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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

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| Juan Sanchez-Hernandez,<br><br>Petitioner,<br><br>v.<br><br>Fred Figueroa, et al.,<br><br>Respondents. | No. 2:25-cv-02351-PHX-DWL (MTM)<br><br>**RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER** |

Respondents Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS"); Kristi Noem, Secretary of DHS; and Pam Bondi, Attorney General of the United States ("Respondents"), by the through undersigned counsel, respond in opposition to Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2).

## I. FACTUAL BACKGROUND

Petitioner Juan Sanchez-Hernandez is a native and citizen of Honduras.[1] Ex. A, Declaration of Brandy Berghouse, at ¶ 5. In 1999, Petitioner entered the United States without inspection. Ex. B, Form I-213, Record of Deportable/Inadmissible Alien dated June 27, 2007. On July 7, 2003, Petitioner filed Form I-821, Application for Temporary Protected Status, with United States Citizenship and Immigration Services ("USCIS"), which was approved until January 5, 2005, and later renewed through July 5, 2006. Ex. A at ¶¶ 7, 8.

On August 15, 2005, the Phoenix Police Department arrested Petitioner for the offenses of kidnapping, kidnapping to inflict death, physical injury, or a sexual offense on the victim, or to otherwise aid in the commission of a felony, two counts of molestation of a child, and four counts of sexual conduct with a minor. Ex. A at ¶ 9. In July 2006, the Maricopa County Superior Court convicted Petitioner (then age 23), of two counts of attempted sexual conduct with a minor under age 15 and one count of child molestation. For these offenses, the court sentenced Petitioner to 17 years of incarceration, lifetime probation, and lifetime registration as a sex offender. Ex. A at ¶ 10. After notice to Petitioner, USCIS revoked Petitioner's Form I-821. Ex. A at ¶¶ 11, 12.

In February 2008, Petitioner was issued a Form I-851, Notice of Intent to Issue a Final Administrative Removal Order, charging her with violating Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA") 8 U.S.C. § 1227(a)(2)(A)(iii), as a non-citizen who has been convicted of an aggravated felony as defined in Section 101(a)(43)(A) of the INA, 8 U.S.C. § 1101(a)(43)(A), a law relating murder, rape, or sexual abuse of a minor. Ex. A at ¶ 14.

In August 2022, the Arizona Department of Corrections released Petitioner to ICE custody pursuant to an ICE detainer. Ex. A at ¶¶ 13, 15. Petitioner was issued a Final Administrative Order of Removal pursuant to 8 U.S.C. § 1228(b). Ex. C, Final

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[1] Petitioner identifies as transgender and accordingly, will be referred to with female pronouns in this response brief.

Administrative Removal Order. During processing, Petitioner expressed a fear of returning to Honduras. Ex. A at ¶ 15. Petitioner was found to have a credible fear and was referred to an Immigration Judge ("IJ"), who denied her request for withholding of removal but granted her deferral of removal to Honduras under the Convention Against Torture ("CAT").[2] Ex. A at ¶¶ 16-18; Doc. 2 at Ex. 1. In January 2023, Petitioner was released from immigration detention on an Order of Supervision ("OSUP") because ICE had not been able to locate a third country to which to remove Petitioner. Ex. A at ¶¶ 19-21; Ex. D, I-213, Record of Deportable/Inadmissible Alien dated June 19, 2025; Doc. 2 at Ex. 3. On June 19, 2025, Petitioner was detained by ICE. Ex. A at ¶ 23. On June 29, ICE attempted to remove Petitioner to Mexico, but Petitioner claimed a fear of removal to Mexico. Ex. A at ¶ 26. Petitioner's case has been referred for a credible fear interview regarding her claimed fear. She is currently pending an interview with an asylum pre-screening officer. Ex. A at ¶¶ 27, 28.

On July 7, 2025, Petitioner filed this habeas action asserting six causes of action: (1) her detention violates 8 U.S.C. § 1231(a)(6) because the 90-day statutory removal period is expired; (2) her detention violates her due process rights because there is no reason to believe that any third country will accept her; (3) issuance of a writ of habeas corpus; (4) her procedural due process rights have been violated because she cannot be removed to Mexico, since it will just remove her to Honduras, in violation of her CAT order; (5) the Government has violated "regulations and procedures/relief" by attempting to remove her to Mexico without first reopening her CAT proceedings; (6) violation of 8 C.F.R. § 241.1(l) and the Fifth Amendment. *See* Doc. 1. Petitioner requests that the Court

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[2] CAT protection or withholding under Section 1231(b)(3) does not alter *whether* an alien may be removed; it affects only *where* an alien may be removed to. That is, a grant of CAT protection "means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country." *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The United States remains free to remove that alien "at any time to another country where he or she is not likely to be tortured." *Id.* (citation omitted); *see I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987). Thus, the alien remains removable as an alien with a final order of removal.

require Respondents to justify the basis of Petitioner's detention, preliminarily and permanently enjoin her removal to Honduras; preliminary and permanently enjoin her removal to any other country until all appeals seeking withholding of removal to any such country have been exhausted; order her released from immigration detention; and award attorneys' fees and costs. Doc. 1 at 13-14. The same day, Petitioner also filed a Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2) asking the Court to order her immediate release from immigration detention, enjoin Respondents from re-arresting her until they prove to a judge by clear and convincing evidence that she is a danger to the community or a flight risk, and enjoin her removal to "any place outside of the United States." Doc. 2 at 24.

## II. LEGAL FRAMEWORK FOR TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS.

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

Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22. Where the government is a party, courts merge the analysis of the final two *Winter*

factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner's burden is aptly described as a "heavy" one. *Id.*

A preliminary injunction can take two forms. A "prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (cleaned up). A "mandatory injunction orders a responsible party to take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 879 (cleaned up). A mandatory injunction is "subject to a higher degree of scrutiny because such relief is particularly disfavored under the law of this circuit." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be "extremely cautious" when issuing this type of relief, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied "unless extreme or very serious damage will result," and even then, not in "doubtful cases." *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

## III. THE COURT LACKS JURISDICTION TO STAY PETITIONER'S REMOVAL.

### 1. 8 U.S.C. § 1252(g) bars review of Petitioner's challenge to the execution of her removal order.

Petitioner's claim seeking a stay of removal pending the completion of extra-statutory procedures to remove her 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 removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999).

Petitioner's claims arise from her concerns about the execution of her removal order and her detention pending execution of her removal order, and the Petition seeks, in part, to require ICE to provide her with additional procedures prior to her removal, *see* Doc. 1 at Prayer for Relief at (c), (d), while the Motion seeks an order enjoining Respondents from "sending her to any place outside of the United States[,]" Doc. 2 at 24. But numerous courts of appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of removal—even temporarily to assert other claims to relief—are barred by Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred petitioner's claim seeking a temporary stay of removal while he pursued a motion to reopen his immigration proceedings); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting petitioner's

argument that jurisdiction remained because petitioner was challenging DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

**2. The Foreign Affairs Reform and Restructuring Act of 1998 precludes Petitioner's claims related to additional CAT process.**

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**2. The Foreign Affairs Reform and Restructuring Act of 1998 precludes Petitioner's claims related to additional CAT process.**

Petitioner's claims seeking an order from the Court requiring Respondents to provide her with additional procedures beyond what CAT provides run afoul of Section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), which implements Article 3 of CAT and provides that:

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

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

Any judicial review of any claim arising under CAT is available exclusively on an individualized basis "as part of the review of a final order of removal" in the courts of appeals. *See* 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822 (same for "any other determination made with respect to the application of [CAT]"); *cf. Nasrallah*, 590 U.S. at 580 (discussing FARRA). Under FARRA, "no court" has jurisdiction to review DHS's implementation of CAT, yet that is precisely what Petitioner

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

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

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

This Court should dismiss Petitioner's claims seeking additional, extra-statutory procedures prior to removal from the United States to a third country,[3] because those claims are already being adjudicated in the nationwide *D.V.D.* class action. *See D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting that a district court "has broad discretion to stay proceedings as an incident to its power to control its own docket). As part of district courts' discretion to administer their docket, courts have dismissed, without prejudice, suits brought by individuals whose claims are duplicative of class claims in other litigation. *See, e.g.*, *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay of Fifth Amendment challenge pending

[3] In the INA, Congress has enacted provisions governing the determination of the country to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 338-341 (2005). For certain aliens arriving in the United States (Section 1231(b)(1)) and then all other aliens (Section 1231(b)(2)), the statute establishes sequences of countries where an alien shall be removed, subject to certain disqualifying conditions (e.g., the receiving country will not accept the alien). For instance, under Section 1231(b)(2), possible countries of removal can include a country designated by the alien, the alien's country of citizenship, the alien's previous country of residence, the alien's country of birth, and the country from which the alien departed for the United States. *See* 8 U.S.C. § 1231(b)(2). Under both Section 1231(b)(1) and (b)(2), Congress provided a fail-safe option in the event that other options do not work: An alien may be removed to any country willing and able to accept him. *See* 8 U.S.C. § 1231(b)(1)(C)(iv), (2)(E)(vii).

completion of pending class action); *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-JDE, 2022 WL 18396018, at *4-6 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*, 2023 WL 319917 (C.D. Cal. Jan. 18, 2023) (dismissing habeas case brought by federal prisoner related to COVID-19 measures reasoning that petitioner's claims were based, in part, on a duplicative class action and were "not property before the court.").

Multiple courts of appeals have upheld dismissals of cases where parallel class actions raise the same or substantially similar issues. *See, e.g.*, *Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss "those portions of [the] complaint which duplicate the [class action's] allegations and prayer for relief"); *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) (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 her removal to a third country until ICE complies with extra-statutory procedures substantially overlap with 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. CV 25-10676-BEM, 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 2025), *opinion clarified,* No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion clarified,* No. CV 25-10676-BEM, 2025

WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26, 2025). Petitioner makes no mention of her class membership in her Petition or Motion.

Because the *D.V.D.* class was certified pursuant Rule 23(b)(2), *see D.V.D*, 2025 WL 1142968, 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 (2011) (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. 3:23-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 DHS to comply with various procedures prior to removing a class member to a third country. The 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 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class, Petitioner is entitled to and bound by any relief that the *D.V.D.* court ultimately grants, including any applicable injunctive relief. Accordingly, this Court should dismiss her claims seeking additional procedures prior to her removal to a third country because they are subsumed within the issues being litigated in *D.V.D.* To do otherwise would undermine what Rule 23 was intended to ensure: consistency of treatment for similarly situated individuals. *See Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel litigation in district courts all over the country which could ultimately threaten the certification of the underlying class by creating differences among the class members. Another court is already considering Petitioner's alleged constitutional right to extra-statutory procedures before removal to a third country. This Court should therefore dismiss the claims seeking such relief.

## V. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

### A. Petitioner is not likely to succeed on the merits, nor has she raised serious questions going to the merits of her claims.

#### 1. Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6).

Petitioner relies on the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001), to allege a violation of her constitutional rights. Ordinarily, once an alien has been deemed inadmissible and ordered removed, the Government "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This is commonly referred to as the "removal period." However, another provision, 8 U.S.C. § 1231(a)(6), permits detention of an alien after the removal period for certain categories of aliens. Although the post-removal-period detention statute contains no time limit on detention, in *Zadvydas*, the Supreme Court explained that the Fifth Amendment's Due Process Clause "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States. It does not permit indefinite detention." 533 U.S. at 689.

To avoid reading the statute as violating the Fifth Amendment Due Process Clause and to create uniform standards for evaluating challenges to post-removal-period detention, the Supreme Court held that any detention of six months or less was a "presumptively reasonable period of detention," and that "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Conversely, the Court also held that "[a]fter this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

The purpose of § 1231(a)(6) detention is to effectuate removal. *See Demore v. Kim*, 538 U.S. 510, 527 (2003) (analyzing *Zadvydas* and explaining the removal period was based on the "reasonably necessary" time in order "to secure the alien's removal"). The statute provides that—if the alien is not removed—the alien "shall be subject to

supervision" under relevant regulations with certain requirements. 8 U.S.C. § 1231(a)(3). Here, Petitioner's OSUP was revoked and she was re-detained because the government determined it was significantly likely to be able to effectuate her remove her to Mexico in the reasonably foreseeable future. She has been re-detained for less than one month, which does not violate *Zadvydas*.

**2. The Government is not required to show "changed circumstances" or provide advance notice prior to revoking an OSUP.**

In the Motion for a Temporary Restraining Order and Preliminary Injunction, Petitioner asserts that "ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release." Doc. 2 at 3-4; *see also* Mot. at 7-9. In support of that assertion, Petitioner relies primarily on 8 U.S.C. § 1226(b), 8 C.F.R. § 236.1(c)(9), *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), and *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018), but Petitioner's reliance on those sources is misplaced because her detention is governed by 8 U.S.C. § 1231(a)(6).[4] 8 U.S.C. § 1226(b) states that "[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). Subsection (a), titled "Arrest, Detention and Release," applies to aliens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Similarly, 8 C.F.R. § 236.1 is found in Title 8, Chapter I, Subchapter B, Part 236, Subpart A, which is titled "Detention of Aliens Prior to Order of Removal."

Petitioner relies heavily on *Matter of Sugay*, which stated that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director [of ICE] absent a change in circumstances." 17 I. & N. Dec. at 640. In Petitioner's case, no bond determination was ever made by an immigration judge, so *Matter of Sugay* is inapplicable. Even if it applied, Petitioner's circumstances have changed—

[4] Petitioner acknowledges as much in the Complaint given that her first cause of action asserts that she is being detained in violation of 8 U.S.C. § 1231(a)(6).

Mexico has agreed to accept her. *Saravia* addressed ICE's authority to arrest unaccompanied minors without final removal orders who had previously been placed with sponsors by the Office of Refugee Resettlement ("ORR"). 280 F. Supp. 3d at 1177. There, the court held that "DHS must have probable cause to believe that, notwithstanding ORR's prior determination, the minor is now a danger to himself or the community, or a flight risk." *Id.* at 1196 (citing 8 U.S.C. § 1232(c)(2)(A)). The court analogized the process due to the minors to that owed to aliens subject to 8 U.S.C. § 1226(b), which applies to aliens who have not yet been ordered removed. Since Petitioner is not an unaccompanied minor and has been ordered removed, *Saravia* is also inapplicable. Petitioner also cites *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), but that case involved "a class of non-citizens in removal proceedings who are detained under 8 U.S.C. § 1226(a) . . . ." *Id.* And Petitioner string cites a number of cases at page 9 of the Motion (Doc. 2), all but one of which concern aliens subject to *pre-final removal order* detention in which the primary consideration is ensuring the alien's presence at their future removal proceedings and in which bond hearings are largely available by regulation. *See* Mot. at 9 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 966 (N.D. Cal. 2019) (petitioner was awaiting Ninth Circuit review of removal order so detention was governed by 8 U.S.C. § 1226(a)); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *1 (N.D. Cal. Aug. 23, 2020) (involving alien who had not been ordered removed and considering whether he was subject to detention under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1226(c)); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1053 (N.D. Cal. 2021) (same as *Ortega*); *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1443250, at *1 (N.D. Cal. May 6, 2022) (habeas case involving detention under 8 U.S.C. § 1226(c)); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *1 (E.D. Cal. Mar. 3, 2025) (petitioner was in removal proceedings pending adjudication of asylum claim so detention was governed by 8 U.S.C. § 1225(b)(1)(B)(ii)); *but see Enamorado v. Kaiser*, 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (granting TRO without notice to the government in habeas action brought by alien with final order of removal who sought to prospectively enjoin the potential revocation of

his immigration bond and potential re-detention)). Here, Petitioner is subject to post final order detention under 8 U.S.C. § 1231(a)(6). The purpose of that detention is to effectuate removal—not to ensure presence at removal proceedings. Accordingly, the reasoning underlying the cases Petitioner cites is distinguishable.

Petitioner also alleges that Respondents failed to follow the requirements of 8 C.F.R. § 241.4. *See* Doc. 1 at ¶¶ 48-51. Petitioner does not specify which subsection of 8 C.F.R. § 241.4 Respondents violated, nor does she mention § 241.4 in her Motion, instead arguing that Respondents violated 8 C.F.R. § 236.1(c)(9). Petitioner's claim fails under either regulation because Petitioner's release in January 2023 on an OSUP was pursuant to 8 C.F.R. § 241.13, which establishes special review procedures for aliens subject to a final order of removal detained after the expiration of the 90-day removal period where ICE has determined there is no significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). *See* Ex. D at 3 (Petitioner "was released from custody due to no SLRRFF."). If ICE releases an alien on an OSUP under 8 C.F.R. § 241.13, ICE "may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). ICE is not required to provide the alien with advance notice of its intention to revoke the order of supervision. Rather, "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release[,]" and ICE will promptly conduct an initial informal interview to afford the alien an opportunity to respond to the reasons for revocation and may submit evidence that he or she believes shows there is no SLRRFF. 8 C.F.R. § 241.13(i)(3).[5] If ICE denies a re-detained alien's request for release, he or she may request a review of his or her detention at six-month intervals. 8 C.F.R. § 241.13(j).

Even if 8 C.F.R. § 241.4(l) applied, 8 C.F.R. § 241.4(l), which would be the relevant

[5] Respondents have not been able to confirm whether Petitioner has been notified of the reasons for revocation or received her initial informal interview of the time of filing. If those events have not occurred, Respondents will ensure they occur before Monday's hearing.

subsection, does not require notification of the reasons for the revocation or an informal interview where release is revoked to enforce a removal order. Thus, Petitioner appears to have conflated the two sections and wrongly assumed that her revocation of release under § 241.4(l)(2) requires a detailed explanation and an interview, when, in fact, it does not. Notably, neither section requires pre-revocation notice or a pre-detention hearing. *See Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) ("Here, Petitioners have not alleged with sufficient particularity the source of any due process right to advance notice of revocation of supervised release or other removal-related detention.") Likewise, § 241.4(l)(2) does not require a "change in circumstances" as Petitioner seems to argue. Because Petitioner's OSUP was revoked pursuant to 8 C.F.R. § 241.13(i)(2), and because § 241.4 does not require any of the things Petitioner claims ICE failed to do (*i.e.* notification before revocation of release, providing a detailed explanation as to why revocation occurred, or providing an interview after revocation), Petitioner has failed to establish any likelihood of success on her claim that Respondents violated Government regulations and procedures (Count 5) or 8 C.F.R. § 241.4(l) (Count Six).

**3. Petitioner is not entitled to a pre-detention hearing.**

The Due Process Clause did not prohibit ICE from re-detaining Petitioner. Moreover, there is no statutory or regulatory requirement that entitles Petitioner to a "pre-deprivation" hearing, much less one involving burden-shifting against the government. *See generally* 8 U.S.C. § 1231(a)(6). For this Court to read one into the immigration custody statute would be to create a process that the current statutory and regulatory scheme do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process protections attach.

Petitioner's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472–73. It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed that "due process is flexible and calls for such

procedural protections as the particular situation demands." *Id.* at 481. In addition, the "[c]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function." *Id.* With respect to the precise nature of the government function, the Supreme Court has long held that "Congress regularly makes rules" regarding immigration that "would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under these circumstances, Petitioner does not have a cognizable liberty interest in a pre-detention hearing, but even assuming she had one, it would be reduced based on the immigration context.

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

To determine whether procedural protections satisfy the Due Process Clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335. The first factor favors Respondents. The Supreme Court has long recognized that due process as applied to aliens in matters related to immigration does not require the same strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when exercising its "broad power over naturalization and immigration, Congress regularly makes rules regarding aliens that would be unacceptable if applied to citizens." *Diaz*, 426 U.S. at 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are

subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the individuals subject to immigration detention possess at least a limited liberty interest, it has also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner's liberty interest is less than that at issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-detention hearing.

The second *Mathews* factor also favors Respondents. Under the existing procedures, aliens including Petitioner face little risk of erroneous deprivation. As explained above, there is no risk of erroneous deprivation because Section 1231(a)(6) unquestionably authorizes Petitioner's detention to execute her final removal order to a third country, and ICE is required to give Petitioner additional procedures under the Post Order Custody Review Regulations in 8 C.F.R. § 241.13. These procedures are more than adequate to provide Petitioner notice and opportunity to be heard during her detention.

The third *Mathews* factor—the value of additional safeguards relative to the fiscal and administrative burdens that they would impose—weighs heavily in favor of Respondents. As previously explained, Petitioner's proposed safeguard—a pre-deprivation hearing—adds little value to the system already in place in which she will receive periodic custody reviews to ensure her removal remains reasonably foreseeable and in which the entire purpose of her detention is to effectuate his removal. Petitioner's proposed safeguard would disrupt the removal process. Because the hearing Petitioner proposes would, by definition, involve a non-detained individual, there would be hurdles to efficiently scheduling a hearing. There is no administrative process in place for giving an alien with a final order of removal a hearing resembling a bond hearing before an immigration judge. Petitioner's proposed safeguard presents an unworkable solution to a situation already addressed by the current procedures. *See* 8 C.F.R. §§ 241.4 and 241.13. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-detention hearing.

**B. Petitioner cannot meet her burden to show irreparable harm.**

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

Petitioner's contentions regarding the possibility removal to a third country do 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'"). Petitioner essentially argues that any continued detention will be detrimental to her because the conditions in immigrations facilities are known to be "subpar", Doc. 2 at 21, she is "at risk of being illegally returned to Honduras", *id.* at 22, and her detention will "irreparably harm her friends and family[,]" *id.* But, "there is no constitutional infringement if restrictions imposed" are "but an incident of some other legitimate government purpose." *Slaughter*, 2006 WL 5811899, at *4 (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)).

Plainly, Petitioner is not at risk of being illegally returned to Honduras where the Government recognizes that she has been granted deferral of removal to Honduras under CAT by an IJ and is making no attempt whatsoever to remove her there. Nor can she establish irreparable harm by removal to Mexico, when she is currently not set to removed there without her currently scheduled interview with an asylum officer to assess her alleged fear of being removed there. Rather, Petitioner is an aggravated felon who is lawfully

detained pursuant to a final order of removal and cannot demonstrate that continued detention while the Government pursues alternative countries of removal constitutes irreparable harm.

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 State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish irreparable harm if she is not released from detention and provided a pre-detention hearing where she is lawfully detained pursuant to a final executable removal order.

**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*, 556 U.S. at 435. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

An adverse decision here would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws." *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined."). The public has a legitimate interest in the government's enforcement of its laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the rules that are the subject of this appeal.").

While it is in the public interest to protect constitutional rights, if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). And the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's undisputed criminal history, which includes an aggravated felony for sexual abuse of a minor, and her likelihood of removal to Mexico, the public and governmental interest in permitting her detention is significant. Thus, Petitioner has not established that she merits a temporary restraining order.

**D. Petitioner should be required to post a bond in the event relief is granted.**

Finally, if the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states "The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added).

## VI. Conclusion.

Every habeas corpus petition necessarily alleges the same basic ground for relief, *i.e.*, that the petitioner is detained in violation of the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 2241. Only when it is clear on the face of a petition that exceptional circumstances require immediate review of a petitioner's claims will consideration of his petition be advanced at the expense of prior, pending petitions. Upon the current record, it is not plain that the merits of Petitioner's claims are so strong as to warrant expedited adjudication and Petitioner is not likely to succeed on the merits of her claim. *See In re Roe,* 257 F.3d 1077, 1081 (9th Cir. 2001) (declining to resolve issue of whether a district court has the authority to release a prisoner pending resolution of a habeas case, but holding that if such authority does exist, it can only be exercised in an "extraordinary case involving special circumstances"). Accordingly, Petitioner's Motion

for Temporary Restraining Order and Preliminary Injunction should be denied.

Respectfully submitted this 11th day of July, 2025.

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