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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JUAN EDELMAR ALVA ALVA, Petitioner, v. POLLY KAISER, et al., Respondents.	Case No. 3:25-cv-06676-RFL **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE; OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION; AND RETURN TO HABEAS PETITION** Date: August 21, 2025 Time: 1:00 p.m. Courtroom: 15, 18th Floor Hon. Rita F. Lin

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I. INTRODUCTION

Petitioner Juan Edelmar Alva Alva is subject to a final order of removal from the United States because he has unlawfully entered the United States at least four times. His order of removal was most recently reinstated in December 2018, but the government did not immediately remove him at that time due to capacity constraints. In 2023, Petitioner requested what is called "withholding-only" relief, which does not challenge the order of removal, but rather requests a determination that he cannot be removed to a specific country. On August 6 of this year, an asylum officer determined that Petitioner does not have a reasonable fear of returning to Guatemala, and ICE subsequently detained him to effectuate his removal.

Petitioner brought this habeas petition and motion for temporary restraining order to prevent his detention (at least without a bond hearing) before the government effectuates his removal. Remarkably, Petitioner's motion fails to mention that he is already subject to a final order of removal, and the Court could be excused for missing the single passing reference in his habeas petition.[1] And indeed, the duty judge granted Petitioner's request for a temporary restraining order before the government had the opportunity to explain Petitioner's status. But the facts that Petitioner is subject to a final order of removal and an asylum officer has rejected his withholding-only claim are critically important here: They confirm that the government is statutorily and constitutionally permitted to detain Petitioner to effectuate his removal, without providing a bond hearing, at least until his detention becomes impermissibly "prolonged" (which is not at issue here).

Petitioner's constitutional claims are without merit. Congress has created a comprehensive scheme governing the detention of noncitizens pending removal, and the Department of Homeland Security has promulgated detailed regulations to implement that scheme, all of which the Supreme Court has consistently upheld. Granting Petitioner's requested relief would judicially graft on an additional layer of detention review that Congress, the Executive Branch, and the Supreme Court have never held is required in these circumstances.

The Court should deny Petitioner's request for a Preliminary Injunction, deny the habeas

[1] *See* Dkt. No. 1 ("Pet.") ¶ 1.

petition, and enter judgment in favor of the government.[2]

II. FACTUAL BACKGROUND

A. Petitioner's Unlawful Entry, Removals, and Unlawful Reentries.

Petitioner is a native and citizen of Guatemala. *See* Pet. ¶ 15; *see also* Declaration of Thomas Auer ("Auer Decl.") ¶ 4. Petitioner entered the United States unlawfully in roughly 2000. *See* Auer Decl. ¶ 5.

ICE first encountered Petitioner in 2009 during routine jail checks in Montrose County, Colorado. *See id.* ¶ 5. Petitioner was serving a ten-day sentence in county jail following his misdemeanor convictions for speeding and driving without a license. *See id.* DHS placed Petitioner into removal proceedings, in which Petitioner requested and was granted voluntary departure. *See id.* ¶ 6. Petitioner voluntarily departed the United States on January 4, 2011. *See id.*

On September 23, 2013, Border Patrol Agents encountered Petitioner near Nogales, Arizona. *See id.* ¶ 7. The agents determined Petitioner had unlawfully entered the United States and processed him for expedited removal. *See id.* DHS removed Petitioner to Guatemala on October 4, 2013. *See id.*

On June 3, 2017, Border Patrol Agents again encountered Petitioner near Nogales. *See id.* ¶ 8. DHS reinstated Petitioner's 2013 removal order and referred him for criminal prosecution. *See id.* On June 5, 2017, Petitioner was convicted of illegal entry and sentenced to 30 days in prison. *See id.*[3] DHS removed Petitioner to Guatemala on July 12, 2017. *See id.*

On November 27, 2018, Border Patrol Agents encountered Petitioner near the border for the third time. *See id.* ¶ 9. This time, Petitioner was found with his child near Antelope Wells, New Mexico. *See id.* DHS reinstated Petitioner's removal order on December 1, 2018. *See id.* However, rather than removing Petitioner, DHS released him on an Order of Supervision on December 3, 2018, due to a lack of detention space. *See id.* On December 12, 2018, Petitioner was placed in an alternatives-to-detention program. *See id.*

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[2] This Response serves as Respondents' return to the habeas petition. *See* 28 U.S.C. § 2243; *see also* Fed. R. Civ. P. 65(a)(2).

[3] This conviction, and his prior convictions in Colorado, contradict Petitioner's repeated assertion that he has no criminal history. *See, e.g.*, Pet. ¶¶ 15, 55, 61.

B. Petitioner's Request for Withholding of Removal to Guatemala.

Petitioner did not claim a fear of returning to Guatemala when he was apprehended in 2018. *See id.* ¶ 11. Nevertheless, in April 2023, Petitioner requested a reasonable fear interview before an asylum officer. *See id.*[4]

The asylum officer held Petitioner's reasonable fear interview on August 6, 2025. *See id.* ¶ 12. The asylum officer determined that Petitioner did not have a reasonable fear of return to Guatemala. *See id.* Petitioner requested that an immigration judge review the asylum officer's finding. *See id.* By regulation, that review must occur within 10 days (*i.e.*, no later than August 16, 2025), absent "exceptional circumstances." 8 C.F.R. § 1208.31(g).

Meanwhile, due to the asylum officer's determination, ICE detained Petitioner pursuant to section 241(a)(6) of the Immigration and Nationality Act pending the immigration judge's reasonable fear review. *See id.* ¶ 13.

Petitioner filed this habeas petition and motion for a temporary restraining order on August 7. Petitioner was released from ICE custody on August 8, 2025, pursuant to the temporary restraining order entered in this action. *See id.* ¶ 14; *see also* Dkt. Nos. 4, 6.

III. LEGAL STANDARDS

A. Detention of Noncitizens Under 8 U.S.C. § 1231.

The detention of a noncitizen[5] following reinstatement of a prior order of removal is governed by 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021). Section 1231(a)(2) provides that the government "shall detain" the noncitizen for a 90-day "removal period," the commencement of which can be triggered by various events in the noncitizen's proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). Thereafter, the noncitizen "may be detained beyond the [90-day] removal period" if, among other things, he is "inadmissible" (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)) or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6).

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[4] Such requests in these circumstances are typically referred to as "withholding-only" requests.

[5] This brief uses the term "noncitizen" as equivalent to the statutory term "alien." *See Barton v. Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. § 1101(a)(3)).

Section 1231(a) does not provide for a bond hearing for the noncitizen to challenge their detention. *See Guzman Chavez*, 594 U.S. at 526. Rather, noncitizens subject to final orders of removal can request review of their detention after the expiration of the 90-day removal period "where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Moreover, the Supreme Court has recognized that detention of up to six months to effectuate the removal of a noncitizen is "presumptively reasonable" and constitutionally valid, though longer detention may require additional justification. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

B. Preliminary Injunctions.

"A preliminary injunction is an extraordinary and drastic remedy." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (internal quotation marks and citation omitted). "The Supreme Court has emphasized that preliminary injunctions are an 'extraordinary remedy never awarded as of right.'" *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citation omitted). To prove entitlement to a preliminary injunction, a petitioner must establish that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit recognizes a sliding scale test, under which a preliminary injunction may issue if the petitioner demonstrates "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff . . . assuming the other two elements of the *Winter* test are also met." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). The petitioner must adduce "substantial proof" and make a "'*clear showing*'" that preliminary equitable relief is warranted. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original).

Under Federal Rule of Civil Procedure 65(a)(2), the Court may consolidate consideration of a motion for a preliminary injunction with the consideration of the merits of an action. "Consolidation is generally appropriate when it would (1) result in an expedited resolution of the case; (2) conserve judicial resources and avoid duplicative proceedings; (3) involves only legal issues based on uncontested evidence and public records; and (4) would not be prejudicial to any of the parties." *Thomas v. Zachry*, No. 3:17-cv-0219-LRH, 2017 WL 2174946, at *1 (D. Nev. May 17, 2017) (citing cases).

C. Habeas Corpus.

Federal district courts may grant writs of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). In immigration cases, the federal courts' habeas jurisdiction is limited by 8 U.S.C. § 1252(a)(2)(B), which provides that "no court shall have jurisdiction to review" "decision[s]" for which the statute grants "discretion" to the Attorney General.

IV. ARGUMENT

A. Petitioner's Due Process Claims Fail On The Merits.

Petitioner is subject to a reinstated order of removal; an asylum officer has determined he has no reasonable fear of return to Guatemala; and an immigration judge will review that determination in a matter of days. Petitioner's detention is authorized by 8 U.S.C. § 1231, and he has no right to a bond hearing before being detained. Petitioner's substantive and procedural due process claims therefore fail on the merits.

1. Petitioner's detention would not violate substantive due process.

The Supreme Court has squarely held that noncitizens in Petitioner's procedural posture – those subject to reinstated removal orders pending an immigration judge's withholding of removal determination – are subject to detention under § 1231 and "are not entitled to a bond hearing while they pursue withholding of removal." *Guzman Chavez*, 594 U.S. at 526; *see also, e.g.*, *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022) (rejecting argument that § 1231(a)(6) "require[s] an initial bond hearing" "at the outset of detention"). And that textual holding is reinforced by the Supreme Court's prior determinations that, so long as it is not prolonged, detention to effectuate removal is generally constitutionally permissible.

Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also, e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for

administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner's substantive due process claim therefore fails. *See Demore*, 538 U.S. at 531; *see also Zadvydas*, 533 U.S. at 701 (recognizing a "presumptively reasonable period of detention" of up to six months to effectuate a final removal order).

True, noncitizens held under § 1231 may be able to obtain review of their detention after six months, including to avoid the constitutional problems with "prolonged" detention. *See Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by [§ 1231(a)]."); *but see Arteaga-Martinez*, 596 U.S. at 580-82 (rejecting claim that statutory text of § 1231(a)(6) required periodic bond hearings every six months). But Petitioner does not and cannot argue that his detention has become prolonged, or that his removal is not reasonably foreseeable at this time. *See generally* Pet.

Remarkably, Petitioner does not even try to address the statutory basis for his detention, much less try to distinguish any of the Supreme Court authority establishing that he can be detained without a bond hearing. *See generally* Pet.; Mot. Petitioner's substantive due process claim therefore fails.

2. Procedural due process does not require an extra bond hearing.

Petitioner asserts that his procedural due process claim is governed by *Mathews v. Eldridge*, 424 U.S. 319 (1976). The government does not concede that *Mathews* applies here, given "the unique constitutional treatment of detained aliens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). Nevertheless, if the Court were to apply *Mathews*, it would consider three factors: the plaintiff's private interest, the risk of erroneous deprivation without additional procedures, and the government's interest. These factors weigh against the additional process requested here.

(i) Petitioner's history and status reduce his liberty interest.

First, Petitioner's liberty interest is reduced by the fact that he is a noncitizen subject to a final

order of removal. *See Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434, at *3 (N.D. Cal. Oct. 14, 2022) (holding released noncitizen had a reduced liberty interest where he "always knew that his release was subject to appellate review"); *see also Rodriguez Diaz* 53 F.4th at 1206-08.

That is especially true in light of Petitioner's particular circumstances. Petitioner has unlawfully entered the country four times. He is subject to an administratively final order of removal. Although he can seek withholding of his removal to the specific country of Guatemala, he cannot challenge the order of removal itself. *See Guzman Chavez*, 594 U.S. at 531, 535. And in any event, an asylum officer has already determined that he does not have a reasonable fear of returning to Guatemala, which determination is subject to review by an immigration judge over the next few days. *See* 8 C.F.R. § 1208.31(g). All of these factors reduce Petitioner's liberty interest here. *See Rodriguez Diaz*, 53 F.4th at 1206-08.

Petitioner primarily argues that recent district-court cases involving noncitizens in *other* stages of their immigration proceedings "granted the exact relief [he] seeks," and therefore should apply here. Mot. 9. But these cases concerned noncitizens who were not yet subject to final orders of removal, and whose detention was governed by other statutes. *See Garro Pinchi v. Noem*, 2025 WL 1853763 (N.D. Cal. July 4, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025). This difference matters, because individuals at different stages of removal proceedings have different liberty interests and are subject to different procedures. *See Rodriguez Diaz*, 53 F.4th at 1197-98.

Similarly, Petitioner wrongly argues that his liberty interest is actually heightened here because he was conditionally released due to a lack of detention capacity in December 2018. Petitioner has never been granted any form of lawful status in the United States; his release was always subject to revocation so that the government could effectuate his removal. Plaintiff's conditional release does not somehow increase the strength of his liberty interest now, especially when his withholding-only claim has been rejected by an asylum officer. *See Uc Encarnacion*, 2022 WL 9496434, at *3. This case is also fundamentally unlike cases like *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny, where U.S. citizens were released from custody in other contexts, such as post-sentence parole: "The recognized liberty interests of U.S. citizens and aliens are not coextensive." *Rodriguez Diaz*, 53 F.4th at 1206; *see also Uc Encarnacion*, 2022 WL 9496434, at *3 ("Morrissey involved subsequent revocation

of post-release parole for alleged violation of parole conditions, not appellate review of the original decision to parole the petitioner.").

The government recognizes that any form of detention will implicate an individual's liberty interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for wanting to remain out of custody. But those reasons do not change the fact that Petitioner's status and his history in immigration proceedings reduce his liberty interest here.

(ii) The risk of erroneous deprivation is minimal.

Second, the risk of erroneous deprivation of Petitioner's liberty here is minimal. *See Rodriguez Diaz*, 53 F.4th at 1209; *Uc Encarnacion*, 2022 WL 9496434, at *4. There is no dispute that § 1231 authorizes detention to effectuate an individual's removal. *See, e.g.*, *Guzman Chavez*, 594 U.S. at 526; *see also Zadvydas*, 533 U.S. at 701. The Supreme Court has long upheld the legality of such detentions. Petitioner has made no argument that § 1231 does not apply here. *See generally* Pet.; Mot. And "existing agency procedures sufficiently protected [Petitioner's] liberty interest and mitigated the risk of erroneous deprivation." *Rodriguez Diaz*, 53 F.4th at 1209; *see also* 8 C.F.R. §§ 241.13(d)(1) & (j).

(iii) The government has a strong interest in detention pending removal.

Turning to the third *Mathews* factor, the Ninth Circuit has held that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). And the Supreme Court has recognized that "aliens who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order." *Guzman Chavez*, 594 U.S. at 544; *see also Rodriguez Diaz*, 53 F.4th at 1208-09 & n.8 (noting that "[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent").

Moreover, Petitioner's request for an additional level of review would impose administrative and resource burdens on the government that would frustrate its ability to take congressionally authorized detention and removal actions. Congress has determined that the Executive Branch may detain noncitizens ordered removed without providing them a pre-detention bond hearing. Every extra hearing before an IJ adds further congestion to an already backlogged immigration-court system. It drains

limited Executive Branch resources. The government has a significant interest in avoiding these extra-regulatory burdens. *See Uc Encarnacion*, 2022 WL 9496434, at *4-5 (additional bond hearing would "thwart the Congressional design").

In short, the three *Mathews* factors weigh decidedly against granting Petitioner the additional, pre-detention hearing he now requests.

B. Petitioner Fails to Show Irreparable Harm.

In addition to his failure to show a likelihood of success on the merits, Petitioner does not meet his burden of showing he will be irreparably harmed in the absence of a preliminary injunction. Petitioner primarily claims two categories of injury if he is not afforded a hearing before he is arrested again: (1) alleged deprivation of constitutional rights, and (2) loss of income and separation from his family. Mot. 20.

However, Petitioner's speculative claimed injuries are "too tenuous" to support a preliminary injunction. *See Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner's claimed injuries regarding harm to him and his family arise from possible *detention*, not from the absence of a bond hearing. He thus offers no explanation for how those claimed injuries would be prevented by a preliminary injunction, which—even if granted—could still result in his re-detention following notice and a hearing.

The injury that Petitioner asserts from his future potential detention is also insufficient because, as discussed above, it is well established that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also, e.g.*, *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And again, even if Petitioner were detained, he would have the opportunity to seek review of that detention if it extended over time. Petitioner therefore cannot show that any injury he might suffer from the specific absence of a *pre*-detention hearing is "irreparable."

Finally, the alleged infringement of Petitioner's constitutional rights is insufficient when—as here—Petitioner fails to demonstrate "'a sufficient likelihood of success on the merits of [his] constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc.*

v. Coal for Econ. Equity, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm").

Given his undisputed status as a noncitizen subject to a final order of removal whose detention has not been prolonged, Petitioner cannot establish that lawfully authorized detention would cause him irreparable harm.

C. Neither the Balance of Equities Nor Public Interest Favors Petitioner.

When the government is a party, the last two factors that Petitioner must establish to obtain a preliminary injunction merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, for the same reasons that Petitioner has not shown the *Mathews* factors favor his requested additional process, Petitioner has not shown that a preliminary injunction barring his detention is in the public interest. To the contrary, the public interest lies squarely in detaining an individual subject to removal in the near term. *See Rodriguez Diaz*, 53 F.4th at 1208-09.

Indeed, Petitioner's motion ignores the public interest in application of immigration laws that the Supreme Court has long upheld. *See, e.g.*, *Demore*, 538 U.S. at 523; *see also Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court "should give due weight to the serious consideration of the public interest" in enacted laws). Petitioner's claimed harm to himself and his family cannot outweigh this public interest in application of the law, particularly since courts "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) (citation omitted). Recognizing the availability of a preliminary injunction under such circumstances would permit any noncitizen who had been released pursuant to an order of supervision pending removal to petition a federal district court for additional review, circumventing the comprehensive statutory scheme that Congress enacted.

And Petitioner's reliance on his assumed constitutional entitlement to an extra bond hearing does not save his argument. While it is "always in the public interest to protect constitutional rights," if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that public interest does not outweigh the competing public interest in enforcement of existing laws. *See Preminger v.*

Principi, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in upholding the existing processes and permitting Petitioner to be detained without additional burdensome processes, while allowing Petitioner to then challenge his detention if it becomes prolonged, is significant.

V. CONCLUSION

For the foregoing reasons, the Court should deny the preliminary injunction, dismiss the habeas petition, and enter judgment on the merits in Respondents' favor.

Respectfully submitted,

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Dated: August 14, 2025

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