KIMBERLY A. SANCHEZ
Acting United States Attorney
BRODIE M. BUTLAND
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUSTAVO QUIROZ,

Petitioner,

v.

KRISTI NOEM, et al., [1]

Respondents.

CASE NO. 1:25-CV-765-KES-SAB

MEMORANDUM OPPOSING PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Gustavo Quiroz, a Mexican citizen, previously illegally entered the United States and was removed in June 2011. His removal order imposed a 10-year ban on reentering the United States absent express prior request and consent of the Department of Homeland Security (DHS). Yet two months later, Quiroz again illegally reentered the United States. He was recently discovered illegally living in the United States through an anonymous tip on the DHS tip line.

In May 2025, DHS reinstated Quiroz's prior deportation order under 8 U.S.C. § 1231(a)(5), a summary removal procedure for aliens who illegally re-enter the United States after previously being removed. That, in turn, required mandatory detention under § 1231(a)(2) pending removal. Quiroz petitioned for habeas corpus relief under 28 U.S.C. § 2241, seeking release from detention and termination of his removal. He has filed a Motion for Temporary Restraining Order (the "Motion") requesting essentially the same relief.

[1] The Government moves to dismiss all respondents other than Tonya Andrews from this case. A habeas petitioner may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). Here, Petitioner's custodian is the facility administrator at the Golden State Annex located in McFarland, California, where Tonya Andrews serves as administrator. Respondents Kristi Noem, Todd Lyons, and Polly Kaiser are not proper respondents for a § 2241 habeas petition.

Quiroz notably does not contest that he meets the minimal requirements for § 1231(a)(5) reinstatement of a removal order. Instead, he raises three unrelated grounds for relief, but none undermines his reinstatement order.

First, he argues that he cannot be removed because the U.S. Citizenship and Immigration Service's (USCIS) has made a prima facie determination that he meets the requirements for a self-petition under the Violence Against Women Act (VAWA), and thus he is eligible for adjustment of status. But a prima facie determination is not legal status, and § 1231(a)(5) precludes relief from executing a reinstated removal order. And because Quiroz necessarily challenges his reinstated removal order through this argument, the Court lacks jurisdiction over it as well. *See* 8 U.S.C. § 1252(g).

Second, Quiroz argues that he was provided insufficient notice of the reinstatement under 8 C.F.R. § 241.8(b). But he received that notice—in fact, he attached it as an exhibit to his Motion. And even if Quiroz could prove some defect in notice, he cannot show resulting prejudice because he does not contest the factual basis for the reinstatement of his removal order.

Finally, Quiroz argues that his conditions of confinement violate the Fifth Amendment and demand his release. But Quiroz is subject to mandatory detention under § 1231(a)(2). Further, Quiroz cannot raise conditions of confinement in a habeas petition, but instead must bring a civil rights action.

I. BACKGROUND

A. The Executive Branch's broad statutory power to effect removal.

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The Immigration and Nationality Act (INA), originally enacted in 1952, sets forth a comprehensive plan to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. As set forth therein, the President, through the Department of State and the Department of Homeland Security ("DHS"), decides which noncitizens may enter and remain in the United States. *See generally* 8 U.S.C. §§ 1103, 1104.

The INA establishes procedures for removing aliens unlawfully in the United States. Ordinarily, DHS will initiate removal proceedings against the alien. The alien will be given a notice to appear, and an Immigration Judge (IJ) will decide at a hearing whether the alien should be removed. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021); 8 U.S.C. §§ 1229(a)(1)(D), (G)(i). The alien may seek

various forms of relief or protection from removal at that hearing. 8 U.S.C. § 1229a(c)(4), (6)-(7); *Johnson*, 594 U.S. at 528 (citing statutes). If the IJ issues an order of removal, the alien may appeal to the Board of Immigration Appeals (BIA) and then seek judicial review in the U.S. Court of Appeals. *Id.*; 8 U.S.C. §§ 1229a(c)(5)-(7), 1252(b); 8 C.F.R. § 1240.15. Once removal is administratively final, the government generally has 90 days to remove the alien.[2] 8 U.S.C. § 1231(a).

If, however, an alien was previously removed but reenters the United States without prior authorization, Congress created an expedited and summary removal process. *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 34-35 (2006); *Lopez v. Garland*, 40 F.4th 996, 999 (9th Cir. 2022). DHS may "reinstate" a previous order of removal against an alien if an immigration officer (1) determines that the alien was subject to a prior order of removal; (2) confirms the alien's identity; and (3) determines that the alien's reentry was unauthorized. 8 U.S.C. § 1231(a)(5); 8 C.F.R. §§ 241.8(a)-(c); *Johnson*, 594 U.S. at 529-30; *Tomczyk v. Garland*, 25 F.4th 638, 643 (9th Cir. 2022) (en banc).

If the immigration officer so finds, the prior removal order is reinstated, and "the alien *shall be removed* under the prior order." 8 U.S.C. § 1231(a)(5) (emphasis added). During the removal period, the Attorney General is *required* to detain the alien. 8 U.S.C. § 1231(a)(2)(A); *Johnson*, 594 U.S. at 526 (holding that § 1231, not § 1226, applies to alien detention during the removal process); *Padilla-Ramirez v. Bible*, 882 F.3d 826, 829 (9th Cir. 2017) (noting in reinstatement context that "Section 1231(a) provides for mandatory detention during a ninety-day 'removal period'").

Unlike in ordinary removal proceedings, an alien subject to a reinstated removal order has no right to a hearing before an IJ (8 C.F.R. § 241.8(a)), and "is not eligible and may not apply for any relief under" the INA. 8 U.S.C. § 1231(a)(5); *Fernandez-Vargas*, 548 U.S. at 35 (§ 1231(a)(5) "applies to all illegal reentrants . . . and generally forecloses discretionary relief"); *Lopez*, 40 F.4th at 999 ("Unlike in ordinary removal proceedings, an alien subject to a reinstatement order is ineligible for cancellation of removal."). The alien may only seek withholding of removal due to a high likelihood of facing

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[2] If a court of appeals stays removal pending resolution of an alien's appeal, then the 90-day period begins once the court of appeals vacates the stay. 8 U.S.C. § 1231(a). But "DHS need not wait for the alien to seek, and a court to complete, judicial review of the removal order before executing it. Rather, once the BIA has reviewed the order . . . , DHS is free to remove the alien *unless* a court issues a stay." *Johnson*, 594 U.S. at 534-35.

persecution (8 U.S.C. § 1231(b)(3)(A)) or being tortured (8 C.F.R. §§ 208.16-208.17) in the country to which he is being removed. *Johnson*, 594 U.S. at 530-31.

Importantly, a withholding of removal does not prevent removal of the alien from the United States—it only prohibits removal *to a particular country*. *Id.* at 536. If an alien makes a withholding claim, a USCIS asylum officer conducts a "reasonable fear" interview to determine if the alien's assertion is credible. *See* 8 C.F.R. §§ 208.16, 208.31(c). The asylum officer's determination can be reviewed by an IJ. 8 C.F.R. §§ 208.31(e), (g), 1208.31(g). If the IJ finds reasonable fear of persecution or torture, the BIA can review the decision. 8 C.F.R. § 1208.31(g)(2)(ii). If, however, the IJ finds no reasonable fear, the decision is administratively unreviewable. 8 C.F.R. § 1208.31(g)(1). The final agency decision on withholding can be reviewed by the U.S. Court of Appeals. 8 U.S.C. § 1252(a); *Valdez-Lopez v. Sessions*, 689 F. App'x 506, 507 (9th Cir 2017).

B. Factual background relating to Quiroz.

1. Quiroz's first illegal entry.

Quiroz illegally entered the United States in October 1992. Ex. A, Declaration of Armando Meneses, Jr. ¶5 & Ex. 1 (pp.1-2). He was discovered, and on June 1, 2000, was given a written notice that DHS intended to remove him and that he must appear for a hearing before an IJ. *Id.*

On November 18, 2004, the IJ denied Quiroz's application for cancellation of removal and gave him until December 20, 2004, to voluntarily depart. Meneses Decl. ¶ 6 & Ex. 2 (pp.3-4). Quiroz appealed to the BIA, which dismissed his appeal and gave him 30 days to voluntarily depart the United States. Meneses Decl. ¶ 7 & Ex. 3 (pp.5-7). He also unsuccessfully sought review in the Ninth Circuit, which dismissed his petition in November 2008. Meneses Decl. ¶ 8 & Ex. 4 (pp.8-11).

Despite the adverse rulings, Quiroz did not voluntarily leave the United States. This automatically turned the voluntary departure order into an order of removal, and Quiroz was removed two days later. Meneses Decl. ¶ 9 & Exs. 2, 3, 5 (pp.3-6, 12-13). Due to his removal, Quiroz became inadmissible for 10 years, and thus he could not apply for admission during that time unless he first "request[ed] and obtain[ed] permission from the Attorney General." Meneses Decl. Ex. 5; *see* 8 U.S.C. § 1182(a)(9)(C). Quiroz was also warned that entering or being in the United States without such advance permission could be prosecuted as a felony. Meneses Decl. Ex. 5; *see* 8 U.S.C. § 1326(a).

2. Quiroz's illegal reentry and reinstatement of prior removal order.

About two months after being removed, Quiroz illegally reentered the United States. *See* Meneses Decl. Ex. 7 (p.15). He went undiscovered until March 25, 2024, when ICE received an anonymous tip via the DHS tip line. Meneses Decl. ¶ 10 & Ex. 6 (p.14).[3] After an investigation confirming his identity, DHS arrested Quiroz on May 7, 2025. Meneses Decl. ¶¶ 10-11.

During his arrest, Quiroz was given a Notice of Intent/Decision to Reinstate Prior Order. Meneses Decl. ¶ 11 & Ex. 7 (p.15); *see also* Pet'r Exs., ECF 2-2, at 11. The Notice confirmed that DHS intended to reinstate Quiroz's November 18, 2004 removal order, and it detailed the factual basis for doing so—specifically, that Quiroz was subject to a prior removal order, he was removed, and he illegally reentered the United States in August 2011. Meneses Decl. Ex. 7 (p.15). The Notice gave Quiroz the option of making a statement contesting DHS's determination. Quiroz declined to sign the Notice or make a statement, and he did not submit information countering the factual basis for § 1231(a)(5) reinstatement. *Id.* After reviewing the available evidence, a deportation officer determined that Quiroz's prior removal order should be reinstated and that he be removed. *Id.*

As required by § 1231(a)(2)'s mandatory detention requirement during the removal period, Quiroz has been detained at the Golden State Annex since May 7, 2025. He remains there today. Meneses Decl. ¶ 12. After Quiroz asserted a fear of persecution or torture if removed to Mexico, he was referred to a USCIS asylum officer for a reasonable fear interview. Meneses Decl. ¶ 13 & Ex. 8 (pp.16-17); *see* 8 C.F.R. §§ 208.31(a)-(c), 1208.31(a). On May 21, the asylum officer found no reasonable fear of persecution or torture and denied withholding. Meneses Decl. Ex. 8. Quiroz sought review by an IJ, who concurred with the asylum officer's denial. Meneses Decl. ¶¶ 14-15 & Exs. 8-10 (pp.16-22). Quiroz petitioned for review in the Ninth Circuit, which granted a motion to stay deportation pending resolution on the merits. That case, *Quiroz v. Bondi*, 9th Cir. No. 25-3912, remains pending. Meneses

[3] Quiroz suggests that USCIS improperly shared his information with ICE, which led to ICE's enforcement action. Mot. 4-5. He presents no evidence supporting this serious allegation, and Respondent has presented sworn testimony that ICE learned about Quiroz's whereabouts through its public tip line. The Court should not countenance Quiroz's baseless allegation. *Compare Walker v. United States*, No. 24-cv-174, 2024 WL 4564391, at *3 (S.D. Ill. Oct. 24, 2024) ("[Plaintiff] levies a slew of outlandish allegations of cloak-and-dagger conspiracies and backroom deals; however, extraordinary claims require extraordinary evidence and [plaintiff] has failed to present *any* evidence to substantiate these preposterous claims.").

Decl. ¶ 16 & Ex. 11 (pp.23-25).

3. The VAWA self-petition process, and Quiroz's VAWA self-petition.

Normally, a U.S. citizen or a lawful permanent resident (LPR) must file a petition seeking adjustment of status for an alien family member. *See* 8 C.F.R. § 240.2(a), (b), (f). But if the citizen/LPR abuses the alien family member, the alien can file a VAWA self-petition to seek a family classification without needing to rely on the abusive relative. VAWA self-petitions may be filed by aliens alleging abuse by a citizen/LPR spouse, parent, or child. 8 U.S.C. § 1154(a)(1)(A)(iii)-(v), (vii).

When an alien files a VAWA self-petition, USCIS first decides whether the petition and supporting documentation establish a prima facie case. 8 C.F.R. § 204.2(c)(6)(i), (e)(6)(i). USCIS specifically considers whether the self-petitioner has made a prima facie showing that he (1) has a qualifying relationship to an abusive U.S. citizen; (2) is eligible for immigrant classification as an immediate relative or family-based category; (3) was subject to battery or extreme cruelty by the citizen; (4) resided with the abusive citizen; and (5) is of good moral character. 8 U.S.C. § 1154(a)(1)(A)(vii); 8 C.F.R. § 204.2(c)(1), (e)(1).

Importantly, a prima facie determination "does not establish eligibility for the underlying petition." 8 C.F.R. § 204.2(c)(6)(ii), (e)(6)(ii); *see also* ECF 2-2, at 28. Nor does it establish credibility of the evidence provided in the petition or relieve the self-petitioner from further submitting evidence necessary to support the petition. 8 C.F.R. § 204.2(c)(6)(ii), (iv). It merely allows USCIS to decide whether to deny or approve the petition. 8 C.F.R. § 204.2(c)(6)(iii), (e)(6)(ii).

Further, even an *approved* VAWA self-petition does not adjust an alien's status—it "is only 'one step in the application for adjustment of status.'" *Enriquez v. Barr*, 969 F.3d 1057, 1060 (9th Cir. 2020) (citation omitted). Approval merely allows the Attorney General, in his exclusive discretion, to adjust the status of the VAWA self-petitioner. 8 U.S.C. § 1255(a); *Gonzalez Morales v. Bondi*, No. 23-1942, 2025 WL 444139, at *2 (9th Cir. Feb. 10, 2025) ("The presumed result of a successful I-360 [VAWA self-] petition would be an opportunity to seek adjustment of status, but that application require[s] . . . the exercise of discretion in [an alien's] favor.").

In this case, Quiroz submitted a VAWA self-petition on October 7, 2024. ECF 2-2, at 31-34. USCIS made a prima facie determination on November 2, 2024. ECF 2-2, at 28. But USCIS has not yet

adjudicated Quiroz's self-petition.

II. LEGAL STANDARD

Temporary restraining orders and preliminary injunctions are governed by the same standard. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third . . . factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiffs seeking a preliminary injunction bear a "heavy" burden and "difficult task in proving that they are entitled to this extraordinary relief. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). A preliminary injunction requires "substantial proof" and a "clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted).

A court must exercise "heightened scrutiny" where a party seeks a mandatory injunction."[4] *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). If "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. Int'l Olympic Cmte.*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Cmte. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1442 (9th Cir. 1986).

III. LAW AND ANALYSIS

Quiroz's Motion is an improper attempt to achieve the same relief sought in his habeas petition through the guise of temporary relief. That is not the proper function of a TRO/preliminary injunction, and the Court should reject it. Moreover, Quiroz cannot establish the four elements necessary to a TRO/preliminary injunction. The Court thus should also deny his Motion on the merits.

[4] "A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014).

A. Quiroz's Motion is improper because it seeks the same relief as his habeas petition.

The purpose of a preliminary injunction is to preserve the status quo between the parties pending a resolution of a case on the merits. *See U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). To that end, "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992); *Keo v. Warden*, No. 1:24-cv-919, 2024 WL 3970514, at * (E.D. Cal. Aug. 28, 2024) (denying detainee's TRO seeking same relief as habeas petition, finding "it is generally inappropriate for a federal court at the preliminary injunction stage to give a final judgment on the merits"). But that is precisely what Quiroz seeks by asking the Court, through the guise of preliminary relief, to prohibit ICE from pursuing his reinstated removal order (despite not contesting the factual basis for reinstatement under § 1231(a)(5)). In short, he seeks an expedited order that would grant him the ultimate relief he seeks in his petition—all while depriving Respondent an opportunity to address the merits. The Court should reject Quiroz's request.

B. Quiroz is not likely to succeed on the merits.

Quiroz asserts three grounds for preliminary relief: (1) his pending VAWA petition before USCIS; (2) deprivation of due process, especially as to 8 C.F.R. § 214.8(b) notice; and (3) his conditions of confinement. Quiroz is not likely to succeed on the merits of any of the three grounds.

1. The USCIS's prima facie determination does not affect Quiroz's removal.

Quiroz has a final removal order. But he asserts that because USCIS made a prima facie determination for his classification under VAWA, "ICE lacked authority to reinstate" his prior deportation order and there was a "jurisdictional bar" against removing him. Mot. at 3-4. Quiroz notably cites no legal authority supporting these contentions. And his position is wrong.

Section 1231(a)(5) reinstatement expressly renders an alien "ineligible" for and precludes "apply[ing] for any relief under" the INA. 8 U.S.C. § 1231(a)(5). There are two exceptions, neither applying to Quiroz: the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA). 8 C.F.R. § 241.8(d); *Padilla v. Ashcroft*, 334 F.3d 921, 925 (9th Cir. 2003). Under § 1231(a)(5), the Ninth Circuit has repeatedly barred relief from removal under numerous INA statutes.[5] And while the Ninth Circuit has not specifically precluded

[5] *See Padilla*, 334 F.3d at 925 (LIFE Act); *Cuenca v. Barr*, 941 F.3d 1213, 1218 (9th Cir. 2019)

VAWA adjustment based on § 1231(a)(5)'s bar, the Fifth Circuit has, holding that § 1231(a)(5) "speaks in absolute terms" in barring "any relief." *Ruiz-Perez v. Garland*, 49 F.4th 972, 977-79 (5th Cir. 2022). Instead of adopting Quiroz's audacious position lacking any legal support, the Court should follow existing precedent and hold that § 1231(a)(5) means what it says.

Further, § 1252(g) strips this Court of jurisdiction to grant the relief Quiroz seeks. The Court may not "hear any cause or claim by . . . any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders," including those asserted in habeas petitions. 8 U.S.C. § 1252(g). But by asking this Court to prohibit ICE from executing his removal order while he pursues his VAWA self-petition, Quiroz necessarily challenges his reinstatement order. "Until the Reinstatement Order is vacated, [Quiroz] is not eligible for 'any relief,' including adjustment of status." *Morales-Izquierdo*, 600 F.3d at 1082-83. The Court thus lacks jurisdiction to prevent ICE from executing its removal order based on a pending VAWA self-petition.[6]

Quiroz argues that the Court should halt his removal order and release him because USCIS has "superior expertise" and made its prima facie finding "with full knowledge of [Quiroz's] immigration history, including the prior removal order." Mot. at 2-3. This, Quiroz asserts, should create an enforceable right against removal.[7] *See, e.g.*, *id.* But Quiroz's policy-based arguments do not overcome

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(reopening under 8 U.S.C. § 1229a(c)(7)); *Morales-Izquierdo v. DHS*, 600 F.3d 1076, 1079-80 (9th Cir. 2010) (Form I-485 adjustment or Form I-212 waiver), *overruled in part on other grounds*, *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9th Cir. 2012); *Angulo-Morgan v. Holder*, 473 F. App'x 653, 654 (9th Cir. 2012) (adjustment of status under 8 U.S.C. § 1255(i)); *Romero v. Holder*, 471 F. App'x 762, 763 (9th Cir. 2012) (same); *Guzman v. Holder*, 406 F. App'x 120, 121 (9th Cir. 2012) (waiver applications); *Mena v. Mukasey*, 292 F. App'x 583, 583 (9th Cir. 2008) (adjustment of status); *Avelar-Olmos v. Mukasey*, 285 F. App'x 384, 384 (9th Cir. 2008) (adjustment of status)

[6] *See E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (holding that § 1252(g) precluded jurisdiction over claim that reinstated removal order should be stayed until petitioner's VAWA self-petition could be adjudicated); *Suarez-Reyes v. Williams*, No., 2020 WL 3414781, at *2 (D. Ariz. June 22, 2020) (holding that habeas petitioner's attack on decision to remove him before adjudicating his VAWA application "arise from [ICE]'s decision or action to execute his removal order [and] are barred by 8 U.S.C. § 1252(g)"); *compare Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607 (9th Cir. 2019) (holding that § 1252(g) barred challenge to ICE executing removal orders against aliens who filed for a U-visa, as that decision was "entirely within the Attorney General's discretion"); *Garcia-Herrera v. Asher*, 585 F. App'x 439 (9th Cir. 2014) (holding that § 1252(g) barred challenge to ICE's decision not to delay removal pending adjudication of a DACA petition); *Palacios-Bernal v. Barr*, No. 5:19-cv-1963, 2019 WL 5394019, at *4 (C.D. Cal. Oct. 22, 2019) (§ 1252(g) precluded habeas request to postpone removal pending adjudication of U-visa application).

[7] Quiroz cites a purported Ninth Circuit case, *Ozturk v. Barr*, to support this assertion. Mot. at 5.

the plain text of § 1231(a)(5) or § 1252(g). Moreover, Quiroz overstates the significance of USCIS's prima facie determination. As noted in Section II.B.3, a prima facie determination does not mean the petition will be approved. USCIS's prima facie notice to Quiroz confirms as much. ECF 2-2, at 28. And USCIS has not yet adjudicated Quiroz's VAWA self-petition. And even if USCIS approved the petition (which itself is inherently speculative), whether to allow adjustment is committed to the Attorney General's discretion, which this Court lacks jurisdiction to review. *See* Section II.B.3; 8 U.S.C. §§ 1252(a)(2)(B), 1255(a); *Gonzalez v. Bondi*, No. 24-2777, 2025 WL 1431267, at *1 (9th Cir. May 19, 2025); *Mutie-Timothy v. Lynch*, 811 F.3d 1044, 1048-49 (8th Cir. 2016); *Henton v. U.S. Att'y Gen.*, 52 F. App'x 801, 805 (11th Cir. 2013); *Sadik v. Holder*, 525 F. App'x 723, 724-25 (10th Cir. 2013); *Velancous Serpa v. Garland*, No. 21-60938, 2022 WL 5101939, at *1 (5th Cir. Oct. 4, 2022).[8]

Nor is USCIS's prima facie determination the far-reaching inquiry that Quiroz suggests. USCIS examined only whether Quiroz made a prima facie showing that he had the requisite relationship with his abusive citizen child, that he was battered or subject to extreme cruelty by that child, and that he was of good moral character.[9] *See* Section II.B.3. It was not a final determination, and USCIS did not meaningfully consider Quiroz's inadmissibility due to prior immigration violations.

In short, Quiroz's pending VAWA self-petition provides no basis for relief from his reinstated removal order. Sections 1231(a)(5) and 1252(g) preclude relief based on it, the petition has yet to be adjudicated, and relief is entirely discretionary—and speculative—in any event.

2. Quiroz was not deprived of due process.

Quiroz asserts that ICE violated his due process by failing to "provid[e] [him] with notice of the

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Quiroz does not include a case citation, and so far as Respondent can tell there is no *Ozturk v. Barr* case from the Ninth Circuit. Although Respondent has located two *Ozturk* cases in other circuits— *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), and *Ozturk v. Att'y Gen.*, No. 24-2058, 2025 WL 973174 (3d Cir. Apr. 1, 2025)—neither appears germane to the issues in this case.

[8] Of note, *Mutie-Timothy* rejected a VAWA petitioner's argument that an IJ was required to defer to USCIS's factual findings in an *approved* petition because of USCIS's alleged "specialized knowledge and expertise." 811 F.3d at 1048. Here, Quiroz does not even have an approved VAWA petition.

[9] Lack of good moral character is established if the alien is a habitual drunkard, was convicted of an aggravated felony or drug or other crimes, engaged in human smuggling, is a practicing polygamist, primarily derives income from gambling, has been convicted of two or more gambling offenses, provided false testimony to gain an immigration benefit, has served a criminal sentence of at least 180 days, or participated in torture or genocide. 8 U.S.C. § 1101(f).

reinstatement determination and an opportunity to contest it" as required by 8 C.F.R. § 241.8(b). Mot. at 3. "It is difficult to deal with a proposition of this kind except by saying that it is not true." *Hunter v. City of Pittsburgh*, 207 U.S. 161, 177 (1907). Quiroz was served with a Notice of Intent to Reinstate the same day he was apprehended. Meneses Decl. ¶ 11 & Ex. 7. Quiroz expressly acknowledges as much in his habeas petition, and he attaches a copy of the § 241.8(b) notice to his Motion. Petition ¶ 31; ECF 2-2 Ex. B (p.11). As required by § 241.8(b), the Notice provided the basis for reinstating Quiroz's prior removal order and informed him that he could make a statement contesting the determination. Meneses Decl. Ex. 7. Despite this opportunity, Quiroz declined to sign the acknowledgment and response, nor did he offer any statement in his defense. *Id.* "Because aliens do not have a constitutional right to enter or remain in the United States, the only protections afforded are the minimal procedural due process rights for an opportunity to be heard at a meaningful time and in a meaningful manner." *Arambula-Medina v. Holder*, 572 F.3d 824, 828 (10th Cir. 2009). Quiroz received that with the Notice.

But even were Quiroz to demonstrate some defect in procedures under § 241.8(b), he cannot show the prejudice required to establish a due process claim. *Padilla*, 334 F.3d at 924-25 ("As a predicate to obtaining relief for a violation of procedural due process rights in immigration proceedings, an alien must show that the violation prejudiced him."). Quiroz does not contest any of the necessary findings to reinstate his removal order, i.e., that he was correctly identified, was previously removed, and illegally reentered the United States. He therefore cannot establish a due process violation. *Id.* at 925 (rejecting due process challenge to reinstatement order because alien did not "challenge any of the three 'relevant determinations' underlying [it]"); *Manuel-Miguel v. Holder*, 397 F. App'x 306, 308 (9th Cir. 2010) (same); *see also Garcia-Moreno v. Sessions*, 718 F. App'x 531, 534-35 (9th Cir. 2018) (petitioner not entitled to relief from reinstatement order because he did not challenge any of the three relevant determinations underlying it).

Quiroz also argues that his "re-detention" violated procedural due process because "no changed circumstances have occurred since the original bond determination." Mot. at 6. This is a confusing argument, as there was no bond or re-detention here. Decisions to issue a bond, revoke a bond, and re-arrest apply to § 1226 detentions. *See* 8 U.S.C. § 1226(a)-(b). But Quiroz was subject to a reinstated removal order, which *requires* detention under § 1231 during the 90-day removal period (which is still

ongoing). *Johnson*, 594 U.S. at 526; 8 U.S.C. § 1231(a)(2); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 n.4 (9th Cir. 2008) ("Detention 'during' the removal period is mandatory. . . . "[A]n alien detained under . . . § 1231(a), unlike an alien detained under § 1226(a), cannot obtain a bond hearing before an IJ."); *Padilla-Ramirez*, 882 F.3d at 829-30 ("Section 1231(a) provides for mandatory detention during a ninety-day 'removal period' . . . . The bond hearing authorized under 8 C.F.R. § 236.1(d)(1) does not apply to detentions authorized under section 1231(a)."). [10] Quiroz's invocation of bonds and re-detention simply is not apposite to his situation and does not support a due process claim.

3. Quiroz cannot challenge his conditions of detention in a habeas proceeding.

Quiroz asserts that his conditions of detention violate the Fifth Amendment, and he demands release. Mot. at 6-9. But the conditions of detention that Quiroz deems unsatisfactory do not countermand § 1231(a)(2)'s mandatory detention for him, nor invalidate the "immigration purpose" that is served by that detention. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (stating that mandatory detention is constitutional so long as it "serve[s] its purported immigration purpose"); *Johnson*, 594 U.S. at 544 ("Congress had obvious treasons to treat" two "groups of aliens who posed different risks of flight"—those detained under § 1226 and those detained under § 1231—differently because "aliens who have already been ordered removed are generally inadmissible" and can seek only withholding relief). Further, release is not a proper remedy, as "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." *Crawford v. Bell,* 599 F.2d 890, 892 (9th Cir. 1979).

More fundamentally, a habeas petition is not the proper mechanism for challenging conditions of detention. *Pinson v. Carvajal*, 69 F.4th 1059, 1065, 1073-75 (9th Cir. 2023); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Conditions of detention/confinement challenges, rather, are properly brought in a civil rights action. *Pinson*, 69 F.4th at 1075-76; *Badea*, 931 F.2d at 574; *Brown v. Blanckensee,* 857 F. App'x 289, 290 (9th Cir. 2021); *Alcala v. Rios*, 434 F. App'x 668, 669-70 (9th Cir. 2011). Because Quiroz has improperly brought his conditions of confinement claim as a habeas rather than a civil rights

[10] *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), on which Quiroz relies (*see* Mot. at 6), is inapposite for this very reason. That case involved a revocation of a bond for a detained alien issued by an IJ during initial deportation proceedings.

action, he cannot succeed on the merits.

C. Quiroz has not met his heavy burden to show he will likely suffer irreparable harm absent immediate injunctive relief.

Quiroz pithily asserts "per se" irreparable harm from constitutional violations absent preliminary relief. Mot. at 11. But as shown in Section III.B, there are no constitutional violations. Immigration laws have long authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens pending removal. *Demore*, 538 U.S. at 523-26. Through the INA, Congress created a multi-layered statutory scheme for aliens' detention during removal, including mandatory detention for those who have reinstated removal orders. *See* 8 U.S.C. § 1231(a)(2), (a)(5); *Johnson*, 594 U.S. at 529-30. "Detention is necessarily a part of [the] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952). And removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523; *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

Nor do Quiroz's alleged conditions of detention demonstrate irreparable harm. *See* Mot. at 11-12. As shown in Section III.B.3, a habeas petition is not a proper means of challenging conditions of confinement. Neither of Quiroz's cases avoid that shortcoming—one of the cases involved a class action civil rights challenge to conditions of confinement that the Supreme Court later vacated (*Padilla v. ICE*, 953 F.3d 1134 (9th Cir. 2020), *vacated*, 141 S. Ct. 1041 (2021)), and the other involved a challenge to a state Medicaid policy change (*M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir. 2011)).

Finally, Quiroz cannot show irreparable harm to his family with his continued detention and anticipated removal. *See* Mot. at 12-13. Although Quiroz points to his wife's six-week recovery from surgery after her discharge on May 29, 2025, that recovery period has passed. Mot. at 12; ECF 2-2, at 7. And while Quiroz claims that he is the primary caregiver and support system for multiple medically vulnerable family members (Mot. at 13), his declaration provides no support for this assertion. *See* ECF 2-2, at 7 (Quiroz Decl. ¶¶ 9-10).[11]

[11] Although not directly raised in the irreparable harm section of his Motion, Quiroz also suggests that without injunctive relief, he could be transferred to another facility. Mot. at 9-10. But

For the foregoing reasons, and especially given his unlikelihood of prevailing on the merits, Quiroz has not shown irreparable harm necessary to justify preliminary relief.

D. The balance of equities and the public interest do not favor Quiroz.[12]

"The government's interest in efficient administration of the immigration laws" is "weighty," and "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Further, the government's interest in protecting the public and preventing deportable non-citizens from fleeing are strong and compelling. *See e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (government's interests in "protecting the public from dangerous criminal aliens" and "increas[ing] the chance that, if ordered removed, the aliens will be successfully removed" are "interests of the highest order that only increase with the passage of time").

Those interests are especially compelling here. Through amending § 1231(a)(5), Congress deliberately sought to streamline removal of aliens unlawfully present in the United States who had previously been removed. *Fernandez-Vargas*, 548 U.S. at 34-35; *Johnson*, 594 U.S. at 529-30. Congress not only created a more summary removal procedure, but it eliminated discretionary relief (aside from withholding-only protections) and made removal and detention mandatory so long as the minimal requirements for reinstatement were met. *See* 8 U.S.C. § 1231(a)(2), (a)(5); *Padilla-Ramirez*, 882 F.3d at 829; *Fernandez-Vargas*, 548 U.S. at 35. The government seeks to vindicate those interests here, whereas Quiroz seeks to exempt himself from the unambiguous statutes.

Quiroz suggests that his VAWA self-petition will be undermined absent preliminary relief. *See* Mot. at 13, 15. Not so. Quiroz's VAWA self-petition can still be adjudicated even after he is deported. *See* 8 U.S.C. § 1154(a)(1)(A)(v), (B)(iv); *Palacios-Bernal*, 2019 WL 5394019, at *4. If his petition is approved, and the Attorney General elects to adjust his status, Quiroz can get a green card through

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Quiroz has remained at Golden State Annex since May 7, 2025, and there is no intent to transfer him to another facility. Meneses Decl. ¶ 12. Even if he were transferred, he would not suffer irreparable harm because § 1231(a)(2) requires him to be detained. And 8 U.S.C. § 1231(g)(1) "gives both 'responsibility' and 'broad discretion' to the Secretary 'to choose the place of detention for deportable aliens.'" *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022); *Y.G.H. v. Trump*, No. 1:25-CV-435, 2025 WL 1519250, at *9 (E.D. Cal. May 27, 2025).

[12] When the government is a party, the third and fourth preliminary injunction factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

consular processing in his home country. *See* https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents. In short, Quiroz has no "cognizable liberty interest in remaining in the country while [his] application[] [is] pending." *Velarde-Flores*, 750 F. App'x at 607.

In fact, granting Quiroz relief would undermine the immigration statutory framework. Section 1231(a)(5) precludes discretionary relief from removal, such as a VAWA self-petition. *Ruiz-Perez*, 49 F.4th at 977-79. Further, Congress has removed this Court's jurisdiction to entertain challenges to initiation of immigration proceedings or to executing removal orders. 8 U.S.C. § 1252(g); *E.F.L.*, 986 F.3d at 964-65; *Suarez-Reyes*, 2020 WL 3414781, at *2. Preliminary relief would violate multiple statutes, in a subject matter entrusted to Congress and the Executive Branch. And even if USCIS were ultimately to grant Quiroz's VAWA petition (at best a speculative assumption), the ultimate decision on whether to grant adjustment of status belongs to the Attorney General, not this Court. 8 U.S.C. §§ 1252(a)(2)(B), 1255(a); *Gonzalez*, 2025 WL 1431267, at *1; *Mutie-Timothy*, 811 F.3d at 1048-49. Granting preliminary relief would usurp the Attorney General's role in making such weighty decisions.

IV. CONCLUSION

For the foregoing reasons, Quiroz's Motion for Temporary Restraining Order should be denied.

Dated: July 16, 2025

KIMBERLY A. SANCHEZ
Acting United States Attorney

By: /s/ BRODIE M. BUTLAND
BRODIE M. BUTLAND
Assistant United States Attorney