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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Garbis Krajekian, Petitioner, v. John Cantu, et al., Respondents.	No. 25-cv-02666-PHX-DJH (CDB) **RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (DOC. 2)**

I. INTRODUCTION.

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

II. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner, Garbis Krajekian, is a native and citizen of Syria. Exhibit A, Declaration of ICE Deportation Officer, Christopher Fluery ¶ 5. He was born on [redacted] 1975 in Kessab, Syria. *Id.* On June 28, 1994, Petitioner entered the United States, through Los Angeles, on an F-1 student visa. Petitioner remained in the United States and married a United States Citizen. *Id.* ¶ 6. On October 15, 2003, Petitioner's United States Citizen wife file a Form I-130 – Petition for Alien Relative on Petitioner's behalf with United

States Citizenship and Immigration Services (USCIS). *Id.* ¶ 7. On July 19, 2004, USCIS approved the Form I-130 – Petition for Alien Relative. *Id.* ¶ 8. On September 29, 2004, Petitioner filed with USCIS a Form I-485, Application to Register Permanent Resident or Adjust Status. *Id.* ¶ 9. On January 2, 2008, USCIS approved Petitioner's Form I-485, and he adjusted his status to that of a lawful permanent resident. *Id.* ¶ 10.

On January 20, 2013, Petitioner was arrested by the Chandler Police Department in Chandler, Arizona, for domestic violence crimes including disorderly conduct and criminal damage – deface. Exhibit A ¶ 11. However, on May 8, 2013, Chandler Municipal City Court dismissed these criminal charges. *Id.* ¶ 12. On September 17, 2014, the United States Secret Service arrested Petitioner for the crime of uttering counterfeit currency. *Id.* ¶ 13. On June 8, 2015, the United States District Court for the District of Arizona, convicted Petitioner of the crime of uttering counterfeit obligations and securities, sentencing him to forty-one months of incarceration, with three years of supervised release. *Id.* ¶ 14.

On August 30, 2017, ICE encountered Petitioner at Great Plains Correctional Institute (GPCI) in Hinton, Oklahoma, pursuant to his conviction. ICE lodged an Immigration Detainer (Form I-247) with GPCI. Exhibit A ¶ 15. On September 8, 2017, GPCI turned over custody of Petitioner to ICE. *Id.* ¶ 16. On that same date, ICE issued Petitioner a Notice to Appear (NTA), Form I-862, charging him with removability pursuant to Immigration and Nationality Act (INA) § 237(a)(2)(A)(iii), as an alien who, at any time after admission, has been convicted of an aggravated felony as defined by INA §101(a)(43)(R), that is, for an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered, for which the term of imprisonment is more than one year. *Id.*

On September 13, 2017, Petitioner was transferred to Prairieland Detention Center in Alvarado, Texas, pending his removal proceedings. Exhibit A ¶ 17. On October 3, 2017, the Immigration Judge (IJ) ordered Petitioner removed to either Switzerland or Syria. *Id.* ¶ 18. Petitioner waived his right to appeal the IJ's removal order. *Id.*

On October 18, 2017, ICE requested official travel documents to facilitate Petitioner's removal either to Switzerland or Syria. Exhibit A ¶ 19. On October 26, 2017, the Consulate of Switzerland denied ICE's request for travel documents to remove Petitioner to Switzerland. *Id.* ¶ 20. On December 15, 2017, ICE conducted a Post Order Custody Review (POCR). A POCR is where ICE evaluates whether an individual subject to a final removal order has a significant likelihood of removal in the reasonably foreseeable future, and if ICE finds that they do not, they will consider releasing the individual subject to an Order of Supervision (OSUP). That is what happened here. On December 29, 2017, ICE released Petitioner under an OSUP (Form I-220B) because ICE found that there was no significant likelihood it would be able to remove Petitioner in the reasonably foreseeable future at that time. *Id.* ¶ 22.

However, the United States Government has been successful in removals to Syria in recent months, and during a targeted enforcement operation in Chandler, Arizona, on April 6, 2025, ICE re-arrested Petitioner and transported him to the Florence Detention Center for further processing. Exhibit A ¶ 23. On April 7, 2025, Petitioner was transferred to the Eloy Detention Center, where he currently remains in custody pending execution of his valid final removal order. *Id.* ¶ 24.

In an effort to execute Petitioner's valid removal order for an alien convicted of an aggravated felony, ICE submitted a travel document request to ICE Headquarters Removal and International Operations (HQRIO). Exhibit A ¶ 25. On the same date, HQRIO advised local ICE at Eloy that their travel document request had been sent to the United States Department of State for citizenship verification and travel document issuance. *Id.* HQRIO has advised ICE at Eloy, that their travel document request will be reviewed and further guidance will be issued soon. *Id.* Accordingly, Petitioner is currently in ICE custody at Eloy Detention Center, pending removal from the United States pursuant to a valid final order of removal, which can be executed as soon as his travel documents are received. *Id.* ¶ 17. ICE provided a formal notice of revocation of Petitioner's prior OSUP on August 4, 2025 and provided petitioner with an informal interview. *Id.* ¶ 16; *see* Exhibit B, Notice of Revocation of OSUP and Informal Interview. At Petitioner's informal interview, he was notified that he could submit evidence in support of release. *Id.*

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 TO ANY THIRD COUNTRY.

1. 8 U.S.C. § 1252(g) bars review of any challenge to the execution of Petitioner's removal order to a third country.

Petitioner argues that he is entitled to a stay of removal to a third country, pending the completion of extra-statutory procedures to remove him. As a factual matter, the United States has no plans to remove Petitioner to any third country other than the designated country of removal of Syria on his final order of removal—the country of which he is a native and citizen. Exhibit A ¶ 27. Even if the Government did plan to remove

Petitioner to a third country—which it does not at this time—this claim is barred by the plain language of 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 his concerns about the execution of his removal order and his detention pending execution of his removal order to a third country. Doc. 2 at pp.23-26. The Petition seeks, in part, to require ICE to provide him with additional procedures prior to removal to a third country. Doc. 1. The TRO/PI Motion seeks an order enjoining Respondents from removing him to any third country without first providing him with constitutionally-compliant procedures. Doc. 2 at p. 29. 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").

Here, Petitioner's challenges to the Government's ability to execute a valid final removal order to any third country are not only factually irrelevant because the Government is not seeking to remove him to a third country, but they are also squarely prohibited by 8 U.S.C. § 1252(g). The Government has no plans to remove Petitioner to any third country other than his native country of citizenship—Syria.

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 him 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"—and certainly not a district 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 and to stay his removal while doing so.

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, he is challenging the implementation of CAT as applied to him, which is barred by FARRA.

IV. TO THE EXTENT PETITIONER CLAIMS HE IS ENTITLED TO EXTRA-STATUTORY PROCEDURES PRIOR TO REMOVAL TO A THIRD COUNTRY, THESE CLAIMS ARE FORECLOSED BY THE PARALLEL *D.V.D.* CASE.

This Court should dismiss Petitioner's claims seeking additional, extra-statutory procedures prior to removal from the United States to a third country, because the Government is not currently trying him to a third country and even if it were, 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 completion of pending class action).

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

The district court in *Herrera* explained that "Petitioner's allegations regarding the Prison's handling of COVID-19 are duplicative of the allegations in the *Torres* class action, of which Petitioner is a member seeking the same relief, and thus, Petitioner is barred from raising these claims by the terms of the settlement agreement." *Id.* at *6. In addition, "[t]o the extent Petitioner seeks to enforce the provisions of the settlement agreement, he must do so through the class representative or class counsel, and not in his own, separate case." *Id.* (citing *Sykes v. Friederichs*, No. C 04-422MMCPR, 2007 WL 841789, at *6 n.12 (N.D. Cal. Mar. 20, 2007)). Accordingly, the district court dismissed the habeas claims that were based on the related class action. *See id.*

Indeed, 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 claim seeking to prohibit his removal to a third country, until ICE complies with extra-statutory procedures substantially overlaps with the nationwide class action, *D.V.D.* 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. If he were, as he claims, subject to third country removal, which he is not, he would be a member of the certified class, and as a member of the certified class, Petitioner would be 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 his claims seeking additional procedures prior to his removal to any third country because they are subsumed within the issues being actively 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, to the extent any attempted removal to a third country becomes an issue for Petitioner, which it is not at this time. For these reasons, the Court should dismiss Petitioner's claims seeking such relief.

V. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

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

1. Petitioner's detention is authorized under 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 his constitutional rights. Ordinarily, once an alien has been 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.*

DHS has enacted regulations relating to aliens who are detained beyond the removal period and subject to release. *See* 8 C.F.R. § 241.4; *see also* 8 C.F.R. § 241.13. Here, ICE properly provided notice of the revocation of release under 8 C.F.R. § 241.13(i)(2) because there is a significant likelihood Petitioner can be removed in the reasonably foreseeable future, as established below. Exhibit A ¶¶ 25, 27; *see also* Exhibit B. Consistent with this regulation, on August 4, Petitioner was provided notice of the revocation of her prior release order and an informal interview where he was advised of his right to produce evidence supporting his release. Exhibit A ¶ 26; *see also* Exhibit B. ICE has complied with the regulations for revoking release under this section, where there is now a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2).

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 he was re-detained, because at this time, the Government has determined it is significantly likely to be able to effectuate his removal to Syria in the reasonably foreseeable future. *See* 8 C.F.R. §241.13(i)(2). He has only been re-detained for approximately four months while the Government attempts to execute his valid final removal order to Syria—two months less than the presumptively reasonable period to effectuate removal established in *Zadvydas*. His continued detention, while the Government seeks to effectuate his removal and enforce a valid removal order, violates neither section 1231 nor *Zadvydas*. 533 U.S. at 689.

Indeed, Petitioner has a valid final removal order. Here, Petitioner has only been re-detained for a little over four months while the Government attempts to remove him to Syria. No other third country removal is being sought. At this time, Petitioner is simply cannot meet his burden to establish that the Government is unable to effectuate removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 689. Petitioner is thus unlikely to succeed on the merits of his claim that his is unlawfully or indefinitely detained. *Id.*

2. The Government is not required to show "changed circumstances" or provide advance notice prior to the revocation of an OSUP.

Here, Petitioner's revocation of supervised release was pursuant to 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, which are regulations that cover revocation of supervision pursuant to a final removal order. 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.") Neither do either of these applicable regulations require a "change in circumstances" as Petitioner argues. Petitioner has failed to plead that Respondents violated 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13 or any procedural due process rights created thereunder.

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); 8 C.F.R. § 241.4. 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-detained, is constitutionally adequate in the circumstances and no additional process is required. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine whether procedural protections satisfy the Due Process Clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the

Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

The first factor favors Respondents. The Supreme Court has long recognized that due process as applied to aliens in matters related to immigration does not require the same strictures as it might in other circumstances. In *Mathews 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 and ICE is required to give Petitioner additional procedures under the Post Order Custody Review Regulations in 8 C.F.R. § 241.4. These regulations require periodic custody reviews in which Petitioner will have the opportunity to submit documents in support of her release, including documentation about flight risk and dangerousness. *See generally* 8 C.F.R. § 241.4(e)-(f) (listing factors to be considered in custody determinations). These procedures are more than adequate and unquestionably 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 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.

Respondents recognize that Petitioner is making an individualized challenge here. However, the additional procedure she requests would have a significant impact on the removal system. It would require ICE and the Executive Office of Immigration Review to set up a novel administrative process for Petitioner who—for all intents and purposes—represents a large portion of the final order alien population. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-deprivation 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'"). As stated, the Government does not have any plans to remove Petitioner anywhere other than the country of his citizenship, Syria. Being removed to a place you have been ordered removed by a final removal order issued by an IJ, that is Syria here, is not irreparable harm. It is the natural legal consequences of being an alien convicted of an aggravated felony with a final removal order issued by an IJ that is enforceable to Syria.

Petitioner essentially argues that any continued detention will be detrimental to him because the conditions in immigrations facilities are known to be "subpar", Doc. 2 at p. 27. He also contends that he can establish the element of irreparable harm because he is at risk of removal to a third country, however, the record contains no evidence of the Government taking any steps whatsoever to remove Petitioner to a third country. He also contends that his lawful detention pursuant to a removal order based on a criminal conviction, is a hardship on his family. 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)).

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 has not established he will suffer irreparable harm if he is not released from detention and 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*, 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 and the significant likelihood of removal to Syria in the reasonably foreseeable future, 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

Accordingly, Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction should be denied.

Respectfully submitted this 6th day of August, 2025.

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