public
 18 interest does not require us to reverse the district court" denial of an injunction.). Thus, Petitioner has
 19 not established that the public interest supports a temporary restraining order.

20 VII. CONCLUSION

21 For the foregoing reasons, the Court should deny Petitioner's Motion for a TRO.

23 DATED: July 10, 2025

Respectfully submitted,

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